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Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3297/2019*, **, ***

Communication submitted by:	Oriol Junqueras i Vies, Raül Romeva i Rueda, Josep Rull i Andreu and Jordi Turull i Negre (represented by Nico Krisch)
Alleged victims:	The authors
State party:	Spain
Date of communication:	18 December 2018 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 1 February 2019 (not issued in document form)
Date of adoption of Views:	12 July 2022
Subject matter:	Suspension of members of a regional parliament during a criminal investigation into the alleged offence of rebellion
Procedural issues:	Consideration of the same matter under another procedure of international investigation; exhaustion of domestic remedies
Substantive issues:	Voting and elections; participation in public affairs
Article of the Covenant:	25
Article of the Optional Protocol:	5 (2) (b)

1.1 The authors of the communication are Oriol Junqueras i Vies, Raül Romeva i Rueda, Josep Rull i Andreu and Jordi Turull i Negre. The authors are nationals of Spain and were born on 11 April 1969, 12 March 1971, 2 September 1968 and 6 September 1966,

* Adopted by the Committee at its 135th session (27 June–27 July 2022)

** The following Committee members participated in the consideration of the communication: Tania Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi. In accordance with article 108 (a) of the Committee's rules of procedure, Carlos Gómez Martínez did not take part in the consideration of the communication.

*** Attached in the annex to the present document is the dissenting opinion of José Manuel Santos Pais and Wafaa Ashraf Moharram Bassim, members of the Committee.

respectively. They claim that the State party has violated their rights under article 25 of the Covenant. The Optional Protocol entered into force for the State party on 25 April 1985. The authors are represented by counsel.

1.2 In their original submission, the authors requested the Committee to urge the State party to adopt interim measures to revoke their suspension from public duties until the trial against them had taken place and any appeals that they might file had been exhausted. On 1 February 2019, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to submit observations on the authors' request for interim measures. The State party submitted its observations on 1 March 2019 and then submitted additional information on 3 April 2019. On 22 May 2019, the authors submitted additional information on the request for interim measures and the State party requested that the communication be discontinued.[1] On 10 September 2019, the authors submitted comments on the State party's request for the communication to be discontinued.

1.3 On 22 July 2020, the Special Rapporteurs on new communications and interim measures, acting on behalf of the Committee, informed the parties that, given the developments in the proceedings, the authors' request for interim measures had become moot. However, it rejected the State party's requests to discontinue the communication as these developments did not mean that the alleged past violations of the authors' rights had not taken place.

Facts as submitted by the authors

2.1 The authors are former members of the government of Catalonia. Mr. Junqueras was the Vice-President while Mr. Romeva, Mr. Rull and Mr. Turull were ministers. They claim that they were elected on a pro-independence platform and that they helped to initiate and support the independence referendum in 2017.

2.2 On 6 September 2017, the parliament of Catalonia adopted Act No. 19/2017 authorizing the holding of a referendum on the independence of Catalonia. On 7 September 2017, the Constitutional Court suspended the Act pending a ruling on its constitutionality. Despite this, the referendum was held on 1 October 2017, with 43 per cent of the electorate participating in it. A total of 92 per cent of the persons who participated in the referendum voted for independence. The authors point out that, on the day of the referendum, a heavy-handed intervention was staged by around 6,000 police officers sent to Catalonia by the State party. As a result, about 900 persons were injured and many referendum organizers were arrested.

2.3 On 17 October 2017, the Constitutional Court ruled that Act No. 19/2017 was unconstitutional and null and void. The authors claim that the parliament and government of Catalonia invited the Government of the State party to engage in dialogue with a view to peacefully resolving the constitutional crisis and to accept international mediation. However, the Government of the State party refused this invitation. On 27 October 2017, the parliament of Catalonia declared independence and was immediately dissolved by the Government of the State party under article 155 of the Constitution. The Government of the State party scheduled new regional elections to be held on 21 December 2017.[2]

2.4 On 30 October 2017, the Attorney General of the State party initiated criminal proceedings against the authors for the offences of rebellion and misappropriation of public funds. On 2 November 2017, the investigating judge of the National High Court ruled that the authors should be held in pretrial detention. On 24 November 2017, the Supreme Court assumed jurisdiction over the criminal proceedings in question. On 4 December 2017, the Supreme Court upheld the decision to hold Mr. Junqueras in pretrial detention and set bail for the release of Messrs. Romeva, Rull and Turull.

2.5 On 21 March 2018, the investigating judge of the Supreme Court formally authorized the decision to bring criminal proceedings against the authors. On 23 March 2018, the same

[1] The State party submitted a new request for discontinuance on 23 November 2019.

[2] In these elections, the authors were elected as the principal representatives of the main pro-independence parties that obtained a majority in the parliament of Catalonia (Junts per Catalunya and Esquerra Republicana).

judge issued an order for the detention of Mr. Romeva, Mr. Rull and Mr. Turull to be extended. The authors remained in pretrial detention from that date and were able to participate in parliamentary affairs only by means of proxy voting. Their requests to attend parliamentary sessions were denied. Mr. Turull, who had been a candidate for the presidency of Catalonia when he was placed in pretrial detention for the second time, was prevented from standing as a candidate in the election scheduled for the following day (24 March 2018). In May 2018, Messrs. Rull and Turull were appointed ministers of the government of Catalonia but were prevented from taking office. On 26 June 2018, the Appeals Chamber of the Supreme Court dismissed the appeal against the investigating judge's decision, allowing the ruling on the initiation of criminal proceedings to stand.

2.6 On 9 July 2018, the investigating judge declared that the investigation stage was complete and, inter alia, informed the parliament of Catalonia that the authors had been suspended (automatically and pursuant to article 384 bis of the Criminal Procedure Act) from their public duties and posts and that the bureau of the parliament was required to take the measures necessary to implement the legal provision.[3]

2.7 The authors affirm that the definition of the offence of rebellion contained in article 472 of the State party's Criminal Code states that: "a charge of rebellion will be brought against any persons who stage a violent and public uprising for any of the following purposes: 1. to repeal, suspend or amend all or part of the Constitution.[…] 5. to declare the independence of a part of the national territory[…]". They add that article 384 bis of the State party's Criminal Procedure Act establishes that: "once a committal order has been signed and pretrial detention has been ordered for an offence committed by a member or associate of armed gangs, terrorists or rebellious individuals, accused persons who hold public office will automatically be suspended from this office for the duration of their imprisonment".

