

# **MEDIA GUIDE**



# **SUPREME COURT**

## **Special proceedings 20907/2017**

**OFICINA DE COMUNICACIÓN**



## INDEX

1. The public nature of judicial proceedings
2. Media coverage of the oral hearing in special proceedings 20907/2017
3. The court
4. The defendants
5. The offences being tried
6. The prosecutors
7. The defence counsels
8. The trial process
9. The trial at [www.poderjudicial.es](http://www.poderjudicial.es)



Consejo General  
del Poder Judicial



## 1. THE PUBLIC NATURE OF JUDICIAL PROCEEDINGS

The right to a public trial is one of the guarantees of the Spanish criminal justice system. In Spain, the principle of the public nature of judicial proceedings is recognised by the Constitution, case law of the Constitutional Court and Regulation 1/2005 on ancillary aspects of judicial proceedings, approved by the General Council of the Judiciary.

This means that any member of the public who so wishes can attend a trial and that the media have preferential access to courtrooms as "natural intermediaries" between the news and society.

### **Spanish Constitution**

*Judicial proceedings shall be public, with the exceptions outlined in procedural laws" (Article 120(1) of the Spanish Constitution)*

### **Constitutional Court**

Moreover, the public nature of oral hearings has been repeatedly guaranteed by the Constitutional Court, in Judgments 30/1982, 56/2004, 57/2004 and 159/2005, inter alia. The supervisory court has also recognised preferential treatment of the media.

*"The principle that trials should be public, enshrined in the Constitution (Article 120(1)), means that knowledge of these trials can spread beyond the circle of people present at them and be made available to all. This general availability can only come about through the presence of the mass media, who by attending are able to acquire information at source and convey it to those who are precluded from so doing by the imperatives of space, time, distance, work and duties, etc. This role of natural intermediary, performed by the media between the news and those who are unable to experience it in person, increases in importance in the face of events which, given their significance, can affect everyone and have a particular impact on society" (Constitutional Court Judgment 30/1982, Legal Ground 4)*

### **Regulation 1/2005 on ancillary aspects of judicial proceedings**

*"As a general rule, accredited media outlets shall be allowed access to proceedings held in public hearings, except in cases where constitutional values and rights may be affected, in which event the judge or president of the court may deny said access by a reasoned decision."(Article 6)*



## 2. MEDIA COVERAGE OF THE ORAL HEARING IN SPECIAL PROCEEDINGS 20907/2017

### Location of the court building and the courtroom

The trial will take place in the Plenary Chamber of the Supreme Court located at Plaza de la Villa de París in Madrid. Access for accredited journalists will be through the side entrance on Calle del General Castaños.

Accredited media outlets may work in the following locations:

- In the cordoned-off outdoor area in Plaza de la Villa de Paris, in front of the main façade of the court building (Palacio de Justicia). This area can be used for live connections and to film the representatives of the parties and the defendants who are not in custody entering and exiting. They will also access the building by the side door on Calle del General Castaños. There will also be a designated area for lawyers and/or defendants to make statements, if they wish.
- In the press rooms on the second floor of the building, equipped with monitors to follow the trial sessions and audio and video signal distributors. Three spaces have been provided: the library, the room known as "la aspirina" and the auditorium.
- In the courtroom, where a limited number of seats will be reserved for representatives of the media.

The Communications Office of the General Council of the Judiciary and of the Supreme Court will transmit the official signal from the oral hearing which will be sent out live and in full. Televisión Española (TVE) will provide this signal free of charge to any interested media outlets, who must request it by email at the following addresses:

- Television companies: [intercambios.informativos@rtve.es](mailto:intercambios.informativos@rtve.es)
- Web sites (for streaming): [begona.esteban@rtve.es](mailto:begona.esteban@rtve.es)

Media outlets that prefer to receive the signal directly in the Supreme Court will have audio and video distributors at their disposal.

The media can capture images outside the court building. Inside, no images may be captured in the corridors or in the courtroom. Images may only be captured in the press rooms if expressly requested and authorised by the Communications Office.

On the day established for the first trial session, images (photos) of the inside of the courtroom will be available via an Agencia EFE pool and will be distributed to any interested media outlets.

