

# CASE STUDY

# SLAPP IN SPAIN



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**DISCLAIMER**

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## 1. INTRODUCTION

In recent years the phenomenon of strategic lawsuits against public participation, commonly referred to as **SLAPPs**, has been progressively taking hold throughout Europe.

SLAPPs represent those unfounded or exaggerated legal actions brought by powerful individuals, pressure groups, companies, and state bodies with the intention of intimidating, silencing, and dissuading **critical voices** that openly denounce issues of public interest, by draining their resources. Because of their public watchdog role, journalists, human rights defenders, civil society organizations, activists and intellectuals are particularly at risk of being the **victims** of strategic lawsuits.

These vexatious tactics based on strategies of intimidation can last for years. Very often, defendants can find themselves facing multiple legal proceedings at the same time and in different jurisdictions. Thus, SLAPPs result in **abuses** of court proceedings that entail high procedural, economic and personal costs for the targets. This produces an inhibiting and intimidating **effect** that can even lead to self-censorship since, for fear of reprisals, other critical voices may decide to refrain from asserting their right to investigate and report on matters of public interest. In this way, SLAPPs pose a **threat** to pluralistic public debate, impede accountability, undermine fundamental rights and the rule of law in our societies.

While the prevalence of SLAPPs has been identified as a matter of serious concern in some Member States<sup>1</sup>, in others, like **Spain**, due to the lack of apparent SLAPP cases and the challenges of gathering evidence, the phenomenon has not been comprehensively explored yet. To the date, the case of Iñaki Rivera clearly represents the most representative example of a SLAPP case in Spain.

The following **report** explains the background and the summary of proceedings of this sensational case, which clearly shows not only the intent of the plaintiffs, but also the

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<sup>1</sup> CASE Coalition, Criticism: How SLAPPs Threaten European democracy (2022)  
Accessible at: <https://static1.squarespace.com/static/5f2901e7c623033e2122f326/t/>



consequences of SLAPP litigation for the life of the victim and for freedom of expression in general.

## 2. Iñaki Rivera's profile

**Iñaki Rivera** Beiras is Professor of Criminal Law at the University of Barcelona (UB)<sup>2</sup> and has dedicated his academic career to the fight against torture and, more broadly, against institutional violence.

In 2018 he was appointed member of the Observatory of the National Preventive Mechanisms against Torture (NPM) of the Council of Europe, and in 2020 he was selected to be part of the Advisory Council of the Human Rights Structure of Catalonia, with the aim of implementing the new Human Rights Plan.

Pioneer in the creation of the first public defender's office for the assistance to prisoners in the Bar Association of Barcelona, Rivera is a reference in **penitentiary matters**, not only in Spain but also in several European and Latin American countries.

In particular, Rivera has been analyzing and reporting cases of institutional violence for years as founder and Director of the **Observatory of the Penal System and Human Rights (OSPDH)**<sup>3</sup> and general coordinator of the System of Registration and Communication of Institutional Violence (SIRECOVI) of the UB Research Center<sup>4</sup>. Both OSPDH and SIRECOVI are organizations of the University of Barcelona aiming at defending the rights of persons deprived of their liberty and victims of institutional violence.

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<sup>2</sup> <https://webgrec.ub.edu/webpages/000002/cas/rivera.ub.edu.html>

<sup>3</sup> <https://www.ub.edu/portal/web/observatori-sistema-penal/>. The OSPDH, recognized as a Consolidated University Research Center by the Government of the Generalitat de Catalunya, is composed of professors, students, graduates, postgraduates and professionals who, through research, teaching and observation of the institutions of the penal system, work to defend the rights and freedoms of individuals and strengthen the principles and values of the democratic rule of law.

<sup>4</sup> <https://sirecovi.ub.edu/>. The SIRECOVI is a registration and communication system for the protection of victims of institutional violence created and managed by the OSPDH, which operates when a communication arrives to the OSPDH informing that someone has allegedly suffered ill treatment or torture in places of deprivation of liberty (e.g. prisons, police stations, juvenile detention centers, or migration detention facilities) or in the framework of demonstrations or detentions in public spaces, produced by law enforcement officers.

As part of his institutional work, Iñaki Rivera has been questioning the solitary confinement system and the treatment of inmates in Catalan prisons for years. Therefore, he can be also considered a **human rights defender**<sup>5</sup>, in particular of the rights of prisoners.

In this regard, it is worth mentioning that in recent years, on several occasions, numerous international organizations have denounced degrading treatment and torture of inmates in Spanish prisons.

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<sup>5</sup> According to the Declaration on Human Rights Defenders, adopted by the General Assembly in its resolution 53/144, *“everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. (art.1)”* It is the actions of a person that determine whether someone is a human rights defender.

### 3. Background

On April 30, 2004, an altercation took place at the **Quatre Camins prison** in La Roca del Vallèn in Barcelona while prisoners were trying to report the ill-treatment they had been suffering. Consequently, in his capacity as Director of the OSPDH, Rivera requested authorization from the prison administration to interview the prisoners involved in the altercation.

The investigation carried out by the **OSPDH** concluded that numerous prisoners were beaten out of their cells and transferred to other prisons in Catalonia in retaliation for the altercation in which the deputy director of the prison had been injured. They were also beaten during the transfers, and by the former deputy medical director in the prison infirmary<sup>6</sup>. In addition, after the incident, prisoners who had reported torture to the OSPDH continued to suffer daily threats.