2.8 On 30 July 2018, the Appeals Chamber of the Supreme Court dismissed the authors' appeal against the investigating judge's decision. According to the authors, the Court stated that article 384 bis takes effect automatically and is compatible with the authors' political rights. Messrs. Junqueras and Romeva and Messrs. Rull and Turull submitted applications for *amparo* to the Constitutional Court against the Supreme Court's decision on 19 September 2018 and 10 October 2018, respectively. They also requested precautionary measures to stay the decision to suspend them from their duties. The authors state that, at the time when the individual communication was submitted, the Constitutional Court had not ruled on the merits of the case or on the request for precautionary measures. On 24 October 2018, the Supreme Court declared the oral proceedings against the authors for the offence of rebellion, among others, to be open.

The complaint

3.1 The authors claim that the exercise of their political rights under article 25 of the Covenant may not be suspended or excluded except on grounds which are established by law, which are objective and reasonable, and which incorporate fair procedures.[4] They add that the justification must be especially strong when restrictions are placed on the winning candidates of elections and therefore undermine the free expression of the voters' will.[5] Restrictions should be subjected to particular scrutiny when, as in the present case, they are directed not at individual representatives of political groups but at their leaders, and when they are imposed before the conclusion of a criminal trial subject to procedural safeguards. The authors claim that the suspension: (a) was not founded on reasonable and objective grounds provided for in law; (b) was arbitrary because the authors' individual circumstances were not taken into account; and (c) was not subject to guarantees of due process and impartiality.[6]

[3] Supreme Court, aut. No. 20907/2017 of 9 September 2018, p. 11.

[4] *Paksas v. Lithuania* (CCPR/C/110/D/2155/2012), para. 8.3; and Human Rights Committee general comment No. 25 (1996), paras. 4 and 16.

[5] Article 25 (b) of the Covenant.

[6] In the light of the conclusions adopted in these Views, coverage of the authors' arguments concerning points (b) and (c) and the State party's observations has been substantially reduced for the sake of brevity.

3.2 With regard to the first point, the authors argue that their suspension is not established by law as, under national law, the offence of rebellion is constituted only when a violent and public uprising (see para. 2.7) has been staged for certain purposes, including to declare the independence of part of the State party's territory. They add that the element of violence is central to the definition of the offence of rebellion, as shown by the fact that article 384 bis of the Criminal Procedure Act equates rebellion with terrorism and membership of armed gangs. The authors explain that, for the Supreme Court, the element of violence was present in a political plan involving the use of popular protest to exert pressure on the State party.[7] The authors add that the Supreme Court finds that violence was a feature of two events. The first of these – the demonstration held on 20 September 2017 – was generally peaceful, with only a small number of participants causing damage to police vehicles. The second was the referendum held on 1 October 2017, although the only acts of violence on that day, as journalists around the world reported, were carried out by police officers attempting to break into polling stations full of citizens. The authors claim that, in both instances, they and the other leaders of the government of Catalonia and civil society consistently urged citizens to conduct themselves in a strictly peaceful manner.

3.3 The authors argue that these events would not normally be described as violent. They state that this was highlighted by the German court that ruled on the extradition of the former President of the government of Catalonia, Mr. Puigdemont. This court stated that Mr. Puigdemont had intended to use democratic means to legitimize the separatist cause, that there was an unwritten agreement to renounce violence and that the actions imputed to him would not constitute an offence under German law.[8] As the authors point out, the court stated that, in social democratic States, the criminal justice system is required by the Constitution to exercise restraint when it intervenes in political disputes.[9] In the light of this, the court rejected the request to extradite Mr. Puigdemont for the offence of rebellion.[10] The authors point out that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression called on the State party's authorities to refrain from prosecuting Catalan political leaders for the offence of rebellion: "I am concerned that charges of rebellion for acts that do not involve violence or incitement to violence may interfere with rights of public protest and dissent."[11]

3.4 The authors claim that the Supreme Court has opted to employ a distorted interpretation of violence that departs from the restrictive reading previously undertaken by the Constitutional Court, which recognized that rebellion, by definition, is carried out by groups intending to make illegitimate use of weapons of war or explosives to destroy the constitutional order.[12] The authors state that the investigating judge did not mention this case law when ruling on the matter of suspensions on 9 July 2018. The authors point out that around 100 Spanish legal experts expressed their opposition to the decision to charge the authors with the offence of rebellion[13] on the grounds that a violent uprising must take place in order for this offence to be constituted. This view was reiterated by more than 120 legal experts in late 2018.[14] They add that even the Attorney General of the State party decided not

[7] Supreme Court, Criminal Division, special case No. 20907/2017 of 26 June 2018, p. 26.

[8] *Oberlandesgericht Schleswig*, 1 Ausl (A) 18/18 (20/18), 12 July 2018, pp. 9 and10, version translated into Spanish by an official translator and provided by the authors.

[9] Ibid., p. 10.

[10] The court allowed the request for extradition for the offence of misappropriating public funds, whereupon the State party's investigating judge withdrew the European arrest warrant to prevent the extradition from being limited to that offence.

[11] https://www.ohchr.org/en/press-releases/2018/04/un-expert-urges-spain-not-pursue-criminal-charges-rebellion-against?LangID=E&NewsID=22928.

[12] Constitutional Court, judgment No. 199/1987, 16 December 1987, p. 20.

[13] "[..] In our opinion, it would be seriously mistaken to believe that the facts constitute an offence of rebellion under article 474 of the Criminal Code for the very good reason that a structural element of this offence – violence – is absent. After a lively discussion in the Senate, it was decided to include this requirement in the definition of the offence in order to limit its application to situations of the utmost seriousness that do not correspond to this case […]," https://www.eldiario.es/opinion/tribuna-abierta/legalidad-penal-proceso-independentista_129_3073315.html.

[14] See https://www.eldiario.es/opinion/tribuna-abierta/banalizacion-delitos-rebelion-sedicion_129_1824859.html.

to file charges for rebellion, making her position different from that of the investigating judge and the other parties that levelled the charge against the authors (the prosecutor of the State party and the political party Vox). They explain that she restricted herself to filing charges for the offences of sedition, disobedience and misappropriation of public funds, none of which result in automatic suspension from public office.

