

How EU law came to the fore in the Catalan independence debate – and what it means for Carles Puigdemont



The Catalan independence movement has made repeated calls for EU actors to take a role in resolving the crisis that followed the independence referendum in October, but until now the response from EU leaders has largely been that the situation is an internal one to be dealt with in Spain. [Auke Willems](#) writes that despite the EU's intention to stay quiet on the matter for as long as possible, the case of Carles Puigdemont, who fled to Belgium in October, has now brought EU law into the crisis, and could yet force a direct judgment from one of the EU's institutions over his extradition to Spain.



Carles Puigdemont, Credit: [Convergència Democràtica de Catalunya](#) (CC BY 2.0)

Following the constitutional turmoil generated by Catalonia's push for independence, and by the Spanish government's violent refusal to allow a referendum, the response of the EU's institutions has been carefully worded, with Commission President Jean-Claude Juncker, among others, labelling it an 'internal matter for Spain'. They have consistently refused to respond to calls for the EU to condemn Madrid's crackdown on the referendum or to intervene in the dispute over what happens next.

But Catalonia's leaders have nevertheless managed to find an alternative way to directly involve the EU by activating a European law (the [European Arrest Warrant](#)) in the case of ousted Catalan President, Carles Puigdemont, who fled to Belgium in October with several of his ministers. The Catalan case now has a distinct link to EU law and could possibly even come to involve the Court of Justice of the European Union (CJEU).

Puigdemont chose Belgium as his hideout, anticipating charges of rebellion and sedition in Spain. The reason he gave for his trip to Brussels was that as the capital of Europe, this was the place to defend democratic values, and implicitly, to gain maximum exposure. But as plausible as this may sound, and putting to one side the debate over whether his actions were an attempt to defend Catalonia's right to self-determination, or simply amounted to leading his people to chaos before fleeing abroad, there is another major reason he chose Belgium, namely the country's extradition history with Spain. Indeed, this might very well be the primary reason he chose the country, with the fact that Brussels also happens to be the capital of the EU being a secondary consideration.

The European Arrest Warrant and Belgium's extradition history with Spain

The European Arrest Warrant, the flagship EU criminal law instrument, applies the principle of mutual recognition to extradition, meaning that what is referred to as 'surrender' in the text can only be refused on a limited number of grounds. Most importantly, surrender is a judicial procedure, unlike extradition, which is a political decision (often ultimately made by the appropriate Minister of Justice, rather than a judge).

The European Arrest Warrant is based on a presumed level of mutual trust between EU member states, which is justified primarily because of equivalence in safeguarding fundamental rights, more precisely the right to a fair trial. Hence, the most prominent absentee on the list of refusal grounds provided is a direct fundamental rights refusal. There has long been debate about how this absence should be interpreted. The instrument does speak of the importance of fundamental rights several times throughout; however, for a long time the CJEU has not allowed such an interpretation.

But, as is well known, member states do not always comply with EU law, especially in relation to the pre-Lisbon legal instrument that the European Arrest Warrant is contained in. Belgium, like several other member states, has introduced a human rights refusal in the national law transposing the European Arrest Warrant. Furthermore, in 2016 in the [Aranyosi case](#), the CJEU for the first time allowed refusal (postponement in the Court's terms) of a request for a European Arrest Warrant in the case of a fundamental rights deficiency, more specifically relating to poor detention conditions (Article 4 of the [EU Charter](#)).

As to Belgium's extradition history with Spain, there are a number of important cases involving alleged [ETA terrorists](#) which have relevance, most recently the case of Jauregui Espina, an ETA suspect who had been on the run for 32 years and was living in Belgium. The Belgian courts refused his surrender to Spain, primarily because of the risk that he would face inhumane and degrading treatment, as the defence submitted reports that showed deplorable conditions under which ETA suspects were detained. The Belgian court of appeal held that there is no presumption that Spain is fully fundamental rights compliant: a bold decision, breaking with the presumption of mutual trust that lies at the heart of the European Arrest Warrant and Europe's broader criminal justice project.

Another Belgian refusal of a Spanish European Arrest Warrant?

With the knowledge of the Espina case in the back of his mind, and defended by the same lawyer, Paul Bekaert, who successfully defended Espina, Puigdemont decided to take his chances and travel to Brussels. When Spain issued a European Arrest Warrant for Puigdemont's surrender to Spain, it effectively asked Belgium to extradite him back to the country as 'a matter of urgency': in this case 60 days (with a possible 30 day extension). Puigdemont and his lawyer have fought the request primarily by claiming a refusal based on a violation of Article 4 of the EU Charter, prohibiting inhumane or degrading treatment, thereby following closely the tactics used in prior cases, as well as the jurisprudence of the CJEU on this matter.

The Spanish authorities, paying equal attention to the Aranyosi case, and having learned from Espina, submitted detailed evidence to Belgian authorities that Puigdemont will be detained in facilities that are in full compliance with human rights law. In a 15-page document, they showed Puigdemont will be detained in a ten-metre cell with a TV and a proper diet provided. This evidence followed a [report](#) by the Council of Europe (issued the day before) stating that conditions in Spanish prisons had improved and are actually less overcrowded than in Belgium.

Hence, following Spain's detailed response, the detention condition argument of Puigdemont will most likely not hold up. If the Belgian courts ruled against this, they would effectively be saying that they do not believe the Spanish authorities. This would not only seriously threaten Belgian-Spanish (judicial) relations, but also the EU's near-automatic surrender mechanism.

EU law at the heart of the Catalan situation

As has already been set out [by others](#), it is highly unlikely Puigdemont could successfully claim asylum because of the 'Aznar Protocol', which renders it virtually impossible for EU citizens to claim asylum in another member state. One final option would be to 'pull an Assange', that is to seek asylum in a third (non-EU) country willing to open the doors of its Brussels embassy, like Assange is doing in the Ecuadorian embassy in London (as a matter of fact, the two cases have become intertwined, as Ecuador [has asked](#) Assange to refrain from making statements about Catalan independence).

Of course, and this is the point where the case might force a European institution to say something about the sensitive situation in Catalonia, if a question on the interpretation of EU law is raised, a preliminary reference procedure might be instigated, where the Belgian court would refer the matter to the CJEU. However, Belgian courts did not see the need to do this in the Espina case, and could argue that there is no question on the interpretation of EU law here, as the European Arrest Warrant and subsequent case-law is clear on the matter. Nevertheless, if Belgian judges raise a preliminary question, they would pass the 'hot potato' on to Luxembourg. It would offer Belgium a way out of this difficult and unwanted situation, and shield its decision to surrender Puigdemont behind the Court.

Whatever the outcome of this case may be, and it is unlikely that Puigdemont's challenge will ultimately be accepted because of the developments that have occurred since the Espina case, it will take a while before there is a final decision due to Belgium's appeal opportunities. More importantly, it has brought the delicate Catalan issue directly within the sphere of EU law, and might even force a direct judgment from one of the EU's institutions, despite the EU's intention to stay quiet on the matter for as long as possible.

Moreover, the case will prove a serious test for the European Arrest Warrant, whose alleged foundation in mutual trust has long been questioned, and a politically sensitive case like this might add further pressure to the system. Puigdemont has carefully manoeuvred himself to the heart of Europe, geographically and politically, but now also legally.

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Note: This article gives the views of the author, not the position of EUROPP – European Politics and Policy or the London School of Economics.

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