### The courtroom

A limited number of seats will be reserved for journalists in the Plenary Chamber and must be expressly requested. If demand is greater than the number of places available, the Communications Office will establish a system based on criteria of public service and audience size. Once inside the chamber, it will not be possible to leave until the court is adjourned. No mobile phones may be used in the courtroom.

*Failure to comply with the rules set out by the Communications Office in this guide will lead to removal of accreditation from the media outlet.*



### 3. THE COURT

#### Second Chamber of the Supreme Court

*Judges are seated in the Supreme Court in order of length of service. The president, Manuel Marchena, is in the centre and the others sit on either side, from longest to shortest serving – starting on his right - with Andrés Palomo and Ana Ferrer occupying the end seats as the most recently appointed magistrate judges.*

<p><b>Manuel Marchena Gómez</b> <i>President and reporting judge</i></p>	<p>Born in 1959, he has been a Supreme Court magistrate judge since 2007 and president of the Second Chamber since November 2014.</p> <p>He graduated in Law from the University of Deusto and is a Doctor of Law. He is a state prosecutor on leave of absence, a career during which he served as prosecutor at the Supreme Court and divisional chief prosecutor at the Technical Secretariat of the State Prosecutor's Office, among other posts.</p> <p>He is the author of many books and articles published in specialist journals and was an associate lecturer at the Law Faculty of the Autonomous University of Madrid. In 2012 he was appointed president of the Institutional Affairs Committee created that year to amend the Law of Criminal Procedure. He not a member of any judicial association.</p>
<p><b>Andrés Martínez Arrieta</b></p>	<p>Born in 1955, he has been a magistrate judge of the Second Chamber of the Supreme Court since 1998.</p> <p>He entered the judiciary in 1979 and was posted to the Courts of First Instance and Investigation in Azpeitia, Lerma and Móstoles, to Court of Investigation number 11 in Madrid and the Provincial Court of Madrid before joining the high court.</p> <p>When he was appointed, he became the youngest magistrate judge to sit on the Supreme Court. He is a member of the Francisco de Vitoria Judicial Association.</p>
<p><b>Juan Ramón Berdugo Gómez de la Torre</b></p>	<p>Born in 1954, he has been a magistrate judge of the Second Chamber of the Supreme Court since 2004.</p> <p>He graduated in Law from the University of Valladolid, entered the judiciary in 1979 and became a magistrate judge in 1983.</p> <p>His first posting was the Court of First Instance and Investigation in Aguilar de la Frontera and he subsequently served on Courts of this type in Vitoria, Ciudad Real and Córdoba. In 1998 he joined the Provincial Court of Córdoba as a magistrate judge, where he remained until his appointment to the high court. He is a member of the Professional Association of Magistrate Judges.</p>



<p><b>Luciano Varela Castro</b></p>	<p>Born in 1947, he has been a magistrate judge of the Second Chamber of the Supreme Court since 2007.</p> <p>He served as a state prosecutor before joining the judiciary in 1976 and sat on Courts of First Instance and Investigation in Lena, Avilés and Pontevedra and in the Provincial Courts of Álava and Pontevedra before joining the high court.</p> <p>He was a drafter of the Jury Law and was a lecturer on procedural law at the University of Santiago de Compostela for twenty years. He is a founding member of Judges for Democracy, an association set up in 1983.</p>
<p><b>Antonio del Moral García</b></p>	<p>Born in 1959, he has been a magistrate judge of the Second Chamber of the Supreme Court since April 2012.</p> <p>He is a Doctor in Law from the Complutense University of Madrid and he is a state prosecutor on leave of absence, during which career he served in the Technical Office of the State Prosecutor's Office and at the Supreme Court, among other posts.</p> <p>He was a lecturer at IE Business School and the Complutense University of Madrid, he is the author of many publications on topics relating to Criminal Law and was part of the committee of experts responsible for preparing a draft structured text of the new Law of Criminal Procedure in 2012 and 2013. He is a member of the Professional Association of Magistrate Judges.</p>
<p><b>Andrés Palomo del Arco</b></p>	<p>Born in 1954, he has been a magistrate judge of the Second Chamber of the Supreme Court since 2014.</p> <p>He entered the judiciary in 1981 and before joining the high court he served on Court of First Instance and Investigation number 1 in Almendralejo, Court of First Instance and Investigation number 1 in Mérida and Criminal Court number 1 in Salamanca.</p> <p>In 1998 he was appointed president of the Provincial Court of Segovia, a position he held for four terms. He not a member of any judicial association.</p>
<p><b>Ana María Ferrer García</b></p>	<p>Born in 1959, she has been a magistrate judge of the Second Chamber of the Supreme Court since 2014.</p> <p>She entered the judiciary in 1984 and her first postings were to the Courts of First Instance and Investigation in Linares, Aranjuez and Leganés, subsequently serving on Court of Investigation number 16 in Madrid. In 1996 she gained a post as a magistrate judge at the Provincial Court of Madrid, of which she was named president in 2008.</p> <p>She was the first woman to become a magistrate judge of the Second Chamber of the high court. She is a permanent member of the Criminal Law Section of the Law Commission and a member of Judges for Democracy.</p>



