

From:

European Center for
Constitutional and Human Rights (ECCHR)
Zossener Str. 55–58, Staircase D
10961 Berlin
Germany

21 October 2019

Submission of Information for Consideration and Action to:

Mr. Diego García-Sayán, United Nations Special Rapporteur of the Human Council on the independence of judges and lawyers

c/o Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

By e-mail: SRindependenceJL@ohchr.org

URGENT: KINGDOM OF SPAIN – Attacks on lawyer Gonzalo Boye

Dear Mr. García-Sayán,

The following information to initiate a Special Procedure is submitted to you by the European Center for Constitutional and Human Rights (ECCHR) – and co-signed by several European lawyer’s associations – with respect to retaliatory attacks by Spanish state and non-state actors against lawyer Mr. Gonzalo Boye. These actions include complaint procedures for denouncing malfunctions of the Spanish judiciary, accusations of procedural bad faith including impending disciplinary proceedings, and other actions aiming at discouraging Mr. Boye in the discharge of his professional functions as a lawyer.

I. Introduction

ECCHR is an independent non-profit human rights organization, registered in Berlin (Germany) since 2007. By engaging in strategic litigation, ECCHR uses legal means to protect groups and individuals against systematic human rights violations, and hold state and non-state actors responsible for these crimes accountable. The independence and free professional performance of legal professionals is an inherent concern of the

organization. Our special professional and friendly solidarity with Mr. Gonzalo Boye arises from years of cooperation.

Mr. Gonzalo Boye is a criminal lawyer, who has been involved in several high profile judicial proceedings and has faced considerable pressure for representing defendants in politically motivated and sensitive cases. Interferences and attacks have been escalating to an intolerable degree since Mr. Boye took on the legal representation of Catalan politicians charged with the crimes of rebellion, sedition and embezzlement in Spain in 2017.

Through the submission of the following information, ECCHR seeks to draw your attention to the continued politically motivated attacks by state and non-state actors against Mr. Boye. We are deeply concerned that those attacks interfere with Mr. Boye's free performance as a lawyer and defame him as a legal professional.

We submit that Mr. Boye has a right to perform all of his professional functions without intimidation, hindrance, harassment or improper interference from any quarter.¹ Furthermore, he should not suffer, or be threatened with, sanctions for any action taken with recognized professional duties, standards and ethics.² We also submit that Mr. Boye should not be identified with his clients' cause,³ and that he has a civil and penal immunity for relevant statements made in good faith in written or in oral pleadings.⁴

We therefore request you to urge the Spanish state to comply with its duties under international law to refrain from improperly interfering with Mr. Boye in the discharge of his professional functions, adequately protect him against all forms of threat, retaliation, intimidation and harassment, resulting from the discharge of his functions, and to uphold his integrity as a lawyer.⁵

II. Alleged incidents⁶

1. Information about the affected person

The person affected by the incidents described hereinafter is Mr. Gonzalo Boye, a lawyer of Chilean German origin. Mr. Boye has been practicing law in Spain since 2003 and works in his law firm Boye-Elbal&Asociados, S.L.P. in Madrid. Having been subjected to a controversial conviction himself, Mr. Boye defends his clients'

¹ See Principle 16 (a) Basic Principles on the Role of Lawyers and General Comment No. 32, Article 14 ICCPR, Right to equality before courts and tribunals and to fair trial, 23 August 2007 (CCPR/C/GC/32), para. 34.

² See Principle 16 (c) Basic Principles on the Role of Lawyers.

³ See Principle 18 Basic Principles on the Role of Lawyers.

⁴ See Principle 20 Basic Principles on the Role of Lawyers.

⁵ See Principle 17 Basic Principles on the Role of Lawyers and OP 8 of the Resolution adopted by the Human Rights Council on 2 July 2015 (A/HRC/RES/29/6): "(...) reminds States of their duty to uphold the integrity of judges, prosecutors and lawyers and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring perpetrators to justice."

⁶ Any document referred to in this submission of information can be made available on request. References to online sources are accurate as of 24 September 2019.

rights also in highly politicized and infamous cases.⁷ Since 2017, he coordinates the international legal defense of members of Carles Puigdemont's Catalan government, who are currently living in exile in Belgium and elsewhere.⁸

2. Information regarding the incidents

Contextualization

To contextualize the interferences in question, we deem it necessary to highlight the tense political setting of Mr. Boye's current mandate and the hostile reactions by the political opponents towards anyone affiliated with the Catalan independence movement.