3.5 The authors argue that such an interpretation of the law would also be illogical. They claim that, if engaging in popular protests with a view to exerting pressure on the State to bring about constitutional change was grounds for suspending political mandates, Governments would be in a position to completely disregard the guarantees set out in article 25 of the Covenant. The authors argue that their case may be compared to those in which restrictions are placed on the operations of political parties that "peacefully promote ideas not favourably received by the Government or the majority of the population"[15] as it concerns the suspension from office of most of the leaders of the pro-independence political groups. They explain that, according to the Committee, the State party must demonstrate that the prohibition of an association, and the criminal prosecution of individuals for membership of such organizations, is necessary to avert a real, and not only hypothetical, danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose.[16]

3.6 With regard to the second point, the authors state that decisions to restrict the rights provided for in article 25 of the Covenant must take into account the seriousness of the interference and the strength of the justifications in each case. In their view, the automatic application of article 384 bis of the Criminal Procedure Act left no room for such individual assessment. They conclude that the Supreme Court's broad interpretation has resulted in individuals being suspended from public duties in such disparate circumstances that this measure cannot be considered proportionate without further individualized consideration of the grounds for imposing the restriction in each case.

3.7 With regard to the third and final point, the authors state that article 25 of the Covenant requires that the grounds for the removal of elected officials should be set out in provisions incorporating fair and equitable procedures (see para. 3.1). They understand that, under the Covenant, the possibility that a person may be removed from office in such situations cannot be completely excluded. However, such removal must always be subject to scrutiny, justified on exceptional grounds and meet high standards of procedural integrity. They recall that the Committee has determined that, in cases where opponents of a Government have been convicted or sent to trial after an investigation, any suspension or undermining of their right to vote or run for office may be deemed arbitrary if it results from a trial in which due process is not observed.[17] The authors claim that their suspension from office did not meet these high standards of due process scrutiny under article 25 of the Covenant, which, among other things, casts serious doubt on the impartiality of the courts involved.

3.8 With regard to the requirement to exhaust domestic remedies, the authors argue that they have exhausted all available and effective remedies in an effort to have their suspension revoked. They maintain that, although they both submitted applications for *amparo* to the Constitutional Court in October 2018, including requests for precautionary measures, such applications cannot be said to have been effective. They explain that, on 11 December 2018, the Constitutional Court rejected a request for precautionary measures in a parallel case in which citizens requested the revocation of the authors' suspension on the grounds that the suspension violated their own right to vote. The authors state that, in that case, the Court did not consider whether the precautionary measures would be successful but based its decision solely on the argument that revoking the suspension would be tantamount to anticipating a possible ruling in favour of the application for *amparo*.[18] The authors argue that this reasoning may also be applied to their own requests for precautionary measures and that these requests therefore have no prospect of success. They point out that political rights are especially

[15] *Lee v. Republic of Korea* (CCPR/C/84/D/1119/2002), para. 7.2.

[16] Ibid.

[17] *Scarano Spisso v. Bolivarian Republic of Venezuela* (CCPR/C/119/D/2481/2014), para. 7.12; and *Nasheed v. Maldives* (CCPR/C/122/D/2270/2013 and CCPR/C/122/D/2851/2016), para. 8.6.

[18] Constitutional Court, application for *amparo* No. 5342–2018, 11 December 2018.

sensitive to the passage of time[19] and that suspending them from office would nullify their electoral victory as the Constitutional Court takes two years, on average, to rule on the merits of cases and could take even longer. They claim that, in these circumstances, the application for *amparo* is no longer worth considering in connection with the exhaustion of domestic remedies because it is incapable of preventing irreparable harm to their rights.[20]

3.9 The authors request the Committee to declare: (a) that their suspension from office violates article 25 of the Covenant; and (b) that the State party and all its institutions are required to revoke the suspensions.

State party's observations on admissibility and the merits

4.1 In its observations on admissibility and the merits of 20 November 2020, the State party notes that the authors agreed to be replaced by other members of their parliamentary group for the duration of their suspension. It adds that all the authors, apart from Mr. Romeva, resigned as members of the autonomous parliament on 17 May 2019 in order to take up positions as members of the Congress of Deputies of the national parliament (Cortes Generales), to which they were elected in April 2019.[21] It explains that, on 14 October 2019, the Criminal Division of the Supreme Court convicted the authors of the offence of sedition, not the offence of rebellion, and that Mr. Romeva's suspension from the autonomous parliament was immediately revoked.

4.2 First, the State party argues that the communication should be declared inadmissible under article 5 (2) (b) of the Optional Protocol as, at the time of its submission, the applications for *amparo*, which were pending, had not yet been resolved. It explains that the Constitutional Court ruled on these applications on 28 January and 25 February 2020, respectively. It argues that, although the authors claim that the applications for *amparo* were not effective, their doubts about the effectiveness of domestic remedies do not exempt them from exhausting them[22] and they must exercise due diligence to make use of them.[23] It states that the authors must justify that the available remedies are ineffective.[24] Lastly, it adds that the Committee has determined that a delay of two years to consider a constitutional action is not unduly prolonged.[25]

4.3 Second, the State party argues that article 25 of the Covenant was not violated as the measure of suspension from office is provided for in article 384 bis of the Criminal Procedure Act. This article is compatible with the Covenant as the measure in question is reasonable and objective and was applied in an individualized and proportionate manner in the authors' case.

4.4 With regard to the compatibility of article 384 bis of the Criminal Procedure Act with the Covenant, the State party affirms that this article was established in 1988 and declared constitutional by the Constitutional Court in 1994. Therefore, it cannot be said to have been adopted in order to restrict the authors' rights.[26] The State party argues that the measure of suspension from employment and public office governed by this procedural rule is a measure that is: (a) necessary for the preservation of a democratic society, and therefore reasonable; (b) objective, since it is intended to have a general scope and does not target any particular individual; (c) proportionate, by virtue of the nature of the attack imputed to the individual, which is an attack on democratic society itself; and (d) adopted when the criminal proceeding is already at an advanced stage, i.e., after a committal order has been issued and pretrial detention has been ordered.

[19] *Lukyanchik v. Belarus* (CCPR/C/97/D/1392/2005), para. 7.4.
[20] *Lubicon Lake Band v. Canada* communication No. 167/1984; and *Weiss v. Austria* (CCPR/C/77/D/1086/2002).
[21] Mr. Romeva was elected as a senator, which, under national law, is compatible with being a member of an autonomous parliament.
[22] Inter alia, *J.B. v. Australia* (CCPR/C/120/D/2798/2016).
[23] *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3.
[24] Inter alia, *O.K. v. Latvia* (CCPR/C/110/D/1935/2010), para. 7.4.
[25] *Zündel v. Canada* (CCPR/C/89/D/1341/2005), para. 6.3.
[26] Constitutional Court judgment No. 71/1994.

