ON THE CRIMES OF REBELLION AND SEDITION

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Spanish Law | The sentence on the "procés" | Legal background
On a possible criminal reform of sedition | Sedition in comparative law

Spanish law

The current criminal definitions of rebellion and sedition are regulated in articles 472 to 484 and 544 to 549 (respectively) of the Criminal Code, the former in Chapter I of Title XXI, under the title of Crimes against the Constitution, and the latter in Chapter I of Title XXII, under Crimes against Public Order.

A. Thus, art. 472 (basic definition of rebellion) considers rebellion to be a violent and public uprising to achieve one or more of the following objectives:

1) To abolish, suspend or modify the Constitution, in whole or in part.

2) Depose the King or Queen or Regent or members of the Regency or remove all or part of his/her/their prerogatives and powers, or force them to carry out an act against their will[1].

3) Prevent the holding of elections for public office.

4) Dissolve the Parliament, the Senate or any Legislative Assembly of an Autonomous Community (Region), prevent it from meeting, deliberating or ruling, force it to pass a resolution, or seize any of its attributions or powers.

5) Declare the independence of a part of the national territory

6) Replace the Government of the Nation or the Governing Council of an Autonomous Community with another, use or exercise for its own purposes or remove its powers and functions from a Government or Governing Council of an Autonomous Community, prevent or restrict any of its members from exercising their rights freely, or oblige any of them to carry out acts against their will.

7) Remove any kind of armed force from obedience to the Government[2].

1. The term "King or Queen" was introduced to replace the previous reference to "King", as established in point 259 of the sole article of Spanish Organic Law (L.O.) 1/2015 of 30 March 2015, which modifies L.O. 10/1995 of 23 November 1995 of the Criminal Code (published in the Official State Gazette on 31 March 2015). Validity: 1 July 2015

2. A similar definition appears in Polish Law, whose criminal code contains the following provisions; Article 127: 1. Anyone who, acting to deprive the Republic of Poland of its independence, to detach a portion of its territory or to use force to overthrow its constitutional system, undertakes in agreement with others activities aiming at achieving this purpose, is liable to imprisonment for a minimum term of 10 years, imprisonment for 25 years or imprisonment for life.
2. Whosoever makes preparations to commit the crime specified in article 1 will be punished with a minimum prison term of 3 years.
Article 128: 1. Anyone who, in order to remove by force the constitutional body of the Republic of Poland, undertakes activities aimed directly at achieving this objective, shall be punishable by imprisonment for not less than 3 years.
2. Whoever prepares to commit the offense specified in § 1, shall be punishable by imprisonment from 3 months to 5 years.
3. Whoever, by force or unlawful threat, affects the official activities of the constitutional body of the Republic of Poland, shall be punishable by imprisonment from one year to 10 years.

Art. 473 establishes the penalties to be imposed on the basis of the specific responsibility of the participants and the presence compounded objective elements (*Actus reus*):

1. Those that, inciting rebels, have promoted or sustained the rebellion, and its main ringleaders will be sentenced to a prison term of 15 to 20 years and they will be completely disqualified from holding public office or employment for the same period; those who carry out subordinate command, with a prison term of 10 to 15 years and a full disqualification from public office or employment for 10 to 15 years, and lesser participants with a prison term of between 5 and 10 years and special disqualification from public office or employment for 6 to 10 years.

2. If weapons have been brandished or if there has been combat between the forces under their command and sectors loyal to the legitimate authority, or the rebellion had caused damage to publicly or privately owned property, cut telegraphic/telephone communications, radio waves, railway links or others, exercising serious violence against persons, demanded contributions or diverted public funds from their legitimate use, the prison sentences will be, respectively, from 15 to 20 years for the first group, from 15 to 25 years for the second, and from 10 to 15 years for the third.

The legislative background of both crimes (rebellion and sedition) shows that that they are two offences that are very closely related in historical terms. The Criminal Code of 1870 considered them offences against public order, reserving the designation of 'crimes against the Constitution' for offences of *lèse-majesté* or against the Parliament, Council of Ministers and its members and the form of Government. This approach was also continued in the Criminal Code of 1932 (in the Second Republic), with the replacement of the term *lèse-majesté* by 'Head of State' and 'Kingdom' by 'Nation'.