After the unilateral declaration of independence of the Catalan region on 27 October 2017 – under the presidency of Mr. Carles Puigdemont and following an independence referendum – the Spanish Supreme Court initiated criminal proceedings against Catalan political leaders. This action blurred the boundaries between politics and criminal law in detriment of an atmosphere of isolation and neutrality in the criminal proceedings.⁹ It also led to the politicization of supposedly neutral bodies through the perceived obligation of their constituents to defend the Spanish unity against representatives of the Catalan independence movement.¹⁰ On 14 October 2019, the Spanish Supreme Court sentenced nine Catalan separatist leaders to between nine and 13 years in prison after finding them guilty of sedition and misuse of public funds, aggravating political tensions and civil unrest in Catalonia.

In 2017, against this backdrop, Mr. Boye took on the defense of Catalan ex-president Carles Puigdemont and some of his former ministers. In this deeply polarized and politically heated environment, Mr. Boye himself has become the target of attacks in the media and on social media platforms and of a range of adverse legal actions, on which will be elaborated below. Those attacks and interferences with his professional activity peaked following two legal remedies, invoked by Mr. Boye's clients in defense of their political and human rights.

⁷ In 1996, Mr. Gonzalo Boye was convicted for a supposed collaboration with the Basque terrorist group ETA in the kidnapping of the Spanish entrepreneur Mr. Emiliano Revilla. Mr. Boye spent seven years, eleven months and 23 days in prison, time that he used to study law at the Spanish National University of Distance Education. He has always defended his innocence against the collaboration allegations and has dedicated his professional life to defend persons in similar situations.

⁸ The biographic information is based on the author profile of Mr. Gonzalo Boye's book: *...Y ahí lo dejo. Crónica de un proceso* by Gonzalo Boye, Barcelona, Roca Editorial, 2019.

⁹ This predominant (international) perception of events in Spain is among others backed up by the United Nations Working Group on Arbitrary Detention (UNWGAD): On 25 April 2019, the UNWGAD adopted its Opinion No. 6/2019 (A/HRC/WGAD/2019), denouncing the arbitrary detention of three Catalan pro-independence politicians in Spain. The working group found that Spain had violated the defendants' right to a competent and impartial tribunal (para. 136) and the presumption of innocence (para. 128). It specifically noted that the national judges had pre-established ideas on the facts of the case (para. 133, 127) and further confirmed that public interferences condemning the accused prior to the verdict unduly affects the independence and impartiality of a tribunal (para. 123).

¹⁰ Concerning attacks against Mr. Boye, biased positions and statements by Judge Pablo Llarena, Judge Maria Tardón, Member ('vocal') of the Central Election Committee Andrés Betancor, and the members of the Madrid bar associations will be adduced later in this submission of information.

Actions taken against Mr. Boye following the civil lawsuit against Spanish judge Mr. Pablo Llarena in Belgium

Controversial statements made by Mr. Pablo Llarena, investigative judge of the *Causa Especial* 20907/2017 (trial against the Catalan pro-independence leaders) of the Second Division of the Spanish Supreme Court, put into question the impartiality of said judge.¹¹ The statements caused Mr. Boye's clients to resort to the Belgian judiciary, claiming a non-material damage resulting from the dissemination of those statements in front of the Brussels civil court. The claimants resorted to the Belgian court because they lived in Brussels at the time Judge Llarena made the statements in question and had reasons to doubt their chance of a fair trial in Spain, as the described politicization extended to the courts.¹² After the first two rounds of hearings, the Belgium court has yet to decide on its competence to address this case.

The lawsuit, submitted on 4 June 2019 included the original statement of the investigative judge Mr. Llarena in Spanish as well as a French translation by a certified translator. While Mr. Boye coordinates the international defense strategy of his clients, he and his clients rely on the legal expertise of local colleagues and their language abilities. A translation error of the Spanish statement into French was used by the Spanish newspaper *El Mundo* as a pretext to allege Mr. Boye and his Belgian colleagues of criminal counterfeiting and procedural fraud – accusations that were then picked up quickly by other newspapers.¹³ Despite the public reporting being eventually rectified, Mr. Boye received numerous threats, insults and slander in Spanish media and social media platforms.¹⁴

¹¹ In an out-of-court statement in a public conference in Oviedo, Spain, on 22 February 2018, Mr. Pablo Llarena stated that the arbitrarily detained Catalan politicians were no political prisoners. His statements reflected Mr. Llarena's political motivation underlying his actions as an instruction judge and constituted a violation of the presumption of innocence.

