

## POLITICS AND CRIME

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### ABSTRACT

Differences and coincidences between the logic of Politics and the logic of Law. The relationships between both of them should consider the influence of Politics as a Law source, but also the perspective of criminalization of Politics through positive rules. In this sense, conflicts have generally appeared from corruption. However, sometimes the clash arises from disputes on sovereignty. In all of them, the old wish of any kind of power to justify its privilege on the exclusion of legal control is exposed, particularly in the case of the control exercised by Criminal law. From the validity of the rule of law, the former theoretical framework is transferred to the criminal proceedings at the «Catalan *process*», laying out the problematic aspects and suggesting those questions still pending.

### KEY WORDS

Politics and Law, immunity of political acts, corruption and sovereignty, politic crimes, criminal answers to the Catalan conflict, difficult case.

ON THE CRIMES OF REBELLION, SEDITION AND DISOBEDIENCE WITHIN  
THE SENTENCE OF THE SUPREME COURT 459/2019, 14TH OCTOBER

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ABSTRACT

Coincidences and differences between the rebellion and the sedition crimes. Departing from and accepting the facts declared proven, it is argued that such the objective element of the crime (the level of violence) like the subjective element (purpose) were met. Review of the criminal responsibility of legal bodies in relation to the crime of disobedience. Hearings were developed with great respect for human rights. The non-existence of a «right to decide» is reassured.

KEY WORDS

Rebellion, sedition and disobedience crimes, no violation of human rights, non-existence of the «right to decide».

ON THE CRIME OF REBELLION  
COMMENTS TO THE SUPREME COURT SENTENCE 459/2019, 14TH OCTOBER

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ABSTRACT

The sentence of the Supreme Court 14 October 2019, 459/2019 (reporting judge: Honorable Mr. Manuel Marchena) dealt with the aforementioned Catalan independence process, among other crimes, having as central point the rebellion crime, rejecting expressly that the crime was committed according to these facts. In this article, the referred sentence is commented in relation to the rebellion crime.

KEYWORDS

Catalan independence process, rebellion, sentence of the Supreme Court.

NOR REBELLION, NOR SEDITION (CONCERNING THE SUPREME COURT  
SENTENCE 459/2019, 14TH OCTOBER, ABOUT THE *PROCÉS*)

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ABSTRACT

Maybe surprisingly for some people, according to the severity of the valuation of the independence process at the preliminary investigation as circumstantial for rebellion —along with the great questionable precautionary measures inferred from that—, at the sentence 459/2019, 14<sup>th</sup> October, the Catalan social and political leaders are acquitted of the crime established in article 472 Criminal Code. Among the reasons of their acquittance, we find that the non-suitability of the process does not constitute a real defiance to the current constitutional order. This contrasts with the strength of the assessment of those offences in relation to the more severe crimes against the public order (sedition of the article 544 Criminal Code), and with a confusing reasoning concerning the authentic object of protection. Finally, this also contrasts with the facts constituent a «crowded uprising»; or, in relation to the individualization of the contribution personally such as coauthors, given that nine of the accused people are punished with more severe prison penalties.

KEY WORDS

Rebellion, sedition, constitutional order, public order, violence, passive resistance, fundamental rights of assembly and of demonstration.

## THE «CATALAN SENTENCE» AND THE DISOBEDIENCE

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### ABSTRACT

Political, social and legal contexts of the process and the sentence. About the dependence of the prosecution authorities. Requirements and limits of the crime of disobedience. About the hierarchy of the Constitutional Court. Critical analyses of its implementation by the Supreme Court and of the parties' claims. Necessity to reform the Criminal Code. Institutional and constitutional loyalty.

### KEY WORDS

Disobedience crime, dependency of the prosecutor authorities, hierarchy of the Constitutional Court, institutional and constitutional loyalty.

# THE CRIME OF MISAPPROPRIATION: THE DISLOYAL ADMINISTRATION OF THE PUBLIC PATRIMONY

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## ABSTRACT

The Sentence of the Criminal Chamber of the Supreme Court 459/2019, 14<sup>th</sup> October, from Special Cause 20907/2017, condemns to different accused people to crimes of sedition, misappropriation, and disobedience. The media outreach about what the resolution was going to become and what it has finally been has developed in relation to the legal distinction between what is rebellion or sedition, and the possibility to understand that the facts of 2017 may constitute one or another criminal figures. Little —or less— has been said about the misappropriation. Maybe because little —or less— was needed to say. Having proved some budget compromises, non-accredited at the plenary, and accredited their execution by the people finally condemned, some relevant legal issues concerning the application of this crime were limited to decide whether the offence occurred by the diversion of funds to «public» illegal activities; to affirm or not of the existence of financial damage, although the payment did not happen after the incurred expenditure; and to clarify whether the penalty after accepting the link of the misappropriation with a crime of sedition.