4.5 With regard to article 384 bis, the State party argues that it was applied to the authors: (a) in accordance with the requirements established in the article itself; and (b) in an individualized manner to ensure that the restriction of the authors' political rights was as proportionate as possible and caused as little harm as possible to the interests of their political group in the parliament of Catalonia. With regard to the first point, the State party claims that article 384 bis was applied to the authors in a manner consistent with the requirements set out in the article. In this regard, the authors: (i) were charged with the offence of rebellion; (ii) were placed in pretrial detention; and (iii) had a committal order issued against them.[27] With regard to the second point, the State party explains that the individualized application of the suspension measure to the authors was not completed when the order of 9 July 2018 was issued. Rather, as the order itself makes clear, the parliament of Catalonia was responsible for implementing it. The State party explains that the parliament of Catalonia implemented the decision in an individualized manner to ensure that the parliamentary majorities were not altered. To this end, the parliament replaced the suspended members with other parliamentarians from the same group, which measure was approved by the authors' parliamentary group and the authors themselves.[28] The State party argues that the suspension was therefore not "automatic" as it required the participation of the parliament, which implemented it in the manner that was least restrictive for the authors' political rights and, by extension, the rights of their parliamentary group. It stresses that the authors agreed to be replaced by other members of their parliamentary group although only Mr. Romeva was actually replaced as he was the only one of the authors who did not resign from his seat on the autonomous parliament. It adds that the suspension measure was revoked on 14 October 2019, when the Supreme Court ruled that the offence of rebellion was not constituted because the element of instrumental violence required for its constitution was lacking.[29] Consequently, the investigating judge immediately revoked the suspension measure against Mr. Romeva.

4.6 With regard to the authors' claims that the courts are not impartial and that a case involving the offence of rebellion was initiated in order to persecute the independence movement, the State party stresses that the Supreme Court – which the authors consider to be biased – ruled that the offence of rebellion was not constituted because there was insufficient evidence of instrumental violence.[30] In its view, this demonstrates that the State party's judicial system is functioning properly in that a distinction is made between the investigation and trial phases and the two phases of the criminal proceedings are kept absolutely separate. It argues that these proceedings have satisfactorily addressed the authors' main argument, i.e., that the offence of rebellion was not committed.

Authors' comments on the State party's observations on admissibility and the merits

5.1 In their comments of 7 March 2021, the authors reiterate the arguments on admissibility set out in their initial submission. They add that the failure to exhaust domestic remedies is no longer an issue as the Constitutional Court definitively rejected the authors' appeals in its judgments of 28 January and 25 February 2020. They claim that no further course of action is available in the domestic legal system. Therefore, the State party did not make use of the opportunity offered by the rule on exhausting domestic remedies to remedy the violations through its own judicial system. They state that, for the Committee, it is not normally a problem if the last stage of a given appeal has been reached after a communication has been submitted but before a decision on admissibility[31] has been taken.

5.2 With regard to the merits, the authors claim that the State party mainly cites the decisions of the Constitutional Court, which merely assessed whether the law in question had

[27] The State party reproduces the text of pp. 21525–21531 of Constitutional Court judgment No. 11/2020, published in the *Boletín Oficial del Estado* of 29 February 2020.

[28] The State party explains that this measure was taken on the basis of a report issued on 17 July 2018 by lawyers representing the parliament of Catalonia. The report contains assessments of two possible ways of dealing with the authors' temporary suspension.

[29] Judgment No. 459/2019.

[30] Ibid.

[31] *Delgado Burgoa v. Plurinational State of Bolivia* (CCPR/C/122/D/2628/2015), para. 10.2; and European Court of Human Rights, *Selahattin Demirtaş v. Turkey (No. 2)* , judgment of 22 December 2022, No. 14305/14, para. 193.

been applied in an arbitrary manner. They add that the State party never addresses the question of whether the interference with their rights was justified in the specific case, given the absence of: (a) violence; (b) individual assessment; and (c) fair and equitable proceedings.

5.3 In relation to the absence of any acts of violence, the authors argue that article 384 bis of the Criminal Procedure Act establishes an exceptional measure as, at the pretrial stage of the proceedings, a person cannot be suspended from his or her duties for any offence other than rebellion. They claim that the offence of rebellion requires a "violent uprising" to have taken place but there has never been any indication that such an uprising took place in their case and it is now unanimously recognized that their actions, calls and strategies did not involve or make reference to violence. They add that the investigating judge used a broad interpretation of the law to remove the peaceful political opposition from the centre of political life. The authors claim that the investigating judge found the authors' actions to be "violent" largely because, during the demonstrations and the referendum, a small number of participants damaged police vehicles and blocked the passage of the police and because the police used violence to disperse the demonstrators. They draw attention to the Committee's general comment No. 37 (2020), which states that such incidents should not be attributed to persons who have neither used nor promoted violence.[32] The authors affirm that, in April 2019, the Working Group on Arbitrary Detention found that the authors' actions had been non-violent and peaceful and that the State party had clearly violated the rights of six activists and politicians in the Catalan independence movement, including three of the authors.[33] They add that even the Supreme Court ended up recognizing that the authors' political actions did not reach the threshold of violence that would be necessary to constitute "rebellion".

5.4 The authors argue that the charge of "rebellion" always lacked a factual basis and that the formal charge brought by the investigating judge, which was the basis for their suspension, had no legal basis and depended on an excessively broad interpretation of the Criminal Code. They add that, in the absence of any violence, the suspension was disproportionate and was not based on the objective and reasonable criteria required by the Covenant. The authors argue that any lower threshold for a measure as serious as the suspension of fundamental democratic rights before trial would fail to meet this requirement. They add that freedom of expression and political rights are interrelated and mutually reinforcing. They argue that non-violent political campaigns are protected by freedom of expression and cannot be used as justification for restricting the right to stand for election.[34]

5.5 The authors allege that the Constitutional Court did not give due consideration to the merits of the arguments when it reviewed the decision to suspend the authors from their duties. They argue that the Court conducted a very limited review that sought to determine only whether the investigating judge's interpretation of the law had been arbitrary, unreasonable or manifestly erroneous, which it ruled out. They claim that the Court's reasoning was primarily based on the view that no interpretation of the offence of "rebellion" would be unreasonable if it included a consideration of whether the rebellion challenged the essence of the democratic State.[35] The authors state that this approach completely ignores the literal interpretation of "violent uprising" required by the Criminal Code and would allow the term to be applied to a range of peaceful political challenges, including initiatives for fundamental constitutional reform. They add that this approach would abolish clear boundaries and turn the offence of rebellion (which is punishable by a sentence of up to 25 years' imprisonment and the possible suspension of political rights before trial) into a flexible tool with which to persecute political opponents.