¹² UNWGAD Opinion No. 6/2019 (A/HRC/WGAD/2019) adopted on 25 April 2019 (see Footnote 9).

¹³ Exemplary Reporting: "*Carles Puigdemont falsea una traducción para acosar al juez Llarena en Bélgica*" [Loose translation: "*Carles Puigdemont falsifies a translation to harass Judge Llarena in Belgium*"] by Beatriz Ríos, *El Mundo*, 28 August 2018,

<https://www.elmundo.es/espana/2018/08/28/5b84567d46163f587d8b457a.html>, retrieved 2 September 2019; "*El ex etarra Boye contra las cuerdas al destaparse que falseó la una traducción para acosar a Llarena*" [Loose translation: "*The ex-etarra Boye stands with his back against the wall as it is exposed that he falsified a translation to harass Llarena*"] by Luis Balcarce, *Periodista Digital*, 28 August 2018, <https://www.periodistadigital.com/politica/justicia/20180828/ex-etarra-boye-cuerdas-destaparse-falseo-traducion-acosar-llarena-noticia-689401621120/>, retrieved 2 September 2019.

¹⁴ A publication in the Spanish national newspaper *El Mundo* exemplarily demonstrates the severity of personal and professional defamation of Mr. Boye: in the article "*Verdades, mentiras y deudas sin pagar del abogado de Puigdemont*" by Leyre Iglesias, *El Mundo*, 10 September 2018, the author portrays Mr. Boye as a 'dangerous' and 'feared' litigator, a 'vengeful vampire' who is 'making his money defending drug traffickers,' <https://www.elmundo.es/cronica/2018/09/09/5b9393cbe2704e473c8b45c2.html>, retrieved 2 September 2019; On Twitter the following comments were disseminated among others by journalists and politicians: "*Boye no te preocupes que Correos es lento pero seguro*" [Loose translation: "*Boye, don't worry the Mail is slow but reliable*"], posted by an apparent member of the Spanish army; "*@boye_gustedes un malnacido de mierda. Ya va siendo hora de que los españoles de bien perdamos el miedo de decirle a la cara (ahí tiene mi perfil, etarra de los cojones) lo que pensamos de los etarras. Usted a mí ni me da miedo ni tolero que se chulee por ahí. VD. Es su pasado.*" [Loose translation: "*@boye_g you are a shitty bastard. It is time that we Spanish people finally lose the fear of telling you to your face (here you have my profile, fucking etarra) what we think of the etarras. I'm not afraid of you and I won't tolerate you bragging here. You are your past*"]; "*El ruin @boye_g miserable, terrorista, zafio y mediocre. Un defensor a la altura moral del defendido*" [Loose translation. "*Ruin @boye_g miserable, terrorist, clumsy and mediocre. A defense lawyer at the moral height of his defendants*"].

These severe attacks against his integrity as a lawyer and against his person impelled Mr. Boye to seek protection at the Madrid bar association (ICAM) with a formal request for collegiate protection on 3 September 2018. In order to guarantee the right of defense, bar associations should encourage and ensure the independence of lawyers to promote and uphold the cause of justice without fear as well as defend their honor, dignity and integrity.¹⁵ ICAM's governing board denied Mr. Boye's request on 13 September 2018, arguing that the attacks on social media platforms did not interfere with his independence as a lawyer and denied its responsibility to defend Mr. Boye's integrity as a lawyer. Ten days before the denial of collegiate protection, ICAM had published an official statement expressing its full support of Mr. Pablo Llarena with respect to that very same civil lawsuit.

Furthermore, the event gave rise to complaints against Mr. Boye at the Madrid bar association and the Pamplona bar association, both submitted by MEP Enrique Calvet on 31 August 2018, seeking disciplinary sanctions, the suspension of Mr. Boye's professional permit to practice law, and expulsion from the respective bar associations. Mr. Calvet submitted another complaint against Mr. Boye and his Belgian colleagues at the Brussels bar association on 19 September 2018. While the Spanish bar associations argued that the alleged conducts took place outside of their territorial scope, the Belgium bar association denied their competence *ratione personae* and noted the political motivation underlying the complaint procedures.