## KEY WORDS

Misappropriation, disloyal administration, public patrimony, funds diversion, public and illegal expenditure, joinder of crimes.

## THE EXPLOITATION OF THE COMPLIANCE OF THE PRISON SENTENCE

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### ABSTRACT

Once known the severity of the prison sanctions imposed to those condemned by the sentence of the Supreme Court 459/2019 14th October and the rejection of the period of security, the unknown about their form of enforcement begins, in particular about the possibilities of access to the semi-open regime. This discussion requires the analysis of the legal requirements, consistent with the importance of the interpretation and application of the penitentiary legal regime assigned to Catalonia, where the prisons are located. The enforcement of the penalties must be individualized, which is a requirement derived from the constitutional mandate of social reintegration, and not arbitrary, or in violation of the legal certainty, provided that the penitentiary decisions come to terms with the legal framework of discretion, will be entirely justified and submitted to the judicial control.

### KEY WORDS

Security period, transfer of penitentiary competences, regulated discretion.

## PRESUMPTION OF INNOCENCE

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### ABSTRACT

The sentence 459/2019, 14th October (Case *procés*. Independence of Catalonia) will not go down in legal history probably by the criminal procedural decisions, although a very important part of it has focused on the analyses of the likely violations of fundamental rights of the accused people. If it did it, it would be by its substantive content, by that materially decided. However, the only possibility that the defense has to get the nullity of the trial has a procedural nature. In this urgent comment, we will analyze if one possibility, the likely violation of the presumption of innocence, can help to get this nullity. It seems to me it does not. Although the violation alleged by the defense refers to an extra-procedural fact, the current judicial doctrine of the European Court of Human Rights, confirmed by the Spanish Constitutional Court and the Supreme Court, make impossible it to triumph.

### KEY WORDS

Criminal procedure, granted immunity, fundamental rights, presumption of innocence.

## PRE-TRIAL DETENTION OF THE CONVICTS OF THE *PROCÉS*

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### ABSTRACT

Review of the different judicial decisions adopted during the pre-trial phase in terms of pre-trial detention. Considered the precautionary character of this measure, a special emphasis should be put on the possibility of the violation of some fundamental rights, particularly the right to political participation. There is enough evidence of the commission of crimes and the responsibility of the prosecuted. Assessment of the justification regarding the risk of flight, the risk of destruction of evidences and the risk of reiteration of the criminal acts. A strictly formalist solution is not considered acceptable, due to the decision of the EJC ruling case concerning the immunity of Mr. Junqueras, whose effective implementation requires his release.

### KEY WORDS

Pre-trial detention, risk of flight, risk of destruction of evidences, risk of reiteration of the criminal acts, realization of the right of political participation, parliamentary immunity.

# THE ARTICLE 708 LECRIM: A NON-EXISTENT LIMITATION TO THE CROSS-EXAMINATION

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## ABSTRACT

The form to celebrate the interrogation of witnesses during the trial against the independence leaders introduced an unknown novelty. Lawyers from the contrary part of whom had called the witness could only ask about the reason why the litigant brought them to the procedure. The decision, with scarce remote precedents in historical comparative law, limited strongly the scope of the interrogations, what opens some serious doubts concerning the right of defense, which is also essential to consider that the rules of the due process have been respected. This is a fundamental point in any procedure, but especially in this one where there is likely the parts stand before the European Court of Human Rights, and prior to that before the Constitutional Court.

## KEY WORDS

Witness, accused, defense, proof.

# THE COMPETENCE OF THE SUPREME COURT TO KNOW THE SPECIAL CASE OF «EL PROCÉS»

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## ABSTRACT

The assumption of the Supreme Court of knowing of the special case of *el procés* has been the result of a conjunction of factors. On the one hand, the competence to know of the lawsuit against the president of the Catalan Parliament and other members result from their granted immunity (due to their membership of the Permanent Council), connected to the attributed facts accomplished partially out of the territory of Catalonia (article 57.2 Autonomous Statute of Catalonia). On the other hand, the competence to know of the pendent trial before the National Audience against the members of the Governmental Council —ceased by the implementation of article 155 Spanish Constitution and without immunity for this very reason— is based on the inevitable link between the attributed facts to the former ones and those attributed to those with granted immunity, what has also determined the inquiry and the trial of the facts as a whole.

## KEY WORDS

Competent tribunal, immunity, procedural link, legal judge.