In view of the fact that no measures were taken to protect the **mistreated prisoners**, the OSPDH decided to make public the allegations of mistreatment suffered by the prisoners who allegedly participated in the altercation, publishing information about the mistreatment in newspapers and taking the case to the Parliament of Catalonia and to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe (CPT). In addition, the OSPDH contacted several lawyers to take over the case<sup>7</sup>.

A judicial investigation was opened, which, nine years later, in 2013, resulted in the **conviction** of the former deputy medical director and five prison officers by the Barcelona Provincial Court for assault and battery, not for torture. In 2015, the Supreme Court confirmed the conviction<sup>8</sup>.

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<sup>6</sup>[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ESP/INT\\_CCPR\\_NGO\\_ESP\\_93\\_8723\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ESP/INT_CCPR_NGO_ESP_93_8723_E.pdf)

<sup>7</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18895>

<sup>8</sup> [https://www.lainformacion.com/espana/el-supremo-confirma-la-sentencia-al-subdirector-medico-de-quatre-camins-por-maltratar-a-presos-tras-un-motin\\_5vw0LUK3r8T0iAr5Dfffc/](https://www.lainformacion.com/espana/el-supremo-confirma-la-sentencia-al-subdirector-medico-de-quatre-camins-por-maltratar-a-presos-tras-un-motin_5vw0LUK3r8T0iAr5Dfffc/)



Since the serious incident occurred at Quatre Camins prison, Iñaki Rivera had been the target of insults, threats and acts of harassment in retaliation for his legitimate work in defense of human rights through the reporting of cases of torture and/or ill-treatment against persons deprived of their liberty. Some trade union of prison officers were involved in this **hate campaign** against Rivera. Also, for a time, the former Directorate General of Penitentiary Services did not granted the OSPDH access to the prisons of Catalonia.

Several international mechanisms expressed their **concern** about the continuous attacks suffered by Rivera and the OSPDH.

In 2015, in the list of issues prior to the submission of its seventh periodic country report, the **United Nations Committee for the Prevention of Torture (CAT)** requested Spain to report on the investigations that had been carried out into allegations of reprisals against members of the OSPDH and the alleged obstruction of their monitoring work in the penitentiary centers of Catalonia<sup>9</sup>.

Likewise, in a letter sent to the Government of Spain, Michel Forst, the then Special Rapporteur on the situation of human rights defenders, and Juan E. Méndez, the then United Nations Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, expressed their concern about **allegations** of **reprisals** against OSPDH members who had denounced acts of torture committed by public officials of the Quatre Camins prison<sup>10</sup>. The note stated that:

*"After the conviction, there have been serious reactions against the OSPDH, its Director, Mr. Iñaki Rivera Beiras, as well as against lawyers and university professors. It is reported that despite being a Human Rights Research Center accredited by the Government and recognized by it, as well as by different*

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<sup>9</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fESP%2fQPR%2f7&Lang=es](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fESP%2fQPR%2f7&Lang=es)

<sup>10</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/045/66/PDF/G1704566.pdf-A/HRC/34/54/Add.3> pg. 81

*institutions and international organizations, since 2007 Mr. Rivera Beiras has been denied access to penitentiary centers in Catalonia. In fact, it is indicated that a computer alarm system had been installed to prevent Mr. Rivera Beiras and his colleagues from entering penitentiary centers, thus preventing them from carrying out their duties as human rights observers. In view of the OSPDH's repeated demands for access to prisons, the Catalan Administration finally replaced the alarm system by issuing a general denial of access to the OSPDH and to Mr. Rivera Beiras in particular, to all prisons in Catalonia".*

#### 4. Facts of the case(s)

The campaign against Rivera increased in **2018**, when the SIRECOVI published a **report** on “Institutional Violence in Catalonia”, which counted cases of institutional violence-not only torture, but fundamentally inhuman degrading treatment-occurred between December 2016 and September 2018. The 67.9% of the case reported had been committed against people in custody<sup>11</sup>.

On November 29, 2018, shortly after the SIRECOVI published its report, Iñaki Rivera was invited to participate in the **Televisió de Catalunya (TV3) program** called "Tots es mou" (Everything is moving) to talk about the deaths of people deprived of their liberty occurred in the Special Closed Regime Departments (DERT) <sup>12</sup>.

Among other things, the report denounced that in the last four years three inmates had committed suicide or died in questionable circumstances in the **Brians I penitentiary center**. One of these victims was found dead in a solitary confinement cell, where the prisoner had been isolated despite a history of attempted suicides and having a psychiatric diagnosis<sup>13</sup>. The victim spent 75 consecutive days in solitary confinement, although international regulations and the United Nations Rapporteur recommend that solitary confinement should never exceed 15 days so as not to affect the mental health of prisoners.

During the TV program, Rivera pointed out that the deaths in **questionable circumstances** as well as other forms of torture, ill-treatment and humiliation occurred in the DERT of the Catalan prisons -and also in the isolation regimes of the other Spanish prisons- "are not isolated cases".