In addition, on 4 September 2018, Movimiento24DOS – a Spanish nationalist lawyer's association with close ties to Supreme Court judges – issued a criminal complaint against Mr. Boye and his clients as well as the pertinent Belgian judge and the translator, alleging them respectively of document forgery, false testimony, judicial prevarication and usurpation of functions. In the complaint, Movimiento24DOS identified the actions taken against investigative judge Pablo Llarena in Belgium as denigrating Spanish democratic institutions and violating the integrity and dignity of the Spanish jurisdiction.¹⁶ On 6 September 2018, the right-wing nationalist party VOX submitted a similar complaint against Mr. Boye and others, alleging the same crimes. Although the complaints were dismissed, the Spanish judge Mrs. Maria Tardón noted that she did in fact qualify the conducts as forgery but that the Spanish court lacked competence to address this crime as the alleged criminal conduct had taken place outside of the Spanish territory and neither the direct victim nor the prosecutor – who had actually opposed the criminal complaint brought forward against Mr. Boye – had filed a complaint. As no legal proceedings followed, Mr. Boye had no opportunity to counter this unsubstantiated claim adopted by Judge Tardón.

[REDACTED]

¹⁵ See Principles 5 (4) (a), (b) Recommendation (Rec(2000)21) of the Committee of Ministers of the Council of Europe to Member States on the freedom of exercise of the profession of lawyer, adopted on 25 October 2000.

¹⁶ This is a loose translation from the complaint submitted by Movimiento24DOS. The original statement reads: "*Formalmente dirigida contra el magistrado, materialmente tiene como objetivo denigrar nuestras instituciones democráticas, así como violar la integridad y dignidad de la jurisdicción española.*" (p. 3 of the complaint).

[REDACTED]

Actions taken against Mr. Boye following the request for interim measures concerning proceedings of the Spanish Central Election Committee

A second wave of attacks against Mr. Boye followed in the past months: in the 2019 European Parliament elections, the Catalan politicians Mr. Puigdemont and Mr. Antoni Comín were elected into the European Parliament within the Spanish electoral alliance Lliures per Europa. According to the Central Election Committee (JEC), Spanish law requires the MEP-elects to swear on the Spanish Constitution in front of the parliament before including them in the official list send to Brussels. Mr. Puigdemont and Mr. Comín would be subjected to immediate arrest if they entered into Spanish territory, making it impossible for them to undergo said formality and consequently preventing them from taking their seats in the European Parliament.

On 10 June 2019 at 12:53 p.m., in the course of defending their political rights, Mr. Boye’s clients presented a request to the JEC, seeking an order to make the proceedings for the recount of votes and seat allocation public. Mr. Boye’s clients questioned the neutrality of the JEC procedure also because of the clear antagonism of Mr. Andrés Betancor, member (‘vocal’) of the JEC, toward Mr. Puigdemont and Mr. Comín. In several opinion pieces published in the Spanish national newspaper *El Mundo*, Mr. Betancor repeatedly and explicitly expressed his disregard for Mr. Puigdemont and his government as representatives of the Catalan independence movement.¹⁷

On 12 June 2019 at 05:50 a.m., Mr. Boye received the notification of the JEC’s decision to not allow the request to make the session of recounting and seat allocation public, as has been submitted by his clients. On 12 June 2019 at 02:05 p.m., 02:06 p.m. and 02:07 p.m.– only eight hours after receiving JEC’s decision to refuse the request – Mr. Boye’s law firm sent out administrative appeals to that decision and

¹⁷ In his articles, Mr. Betancor explains that it is the judiciary’s duty to fight the leftist and separatists Catalan forces, which are trying to influence the judiciary and end the rule of law in Spain (see “*Hacia el infierno*” by Andrés Betancor, *El Mundo*, 7 February 2019; “*Atila y la tragedia de los comunes*” by Andrés Betancor, *El Mundo*, 3 November 2018; “*El Catalán errante*” by Andrés Betancor, *El Mundo*, 14 July 2018; “*En Defensa del Supremo*” by Andrés Betancor, *El Mundo*, 24 April 2018; “*Continuó en Schleswig-Holstein*” by Andrés Betancor, *El Mundo*, 4 April 2018; “*Cuanto peor, mejor*” by Andrés Betancor, *El Mundo*, 26 October 2017). By now, the spokesperson in question has resigned to his position effective since 28 June 2019, without giving reasons.

requests for interim measures in the name of Antoni Comín, Carles Puigdemont and Lliures per Europa, respectively, to the competent attorneys. The attorneys submitted the requests for interim measures within the legal deadline at 02:39 p.m., 07:09 p.m., and 07:08 p.m. of that same day.