## WITNESS EVIDENCE AND VIDEO DOCUMENTARY SEQUENCE

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### ABSTRACT

In these pages, we analyze the possible violation of the principle of contradiction and, consequently, the right of a procedure with all the guarantees and the right to defense by those accused of rebellion and sedition at the trial of the facts happened in Catalonia between September and October 2017. In particular, we review the decision of the court of not exhibiting the video documentary evidence at the same time that the witnesses testify in order to contrast the veracity of their declarations with the content of the videos. To do so, we assess the possibilities that the Act of Criminal Procedure offers to the parts (and the court) to corroborate the witnesses' declarations at the hearings and if that pretended by the parts was necessary to conform the judicial decision, besides if the non-realization could affect the procedural fundamental rights.

### KEY WORDS

Corroboration of witness, right to defense, principle of contradiction, documentary evidence, witness evidence, veracity of witness.

# THE SENTENCE OF 14 OCTOBER 2019 FROM THE PERSPECTIVE OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS

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## ABSTRACT

The relevance of the European Convention of Human Rights. Review of the Sentence of the Supreme Court from the perspective of the Convention, concerning the material rights of the Convention, established at the articles 10 and 11; rights to freedom of expression, assembly and pacific demonstrations. Allowed limitations and restrictions: justification of the necessity. Differences between violence and resistance. Test of proportionality to the convictions of sedition. Right to freedom of expression at the parliamentary space.

## KEY WORDS

European Convention of Human Rights, right to the due process, right to pacific assembly and demonstration, necessity, proportionality, freedom of parliamentary expression.

## THE EUROPEAN ORDERS ISSUED BY THE SPANISH SUPREME COURT

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### ABSTRACT

The European Arrest and Surrender orders issued by the investigating magistrate against the fled prosecuted has damaged the spirit of the European integration and the construction of the area of freedom, security and justice, which might be based on the respect of mutual recognition of judicial resolutions, due to the rejection of these orders by Germany and Belgium with preposterous arguments. After the resolution issued by the Second Chamber of the Supreme Court, the investigating magistrate has reactivated the European orders against the fugitives, and these must be resolved by Belgium and the United Kingdom. The answer from the states of execution give to them may therefore strive to move towards the European system of cross-border persecution of suspects in criminal cases or those already condemned through a unification of the criteria of admission and rejection of the aforementioned orders. This also requests a decisional dialogue of tribunals headed by the idea of an integrating reciprocity.

### KEYWORDS

Judicial cooperation, European Union, European Arrest and Surrender Warrant, integration, mutual recognition, confidence, in absentia, escape, rejection of surrender, reactivation of European order, decisional dialogue, reciprocity.

# THE INEFFICACY OF THE SPANISH SYSTEM TO COMPENSATE VICTIMS OF SEXUAL VIOLENCE

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## ABSTRACT

The economic compensation to the victims of crime is an objective of the Spanish justice system. The Spanish system compensation efficacy to victims of sexual violence is analyzed. The efficiency of the two existing mechanisms is studied; on the one hand, the effectiveness of payment of the indemnities contained in a resolution in by the criminal court, and on the other, the aid granted by the Government directly to victims. The results indicate the inefficiency of the procedural system, which is general for all types of crimes, and, above all, a lack of interest on the part of the Government in repairing victims of sexual violence. Formulas to improve both systems are addressed, through normative and procedural mechanisms, among which restorative justice can be appropriate in some cases and with certain safeguards.

## KEY WORDS

Victim, compensation, restorative justice, sexual offence, aid.

# THE INCIDENT OF THE LEGAL ACCUMULATION SENTENCES: PROPOSAL DE *LEGE FERENDA*

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## ABSTRACT

The institute of the legal accumulation of sentences constitutes a legal limitation to the successive enforcement of penalties, imposed in the same or different proceedings through a set of punitive limits in order to lessen the dehumanizing effects of the system of material accumulation. This limitation is also motivated by the function of re-education and social reintegration that any custodial sentence must fulfil, as given in article 25.2 of the Spanish Constitution. In this work we develop a proposal de lege ferenda of the rules of procedure of this institution, with a more precise and refined wording of article 988 of the Rules of Criminal Procedure, which safeguards the principle of contradiction and avoids undue delays derived from the current rules of jurisdiction.

## KEY WORDS

Legal accumulation of sentences, criminal execution, procedure, functional jurisdiction, due process of law.

## THOUGHTS ABOUT THE SELF-DEFENSE OF THE STATE AND THE *KRATOS* POLICY

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### ABSTRACT

The attempt to justify the impunity for horrific crimes committed in the Spanish Civil war and in the post-war period by related subjects to the winning side somehow found two reference points: the law of September 23, 1939 by Francisco Franco and the academic support provided by Isaías Sánchez Tejerina from the University of Salamanca. In our days, *Kratos* policy revives global attempts to justify torture and targeted assassinations by placing in its point of view to those who are defined as terrorists.

### KEY WORDS

Criminal law, Civil War, self-defence, *Kratos* policy.