

German Court Held Extradition of Catalan Leader Puigdemont Partly Inadmissible

News

Thomas Wahl

In the most prominent European Arrest Warrant case in Germany in recent time, the possible surrender of former Catalan Regional President *Carles Puigdemont* to Spain, the First Senate for Criminal Matters of the Higher Regional Court of the State of Schleswig-Holstein rendered its [final admissibility decision on 12 July 2018](#). The Higher Regional Court, in essence, reiterated the findings of its decision on extradition detention of 5 April 2018 (see [euCRIM 1/2018](#), pp. 33-34). It held that extradition for the accusation of rebellion is inadmissible, since the requirement of double criminality is not fulfilled.

The judges at the Higher Regional Court argued that the actions *Puigdemont* was accused of fulfilled neither the requirements of the crime of “high treason” (Sec. 81 of the German Criminal Code) nor those of the crime of “rioting” (Art. 125 of the German Criminal Code). As regards the crime of “high treason,” the level of “force” required by Sec. 81, in the light of the case law of the Federal Court of Justice, was not reached taking account the disputes in Spain. As regards “rioting,” *Puigdemont* could not be assigned the “intellectual leader” of acts of violence.

As regards the second accusation, i.e. the embezzlement of public funds, the court held on to its previous assessment and declared extradition admissible. It noted that double criminality need not be established because this accusation falls within the list of criminal activities (“corruption”) for which an examination of mutual criminal liability under German law does not take place. In addition, the Court held the “ticking” of the respective box of corruption in the EAW form in accordance with the list of Art. 2(2) FD EAW plausible, since the Spanish authorities comprehensively explained that *Puigdemont* may be co-responsible for incurring financial obligations at public expense. Whether this accusation can be confirmed is to be exclusively answered in the criminal proceedings in Spain.

One week after the decision of the Higher Regional Court of the State of Schleswig-Holstein, the Spanish authorities withdrew the EAW and *Puigdemont* returned to his exile in Brussels/Belgium. The main reason for this was that *Puigdemont* could have been prosecuted in Spain only for embezzlement of public funds and not for rebellion. This is due to the principle of speciality, which means that criminal prosecution in the issuing Member State is only possible to the extent to which extradition has been declared admissible.

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