The trivialisation of the crimes of rebellion and sedition

Having read the Spanish public prosecutor and state attorney's provisional conclusions submitted to the Supreme Court and Audiencia Nacional (National Court), we the undersigned, all law professors at Spanish universities, feel compelled to express our legal opinion due to the historical importance for Spanish democracy of the criminal proceedings that will soon we under way.

The public prosecutor believes that certain forms of conduct by members of the Mossos d'Esquadra police force and the Parliament and Government of Catalonia, as well as the social leaders of Assemblea Nacional Catalana and Òmnium Cultural, are indicative of the crime of rebellion according to Article 472 of the Spanish Criminal Code. However, this crime requires a violent public uprising. Thus, in our opinion it is a mistake to view the events that took place on 20 September and 1 October 2017 as befitting the concept of violence as required in Article 472 of the Spanish Criminal Code.

Furthermore, the interpretation of the requirement for violence is separate from the doctrine that the Constitutional Court has established for analysing the crime of rebellion. By constitutionally justifying the extension of the exceptional criminal and procedural measures provided for in Article 55.2 of the Spanish Constitution to the crime of rebellion to deal with the actions of armed gangs or terrorists, Constitutional Court ruling STC 198/1987 states that in the parliamentary discussion of the aforementioned precept, "there is an explicit equation between rebellion and terrorism in terms of an attack on the democratic system and the replacement of the form of government and state chosen freely by the people. It is true that Article 55.2 makes no explicit mention of rebels, but only armed groups or terrorists", yet "by definition, a rebellion is carried out by a group intending to use weapons or explosives illegally in order to destroy or overturn the constitutional order". It concludes: "for this reason, it is legally admissible to suspend the rights of rebels who meet the definition of an armed group under Article 55.2 of the Spanish Constitution as permitted by constitutional provision".

Nor do we believe the crime of sedition applies here according to Article 544 of the Criminal Code, due to the fact that at no time has there been any indication that the accused have induced, provoked or staged any tumultuous uprising in order to prevent compliance with the law, unless incitement to the right to association and assembly is interpreted as sufficient for this purpose, even though it is a fundamental right. It is not possible to attribute to the accused the individual conduct of other people or conduct that occurred before or after, since criminal law is not governed by the principle of objective responsibility, but the subjective principle due to the facts themselves.

Regarding the crime of rebellion of Article 472 of the Criminal Code, the public prosecutor maintains that the accused planned to use violence from the beginning with the ultimate goal of achieving the independence of Catalonia and its secession from the Spanish central government. Asking how this was carried out, it responds: through the tumultuous action of

thousands of citizens, instigated by the accused in collaboration with the Mossos d'Esquadra. For the public prosecutor, therefore, the danger lies in inciting demonstrations, which makes the exercise of fundamental rights a crime.

Furthermore, we believe that this interpretation of the types of rebellion and sedition opens the door to the trivialisation of criminal charges that are virtually unprecedented in Spanish democracy and echo a sad memory of the past, which is why the legislature in 1995 restricted them to cases of material harm that is clearly greater than in this case.

We are witnessing the result of an inadequate appeal to these criminal charges, by seeking very long sentences whose consonance with the principle of proportionality—which should guide all legal interpretation—is highly questionable. Only by violating the principle of legal criminal proceedings can it be said that in view of what is attributed to them, the accused could have committed this crime or the crime of conspiring for rebellion, which requires joint agreement to carry out with the same violence.

Yet the only thing that the public prosecutor has demonstrated thus far is that, for this same purpose, all the demonstrations that were staged solely sought to hold a referendum through peaceful and democratic means. In line with its persistent idea of the existence of violence, the public prosecutor focuses essentially on the events of 20 September and of 1 and 3 October. Moreover, it goes so far as to say that the fact that the use of violence was not planned from the beginning does not preclude the notion that following the events on those dates, they decided to continue calling for the referendum, running the risk of acts of violence and other confrontations.

Neither the events of 20 September 2017, nor those of 1 or 3 October 2017, led to the violence required in Article 472 of the Spanish Criminal Code.

Furthermore, regarding the crime of sedition, it is worth remembering that the same article (544) is systematically being evoked to repress and silence civic movements that peacefully practice the right to assembly, association and demonstration.

In conclusion:
- We must also mention the equally serious issue of the lack of jurisdiction of the Audiencia Nacional, which began the process, thereby nullifying its subsequent actions.
- From a strictly legal perspective (and without entering into political considerations), we demand respect for the principle of legal criminal proceedings and an inquiry into everything authorised and required by the rule of law, but only that, because only within those boundaries can there be opportunity, proportion and justice.
- The first step that should be taken is the release of the nine people who remain in pre-trial detention for non-existent crimes.

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