## 4. THE DEFENDANTS

Name	Position at the material time	Personal Situation
Oriol Junqueras i Vies	Vice-President of the Executive Council of the Generalitat (Autonomous Government) of Catalonia	Provisional custody
Jordi Turull i Negre	Regional Minister for the Presidency Office of the Generalitat of Catalonia	Provisional custody
Raül Romeva i Rueda	Regional Minister for Foreign Affairs of the Generalitat of Catalonia	Provisional custody
Josep Rull i Andreu	Regional Minister for Territory and Sustainability of the Generalitat of Catalonia	Provisional custody
Dolors Bassa i Coll	Regional Minister for Employment, Social Affairs and Families of the Generalitat of Catalonia	Provisional custody
Joaquim Forn i Chiarello	Regional Minister for the Interior of the Generalitat of Catalonia	Provisional custody
Jordi Sànchez Picanyol	President of the Catalan National Assembly	Provisional custody
Jordi Cuixart Navarro	President of Òmnium Cultural	Provisional custody
Carme Forcadell i Lluís	President of the Parliament of Catalonia	Provisional custody
Meritxell Borràs i Solé	Regional Minister for Governance of the Generalitat of Catalonia	Provisional release
Carles Mundó i Blanch	Regional Minister for Justice of the Generalitat of Catalonia	Provisional release
Santiago Vila i Vicente	Regional Minister for Enterprise and Knowledge of the Generalitat of Catalonia	Provisional release



## 5. THE OFFENCES BEING TRIED

### Rebellion

The crime of rebellion is outlined in Articles 472 et seq. of the Penal Code, in the title "Crimes against the Constitution".

Article 472.

*Those individuals are guilty of the crime of rebellion who revolt violently and publicly for any of the following purposes:*

- 1. To totally or partially revoke, suspend or modify the Constitution.*
- 2. To relieve or deprive the King or Queen, Regent or members of the Regency of all or part of their prerogatives and faculties, or oblige them to execute an act contrary to their will.*
- 3. To impede the free holding of elections for public posts.*
- 4. To dissolve the General Courts, the Congress of Deputies, the Senate or any Legislative Assembly of an Autonomous Region, impede their meeting, deliberating or resolving, oblige them to pass a resolution or remove them of their responsibilities or competencies.*
- 5. To declare the independence of a part of national territory.*
- 6. To substitute the Government of the Nation or the Governing Council of an Autonomous Region for another, or of any of their members of their faculties, or impede them or restrict their free exercise, or oblige any of them to carry out acts contrary to their will.*
- 7. To remove any type of armed force from the obedience of the Government.*

Article 473.

*1. Those who, inducing the rebels, have promoted or sustain the rebellion, and its ringleaders, shall be punished with a sentence of imprisonment from fifteen to twenty-five years and absolute disqualification for the same period; those who act as subaltern commanders, with a sentence of imprisonment from ten to fifteen years and absolute disqualification from ten to fifteen years, and mere participants, with a sentence of imprisonment from five to ten years and special disqualification from public employment or office for a term of six to ten years.*

*2. If weapons have been used, or if there has been combat between the rebellious force and the sectors loyal to the lawful authority, or when the rebellion has caused criminal damage to publicly or privately owned property, cutting off communications via telegraph, telephone, radio waves or railway, or of any other kind, with serious violence against persons, demanding contributions or diverting public funds from lawful investment, the prison sentences shall be, respectively, twenty-five to thirty years in the first instance, fifteen to twenty-five years in the second instance and ten to fifteen years in the last instance.*

### Sedition

The crime of sedition is outlined in Articles 544 et seq. of the Penal Code, in the title "Crimes against public order".