The Criminal Code of 1944, and later that of 1973 (both under General Franco's Dictatorship) included them as crimes against the interior security of the State, being regulated successively (arts. 214 a 217 for rebellion and arts. 218 and following for sedition). The slight case law in existence refers to this legislation (now repealed).

The crime of rebellion has undergone a series of modifications in the recent democratic phase. Until the approval of the so-called 'Criminal Code of Democracy' through Organic Law 10/1995 of 23 November 1995, the Criminal Code of 1973 (approved in the final stages of Franco's dictatorship) remained in force. It defined the crime of rebellion as a public uprising in open hostility (an expression equivalent to armed assault, according to the Dictionary of the Spanish Royal Language Academy), with a text identical to that contained in all the criminal codes of the 19th and 20th centuries.

Following the traumatic experience of the attempted coup d'état of 23 February 1981, Organic Law 2/1981 of 4 May 1981 introduced some major changes: it removed the requirement of open hostility, defining 'rebellion' as any public uprising, even without violence and without the use of weapons, carried out with the aim of abrogating, suspending or modifying -either totally or partially- the Constitution or declaring the independence of a part of the national territory (art. 214 Criminal Code); it penalized rebellion through guile or through the use of means contrary to the law, even when the uprising is not public (art. 217.1); and is considered an act of subverting the integrity of the Nation or acting against the independence of all or part of the national territory through means different from those envisaged for crimes of treason as 'rebellious behaviour'. Later, Organic Law 14/1985 of 9 December 1986 modified some of the more ancillary aspects

of these criminal precepts.

The Criminal Code approved in 1995 introduced the violent nature of the uprising as a typical element of rebellion. This element has been at the heart of the legal debates around the very serious events that took place in the Autonomous Community (Region) of Catalonia in September and October 2017. **This punitive text systematically relocates both criminal offences in the context of the legal asset that is the subject of protection. Thus, the crime of rebellion heads the list of crimes against the Constitution, being defined as the most serious attack on the constitutional order, while sedition heads the list of crimes against public order. This finer point is important when it comes to analysing and evaluating the seriousness of the events, and their nature, that occurred in Catalonia in autumn 2017.**

It is not correct, therefore, to claim that the crime of rebellion, as it is currently defined, has not been subject to any modification, alleging that it was only envisaged for military uprisings in the distant past. Neither is it the case that the events that took place in Catalonia are not accommodated in the legal definition in question, under the pretext that it was a post-modern civil rebellion that has not been legally defined. A civil uprising can be seen as a crime of rebellion whenever the basic requirements that make up such a criminal offence are fulfilled. The inclusion of the civil element in coups d'état was precisely the reason that justified the reforms of 1981 and 1985.

Placing the events that occurred in Catalonia in autumn 2017 in the legal category of sedition, however, can be considered a little contrived. Let us be sincere and rigorous here. **Converting a rebellion against the constitutional order into sedition against public order, as a result of a supposed daydream -an unusual literary licence even rejected in different interviews by the persons sentenced - does not appear to be the most correct legal solution for events that the Appeals Chamber of the Supreme Court defined, in a series of orders dated 5-1-2018, 17-4-2018 and 26-6-2018, as an institutional rebellion by the authorities of a territory who held legally established powers, and whose seriousness was manifest.**

The speech by His Majesty the King (with only one similar historic precedent, the one made by his father following the attempted coup on 23 February 1981), the despatch of thousands of police officers to the Autonomous Community of Catalonia and the application of an exceptional mechanism in defence of the Constitution (envisaged in article 155 of the Spanish Constitution) are not measures that are adopted to deal with the disruption of public order, however serious it may be.

In a context so far removed in time from the old military revolts, once an essential requirement for rebellious uprisings, the use of violence –when the rebels have all the levers of power at their disposal (with the exception of the Judiciary)– was only needed to get through certain stages of the 'procés' (the events of 20 September and the holding of the illegal referendum on October 1st). This, however, does not remove the slightest element of instrumentality and functionality from the violence that was used. At certain moments, the use of violent opposition (assault, battery, coercion, damage, etc.) became a necessary means of advancing the rebellious process, in such a way that violence fulfilled an essential function and contributed as a crucial instrument to the achievement of its objectives.

However, let us imagine for a moment that weapons had been used during the violent episodes recognised by the court. Would the choice of sedition have been the final one?