5.6 With regard to the lack of individualized assessment, the authors mention that the Committee recently highlighted the importance of conducting such assessments in cases where restrictions are placed on the rights provided for in article 25.[36] They claim that the State party's analysis is erroneous since it assumes that the mere act of applying

[32] Paras. 17–18.
[33] A/HRC/WGAD/2019/6, paras. 114 and 119; and A/HRC/WGAD/2019/12.
[34] *Selahattin Demirtaş v. Turkey* (No. 2) , No. 14305/14, para. 392.
[35] Judgment No. 11/2020, p. 21529.
[36] *Arias Leiva v. Colombia* (CCPR/C/123/D/2537/2015), para. 11.7.

article 384 bis of the Criminal Procedure Act constitutes sufficient individualization and since, according to the Constitutional Court itself, the article is applied automatically as a matter of law, leaving no room for interpretation in its application, provided that the conditions applicable to the measure by law have been met.[37]

5.7 With regard to the failure to conduct fair and equitable proceedings in connection with the restrictions placed on the rights provided for in article 25 of the Covenant, the authors argue that the Supreme Court's judgment did not objectively assess the challenges to its impartiality but perceived them as unjustified a priori. They stress that the issue is even more problematic when considered in the light of the procedural stage at which the suspension was decided, that is, the moment when a single investigating judge decided that a charge of rebellion should be brought without any adversarial proceedings.

State party's additional observations

6.1 In its additional observations of 9 August 2021, the State party maintains that article 384 bis of the Criminal Procedure Act provides that the measure of suspension from duties may be applied in very specific circumstances and is therefore not a measure of general application.[38] It claims that this rule is not implemented automatically. Rather, it requires a judicial decision that applies it to a specific case, which involves defining the facts in each individual case that match the limited and specific circumstances that give rise to the application of the suspension measure. The State party reiterates that the final application of the measure to an individual required action to be taken by the parliament of Catalonia (see para. 4.5). It draws attention to the case law of the European Court of Human Rights, according to which a specific judicial decision does not necessarily have to be issued in order for a person's political rights to be withdrawn.[39] It concludes that the law governing suspension is in compliance with universal and regional standards in that it reflects the need to enhance civic responsibility and respect for the rule of law and ensure the proper functioning and preservation of the democratic regime.[40]

6.2 The State party reiterates that decisions concerning suspension from duties are taken during the investigation phase, when the investigating judge assesses whether there is circumstantial evidence that the offence giving rise to the suspension has been committed. It adds that this decision is not final but temporary, lasting the duration of the proceedings related to the act of rebellion. It states that the Criminal Division of the Supreme Court found that the evidence for the offence of rebellion referred to by the investigating judge did not exist and classed the acts as an offence of sedition in its judgment. As a result, the suspension temporarily adopted by the investigating judge ceased to have effect. According to the State party, this outcome shows that, in the present case, the Spanish criminal justice system was working properly, the investigation and trial phases were kept separate and the judges were independent and impartial and did not work in concert.

6.3 The State party notes that the authors' assessment of the facts differs from that of the investigating judge in the proceedings. However, this does not mean that the Covenant was violated unless, in the language used by the Committee, the judge's assessment is found to have been arbitrary or to have involved a denial of justice. Although it is possible to disagree with the investigating judge's reasoning, it was not arbitrary and did not involve a denial of justice. Therefore, the Covenant was not violated. The State party argues that the Committee's doctrine is clear on this point and that the Optional Protocol does not empower the Committee to review the assessment of facts by national courts.

6.4 With regard to the authors' claims that the State authorities were working in concert against the independence movement, the State party submits that the authors were tried and convicted for their attempt to gain independence for Catalonia by unlawful means without following the constitutional route for reforming the Constitution, which allows changes to be made to the territorial system. It reiterates that their actions violated the rule of law. It also states that there has never been any desire to silence the independence movement. It recalls

[37] Judgment No. 11/2020, p. 21527.

[38] *Yevdokimov and Rezanov v. Russia Federation* (CCPR/C/101/D/1410/2005), para. 7.5.

[39] *Scoppola v. Italy* (No. 3), May 2012, No. 126/05, para. 104.

[40] Ibid, translation by the State party.

that, following the elections called by the national Government in December 2017, a pro-independence majority emerged in the parliament of Catalonia, which then took over the government of Catalonia. It states that, following the elections held in February 2021, the government of Catalonia is once again composed of pro-independence parties. Against this background, the State party argues that every judicial measure taken in the criminal proceedings was aimed at ensuring that the majorities in the parliament were respected and that the judicial proceedings did not affect the election results. Therefore, when the decision to temporarily suspend the authors' mandates was adopted, steps were taken to replace them with other persons from their group so that the pro-independence majority in the parliament of Catalonia would not be affected. This measure was supported by the authors.

6.5 Lastly, the State party points out that the Government, acting in the public interest, remitted the authors' prison sentences on 22 June 2021.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes the State party's reservation to the aforementioned article, which excludes the Committee's competence in relation to cases where the same matter has been examined under another procedure of international investigation or settlement. The Committee notes that, in April 2019, the Working Group on Arbitrary Detention issued two opinions related to six activists and politicians in the Catalan independence movement, including Mr. Junqueras[41] and Messrs. Rull and Romeva.[42] The Committee must therefore decide whether, in respect of these three authors, the same matter has been examined under another procedure of international investigation or settlement.

7.3 The Committee recalls its jurisprudence that the "same matter" within the meaning of article 5, paragraph 2 (a) of the Optional Protocol, must be understood as relating to the same author, the same facts and the same substantive rights.[43] In the present case, the Committee notes that the authors' complaint relates to their suspension, prior to a conviction, from public duties and posts following the issuance of a pretrial detention order against them and that this suspension allegedly violates their rights under article 25 of the Covenant (see paras. 3.1 and 3.12). The Committee notes, however, that the communication submitted to the Working Group relates to the question of whether their detention was arbitrary. The Committee also notes that the authors cite article 25 of the Covenant in their communication to the Working Group. However, this article is not cited in connection with their suspension from public duties and posts but, more generally, to support their claim that their detention was arbitrary under article 9 of the Covenant as it resulted from the exercise of rights or freedoms guaranteed under the Covenant.[44] The Committee therefore considers that the communication submitted to the Working Group does not constitute the "same matter" within the meaning of article 5 (2) (a) of the Optional Protocol. Thus, without considering the question of whether the Working Group on Arbitrary Detention constitutes "another procedure of international investigation or settlement",[45] the Committee considers that there are no obstacles to the admissibility of the present communication under this provision.