*The following are guilty of a crime of sedition: those who, without incurring in the crime of rebellion, publicly revolt in a tumultuous manner, by force or outside of the legal channels, to prevent the application of the Law or to prevent any authority, official corporation or civil*



servant from legitimately exercising their functions or complying with agreements or administrative or judicial decisions.

### **Misappropriation**

The crime of misappropriation is outlined in Article 432 of the Penal Code, in the title "Crimes against the Public Administration".

*An authority or public official who commits the offence under Article 252 on public property is guilty of misappropriation (Article 432 of the Penal Code).*

- *Those who, with powers under the law to manage an asset of a third party, and which are granted by the authority or assumed by means of a legal transaction, violate said powers, overstepping the exercise thereof and, thus, who cause a damage to the asset managed shall be punishable (Article 252 of the Penal Code).*

### **Criminal Organisation**

The crime of criminal organisation is outlined in Articles 570 bis of the Penal Code, in the title "Crimes against public order".

*Those who promote, constitute, organise, coordinate or oversee a criminal organisation shall be sanctioned with a prison term of between four and eight years where the organisation is dedicated to the commission of serious crimes, and with a prison term of between three and six years in all other cases; those who actively participate in the organisation, form a part of it or cooperate with it, economically or in any other manner, shall be sanctioned with a prison term of between two and five years, where the organisation is dedicated to the commission of serious crimes, and with a prison term of between one and three years in all other cases.*

*For the purposes of this Code, a criminal organisation is understood to refer to a group formed of more than two people that is stable in nature and operates for an indefinite period, which, in an arranged and coordinated manner, assigns various tasks or functions with the aim of committing crimes.*

### **Disobedience**

The crime of disobedience is outlined in Article 410 of the Penal Code, in the title "Crimes against the Public Administration".

*Public authorities or officials who openly refuse to duly comply with legal rulings, issued within the sphere of their respective competence and under the legal formalities, shall be sentenced to a fine of three to twelve months and special disqualification from public employment or office for a term of six months to two years.*



## 6. THE PROSECUTORS

Three prosecutions are parties to the proceedings: the State Prosecutor's Office, the State Legal Service and the "popular prosecution" brought by the political party VOX.

Each prosecution accuses the defendants of the following offences and requests the following sanctions for them in their written provisional findings.

### STATE PROSECUTOR'S OFFICE

The State Prosecutor's Office will be represented by the divisional prosecutors Consuelo Madrigal, Javier Zaragoza, Jaime Moreno and Fidel Cadena.

DEFENDANT	OFFENCES	SENTENCE REQUESTED
Oriol Junqueras	Rebellion with misappropriation	25 years' imprisonment and 25 years' absolute disqualification
Jordi Turull Raül Romeva Josep Rull Dolors Bassa Joaquim Forn	Rebellion with misappropriation	16 years' imprisonment and 16 years' absolute disqualification
Jordi Sànchez Jordi Cuixart Carme Forcadell	Rebellion	17 years' imprisonment and 17 years' absolute disqualification
Meritxell Borràs Carles Mundó Santiago Vila	Misappropriation and disobedience	7 years' imprisonment and 16 years' absolute disqualification for the offence of misappropriation, plus a fine of 30,000 euros and 20 months' special disqualification from public employment or office for the offence of disobedience

### STATE LEGAL SERVICE

The State Legal Service will be represented by the chief State criminal counsel, Rosa María Seoane López, and by Elena Sáenz Guillén.