The replacement of the Constitution by a totally unconstitutional parallel legality and the proclamation of independence, characteristic aims of a rebellion (art. 472 sections 1 and 5 Criminal Code), apart from any guarantee of success and even if only for a short time, justified the inclusion of the events under the criminal definition of rebellion, and their legal-political definition as a coup d'état, and against the State in the full sense.

Judging from the perception of the millions of Spanish citizens who witnessed the events that took place over those two months with undisguised surprise and even greater concern, **they did not seem to be purely symbolic acts or rhetorical declarations that emerged from an oneiric or fantasy universe that would have been incapable of creating a risk to the constitutional order.**

Neither was there a perception, at the time, of the hypothetical mutation of the aims pursued by the leaders of the 'procés', under which the right to decide surprisingly became the right to exert pressure. As Professor Gimbernat rightly points out, there is one circumstance that does not change the basic element of the crime of rebellion at all: the aim continues to be the achievement of independence, either directly (as effectively happened) or indirectly, coercing the Government of the Nation to negotiate, as in both cases the channel used to achieve this was illegal and criminal.

B. Article 544 considers people guilty of sedition those who, without being included in the offence of rebellion, rise up publicly and tumultuously to prevent, by force or outside legal means, the application of the Law by any authority, official corporation or public official from legitimately carrying out their functions or complying with their agreements, or of administrative or judicial resolutions.

C. Article 545 establishes the sentences to be imposed based on the specific responsibility of the participants and the presence of compounded objective elements:

1. Those people who would have incited, sustained or directed the sedition, or took part in it as its main perpetrators, will be given prison sentences of 8 to 10 years, and 10 to 15 years if they were persons in positions of authority. In both cases, they will also be completely disqualified from holding public office or employment for the same period.

2. Aside from these cases, a prison sentence of 4 to 8 years and special disqualification from public office or employment of between 4 and 8 years.

In both cases, there will be specific sanctions for plotting and incitement to commit both offences.

Both offences -rebellion and sedition- tend to be of a short duration, as it is not necessary that the proposed objective or purpose be achieved for them to be considered committed.

The main difference with the crime of rebellion lies in the element of violence (an unavoidable requirement in this crime, but not in sedition), and in the pursued aim, an attack on the constitutional order in rebellion, and a negative effect on public order in sedition.

It is essential to point out that the standard description does not tie in with 'public uprising', its express characterisation as violent being a premise shared with the crime of rebellion.

The description of the crime envisaged in art. 544 of the Criminal Code –if we reject other approaches based on wishful thinking– includes an alternative in the description of 'public uprising' and 'tumultuous'. Indeed, this can be carried out "through force or outside legal channels". Whoever understands that, despite this alternative text, the requirement of violence in the crime of sedition is inherent to the term 'uprising' ignores the grammatical meaning of the word. None of its definitions is exclusively linked to the use of violence. Neither does the grammatical meaning of the term 'tumultuous', equivalent to agitated, disordered or turbulent, back this thesis up.

The sentence on the 'procés'

As the Supreme Court Sentence of 14-10-2019 indicates, an uprising is characterized by objectives that connote an insurrection or an attitude of open opposition to the normal functioning of the legal system, constituted by the effective application of the law and the non-obstruction of the enforcement of decisions by institutions. However, it is not a requirement that the action of a group should be separated from organizational models, as it could be carried out in line with a specific and predetermined strategy.

Commitment (of the offence) needs to be established, based on the nature of the criminal offence as a frustrated result, in similar terms to rebellion. This requires an objective functionality (as well as being subjectively obtained) regarding the hampering of compliance with the Law or the enforcement of resolutions adopted by the Administration or the Judiciary.

The defined impairment does not necessarily have to be effectively achieved by the perpetrators. This would come under the phase of depletion, beyond the committing of the action. However, as for the purpose of the perpetrators, it does not have to be the absolute aim of all of them. It is sufficient to obstruct or impair in such a way that it contributes towards the objective of dissuading persistence in the application of the Law, the legitimate action of a public authority or body or public officials who wish to comply with their administrative or legal resolutions. This is because this intention to dissuade implies a desire to definitively impede, and it is not necessarily postponed over time.