7.4 With regard to the requirement to exhaust domestic remedies, the Committee notes the State party's argument that the communication should be declared inadmissible under

[41] See A/HRC/WGAD/2019/6.

[42] See A/HRC/WGAD/2019/12.

[43] *Petersen v. Germany* (CCPR/C/80/D/1115/2002), para. 6.3.

[44] A/HRC/WGAD/2019/6, para. 27; and A/HRC/WGAD/2019/12, para. 24.

[45] See also *Al-Rabassi v. Libya* (CCPR/C/111/D/1860/2009), para. 6.2; *Cedeño v. Bolivarian Republic of Venezuela* (CCPR/C/106/D/1940/2010), para. 6.2; and *Musaev v. Uzbekistan* (CCPR/C/104/D/1914,1915,1916/2009), para. 8.2.

article 5 (2) (b) of the Optional Protocol since remedies were pending when it was submitted (see para. 4.2). However, the Committee recalls its long-standing jurisprudence, according to which, when complaints are considered, the question of whether domestic remedies have been exhausted is determined in relation to the time when the communication is being examined.[46] The Committee recalls that procedural economy is a key concern as a communication in respect of which domestic remedies have been exhausted after submission could be immediately re-submitted to the Committee if it is declared inadmissible for that reason.[47] The Committee notes that, in the present case, the parties have been able to submit additional information and allegations, which have been transmitted to the other party for observations and comments, giving both parties the opportunity to challenge each new fact and the corresponding allegations.[48]

7.5 The Committee also notes the State party's argument that the authors' doubts about the effectiveness of domestic remedies do not exempt them from exhausting them, and that they should exercise due diligence to make use of them (see para. 4.2). The Committee also notes that the authors' complaint relates to their suspension, prior to a conviction, from public duties and posts following the issuance of a pretrial detention order against them (see paras. 3.1 and 3.12) and that they should have exhausted domestic remedies in relation to this issue. In this regard, the Committee notes that the authors both submitted applications for *amparo* with precautionary measures to the Constitutional Court, requesting the revocation of their suspensions from public office and duties, and that the applications were finally resolved in January and February 2020. The Committee takes note of the authors' contention that these applications were not effective in preventing the irreparable harm that they allegedly suffered (see paras. 4.7 and 5.1). At the time, the Committee considered these arguments to be sufficiently substantiated for the purposes of registering the individual communication. The Committee notes the authors' argument that, at present, no other domestic remedies for the alleged violations are available and that the aforementioned applications for *amparo* gave the State party the opportunity to use the rule on exhausting domestic remedies to remedy the violations through its own judicial system (see para. 5.1). The Committee notes that the State party has not mentioned any other effective and reasonably available remedy that the authors should exhaust at this stage.[49] The Committee therefore takes the view that article 5 (2) (b) of the Optional Protocol is not an obstacle to the admissibility of the communication.

7.6 The Committee considers that the authors' allegations concerning their suspension from public office and duties prior to any conviction being handed down have been sufficiently substantiated for the purposes of admissibility. As no other obstacles to admissibility exist, the Committee declares the communication admissible under article 25 of the Covenant and proceeds to its consideration on the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information submitted to it by the parties, as required by article 5 (1) of the Optional Protocol.

8.2 The Committee notes the authors' allegations that their suspension, prior to a conviction, from public duties and posts during the criminal proceedings against them violated their rights under article 25 of the Covenant insofar as this suspension prior to a conviction: (a) was not based on reasonable and objective grounds provided for by law; (b) was arbitrary because the authors' individual circumstances were not taken into account; and (c) was not subject to guarantees of due process and impartiality (see paras. 3.1 and 3.12).

[46] Inter alia, *Al-Gertani v. Bosnia and Herzegovina* (CCPR/C/109/D/1955/2010), para. 9.3; *Singh v. France* (CCPR/C/102/D/1876/2009), para. 7.3; *Lemercier v. France* (CCPR/C/86/D/1228/2003), para. 6.4; *Baroy v. The Philippines* (CCPR/C/79/D/1045/2002), para. 8.3; and *Bakhtiyari et al. v. Australia* (CCPR/C/79/D/1069/2002), para. 8.2.

[47] *Bakhtiyari et al. v. Australia*, para. 8.2.

[48] *Lula da Silva v. Brazil* (CCPR/C/134/D/2841/2016 final proceedings), para. 7.4.

[49] Ibid, para. 7.5. and *Katashynskyi v. Ukraine* (CCPR/C/123/D/2250/2013), para. 6.3. See also, mutatis mutandis, *Randolph v. Togo* (CCPR/C/79/D/910/2000), para. 8.5; *C.F. et al. v. Canada* (CCPR/C/24/D/113/1981), para. 6.2; *Muhonen v. Finland* (CCPR/C/24/D/89/1981), para. 6.1; and *Sequeira v. Uruguay*, communication No. 1/6, para. 9.b.

8.3 The Committee states that article 25 of the Covenant lies at the core of democratic government.[50] The Committee recalls that this article recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government that a State adopts, the exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by laws that are objective and reasonable, and that incorporate fair procedures.[51] The Committee notes that, in order for a restriction on these rights to be considered as established by law, the law in question must be predictable, meaning that it must be formulated with sufficient precision to enable individuals to regulate their conduct in accordance with it and it may not confer unfettered or sweeping discretion on those charged with its execution.[52] The Committee also recalls that if a conviction for an offence is a basis for suspending the right to vote or to stand for office, such restriction must be proportionate to the offence and the sentence.[53] The Committee further recalls that when this conviction is clearly arbitrary or amounts to a manifest error or denial of justice, or the judicial proceedings resulting in the conviction otherwise violate the right to a fair trial, it may render the restriction of the rights under article 25 arbitrary.[54] The Committee notes that the guarantees under article 25 must be applied more rigorously when these rights are restricted before rather than after a conviction has been handed down for an offence.[55] The Committee must therefore firstly determine whether the authors' suspension from their duties prior to a conviction was based on reasonable and objective grounds provided for in law.