DEFENDANT	OFFENCES	SENTENCE REQUESTED
Oriol Junqueras	Sedition and misappropriation	12 years' imprisonment and 12 years' absolute disqualification
Jordi Turull Raül Romeva Josep Rull Dolors Bassa Joaquim Forn	Sedition and misappropriation	11 years and 6 months' imprisonment and 11 years and 6 months' absolute disqualification
Jordi Sànchez Jordi Cuixart	Sedition	8 years' imprisonment and 8 years' absolute disqualification
Carme Forcadell	Sedition	10 years' imprisonment and 10 years' absolute disqualification
Meritxell Borràs Carles Mundó Santiago Vila	Misappropriation and disobedience	7 years' imprisonment and 10 years' absolute disqualification for the offence of misappropriation, plus a fine of 30,000 euros and 20 months' special disqualification from public employment or office for the offence of disobedience



## POPULAR PROSECUTION

In Spain the State Prosecutor's Office does not have a monopoly on criminal proceedings. Article 125 of the Spanish Constitution recognises that any natural or legal person may bring such proceedings, even if they are not directly affected by the crime in question, which is referred to as the *acusación popular*, or popular prosecution, and has a functional autonomy compared to the public interest, which is represented by the State Prosecutor. The popular prosecution will be represented by the lawyers Francisco Javier Ortega Smith-Molina and Pedro Fernández Hernández.

DEFENDANT	OFFENCES	SENTENCE REQUESTED
Oriol Junqueras Jordi Turull Raül Romeva Josep Rull Dolors Bassa Joaquim Forn	Rebellion, criminal organisation and misappropriation	74 years' imprisonment, 20 years' absolute disqualification from public employment or office and 20 years' special disqualification
Jordi Sànchez Jordi Cuixart Carme Forcadell	Rebellion and criminal organisation	62 years' imprisonment, 20 years' absolute disqualification from public employment or office and 20 years' special disqualification
Meritxell Borràs Carles Mundó Santiago Vila	Criminal organisation and misappropriation	24 years' imprisonment, 20 years' special disqualification, 20 years' absolute disqualification from public employment or office and a fine of 216,000 euros

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## 7. THE DEFENCE COUNSELS

Defendant	Lawyer
Oriol Junqueras	Andreu Van den Eynde Adroer Estefanía Torrente Guerrero
Jordi Turull	Jordi Pina Massachs Ana Bernaola Lorenza Francesc Homs i Molist Miriam Company Marsá
Raül Romeva	Andreu Van den Eynde Adroer Estefanía Torrente Guerrero
Josep Rull	Jordi Pina Massachs Ana Bernaola Lorenza Francesc Homs i Molist Miriam Company Marsá
Dolors Bassa	Mariano Bergés Tarilonte
Joaquim Forn	Javier Melero Merino Judit Gené Creus Francesc Homs i Molist
Jordi Sànchez	Jordi Pina Massachs Ana Bernaola Lorenza Francesc Homs i Molist Miriam Company Marsá
Jordi Cuixart	Marina Roig Altozano Alex Solá Paños Benet Salellas Vilar
Carme Forcadell	Olga Arderiu Ripoll Raimon Tomás Vinardell
Meritxell Borràs	Javier Melero Merino Judit Gené Creus Francesc Homs i Molist
Carles Mundó	Josep Riba Ciurana
Santiago Vila	Pablo Molins Amat Juan Segarra Monferrer

All the defence counsels request the acquittal of their clients.



## 8. THE TRIAL PROCESS

The oral trial is a public act in which evidence is examined and the State Prosecutor, prosecutions (with their lawyers) and the accused party or parties (with their lawyers) appear.

There is a singular feature in the Spanish legal system that does not appear in other European systems: the State Prosecutor does not have monopoly over criminal proceedings. Article 125 of the Spanish Constitution recognises that any natural or legal person may bring such proceedings, even if they are not directly affected by the crime in question, which is referred to as the *acusación popular*, and has a functional autonomy compared to the public interest, which is represented by the State Prosecutor. This explains why proceedings may include a prosecution brought by a political party.

The trial court is comprised of seven magistrate-judges from the Criminal Chamber of the Supreme Court. These magistrate-judges have not intervened either in the investigation stage or the resolution of the remedies lodged during this stage.

The legal regulation on the oral trial can be found in Articles 680 et seq. of the Law of Criminal Procedure (LECRIM).

### 1. GENERAL RULES ON THE HOLDING OF THE TRIAL

- 1) The entire trial process is public
- 2) All parties who are questioned or who address the Court must do so standing. The State Prosecutor, the lawyers representing the appearing parties, and the individuals who the President dispenses of this obligation for special reasons, are excepted.
- 3) Signs of approval or disapproval are prohibited.
- 4) The President of the Court has the responsibility of directing the debates and maintaining due order and respect in the Courtroom.