On 13 June 2019, the court decided not to admit the requests for interim measures but instead opened a separate proceeding, alleging Mr. Boye of procedural bad faith in the management of time for submitting the request for interim measures few hours before the JEC proceeding in question took place. Furthermore, the court considered that requesting the abstention from one of the spokespersons in the JEC proceeding in question also constituted bad faith, as the latter had been in his position for more than five years and no one had ever questioned his impartiality. However, Mr. Boye had actually done so in a previous appeal to the court.

On 9 July 2019, the court imposed a 3,000 Euro fine on Antoni Comín, Carles Puigdemont and Lliures per Europa each for procedural bad faith. According to Article 247 LEC (Spanish Civil Procedure Law) – considering that the procedural bad faith can be attributed to Mr. Boye as the legal representative – the issue at stake was transferred to the pertinent bar association in Madrid (ICAM) to decide about possible disciplinary sanctions against Mr. Boye. The attorneys responsible for submitting the requests for interim measures to the court, and as such at least sharing responsibility for the alleged mismanagement of time, on the other hand, were to no extent incriminated.

On 12 July 2019, Mr. Boye sought again collegiate protection from the Madrid bar association, this time regarding the sentence accusing him of procedural bad faith. The governing body again denied this request on 29 July 2019 on the ground that the sentence of the court was not firm. The bar association furthermore stated that disciplinary proceedings will be initiated once the sentence in question is firm.

On 19 July 2019, Mr. Boye's clients, imposed with the fine for procedural bad faith, appealed the decision of the court, to which the JEC opposed in writing on 31 July 2019. The appeal is ongoing; a decision is expected in the upcoming weeks.

Coinciding with the renewed media coverage and uproar resulting from the legal dispute on the political rights of the exiled Catalan politicians a new bizarre accusation was made against Mr. Boye. On 24 July 2019, in the context of another mandate,¹⁸ a remand prisoner accused Mr. Boye in court of managing the money laundering operations of a drug trafficking organization in Spain. While the incriminations are absurd and easy to refute, said statement was a source of concern given the history of constant attacks against Mr. Boye and the lack of protection by competent authorities. The incrimination is an attack against the professional integrity of Mr. Boye and forces him to invest his resources on proving his innocence. It is furthermore worrisome that the competent judge in this case is Judge Maria Tardón, who – as mentioned above – incomprehensibly alleged Mr. Boye of document forgery in connection with the previous criminal complaints by Movimiento24Dos and VOX. In light of the laid-down recent decision-making of the Spanish national judiciary and in concert with the overall defamation of Mr. Boye, even unsubstantiated accusations like the present one

¹⁸ Mr. Boye is the defense lawyer of José Ramón Prado, who has been repeatedly accused and convicted of drug trafficking and money laundering in Spain. As is the case with many other of Mr. Boye's mandates, the sensationalist media coverage is to the detriment of impartial proceedings and the rights of the defendants.

pose a serious risk to Mr. Boye and might have severe legal consequences for him.¹⁹ Additionally, the search of Mr. Boye's house gained a lot of media attention and was accompanied by a new wave of insult and slander on social media.

Patterns and trends of attacks against Mr. Boye

As has been laid down, the attacks are carried out in the context of the highly politicized and polarized environment of the Catalan independence movement and the criminal trial against its leaders. Part of the opposition to this movement consists in personally attacking those affiliated with it, such as Mr. Boye, and include retaliatory measures by the judiciary in response to voicing critique towards the system of justice and its constituents. In his function as a defense lawyer, Mr. Boye criticized the charges against his clients as being politically motivated and implausible from a technical, criminal legal point of view.²⁰ He also denounced the violation of his clients' political rights as well as the arbitrary detention of other Catalan politicians standing trial in Madrid,²¹ and questioned the impartiality of members of the judiciary based on their public statements.²² In order to effectively defend his clients' rights, Mr. Boye must be able to make use of all legal remedies available in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter as long as the measures are reasonable, taken in good faith and are in the best interest of the clients. While the legal remedies taken by Mr. Boye's clients might have been uncomfortable for the Spanish judiciary, they are reasonable and taken in good faith. In Mr. Boye's case, the concept of bad faith has been used to criminalize reasonable critique on the impartiality of legal proceedings, indicating a political inclination of parts of the judiciary.²³