In fact, due to the several complaints received, in 2018, the **Committee for the Prevention of Torture of the Council of Europe (CPT)** decided to carry out an *ad hoc*

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<sup>11</sup> <https://www.ub.edu/portal/documents/10080835/10975974/SIRECOVI+INFORME+GENERAL-comprimido.pdf/ea5068b2-9946-924e-51cd-fa8990da8497>

<sup>12</sup> <https://www.ccma.cat/tv3/alacarta/tot-es-mou/morts-a-la-presos/video/5802430/>

<sup>13</sup> <https://www.ccma.cat/tv3/alacarta/tot-es-mou/morts-a-la-presos/video/5802430/>

visit to Spain to examine the treatment of prisoners held in special solitary confinement<sup>14</sup>. Furthermore, according to the annual report for 2018 of the **Ombudsman's Torture Prevention Mechanism**, 59 administrative and judicial proceedings were opened for ill-treatment in Catalan prisons - 15 of them in Brians I- predominantly for allegations of aggression and humiliation carried out by public officials, but also for complaints about incidents suffered by prisoners in solitary confinement<sup>15</sup>.

Therefore, during the interview, Rivera denounced the deaths that had occurred in the context of the prison solitary confinement regime and pointed out that examples of ill-treatment and torture in Catalan prisons were not isolated cases, as the SIRECOVI had been able to confirm in its latest report on institutional violence, which also placed special emphasis on the Brians I prison. And, when asked who the torturers are, Rivera **affirmed** that *"evidently, torture can only be carried out by a public official."*<sup>16</sup>

In this regard, it is worth mentioning that Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as follows:

*"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."*

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<sup>14</sup> <https://rm.coe.int/16809cbe59>

<sup>15</sup> <https://www.defensordelpueblo.es/informe-mnp/mecanismo-nacional-prevencion-la-tortura-informe-anual-2018/>

<sup>16</sup> <https://www.youtube.com/watch?v=jRDQd2TRinw>

Following Rivera's interview, the OSPDH published a **statement** on its website, clarifying that the allegation of torture in Catalan prisons did not constitute a questioning of the prison officers<sup>17</sup>.

As a result of his participation in the TV3 program on November 29, 2018, Riviera was subjected to **two criminal proceedings** for defamation and slander with publicity.

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<sup>17</sup> See Annex 1

## 5. Applicable laws

The **right to honor** is a fundamental right, which is afforded special protection, being enshrined in **article 18** of the **Spanish Constitution** of 1978<sup>18</sup>. Its aim is to safeguard the dignity of the person against possible attacks on their reputation, privacy and image.

The Spanish legal system includes a series of civil and criminal mechanisms for the **protection** of the right to honor. It goes without saying that the criminal route is a last resort, which is only used for the more serious breaches of an individual's right to honor.

In particular, the Spanish Criminal Code includes two general types of **offences** against honor: slander (Art. 205) and defamation (Art. 208)<sup>19</sup>. This distinction is based on the content of the defamatory statement rather than on the medium of expression used to convey the statement.

**Slander** (*calumnia*) refers to the false accusation of a crime, made with knowledge of its falsehood or reckless disregard for the truth (Article 205 of the Criminal Code). It is generally punished with a fine. The crime is punishable under Article 206 of the Criminal Code with a fine of six to twelve months.

The daily amount of the fine to be applied is to be established by the judge depending on circumstances of the case having regard to the thresholds and the principles established in Article 50 of the Criminal Code. Spanish criminal fines are computed at a "daily rate" (*sistema de días-multa*). The minimum daily rate is €2, and the maximum is €400 per day for natural persons and €30 and €5,000 EUR per day for legal

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<sup>18</sup> Article 18, Spanish Constitution, 1. The right to honour, to personal and family privacy and to the own image is guaranteed. Accessible at: <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>

<sup>19</sup> Ley Orgánica 10/1995, de 23 de noviembre. Accessible at: [https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal\\_Code\\_2016.pdf](https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf)

persons. Courts are directed to determine the fine taking into account a person's financial situation.

In crimes against an individual's honor there is an important element that aggravates the breach. Where the offence of slander is committed through **public dissemination** (press, broadcasting, or any other equivalent means of dissemination, pursuant to Article 211 of the Criminal Code)- as in the case of Iñaki Rivera- Article 206 provides for aggravated penalties of imprisonment of between six months and two years or a fine of twelve months to two years.

On the other hand, **defamation** (*injuria*) refers to any accusation, expression, or action that "harms the dignity of another person, detracting from his/her reputation or attacking his/her self-esteem", according to Article 208 of the Criminal Code, which also clarifies that defamation amounts to a crime if "by its nature, effect, or circumstances is considered **serious** by the public at large". In the case of an assertion of fact, the offender must also know the statement to be false or have acted with reckless disregard for the truth. Defamation is generally punished with a fine of three to seven months.

The crime is punishable pursuant to Article 209 of the Criminal Code with a fine of three to seven months. Again, where the offence is committed through **public dissemination** (press, broadcasting or any other equivalent means of dissemination, pursuant to Article 211 of the Criminal Code), an aggravated fine of six to fourteen months applies.

Additional sanctions are also prescribed by Article 213 of the Criminal Code if defamation is committed against payment (the offender may be barred from certain rights, such as holding public office or practicing a particular profession, for six months to two years). In certain cases (e.g. if defamation was committed for payment), the offender may be barred from certain rights, such as holding public office or practicing a particular profession (Art. 213, in accordance with Arts. 42-45) for six months to two years.