The features associated of the crime of sedition –the violence that characterises rebellion would probably be something else– are covered when, instead of a simple demand to whoever remained together with the same purpose, the step is taken to necessarily attempt to counteract their opposition. This is also the case when police officers need to give way and desist from complying with the judicial warrant they intend to enforce in the face of the confirmed attitude of defiance and opposition to its enforcement by a group of persons who clearly outnumber them. The most numerous cases respond to this profile, given that officers of the *Mossos d´Esquadra* turned up at the schools. The same criminal signification should be attributed to the people gathered who announced a certain attitude of opposition to the officers to prevent them from carrying out their duties, including resistance. In this scenario, this refusal, even though no further step is not taken, is in itself sufficient to fulfil the common requirements of the crime of sedition.

The right to protest cannot mutate into an exotic right to physically prevent police officers from enforcing a judicial warrant, and to do so generally throughout a region in which the execution of a legal order has been suspended for one day. One-off and singular opposition would exclude some ingredients that could perhaps lead us to other objective elements. However, in the face of the multitudinous revolt -generalised and strategically planned- it is not possible to obviate the objective element of sedition. The authority of the Judiciary was put on hold, replaced by the will -that the referendum had to be held- of the conveners and those who supported the call; a will imposed by force.

These events -outside legal channels, as indicated in art. 544 of the Criminal Code- are also made up of the cases in which the law enforcement officers -the *Mossos* in most cases- found themselves called upon by a group of people to resist any order, whether issued by the police of the judiciary, and to desist from their attempt to comply with the legal order and to give in, in a shameful, resigned and -in some cases- almost compliant manner. There is evidence of episodes of authentic complicity, clearly deduced from some images and scenes, of complicity and almost connivance, perhaps due to ideological sympathy or to feeling sure that they would earn the applause and endorsement of the rebellious citizens or political leaders. In all the polling stations, the refusal to cooperate with the police officers was strongly expressed within a scenario of protest by large groups of people who blocked the entrances and showed a firm determination to maintain the blockage, despite the legal injunction.

It should be noted that the crime of sedition, once committed, cannot be deleted by posterior acts by third parties. The objective nature of events is not affected by claims of excessive policing, which are duly investigated by other legal bodies. These are different complaints and processes that are collateral and, therefore, not decisive for the purposes of the criminal definition of the offence proclaimed in this sentence.

In the proven facts of the Supreme Court Sentence of 14-10-2019 it is stated that the actions of 20 September and 1 October 2017 were far from a peaceful and legitimate manifestation of protest.

The hostility shown made it impossible for the public officers to enforce the orders of Court of First Instance No. 13 on 20 September, creating real fear not only in the public officials that were enforcing legitimate legal orders -for example, the lawyer of the judiciary in the offices of the Vice-Presidency- but also regional public officials under investigation, who had to be transferred (by legal requirement) to the places where the searches were being carried out. These were the same public officials whom the people accused of sedition said they wanted to defend. Their presence was effectively and definitively prevented by the defendants who led the tumultuous mobilization.

The behaviour seen on October 1st involved the sufficient use of force to neutralize the police officers who legitimately tried to prevent the voting, as they were obliged to do by express legal order. Therefore, the aim was to obstruct compliance with the orders of the Magistrature of the Supreme Court of Justice of Catalonia and the Constitutional Court. All this took place with a transcendence that far exceeded the limits of a lax interpretation of the concept of public order and impacted the core of that concept from a constitutional perspective. **Indeed, a reading of the proven facts, which contains the essential elements of laws 19 and 20 approved by the Parliament in early September 2017, is sufficient to understand that, even leaving aside their functional irrelevance regarding the type of rebellion, they represent an attempt to repeal valid current legislation, as well as showing a clear refusal to obey the resolutions of the**

Constitutional Court.

These results were aimed at completely outside legal channels. The proven facts show the forced interpretation of the Regulations of the Regional Parliament to proclaim these legal provisions. The effectiveness -but not validity- of the new provisions was reflected in that the defendants interpreted them in terms of their precepts, despite the repeated demands of the Constitutional Court that they should not be applied in practice.

Legal background

There are very few judicial precedents that analyse the criminal offences of rebellion and sedition. Obviously because, in a context of democratic stability and social peace, it is difficult for events as serious as those involved in both offences to take place.

