

## **Press Statement 6/2018**

**Schleswig, July 12, 2018**

**Matter Carles Puigdemont: The extradition for the accusation of embezzlement of public funds is admissible, an extradition for the accusation of rebellion is inadmissible. Carles Puigdemont remains free.**

With a ruling of July 12, 2018, the I. Senate for Criminal Matters of the Oberlandesgericht for the State of Schleswig-Holstein decided on the admissibility of the former Catalan Regional President Carles Puigdemont's extradition to Spain.

The Senate held an extradition for the accusation of rebellion inadmissible. The actions that the former Catalan Regional President is accused of fulfill neither the requirements of the crime of high treason (Sec. 81 of the German Criminal Code) nor the requirements of rioting (Sec. 125 of the German Criminal Code) under German law. The degree of force required by the provision of high treason was not reached by the disputes in Spain. The requirements of rioting are not fulfilled because Carles Puigdemont was only aiming at holding the referendum; he was no "intellectual leader" of acts of violence.

An extradition for the accusation of embezzlement of public funds, however, is admissible because the Spanish administration comprehensibly accuses Carles Puigdemont of being co-responsible for incurring financial obligations at public expense. Whether or not this accusation can be confirmed is a question that must be answered exclusively within the framework of the Spanish criminal proceeding.

Since Carles Puigdemont has always complied with his obligations under the arrest warrant, the arrest warrant remains stayed.

The Senate further argues:

1. Regarding the accusation of "rebellion", the mutual criminal liability required by Sec. 3 of the Act on International Cooperation in Criminal Matters is, even upon another examination, still not given. According to the intention of the German legislature and in accordance with European law, this requirement is essential. The relevant German

criminal provision of high treason according to Sec. 81 of the German Criminal Code requires a level of force that the disputes in Spain did not reach.

The referendum of October 1, 2017 itself did not realize the required level of force because it could not have led to an immediate secession from Spain and was intended by Puigdemont to only initiate further negotiations. The violent disputes between potential voters and the Guardia Civil or the national police that took place particularly in front of a number of polling places did also not reach an intensity that seriously endangered Spain's constitutional order.

To the extent that the Prosecutor General and the Spanish Judiciary referred to an order, issued with Puigdemont's participation, to the regional police (Mossos d'Esquadra) under the command of the Catalan Regional Government to "safeguard" the holding of the referendum, the Senate neither considered this an initiation of acts of violence against forces of the central government. Moreover, based on the available information, such acts of violence did not occur.

2. The Senate also denied criminal liability under the aspect of rioting (Sec. 125 of the German Criminal Code).

Even though a planner or organizer of acts of violence who is not present at the location in which such acts are being committed may also be held criminally liable, it is required that such a "backer" was able to notice the acts of violence and has approved of them and was able to influence the events. This was not the case with respect to Puigdemont. Puigdemont only intended the holding of the referendum. He was no "intellectual leader" of acts of violence.

3. As regards the accusation of embezzlement of public funds, the Senate held on to its earlier assessment and declared Puigdemont's extradition admissible. With respect to this accusation the mutual criminal liability does not have to be examined because it is a so-called catalogue accusation within the meaning of the EU Framework Decision for which such an examination does not take place. Moreover, mutual criminal liability is given because the act would as well have been criminally punishable under German law as embezzlement (Sec. 266 of the German Criminal Code).

Despite the fact that, based on further investigations, the original description of events can no longer be fully sustained, the Senate was able to recognize sufficiently clearly that Puigdemont is finally accused of being co-responsible for incurring financial obligations at public expense. It was obvious for Puigdemont as Regional President that the holding of a referendum would cost money. Already the endangerment of assets through incurring obligations is, also under German law, considered a sufficient damage. It is not obvious that, from the outset, the incurred costs were supposed to be covered by third parties. The remaining questions of detail must be answered within the Spanish criminal proceeding.

4. The Senate rules out that the extradition request aims at politically persecuting Carles Puigdemont in Spain, a concern raised by Puigdemont. It is fallacious to assume such a thing of Spain, a member of the value community and the common legal community of the European Union. The Senate fully trusts the Spanish Judiciary to comply with the requirements of national as well as Community law.

5. The Senate did neither see any formal obstacles to the extradition nor any concerns regarding the authorization to extradite, an authorization that is to be issued by the Prosecutor General for the State of Schleswig-Holstein.

This is also true with respect to compliance with the principle of speciality (criminal prosecution in Spain is now only admissible to the extent to which the extradition has been declared admissible). The Senate assumes that the Spanish courts will observe this principle and will not prosecute Puigdemont, upon his extradition for the accusation of embezzlement, also for rebellion.

6. Finally, the Senate denied the Prosecutor General's application to take Puigdemont under extradition arrest since Puigdemont, so far, has steadily complied with the conditions under which the extradition arrest warrant has been stayed.

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