Regarding the **procedure**, Spanish law establishes that in case of slander and defamation, along with the suit (*querrela*), the aggrieved person must present a certification before the judge, justifying that **conciliation** between claimer and offender has been previously tried. In the event that the slander and defamation have been directed against civil servants and referred to facts concerning the exercise of their office, the victim only files a **report** to the police, a prosecutor or a judge (*denuncia*) (art. 215.1)<sup>20</sup>.

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<sup>20</sup> Article 215.1 “Nobody shall be convicted of slander or defamation other than by means of a suit filed by the person offended by the criminal offence or his legal representative. Prosecution shall be effected on the Court’s own motion if the criminal offence is against a civil servant, authority or agent thereof, over events related to exercise of his duties of office.” Accessible at:  
[https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal\\_Code\\_2016.pdf](https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf)



## 6. Course of proceedings

Between late December 2018 and May 2019, Rivera received:

- On December 17, 2018: a **request for conciliation** filed by the Central Sindical Independiente y de Funcionarios (CSIF). The conciliation ended without a settlement on 21 of March 2019<sup>21</sup>;
- On December 18, 2018: a **criminal report** filed by the Prison Staff Association of the trade union CCOO (Confederación Sindical de Comisiones Obreras) which led to the first trial;
- On April 18, 2019: a **request for conciliation** filed by a group of almost 200 prison officers supported by Marea Blava Prisiones. The conciliation ended without a settlement on 18 February 2020.
- On May 6, 2019: a **request for conciliation** filed by the Agrupación de los Cuerpos de los Cuerpos de la Administración de Instituciones Penitenciarias (ACAIP). The conciliation ended without a settlement on 8 November 2019.

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<sup>21</sup> <https://www.csif.es/contenido/cataluna/general/282549>

## 6.1 First proceeding

Shortly after Rivera's participation in the TV program, on 18 December 2018, the Prison Officers Association of the CCOO Union (Confederación Sindical de Comisiones Obreras) filed a **criminal report** (*denuncia*) against public officials in the exercise of their duties (art. 215.1 penal code)<sup>22</sup>.

According to what **Rivera** told the press, he thought that *"it would be one more, they have been insulting me for years in the social networks, the unions of prison officials have told me everything"*. However, on Twitter the **Union** stated: *"we regret not having reached an agreement with Iñaki Rivera, so that, nuancing his statements, he would clarify that his complaint did not seek to generalize the accusation to all civil servants. This would have allowed us to deal with the complaint in a different way"*<sup>23</sup>.

On May 10, 2019, this complaint led to preliminary proceedings. On September 18, 2019, Rivera was summoned to appear before the **Court of Instruction No. 3 of Barcelona**. Rivera appeared, supported by a group of about fifty people<sup>24</sup>, and confirmed his statements, claiming that these were based on the complaints filed by prisoners and received by the OSPDH and the local authorities, and that there was no intention to belittle or offend the prison officers. Moreover, Rivera framed the union trade's complaint as an attempt to intimidate the OSPDH and SIRECOVI<sup>25</sup>.

On this same day, Rivera appeared again on the same **TV3 program** to clarify what he affirmed in the initial TV3 program on November 29, 2018<sup>26</sup>.

On September 19, 2019, the Secretary General of the Federation of Citizen Services of the trade union Comisiones Obreras of Catalonia filed a **brief** with the Court

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<sup>22</sup> [https://www.ccoo.cat/pdf\\_documents/2019/denuncia\\_Iñaki\\_rivera.pdf](https://www.ccoo.cat/pdf_documents/2019/denuncia_Iñaki_rivera.pdf)

<sup>23</sup> <http://tokata.info/los-defensores-de-la-tortura-impune-atacan-a-Iñaki-rivera-beiras-para-intimidar-a-quien-se-atreva-a-enfrentarse-a-ella/>

<sup>24</sup> <http://tokata.info/los-defensores-de-la-tortura-impune-atacan-a-Iñaki-rivera-beiras-para-intimidar-a-quien-se-atreva-a-enfrentarse-a-ella/>

<sup>25</sup> [https://www.elnacional.cat/ca/societat/Iñaki-rivera-tortures-presons-jutge\\_421439\\_102.html](https://www.elnacional.cat/ca/societat/Iñaki-rivera-tortures-presons-jutge_421439_102.html)

<sup>26</sup> <https://www.ccma.cat/tv3/alacarta/tot-es-mou/la-denuncia-de-ccoo-contra-Iñaki-rivera/video/5920446/>

of Instruction No. 3 of Barcelona. The written statement stated that, by the time the facts were reported, the plaintiff was not aware that the OSPDH had published an explanatory statement on its website and, as well as, that Iñaki Rivera had participated on the another TV3 program to clarify his previous statements.

In a press interview Montse Ros, spokesperson for CCOO of Catalonia, stated:

*"We filed a complaint against him [Rivera] to give him to chance to explain his statements and this week he has done so. Therefore, we have written to the judge and we are satisfied that he has clarified the meaning of his accusations in the same TV3. In fact, he had made very severe statements about torture or deaths in prisons blaming improper conduct to most of the officials, but he cleared this up. Unfortunately, his statements corresponded with a considerable increase in assaults of officials and that outraged even more a group already greatly penalised".<sup>27</sup>*

On 20 September, Rivera's defense requested the case to be dismissed. On 16 December, the **Public Prosecutor's Office** filed a brief **supporting** the **dismissal** requested by the defense and alleging that the CCOO had acknowledged that Rivera had clarified his statement on a second TV3 program and that Rivera's work had been accredited.