As for the crime of rebellion, one of the most serious attacks on constitutional order, there are three judicial precedents known to us. The first is the attempted coup d'état on 23 February 1981, a military uprising in which the nation's Parliament was held hostage by a group of armed civil guards, who were eventually sentenced to prison for the crime of military rebellion. The ringleaders were convicted for the crime of military rebellion, although the Supreme Court later increased some sentences; in some cases, the conviction for conspiracy to rebellion became one for a crime committed.

The second is the so-called 'Coup of the Colonels', dismantled in October 1982 just a few days before the General Election of October 27th, in which the PSOE swept to victory. Three army chiefs were put on trial (two colonels and a lieutenant-colonel) for devising a plan to carry out a coup and abolish the democratic institutions. They did not succeed in perpetrating the crime, despite which they were convicted for conspiracy to rebellion, with prison terms of 12 years and one day.

The third, known as 'Operation Galaxy', took place in mid-1978. It was dismantled at a very early stage, and its alleged perpetrators (a lieutenant-colonel and a commanding officer) were sentenced to a few months in prison.

There are not many precedents for the crime of sedition either. There are fewer than half a dozen resolutions that have made a pronouncement on the criteria of application of this criminal definition.

The Supreme Court Sentences of 21-7-1934, 10-10-80, 16-10-1983 (on a riot that occurred in the Torrero-Zaragoza prison) and 3-7-91 are worth mentioning. We will examine them later to precisely establish the scope and requirements of the crime of sedition envisaged in art. 544 of the Criminal Code, as its text is almost identical to that of art. 218 of the Criminal Code of 1973, and also art. 245 of the Criminal Code of 1932.

We should start by pointing out that sedition is a second-degree rebellion in that the definition of the crime only takes into account culprits who are included in the crime of rebellion. While the **Supreme Court Sentence of 3-7-1991 states that "rebellion tends to attack the normal performance of the primary functions of legislating and governing, while sedition tends to attack the secondary functions of administering and sentencing", this does not prevent the events from being legally defined as sedition when -without the element of violence being involved-** (required for rebellion ex art. 472 Criminal Code) the aim of the participants in the uprising is not just to prevent the application of the Law, the legitimate exercise of their functions by authorities, official bodies or public officials, compliance with their undertakings

or administrative or judicial resolutions, but also **illegally declaring the independence of a part of the national territory. The presence of a dual purpose, without using violence as in the present case, places us before a much more serious action from the perspective of illegality**, and, as a result, a greater demerit of injustice in terms of its ultimate aim, as well as that involved in this criminal definition, that envisaged for crimes of rebellion.

The Supreme Court Sentence of 10-10-1980 dissects this criminal definition as follows:

a) an uprising is required, i.e. a revolt or insurrection against the established legal order or the normal functioning of the institutions that **does not require the use of force because it is sufficient to do so outside established legal channels** (e.g. unlawful conduct **to openly refuse to comply with the law). Bearing in mind that national sovereignty lies in the Spanish people and its representation in the Spanish Parliament, there is no greater attack on the constitutional order than that of aiming to separate a part of the national territory, flagrantly undermining constitutional norms and removing the most genuine function from the national legislative power.**

b) It is a case of a crime of mere activity or frustrated result, also defined as a ***delito de tendencia*** (trend crime), in that it is **committed through the mere action of rising up, even though the desired aims are not achieved.**

c) **the uprising has to be public**, i.e. open, evident, manifest and tumultuous. Its etymological meaning is equivalent to 'agitated' or 'disordered', although common law considers that the criminal act is also committed when it is ordered or organized (which is logical because an organized act of sedition has a greater chance of achieving its objectives).

d) **the uprising aims at achieving the objectives envisaged in the defined crime**, although using force, either outside legal channels or, -which amounts to the same- illegitimately or illegally circumventing the procedures envisaged in the Law.

e) **the subject should necessarily be plural,** i.e. a sufficient number of persons to achieve the objectives without it being necessary to constitute a crowd (the Supreme Court Sentence of 21-7-1934 estimated that 30 persons is a considerable number for this purpose).

f) as regards the object, the legislative power and public bodies, authorities, public officials, State, province, municipality, etc. may be affected.