8.4 The Committee notes the authors' argument that their suspension prior to conviction is not required by law, as the definition of the offence of rebellion contained in article 472 of the Criminal Code applies only to persons who have staged a violent and public uprising. It also notes that article 384 bis of the Criminal Procedure Act may be applied only if an act of violence has taken place and that the authors' actions cannot be said to have satisfied this condition (see paras. 2.7 and 3.2). The Committee notes the State party's argument that article 384 bis of the Criminal Procedure Act is compatible with the Covenant insofar as the measure of suspension it provides for is reasonable, objective and proportionate and is adopted when the criminal proceedings are already at an advanced stage (see paras. 4.3 and 4.4). The Committee notes that the parties do not dispute the fact that article 384 bis of the Criminal Procedure Act requires a charge of rebellion to be brought (see paras. 4.5 and 5.3). In the light of this situation, the Committee considers that any analysis of the lawfulness of the suspension prior to a conviction must include consideration of how the national courts applied the provisions of article 472 of the Criminal Code on the offence of rebellion, which automatically triggered the application of article 384 bis of the Criminal Procedure Act. The Committee notes that, even before the charge was brought, the authors drew attention to the relationship between the two rules and the impact that a trial for the offence of rebellion would have on their political rights.[56]

8.5 With regard to article 472 of the Criminal Code, the Committee notes the State party's argument that the investigating judge's assessment of the facts was not arbitrary and thus did not amount to a denial of justice (see paras. 6.1 and 6.6). The Committee recalls its established jurisprudence according to which it is generally for the courts of States parties to

[50] General comment No. 25 (1996), para. 1.

[51] Ibid., paras. 3–4 and 16; and *Paksas v. Lithuania*, para. 8.3.

[52] In this regard, and within the framework of article 25 of the Covenant, the Committee has stated that the criteria must be clearly established by law (*Maldonado Iporre v. the Plurinational State of Bolivia* (CCPR/C/122/D/2629/2015) para. 11.5; and *Delgado Burgoa v. the Plurinational State of Bolivia*, para. 11.5). See also E/CN.4/1985/4, annex, p. 3 footnote and para. 17. With regard to other rights, see also Human Rights Committee general comment No. 37 (2020), para. 39; general comment No. 34 (2011), para. 25; and general comment No. 35 (2014), para. 22.

[53] General comment No. 25 (1996), para. 14, and *Dissanayake v. Sri Lanka* (CCPR/C/93/D/1373/2005), para. 8.5.

[54] *Arias Leiva v. Colombia* (CCPR/C/123/D/2537/2015), para. 11.6; and *Nasheed v. Maldives* (CCPR/C/122/D/2270/2013 and CCPR/C/122/D/2851/2016), para. 8.6.

[55] Some rights, such as the right to vote, may not be restricted if the person has been deprived of liberty but has not been convicted (Human Rights Committee, General comment No. 25 (1996), para. 14).

[56] Supreme Court, Criminal Division, special case No. 20907/2017 of 26 June 2018, p. 21.

review facts and evidence or the application and interpretation of domestic legislation,[57] except where these have been arbitrary or have constituted a manifest error or denial of justice.[58] However, the Committee considers that, in the present case, it is not being called on to make a determination on the adequacy of the national courts' interpretation of domestic law or their assessment of the facts and evidence. What the Committee must decide is whether, as mentioned in paragraph 8.3 above, the manner in which the national courts initially applied article 472 of the Criminal Code, with the consequent application of article 384 bis of the Criminal Procedure Act, meets the requirements established by article 25 of the Covenant, as mentioned above (para. 8.3).

8.6 In the present case, the Committee notes that the investigating judge charged the authors with the offence of rebellion on the grounds that they had incited popular protest with a view to exerting pressure on the State and that they had even acknowledged that violent confrontations might occur,[59] including the disturbances and acts of violence that took place on 20 September and 1 October 2017[60] (see para. 3.2). In this regard, the Committee notes the authors' argument that if mobilizing the public to exert pressure on the State in order to bring about constitutional change was sufficient grounds for suspending political mandates, Governments would be in a position to completely disregard the guarantees set out in article 25 of the Covenant (see para. 3.5). The Committee notes the authors' argument that a number of national and international bodies have drawn attention to the peaceful nature of the actions taken by the authors and other political and social leaders in Catalonia who were prosecuted for the offence of rebellion (see paras. 3.3 and 5.3). The Committee notes that the State party's domestic courts eventually convicted the authors of the offence of sedition rather than the offence of rebellion as no act of violence had been carried out, which is required in order for article 472 of the Criminal Code to be applied (see paras. 4.1, 6.1 and 6.5). The Committee recalls that the rights guaranteed by article 25 of the Covenant are closely related to the rights to freedom of expression, assembly and association.[61] Without entering into an assessment of whether, at the time, there was sufficient evidence that the authors had committed an act of violence in the sense used by the investigating body to interpret the substantive criminal law when it decided on the charge, the Committee notes that the authors urged the public to remain strictly peaceful. It also recalls that "there is a presumption in favour of considering assemblies to be peaceful" and that "isolated acts of violence by some participants should not be attributed to others, to the organizers or to the assembly as such".[62]

8.7 With regard to article 384 bis of the Criminal Procedure Act, the Committee notes the State party's argument that the law governing suspension is in compliance with universal and regional standards in that it meets the need to enhance civic responsibility and respect for the rule of law and ensure the proper functioning and preservation of the democratic regime (see para. 6.4). The Committee considers that the State party has a legitimate interest in pursuing these goals. The Committee also notes the authors' argument that article 384 bis establishes an exceptional measure since it provides for a person's suspension from duties prior to the holding of a criminal trial and only in cases where he or she is being prosecuted for the offence of rebellion (see para. 5.3). In the light of the foregoing, the Committee notes that, as the exceptional measure of suspension from duties is applied prior to a conviction, the criteria for such a suspension to be compatible with the Covenant are, in principle, stricter than those applied after a conviction has been handed down (see para. 8.3). This higher level

[57] General comment No. 32 (2007), para. 26.

[58] *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.3; *Schedko v. Belarus* (CCPR/C/77/D/886/1999), para. 9.3; *Röder and Röder v. Germany* (CCPR/C/80/D/1138/2002), para. 8.6; *F.B.L. v. Costa Rica* (CCPR/C/109/D/1612/2007), para. 4.2.

[59] Supreme Court, Criminal Division, special case No. 20907/2017 of 26 June 2018, p. 26.

[60] Ibid., p. 25.

[61] General comment No. 25 (1996), paras. 25 and 26.

[62] General comment No. 37 (2020), para. 17. According to paragraph 18 of this general comment, "the question of whether or not an assembly is peaceful must be answered with reference to violence that originates from the participants. Violence against participants in a peaceful assembly by the authorities, or by agents provocateurs acting on their behalf, does not render the assembly non-peaceful. The same applies to violence by members of the public aimed at the assembly, or by participants in counterdemonstrations."

of scrutiny is all the more relevant insofar as the domestic courts have determined that the measure of suspension prior to conviction is applied automatically as a matter of law, leaving no room for any variation in the manner of its application, provided that the conditions applicable to the measure of suspension from duties under this law have been met[63] (see para. 5.6).