However, on December 19, 2019, the **complaint** (*querrela*) filed by the Agrupación de los Cuerpos de la Administración de Instituciones Penitenciarias (ACAIP) was joined to the proceeding.

On December 19, 2019, the Court of Instruction No. 3 of Barcelona not only accepted to join the complaint filed by ACAIP, but also ordered to close the

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<sup>27</sup> [https://www.elconfidencial.com/espana/cataluna/2019-09-21/oscura-historia-Iñaki-rivera-hombre-vigilo-juicio-proces\\_2245603/](https://www.elconfidencial.com/espana/cataluna/2019-09-21/oscura-historia-Iñaki-rivera-hombre-vigilo-juicio-proces_2245603/)

investigation phase and to grant ACAIP time to file a **written accusation**, rejecting the request for dismissal filed by Rivera's legal representation<sup>28</sup>.

On January 13, 2020, Rivera's defense filed an **appeal** against the Court's decision, arguing against the merits of the case and providing new documentation subsequent to the initial brief, in particular demonstrating the international support received by Rivera. In response, on 27 January, the trade union ACAIP filed a brief challenging the appeal.

Rivera's defense decided to file a new brief alleging the **report** made by the **Committee for the Prevention of Torture of the Council of Europe (CPT)** which confirmed the situation of the Catalan prisons highlighted by Rivera during the television program<sup>29</sup>.

On March 10, 2020, the Prosecutor's Office filed a brief in **support** of the **appeal**, stating that Iñaki Rivera did not attribute any specific action to any public official and that he made a generic statement disseminating truthful information.

On July 16, 2020, the Second Section of the **Provincial Court of Barcelona** upheld the appeal and dismissed the case, on the grounds that the elements of the offence were not met. The Court ruled that *"the accusation made not to a specific official or officials but, in a generic way, to a group of people, without further specification, does not allow prison officials to be considered passive subjects of the crime so that it is devoid of its typical elements"*.<sup>30</sup> However, the Court decided **not to impose the costs of proceedings** on the plaintiff.

Despite the order of dismissal pronounced by the Provincial Court of Barcelona on July 30, 2020, ACAIP lodged an **appeal** with the **Supreme Court**, which on 20 September dismissed the appeal because ACAIP had finally not formalised it, and

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<sup>28</sup> <http://www.acaip.cat/areas/informacion-general/novedades/item/21679-acaip-se-querella-contra-Iñaki-rivera>

<sup>29</sup> <https://rm.coe.int/16809cbe59>

<sup>30</sup> [https://www.eldiario.es/catalunya/archivada-querella-sindicatos-prisioneros-profesor-ub-decir-carceles-hay-torturas\\_1\\_6125271.html](https://www.eldiario.es/catalunya/archivada-querella-sindicatos-prisioneros-profesor-ub-decir-carceles-hay-torturas_1_6125271.html)

imposed the costs of this proceeding on the plaintiff. Although the Supreme Court **ordered** the prison officers' union to **pay** the **costs**, Rivera decided not to claim anything, in order to end the judicial proceeding as early as possible<sup>31</sup>.

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<sup>31</sup><https://laicismo.org/slapp-la-presion-via-judicial-a-periodistas-y-activistas-puede-tener-los-dias-contados/257867>

## 6.2 Second proceeding

On October 5, 2020, after it was made public that the Provincial Court of Barcelona had dismissed the first criminal proceeding, a group of almost **200 prison officers**, with the support of Marea Blava Prisiones, filed a complaint with the Court of Instruction of Barcelona against Rivera for the same statements made during the TV3 program "Tot es mou", requesting **500,000 €** in damages<sup>32</sup>.

At that time, the alleged crime was already **time-barred** and the **same facts** reported by the plaintiffs had already been **dismissed** by the Second Section of the Provincial Court of Barcelona.

On October 14, 2020, the Court of Instruction of Barcelona recognized the Sant Feliu de Llobregat Courts, where TV3's headquarters are located, were competent to hear the case. Therefore, on November 23, 2020, Rivera filed a brief with the **Sant Feliu de Llobregat Court**, enclosing the corresponding documentation and informing of the course of the first judicial process, in order to try to prevent the Court from initiating the proceeding.

The Court of Sant Feliu de Llobregat omitted the brief presented by the defense and on January 27, 2021 required the 200 public officials to provide a power of attorney or make an electronic designation to the procurator, before deciding whether to admit the criminal complaint. Then, the Court granted 5 days to the plaintiffs to identify themselves, providing their full names, in order to the complaint to be admitted. On 1 March, the officials' representatives filed a written request for an extension of the deadline due to the large number of plaintiffs.

On 4 March, the Court issued a judicial decree for the **commencement** of a **preliminary investigation** and, at the same time, ordered the **dismissal**, without referring

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<sup>32</sup> <https://www.mareablavapresons.cat/index.php/tag/Iñaki-rivera/>

to the brief submitted by Rivera's defense. On 12 March, the Court requested Rivera to appear in person, and on 22 March, Rivera's defense filed its final brief again.