On a possible criminal reform of sedition

Based on these precedents, the idea of modifying the definition of these offences has emerged. It will be necessary to wait to see the definitions of the offences and the penalties attached to them, but everything leads one to think that the core of the reform, at least regarding the crime of sedition, will consist of the creation of a compounded sub-type for the misuse of public funds and the reduction of terms (both prison and disqualification), including cases in which it is a case of compounded sedition due to the misuse of public funds. All this, under the pretext of modernizing the definition of a criminal offence that is very rarely applied in our courts of law, aimed at sanctioning disruptions of public order of a certain seriousness (prison riots, the case of the air traffic controllers' strike, etc.).

The trite and recurring argument that the sentences imposed on persons convicted in the trial of the 'procés' are excessive and disproportionate lacks any legal basis, and it is rebutted if the misuse of public funds is taken into account for sums above 250,000 euros (art. 432.3, last paragraph Criminal Code), which involves a prison term of at least 6 years and a maximum of 12, and another of complete disqualification of 12 to 20 years. Logically, the crime of sedition compounded by misuse of funds should not imply –in any case– prison sentences and disqualification periods shorter than those individually indicated for the aforementioned crime of misuse of public funds.

If this should occur, the *ad hominen* nature of the reform would be exposed, and the principle of proportionality of the sentences completely vindicated. This, because despite the anti-legal demerit of the criminal offence (sedition plus misuse), a shorter penalty would be imposed, without taking into account the greater seriousness of the event and the varied nature of the affected legal assets.

A penal reform of this nature is only justified by reasons of general interest. In the case in point, it is merely a case of identifying it with the incorporation of criminal figures that guarantee a more effective defence of the constitutional order and avoid the repetition of criminal acts as serious as those that occurred.

We are all aware that the criminal response to attacks against the constitutional order shows some deficiencies that need to be corrected. However, the solution does not lie in dismantling or neutralizing the preventive-punitive effects of current criminal law, but in protecting them against new threats and modern-day attacks. **In addition to maintaining the crimes of rebellion and sedition in their present terms, this requires the application of criminal law through the incorporation of new legal instruments that guarantee the efficient protection of the constitutional framework: among them, the crime of illegal convening of a consultation and/or referendum** (as was announced in the electoral period), **or the specific definition of reiterated disobedience to the Constitutional Court as a compounded modality of disobedience, which involves prison sentences and disqualification of a certain seriousness.**

If these criminal definitions had been in force at the time, it is highly likely that their immediate application by criminal justice would have meant that many of the serious criminal episodes committed could have been averted or prevented, which would have made resorting to other, more serious criminal modalities unnecessary.

Sedition in comparative law

In contrast to what happens in other countries most similar to ours (France, Italy, Belgium), with their Napoleonic legal codes, in which the crime of sedition is not expressly defined, although rebellion is, all the Spanish criminal codes of the 19th and 20th centuries have clearly differentiated these two behaviours. They are considered different (but close) modalities of crimes against public order or the internal security of the State, to the extent that the classic common law doctrine defines sedition as a rebellion of inferior degree.

3. Article 269 of the Belgian Criminal Code states: Any attack, resistance with violence or threats against ministerial representatives, rural or forestry guards, depositaries or law enforcement officers, tax and contribution collectors, bailiffs, customs officers, receivers, commissioned officers and personnel of the administrative or judicial police, or proxies acting to enforce laws, orders or ordinances of the public authority, legal orders or sentences.

Article 433-6 of the French criminal code says: Rebellion is the presentation of violent resistance to a public depository or someone charged with a public service mission acting in the performance of his/her functions to enforce the law, orders by the public authorities, and legal sentences and injunctions.

Article 433-7 Rebellion will be punished with 2 years in prison and a fine of 30,000 euros. If the rebellion is committed in a group, the sentences will be 3 years in prison and a fine of 45,000 euros.

Article 433-8 Armed rebellion will be punished with 5 years in prison and a fine of 75,000 euros. Armed rebellion in a group will be punished with 10 years in jail and a fine of 150,000 euros.

4. Article 81, section 1, of the German STGB establishes that persons who undertake, by force or threat of force, to undermine the continued existence of the Federal Republic of Germany or to change the constitutional order based on the Basic Law for the Federal Republic of Germany (Grundgesetz für die Bundesrepublik Deutschland) are liable to imprisonment for life or for not less than 10 years; in less serious cases, the penalty is imprisonment for a term of between 1 year and 10 years.