¹⁹

²⁰ The inapplicability of rebellion charges to the events in question is supported by the ruling of a German High Regional Court, which declared the inadmissibility of extradition for rebellion of Mr. Carles Puigdemont to Spain (see Press Release of the High Regional Court Schleswig-Holstein on 12 July 2018, <https://www.schleswig-holstein.de/DE/Justiz/OLG/Presse/PI/201806Puigdemontenglisch.html>, retrieved 4 September 2019). In addition, more than 500 criminal law professors have signed a petition against invoking rebellion and sedition charges against Catalan politicians, as this would constitute a trivialization of these charges (see https://www.peticion.es/la_banalizacion_de_los_delitos_de_rebelion_y_sedicion?a=2, retrieved 4 September 2019).

²¹ The reasonable justification and legitimacy of such claims is backed up by corresponding reports of the UNWGAD in its Opinion No. 6/2019 (A/HRC/WGAD/2019), denouncing the arbitrary detention of three Catalan pro-independence politicians in Spain and by public statements of international NGOs such as Amnesty International ("*Amnesty International Public Statement. Spain: Charges for sedition and pre-trial detention against Jordi Cuixart and Jordi Sanchez are excessive*" by Amnesty International, 18 October 2017, <https://www.amnesty.org/download/Documents/EUR4173082017ENGLISH.pdf>, retrieved 8 August 2019) or the International Commission of Jurists ("*Spain: trial of Catalanian leaders imperils human rights*" by ICJ, 12 February 2019, <https://www.icj.org/spain-trial-of-catalonian-leaders-imperils-human-rights/>, retrieved 4 September 2019).

²² See Footnotes 11 and 17.

²³ The International Bar Association states: "*An impartial and independent judiciary is more likely to be tolerant and responsive to criticism, which means that lawyers are able to freely criticise the judiciary, without fear of retaliation, whether in the form of prosecution by the government or unfavourable judicial decisions*", in: "*The Independence of the Legal Profession. Threats to the bastion of a free and democratic society. A report by the IBA's Presidential Task Force on the Independence of the Legal Profession*", September 2016, p. 10; The Special Rapporteur on the Independence of Judges and Lawyers made a similar observation: "*(...) lawyers were put under pressure and ran the risk of reprisals or even prosecution after denouncing ill-treatment suffered by*

Attacks against Mr. Boye peaked after voicing this critique in the course of protecting his clients' rights. They included several complaint procedures in front of three different bar associations, criminal complaints for procedural fraud [REDACTED], and impending disciplinary proceedings at the Madrid bar association. The entirely unsubstantiated and unproportioned (criminal) complaints based on a translation error are a retaliation for formally questioning the neutrality in the proceedings against Catalan independence leaders in Spain. The judge's decision to substantively agree with the accusations made against Mr. Boye while dismissing the complaint for lacking formal competence enqueues in the retaliation aiming at discouraging Mr. Boye from criticizing the Spanish justice system. The sentence from 9 July 2019 also implies that any exercise of lawyers' professional responsibilities perceived as uncomfortable for the courts would not be tolerated and bares the risk of being accused of acting in bad faith. In this context, the impending disciplinary action is used as a strong means of pressure against Mr. Boye to interfere with his work.

It is notable, that the attacks against Mr. Boye do not stem from one specific actor but are carried out by a variety of individuals to whom Mr. Boye and his clients represent a disturbance to the institutional and political status quo in Spain. While certain – even legal – confrontations are indispensable in a democratic society, the actions described are aimed at discouraging lawyers in general and Mr. Boye in particular to take and carry on with the defense of the Catalan politicians living in exile. As such, they are violating the independence and freedom of lawyers, which are necessary to comply with the minimal guarantees of the right of defense.

Steps taken to seek protection on national level

Mr. Boye has taken several steps to seek protection from the previously laid down attacks, interferences and hindrances.