On 25 March, the Court admitted the request of **appeal** lodged by the prisoner officers' legal representation. Consequently, on 1 April, Rivera's defense filed a brief requesting the annulment of the Court's decision admitting the appeal, alleging that the plaintiffs had not formally appointed the solicitor, who, therefore, was not legally acting on behalf of the plaintiffs. Likewise, a few days later, on 8 April, Rivera's defense filed another document challenging the appeal.

On May 18, 2021, the Court issued an order, **declining to admit** the three briefs filed by the defendant and arguing that Rivera's defense could not be considered a party in the proceeding, although the Court had notified the defendant of all the rulings since the beginning of the judicial proceeding. Rivera's defense requested the annulment of this last decision.

The Court of Sant Feliu de Llobregat sent the appeal lodged by the plaintiffs to the **Provincial Court of Barcelona** to be resolved. The appeal was not accompanied by the appeal lodged by Rivera's defense, who then decided to file another brief to the Provincial Court, attaching all the documentation, explaining and documenting the actions of the Court of Instruction, which had not allowed the defendant to file the appeal.

Eventually, on November 9, 2021, almost three years after Rivera's participation in the television program "Tot es mou", the Provincial Court of Barcelona **dismissed** the case, confirming the decision of the court of first instance of dismissing the criminal complaint. However, the Provincial Court did **not** impose the **costs of proceeding** on the plaintiffs, an action that could have meant a symbolic reparation<sup>33</sup>.

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<sup>33</sup> [https://es.ara.cat/opinion/slapp-mordaza-legal-prensa-critica-social\\_129\\_4179429.html](https://es.ara.cat/opinion/slapp-mordaza-legal-prensa-critica-social_129_4179429.html)

## 7. Defense strategy

Rivera's defense, exercised by criminal lawyer Laia Serra, claimed the **no-criminality** of the allegations made by the public officials with respect to the statements made by Iñaki Rivera during the program "Tot es mou" on Televisió de Catalunya (TV3) on November 29, 2019.

In all its pleadings, the defense always invoked the **exception of truth**, recalling the **numerous judgments** that have condemned public officials for ill-treatment of inmates, as well as the **reports** issued by international organizations on the situation of Catalan prisons, including the report of the Committee for the Prevention of Torture of the Council of Europe (CPT) following the visit to Spain in September 2018<sup>34</sup>. In this regard, it should be recalled that Articles 207 and 210 of the Spanish Criminal Code provide that "the accused shall be exempt from liability by proving the truth of the allegations" in the case of slander or defamation consisting of the attribution of dishonorable acts (*exceptio veritatis*<sup>35</sup>).

Furthermore, the defense argued that Rivera's statements were protected by **freedom of expression** and **information**, which shields the public and social condemnation carried out by human rights organizations. The statements were **contextualized** in the framework of the defendant's efforts to disclose and denounce the solitary confinement of prisoners and were not intended to be a negative assessment of the work of prison officers.

Additionally, the defense framed the **judicial harassment** experienced by the defendant in the abusive attempt to inhibit his team at the OPSDH as well as those

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<sup>34</sup> <https://rm.coe.int/16809cbe59>

<sup>35</sup> Article 207 "Whoever is accused of the criminal offence of slander shall be exempt from all punishment by proving the criminal deed whereof he has accused the other person.". Article 210 "Whoever is accused of defamation shall be exempt of all liability by proving the truth of the statements if these are against civil servants concerning deeds in exercise of their duties of office or referring to the commission of administrative offences.". Accessible at:

[https://ww.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal\\_Code\\_2016.pdf](https://ww.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf)



professionals and groups that investigate and report human rights violations<sup>36</sup>, and contextualized the criminal proceedings within the framework of the hostility, harassment, and **intimidation** that Rivera had been suffering since the Quatre Camins' altercation.

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<sup>36</sup> <https://www.europapress.es/catalunya/noticia-abogada-cdr-presos-critica-vulneraciones-infinitas-derechos-20190930152335.html>

## 8. Extra-legal strategies

During almost four years of judicial harassment, Rivera received unanimous **support**, not only from public institutions, but also from about 60 national and international organizations<sup>37</sup>.

Leading organizations in the field, such as the **World Organization Against Torture (OMCT)**, together with the **International Federation for Human Rights (FIDH)**, issued **several statements** in support of Rivera.

In December 2018, an **open letter** was addressed to the then Minister of the Interior, Fernando Grande-Marlaska Gómez, the Secretary General of Penitentiary Institutions, Ester Capella i Farré, the Minister of Justice of the Generalitat de Catalunya, Amand Calderó i Montfort, and the Director General of Penitentiary Services of the Generalitat de Catalunya with the aim of:

*"urge the authorities of the government of Spain and the autonomous government of Catalonia to take all necessary measures to ensure the physical and psychological integrity of Mr. Iñaki Rivera and the other members of OSPDH and SIRECOVI, as well as to guarantee that they can carry out their legitimate and essential work of defending human rights without obstruction or reprisals and with all the guarantees established in the United Nations Declaration on Human Rights Defenders"*<sup>38</sup>

The letter stressed that the disturbing attacks that Rivera was suffering at that time should have not be considered a one-off event, but rather that part of a **long list** of **hostility, harassment**, and **intimidation** that began in 2004, after the events occurred at the Quatre Camins' prison center. Furthermore, the letter commented that these attacks were taking place in a context that showed a **general tendency to misuse criminal law**

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<sup>37</sup> Forero A., Estados De Negación, Corporativismo Y Criminalización De La Denuncia Contra La Violencia Institucional, Revista Crítica Penal y Poder 2019, nº 17 Octubre-Noviembre (pp.10-16): <http://diposit.ub.edu/dspace/bitstream/2445/153980/1/695924.pdf>

<sup>38</sup> <https://www.resumenlatinoamericano.org/2018/12/21/catalunya-querella-contra-el-abogado-Iñaki-rivera-beiras/>

against statements and messages protected by freedom of expression, including critical remarks concerning the actions of the police force, by resorting to criminal offenses such as hate crimes, defamation or glorification of terrorism, with an obvious inhibitory intent.