8.8 In view of the above, the Committee considers that the State party has not demonstrated that the application of article 472 of the Criminal Code and the consequent application of article 384 bis of the Criminal Procedure Code by the domestic courts meets the requirement of predictability established in article 25 of the Covenant. Likewise, in the circumstances of the present case, an application of domestic law that allows elected officials to be suspended automatically from their duties for alleged offences involving peaceful public acts, prior to the existence of any conviction, does not allow for an individualized analysis of the proportionality of the measure and thus cannot be considered to meet the requirements of reasonableness and objectivity. In conclusion, the Committee concludes that the State party violated the authors' rights under article 25 of the Covenant as the decision to charge the authors with rebellion, which automatically led to their suspension from public office prior to a conviction, was not based on reasonable and objective grounds provided for by law.

9. The Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses a violation by the State party of article 25 of the Covenant.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. The Committee considers that, in the present case, its Views on the merits of the complaint constitute sufficient reparation for the violation found. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views and to have them widely disseminated in the official languages of the State party.

[63] Constitutional Court, judgment No. 11/2020, p. 21527.

Annex

[Original: English]

Joint opinion of Committee members José Manuel Santos Pais and Wafaa Ashraf Moharram Bassim (dissenting)

1. We regret not being able to concur with the Committee's Views. The authors' complaints should not have been considered admissible, due to non-exhaustion of domestic remedies. Although the complaints were considered admissible, we would not have found a violation of the authors' rights under article 25 of the Covenant.

2. The authors were former members of the government of Catalonia. On 6 September 2017, the regional parliament adopted Act No. 19/2017, authorizing the holding of a referendum on the independence of this autonomous community. The very next day, the Constitutional Court of Spain suspended the Act, pending a rule on its constitutionality. Despite that decision, the referendum was held on 1 October 2017, with the participation of 43 per cent of the electorate (see para. 2.2). On 17 October 2017, the Constitutional Court ruled that Act No. 19/2017 was unconstitutional, null and void. Notwithstanding that ruling, on 27 October, the parliament of Catalonia declared independence and was immediately dissolved by the Government of Spain. New regional elections were scheduled for December 2017 (see para. 2.3).

3. The political situation in the State party at the time was very delicate and the State party was on the brink of a disruption to its unity. Demonstrations were held, not only in Catalonia but also in other regions, with significant risks to national security and the democratic order. The authors were aware of the risks that they were taking by blatantly violating the law and decisions of the Constitutional Court, but they persisted in their efforts to secure the independence of Catalonia. The Attorney General therefore initiated criminal proceedings against them for the crimes of rebellion and misappropriation of public funds. The investigating judge placed the authors in pretrial detention on 2 November 2017. The Supreme Court upheld this decision with regard to one of the authors and set bail for the others (see para. 2.4).

4. On 9 July 2018, the Supreme Court informed the parliament of Catalonia that the authors had been suspended from their public duties and posts pursuant to article 384 bis of the Criminal Procedure Act and that the Bureau was required to take the necessary measures (see paras. 2.6 and 4.5). The authors agreed to be replaced by other members of their parliamentary group (see para. 4.1). An appeal by the authors on their suspension was rejected by the Supreme Court on 30 July 2018. The authors submitted applications for *amparo* to the Constitutional Court on 19 September and 10 October 2018 and requested precautionary measures to stay the decision to suspend them from their duties. A mere two months later, on 18 December 2018, they submitted their communication to the Committee.

5. At the date of the submission of the communication, the applications for *amparo* were still pending and not yet resolved. Rulings on them were handed down on 28 January and 25 February 2020 (see para. 4.2). The Constitutional Court took a year to decide on them, a reasonable time for such judicial consideration. As for the Supreme Court, a decision on the authors' conviction was issued on 15 October 2019, also in a timely manner. Domestic remedies were therefore not futile, but effective and not unreasonably prolonged, having addressed the authors' complaints and even accepting some of their arguments. Their communication should therefore have been declared inadmissible. We are of the view that the reasoning in the present Views (see paras. 7.4–7.5) would make it extremely difficult to effectively enforce article 5 (2) (b) of the Optional Protocol in the future.

6. Article 384 bis of the Criminal Procedure Act was established in 1988 and was declared constitutional by the Constitutional Court in 1994. It is therefore not a new provision and the authors were acquainted with it. The measure of suspension from the authors' public duties, due to the far-reaching political implications of their actions, was necessary, reasonable, objective and proportionate. It was taken by an investigating judge, after a

thorough and detailed reasoning of all available evidence at the time, in the framework of a criminal investigation, with all due process guarantees (see paras. 4.4, 4.5 and 6.1–6.4). The Supreme Court later decided, on 14 October 2019, that the authors had not committed the crime of rebellion, but that of sedition, because of insufficient evidence of instrumental violence, and so the measure of suspension was immediately revoked (see para. 4.1). The course of events reflects the regular functioning of domestic courts, whereby a later decision (during trial) assesses and changes a previous decision (by the investigating judge) in the face of more detailed and ample evidence. There was therefore neither arbitrariness nor denial of justice by domestic courts and no irreparable harm was caused to the authors, who regained their political rights (most of them were elected as members of the Cortes Generales in 2019). Ultimately, the authors' prison sentences were remitted on 22 June 2021 by the State party's Government, acting in the public interest (see para. 6.5).

7. As regards the alleged violation of article 25 of the Covenant, the authors have acted unlawfully and disrespected decisions of the Constitutional Court. Their rights were therefore restricted because they resorted to unlawful means instead of available constitutional routes for reforming the State party's Constitution. In its Views, the Committee tried to avoid the pitfall of its established jurisprudence on national courts' interpretation of domestic legislation and their assessment of facts and evidence (paras. 8.5–8.6). However subtle the reasoning used may be, it still confronts the interpretation under domestic law of the crimes of rebellion and sedition and the applicability of article 384 bis of the Criminal Procedure Act. Domestic courts have settled such an interpretation reasonably and in a timely manner and the Committee should therefore not act as a fourth instance to dispute their analysis. The State party also explained that the use of article 384 bis of the Criminal Procedure Act was not automatic but applied to a specific case, in an individualized manner and in view of specific circumstances (see paras. 4.5 and 6.1). In any event, the imposed measure of suspension from public duties was reasonable, necessary, proportionate and, moreover, predictable in the serious circumstances that the domestic courts faced at the time. We would thus have not found a violation of the authors' rights under article 25 of the Covenant.