Under Article 82, section 1 of the STGB, a person who undertakes, by force or through threat of force, to incorporate the territory of one member state (Land) in whole or in part into another member state of the Federal Republic of Germany or to separate a part of a member state from it shall be liable to imprisonment for from 1 to 10 years; in less serious cases, the penalty is imprisonment for a term of between 6 months and 5 years.

The Criminal Code of Finland contains provisions on high treason, defined as follows:

Chapter 13 - High treason

1) Perpetrators of crimes of high treason are those who, with the use of violence or the threat of violence or other comparable manner, illegal coercion or in violation of the Constitution, with the aim of (1) abolishing the Finnish Constitution or changing it, or A person who by violence or the threat of violence or by another comparable manner, by unlawful coercion or in violation of the Constitution, for the purpose of (1) abrogating the Finnish Constitution or altering it, or

2) altering the political foundations of Finland commits an act which causes the danger of said purpose being attained shall be sentenced for high treason to imprisonment for at least one and at most 10 years.

Perpetrators of crimes of high treason are also those persons who, with the use of violence of threat of violence, depose or try to depose the President of the Republic, the Council of State or the Parliament, or whosoever may try to prevent them from exercising their authority.

The Criminal Code of Sweden establishes (Chapter 19, Section 1) that perpetrators of crimes of high treason are those who undertake, or aim to undertake, acts that involve danger with the intention that the country (or part of it), through violent or illegal means or with assistance from outside, be subjugated to a foreign power or being accountable to that power, or bring about the separation of a part of the country. They will be punished with a prison sentence of between 10 and 18 years, or life imprisonment, or if the danger is lesser, at least 4 and a maximum of 10 years.

If we analyse the comparative legislation, what Spanish law considers a crime of sedition is considered rebellion by other legislations such as those referred to above[3], and what Spain defines as rebellion is called high treason in the laws of some Nordic countries (Germany, Sweden, Finland), involving very serious prison sentences[4].

Legislative harmonization stands out by its absence, as we have seen. **Although the different definitions in one country and another are evident -which has created a major problem in terms of European cooperation in relation to the call for the surrender of some fugitives who took part in the coup d'état in Catalonia in September and October 2017-, this should not been have been an obstacle for handovers under the provisions established by European legislation, subject to the principles of mutual trust and loyal cooperation between Member States of the Union. However, the European space of freedom, security and justice has once again failed miserably in the face of the manifest destabilization of one of its members.**

For the purposes of the application of Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant, the disparity of legal-legislative criteria should not be an obstacle for loyal cooperation between EU States, in that the *nomen iuris* is not important for its granting, rather the consideration of the *factum delictivo* as an event that is legally pursuable. Hence, **art. 2.4 of the Framework Decision proclaims that, besides the list of crimes exempt from control by double definition, once the double incrimination of the events has been confirmed the executing State should not take into account the elements that make up the crime nor the specific definition of it to take a decision on surrender.**

However, by rejecting the surrender of Mr Puigdemont in a resolution dated 12 July 2018,the German court of Schleswig-Holstein ignored the abovementioned legislative provision, thus exceeding the regulatory legal framework of the European arrest warrant, as the decision to reject the surrender for rebellion occurred after analysing the specific elements that make up the crime of rebellion, particularly the presence of "violence", a requirement of the definition mentioned in both the Spanish and German criminal codes, to conclude that in this specific case, and despite the recognition that violence existed, it was considered that a sufficient degree of violence to jeopardize the Spanish constitutional order had not been observed.

In summary, the German court, by completely perverting the essence and basis of the European arrest warrant as a cornerstone of the mutual recognition of legal resolutions and judicial cooperation in the European Union, examined issues that it is legally not allowed to examine, issues that affect the heart of the matter (the sufficiency of a legislative element: the intensity of violence required, the incriminating elements that certify its involvement, etc.), **that can only be evaluated after the examination of evidence by the Court charged with the case.**

What happened should serve to improve and adapt the European arrest warrant mechanism, with the aim of avoiding any State of the Union becoming a place of refuge of impunity for persons who, through illegal and coercive procedures, aim to disrupt the Rule of Law and the democratic system of one of its members. either including attacks on the constitutional order and public order in the list of crimes exempt from double criminality, or by adopting the legislative provisions required to prevent the refusal to surrender persons who are subject to investigation for acts of this type under the pretext of baseless reasons of political persecution.