In September 2019, when Rivera had been summoned to appear before the Court of Instruction of Barcelona, following the complaint filed by the prison union of Comisiones Obreras (CCOO), the World Organization Against Torture and the International Federation for Human Rights published another **urgent appeal** addressed to the President of the Government of Spain, Pedro Sánchez, to the then Minister of the Interior, Fernando Grande-Marlaska Gómez, to the then Minister of Foreign Affairs, Josep Borrell Fontelle, the Secretary General of Penitentiary Institutions, Ester Capella i Farré, the Minister of Justice of the Generalitat of Catalonia, Amand Calderó i Montfort, and the Ambassador Permanent Representative of Spain to the United Nations and Other International Organizations in Geneva, Cristóbal González-Aller Jurado, asking the authorities to take all necessary measures to ensure Rivera's **physical** and **psychological integrity**, as well as to guarantee that no acts of harassment were carried out against him, including at the judicial level. At that time, the CSIF had summoned Rivera to retract his statements, under the **threat** of filing a second criminal complaint for defamation<sup>39</sup>.

In June 2020, in the face of the continuing criminalization against Rivera, the World Organization Against Torture and the International Federation for Human Rights issued a **third urgent appeal**<sup>40</sup>.

Moreover, on December 23, 2019, **Front Line Defenders**<sup>41</sup> issued an urgent appeal stressing that the accusations and charges brought against Iñaki Rivera were directly

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<sup>39</sup> <https://www.fidh.org/es/temas/defensores-de-derechos-humanos/espana-criminalizacion-del-sr-in%CC%83aki-rivera>

<sup>40</sup> <https://www.fidh.org/es/temas/defensores-de-derechos-humanos/espana-continuacion-de-la-criminalizacion-en-contra-del-sr-Iñaki>

<sup>41</sup> <https://laicismo.org/slapp-la-presion-via-judicial-a-periodistas-y-activistas-puede-tener-los-dias-contados/257867>

related to the exercise of his right to freedom of expression to peacefully and legitimately defend the rights of prisoners. Therefore, the NGO urged the **Spanish authorities** to:

- "1. Conduct an immediate, thorough and impartial investigation into the allegations of torture and ill-treatment of inmates reported by Iñaki Rivera Beiras, with a view to publishing the findings and bringing those responsible to justice in accordance with international standards;*
- 2. Publicly defend the legitimate role of human rights defenders with respect to the human rights of prisoners and ensure that this message is communicated to all prison staff;*
- 3. guarantee that all human rights defenders in Spain are able to carry out their legitimate human rights activities in all circumstances without fear of reprisals and free from any constraints, including judicial harassment."*<sup>42</sup>

Likewise, the **Euro-Latin American Network for the Prevention of Torture and Institutional Violence (RELAPT)** showed its support with a communiqué condemning Rivera's judicial harassment and demanding guarantees for human rights defenders like Rivera<sup>43</sup>.

Additionally, more than 130 academics, researchers and human rights activists from around the world joined the support campaign. Among them, for example, in September 2019, the **Collective of criminologists and criminologists of Chile and Latin America**, launched a petition on **Change.org** in favor of Rivera. The text of the communiqué defines the complaint filed by the Confederación Sindical de Comisiones Obreras CCOO against Professor Rivera as:

*"extortion, undue pressure and an indiscriminate use of the criminal prosecution system to evade personal and institutional responsibilities. In other words, the*

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<sup>42</sup> [https://www.frontlinedefenders.org/sites/default/files/ua\\_spain\\_beiras\\_240120\\_es.pdf](https://www.frontlinedefenders.org/sites/default/files/ua_spain_beiras_240120_es.pdf)

<sup>43</sup> <https://relapt.usta.edu.co/index.php/comunicacion-y-difusion/noticias/66-la-relapt-rechaza-la-judicializacion-del-profesor-Iñaki-rivera>

*aforementioned complaint is nothing but the archetype of an ad hominem fallacy, by means of which the CCOO intends to discredit the messenger and avoid the message.”<sup>44</sup>*

Among the statements of support, it is worth mentioning the one published by the **Argentinean Penitentiary Prosecutor's Office**, which describe the same criminal complaint as follows:

*“an improper use of criminal law against statements and messages protected by freedom of expression, and pursues the objective of preventing Mr. Rivera and the Observatory of the Penal System and Human Rights of the University of Barcelona from being able to carry out their legitimate and essential work of defending human rights in the prison system without obstruction or reprisals and with all the guarantees established in the United Nations Declaration on Human Rights Defenders.”<sup>45</sup>*

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<sup>44</sup> <https://www.change.org/p/crimin%C3%B3logas-crimin%C3%B3logos-y-penalistas-chilenos-as-y-latinoamericanos-as-declaraci%C3%B3n-p%C3%BAblica-de-apoyo-al-profesor-i%C3%B1aki-rivera-beiras-ante-querella-del-ccoo>

<sup>45</sup> <https://www.ppn.gov.ar/index.php/institucional/noticias/2339-la-ppn-manifiesta-preocupacion-sobre-la-denuncia-contr-rivera-beiras>

## 9. Impact of the case

During the judicial harassment Rivera received serious disqualifications and **stigmatization**, while prison officials promoted the **prohibition** of his entry to the penitentiary centres of Catalonia<sup>46</sup>.