He has requested protection from the pertinent Madrid bar association on 3 September 2018 after having received threats and insults via the social media platform Twitter. The request was denied on 13 September 2018 arguing that the attacks had no effect on Mr. Boye's free professional performance, and that he had inflicted the attacks and threats upon himself by being active on said platform. On another occasion, the Madrid bar association failed to grant Mr. Boye the necessary protection by arguing that the root of the complaint procedure against him was a trial in Belgium and was therefore outside of ICAM's territorial scope. On 12 July 2019, Mr. Boye sought again collegiate protection by the Madrid bar association, this time regarding the sentence accusing him of procedural bad faith, which the governing board denied to him on 29 July 2019 on the ground that the sentence of the court was not firm.

The denial of protection by the bar association is contrary to its duties, as it should take any necessary action in case of publication, which require action on behalf of lawyers or any decision to take proceedings calling into question the integrity of a lawyer.²⁴ The negative stance of ICAM's governing board to grant collegiate

their clients or malfunctions in the system of justice", in: Report of the Special Rapporteur on the independence of judges and lawyers, 28 July 2009 (A/64/181), para. 67.

²⁴ See Principles 5 (5) (b), (e) Recommendation (Rec(2000)21) of the Committee of Ministers of the Council of Europe to Member States on the freedom of exercise of the profession of lawyer, adopted on 25 October 2000.

protection to Mr. Boye despite his precarious situation coincides with publicly expressed opinions of the members of this board.²⁵ The untenability of ICAM's arguments to deny protection to Mr. Boye – namely that the trial at the root of the harassment against Mr. Boye takes place in Belgium and that the sentence accusing Mr. Boye of procedural bad faith is not firm yet – becomes clear, as ICAM expressed its full solidarity and support for Judge Pablo Llarena – who's impartiality has been questioned in the same Belgian civil proceeding, which has not produced any sentence yet either.²⁶

Furthermore, Mr. Boye sought the rectification of false media reporting and issued complaints regarding threatening posts on the social media platform Twitter and the online magazine *Periodista Digital*, which were so far denied by the court arguing that Mr. Boye is a public person.

[REDACTED]

Mr. Boye also appealed to the sentence of 9 July 2019, imposing a civil fine for procedural bad faith and transferring the issue to the Madrid bar association for disciplinary proceedings. The case is pending and a decision is expected soon. It is entirely possible that the sentence will be upheld and disciplinary sanctions will be imposed, which could amount to depriving Mr. Boye of his status as a lawyer. The threat of such a drastic and unsubstantiated sanction is real, given the political inclination of the competent bar association's (ICAM) governing board.

²⁵ In his inaugural speech, the dean of the governing board José María Alonso stressed that under his presidency the ICAM will be absolutely committed to maintain the unity of Spain – referencing the Catalan independence movement (see “*Toma de posesión de José María Alonso comonuevodecano del Colegio de Abogados de Madrid*” by Irene Gonzalvo, *Diario Jurídico*, 9 January 2018, <https://www.diariojuridico.com/toma-posesion-jose-maria-alonso-nuevo-decano-colegio-abogados-madrid/>, retrieved 4 September 2019). In a press conference on 25 June 2019, Mr. Alonso made a controversial statement in his supposedly neutral position as the dean of the bar association, downplaying the extreme right-wing orientation of the Spanish party VOX – which submitted one of the criminal complaints against Mr. Boye (see “*Decano de Abogados: Vox no es como otros partidos de extrema derecha europea*”, *La Vanguardia*, 25 June 2019, <https://www.lavanguardia.com/politica/20190625/463115670877/decano-de-abogados-vox-no-es-como-otros-partidos-de-extrema-derecha-europea.html>, retrieved 4 September 2019).

²⁶ In a communication following the civil complaint against Judge Pablo Llarena in Belgium, the dean of the Madrid bar association Mr. Alonso emphasized his full support for the actions of Mr. Llarena and strongly rejected the complaints brought against the judge (see “*Comunicado del decano del ICAM relativo a la demanda presentada en un juzgado de Bélgica contra el magistrado D. Pablo Llarena*” by José María Alonso, 3 September 2018, <https://web.icam.es/actualidad/noticia/5097/Comunicado-del-decano-del-ICAM-relativo-a-la-demanda-presentada-en-un-juzgado-de-B%C3%A9lgica-contra-el-magistrado-D-Pablo-Llarena>, retrieved 9 September 2019).