### 2. TRIAL STAGES

#### 2.1. Preliminary questions stage

At the beginning of the trial, the parties may intercede to present before the Court that which they deem opportune on questions such as the violations of any fundamental rights, or the reasons for suspending the oral trial. The Court may resolve these in the act or defer the decision to the passing of judgment.

#### 2.2. Evidence stage

##### 1) Statement from the accused

The evidence stage begins with the statement of the accused.

The accused have the right not to declare, and to not answer any or all of the questions put to them.

The accused are not obliged to state the truth in the trial.

The order for questioning is as follows: first, it is the turn of the Public Prosecutor and the private prosecution lawyers, then the lawyers of any other accused parties and, lastly, the lawyer for the accused.

##### 2) Witness statement

Following the accused, it is the turn of the witnesses to make their statements.

Witnesses are obliged to answer all questions put to them during the trial, save the existence of a legal reason that permits them not to answer.



Witnesses are obliged to state the truth in their response to the questions (if they fail to do so, they could be committing the offence of giving false testimony).

The order of the witnesses is as follows: firstly, the witnesses proposed by the State Prosecutor make their statements, then it is the turn of those proposed by the other prosecutions and, lastly, those proposed by the accused.

Witnesses shall be questioned in the order in which their names appear on the lists proposed by the parties.

The President of the Chamber will be able to change this order if it is convenient for the best clarification of the events or for the most reliable discovery of the truth.

### 3) Expert statement

Following the witnesses, it is the turn of the experts to make their statements. These experts provide their knowledge on a matter to the Court.

The order of the experts is the same as for the case of the witnesses.

### 4) Documentary evidence

Following the expert statements, the parties will indicate which documents in the proceedings they consider opportune for the Court to take into account in order to pass judgment.

## **2.3. Conclusion stage**

Following the evidence stage, the parties give their "definitive conclusions". In these they indicate to the Court those offences they consider to have been committed, which crimes they consider applicable and which punishments must be imposed thereon.

In the conclusions stage, there are a number of possibilities:

- 1) The parties limit themselves to state that they consider the provisional findings to be definitive (which they have already presented in writing before the start of the trial).
- 2) The parties consider it necessary to modify these conclusions. In this case they shall formulate, via another written document, the new conclusions.
- 3) The parties present alternative classifications.

## **2.4. Report stage**

Following the conclusion stage, the parties have the floor to orally express their arguments before the Court and explain to it the result of the trial regarding the crimes declared as proven and their legal classification.

The order of presentation is as follows: firstly, the State Prosecutor issues a report, then lawyers for the prosecution issue a report, and, lastly, it is the turn of the lawyers for the accused.

## **3. RIGHT TO FINAL WORD**

The accused have the right to say what they consider convenient at the end of the trial. It is a right of the accused (not their lawyer), who will address the Court directly. To do so, the President of the Courtroom shall ask the accused if they have anything to say to the Court and where they state that they do they will be given the floor.

After this final word procedure, the trial shall be declared as concluded, ready for judgment.



## 9. THE TRIAL at [www.poderjudicial.es](http://www.poderjudicial.es)

Throughout the trial, the Communications Office will provide a space on the website [www.poderjudicial.es](http://www.poderjudicial.es) to follow the oral hearing, with the following content:

1. Latest news

Decisions adopted by the court during the oral hearing, modifications to the timetable, weekly outlooks, etc.

2. The court

Profiles of the seven magistrate judges who sit in the trial chamber: the date they joined the judiciary and the Supreme Court, previous posts, etc.

3. Information guide

Information on the defendants, the offences being tried, the prosecutions, the defence counsels and the conduct of the trial included in this guide.

4. Ruling archive

Link to the main rulings - arranged by date - issued during the investigation stage and the intermediate stage, which can be downloaded in pdf format.

5. The trial, live

The oral trial sessions streamed live and in full.

Access all the information about the oral hearing in special proceedings 20907/2017 at:

[www.poderjudicial.es/cgpi/es/Poder-Judicial/Tribunal-Supremo/](http://www.poderjudicial.es/cgpi/es/Poder-Judicial/Tribunal-Supremo/)

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