Measures taken on the national level have proven to be insufficient and do not draw confidence for an efficient protection of Mr. Boye's rights and interests in the future. As long as the impartiality of the judiciary and quasi-judicial bodies like the Central Election Committee or the governing board of the bar association is not ensured and the pertinent biased decision-making is not publically condemned, Mr. Boye's independence as a lawyer cannot be guaranteed.

This appraisal is compounded by the sentence against Catalan pro-independence leaders of 14 October 2019 and a new arrest warrant against Mr. Puigdemont, which intensified the political tensions in Spain to the detriment of the legal standing of the Catalan pro-independence leaders. This new development is very likely to result in an increased pressure and intensification of attacks against Mr. Boye, based on legal actions his clients will undertake to defend their political and human rights.

III. Conclusion and request for action

The described attacks against Mr. Boye interfere with his free performance as a lawyer and defame him as a legal professional. The attacks are based on an identification of Mr. Boye with his clients' cause, namely the Catalan independence movement. He is subjected to intimidation, hindrance and improper interference in the discharge of his functions as a lawyer. Furthermore, the impending disciplinary proceedings are a threat for actions taken in accordance with recognized professional duties, standards and ethics.

The criminalization of Mr. Boye's professional activities in relation to the legal defense of his clients Carles Puigdemont and other exiled Catalan politicians, and retaliatory measures taken against him, aim at discouraging Mr. Boye to carry on with his mandate. This impedes an effective representation of the Catalan politicians, which is indispensable for ensuring their political and human rights and therefore upholding the rule of law in Spain.

The tense political setting of the legal dispute in question has produced serious adverse effects for the defendants themselves but also for Mr. Boye as their legal representative. At this point, Mr. Boye is under immense pressure resulting from impending disciplinary proceedings, attacks against his professional reputation through the court and the media [REDACTED]. The politicization of the legal dispute in question has furthermore had detrimental effects on the neutrality and impartiality of proceedings, including in the bar association responsible for the protection of Mr. Boye's activities as a lawyer. So long as this politicization continues – and against the backdrop of the recent prison sentences against the Catalan pro-independence leaders – national mechanisms give little hope to grant an adequate protection to Mr. Boye.

We are furthermore concerned that the ongoing pressure and attacks on Mr. Boye, in the discharge of his functions as a lawyer, discourage other lawyers and civil society as a whole to denounce the criminalization of peaceful and democratic actions.

Under international standards, including the UN Basic Principles on the Role of Lawyers, the Spanish government must ensure that Mr. Boye is able to perform his professional functions without interferences from any quarter and adequately protect him against all forms of attacks resulting from the discharge of his functions. It is furthermore the duty of the state to uphold Mr. Boye's integrity as a lawyer – irrespective of the political expediency of his mandate.

ECCHR therefore formally requests you, in your capacity as UN Special Rapporteur on the independence of judges and lawyers, to urge the government of Spain to reject the hostile position and actions based on an identification with the Catalan independence movement, to ensure the independence of the judiciary and to take measures against attacks from any quarter on Mr. Boye's free exercise as a lawyer.

If we can be of any further assistance, or provide any more information, please do not hesitate to contact us. Any document referred to in this submission of information can be made available on request.

We wish to be kept informed about any action taken.

SIGNATORIES:

Wolfgang Kaleck,
General Secretary
European Center for Constitutional
and Human Rights (ECCHR)

Florian Borg,
General Secretary
Avocats européens démocrates
(AED/EDL)

William Bourdon,
Board of Directors
Sherpa

Bill Bowring,
President
European Association of Lawyers for
Democracy & World Human Rights
(ELDH/EJDM)

Hans Gaasbeek,
Director
Day of the Endangered Lawyer

Thomas Schmidt,
General Secretary
European Association of Lawyers for
Democracy & World Human Rights
(ELDH/EJDM)

Peer Stolle,
Chairman
Republikanischer Anwältinnen- und
Anwälteverein (RAV)

CONTACT:

Wolfgang Kaleck
kaleck@ecchr.eu

c/o European Center for
Constitutional and Human Rights (ECCHR)
Zossener Str. 55–58, Staircase D
10961 Berlin
Germany

T: +49 (0)30 – 400 485 90

F: +49 (0)30 – 400 485 92