Rivera has stated that the chain of court cases was accompanied by a campaign of **hatred on social media**: *"on their website they called me all sorts of names, one of them has a Twitter account in which he used my face as an image with a montage like Frankenstein's monster; they are still insulting me today"*.<sup>47</sup>

Furthermore, Front Line Defenders confirmed that Rivera was provided with **police protection** by the Mossos d'Esquadra, the autonomous police of Catalonia. The Catalan police took this preventive measure in order to protect Rivera in case the situation worsened<sup>48</sup>.

All of this affected Rivera, the OPDSH and the SIRECOVI, causing a significant personal, family, work and economic **impact** of the defendant's life.

On the other hand, in order to support him, Familias de Presos de Catalunya, a group formed by relatives of prisoners, decided to nominate Iñaki Rivera as a candidate for the human rights award of Spanish Association for Human Rights (Asociación Pro-Derechos Humanos de España-APDHE), which is awarded by popular vote<sup>49</sup>.

The **award nomination letter** indicated that:

*"Mr. Rivera's committed work, however, has come at a high personal cost. For decades he has received disqualifications and even threats for his work, and several administrations have denied him access to prison centers as a way of trying to silence*

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<sup>46</sup> <https://www.fidh.org/es/temas/defensores-de-derechos-humanos/espana-criminalizacion-del-sr-in%CC%83aki-rivera>

<sup>47</sup> <https://laicismo.org/slapp-la-presion-via-judicial-a-periodistas-y-activistas-puede-tener-los-dias-contados/257867>

<sup>48</sup> [https://www.frontlinedefenders.org/sites/default/files/ua\\_spain\\_beiras\\_240120\\_es.pdf](https://www.frontlinedefenders.org/sites/default/files/ua_spain_beiras_240120_es.pdf)

<sup>49</sup> <https://familiasdepresoscatalunya.wordpress.com/Iñaki-rivera/>

*him. And although all this has not been easy for him, it is since 2018 when he has been target of more serious attacks through several criminal complaints filed by prison workers' unions who accuse him of committing defamation and slander as a result of the statements he made during a television program where he participated together with the family of a prisoner who had died in isolation confinement in questionable circumstances, and where he denounced the existence of abuse and mistreatment in prisons."*

Rivera's nomination received strong support from prominent individuals and groups, including: Adolfo Pérez Esquivel (Nobel Peace Prize); Paulo Abrão (Former Secretary General of the IACHR); Mauro Palma (Guarantor of the Rights of Detained Persons in Italy); World Organization Against Torture; European Prison Observatory; Human Rights Institute of Catalonia; Novact. International Institute for Nonviolent Action; Defender a quien Defiende; Observatori DESC; Comisión Provincial por la Memoria (Argentina); ANANKE Pro-presos; Colectivo Familias "Libertad"; Grup de Suport a Presxs de Lleida; Coordinadora Contra la Marginació (Cornellà de Llobregat); ACATHI (Migració, Refugi i Diversitat LGBTI+)<sup>50</sup>.

On November 30, 2021, two weeks after the last judgement issued by the Provincial Court of Barcelona, Iñaki Rivera was awarded the **2020 Human Rights National Award**<sup>51</sup>.

However, despite the positive outcome of both criminal proceedings and the great support received, according to Rivera's defense, the **hate online campaign** against Iñaki Rivera and the OPDSH is **still ongoing**, especially with regard to the request for the creation of a parliamentary commission on a mechanical restraint<sup>52</sup> and the creation of the association Observa, created to support and guarantee the

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<sup>50</sup> <https://familiesdepresoscatalunya.wordpress.com/lista-de-apoyos/>

<sup>51</sup> <https://apdhe.org/poll/votacion-premios-derechos-humanos-2020-categoria-nacional-2/>

<sup>52</sup> <https://www.idhc.org/es/actualidad/las-organizaciones-de-defensa-de-los-derechos-humanos-pedimos-la-creacion-de-un-grupo-de-trabajo-en-el-parlament-de-catalunya-sobre-contenciones-mecanicas-en-los-centros-penitenciaris.php>

functioning of organizations, entities and associations whose purpose is to study and monitor the functioning of the penal system and, in particular, the penitentiary system, to ensure and promote the respect of human rights<sup>53</sup>.

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<sup>53</sup> <https://observa.cat/es/que-hacemos/>



## 10. Conclusions

It is clear that the case covered by this study represents an example of **abusive proceedings** brought against a human rights defender on account of his engagement in public participation on a matter of public interest concerning the fundamental rights of people deprived of their liberty.

The analysis conducted in the previous chapters has highlighted that not only the court proceedings brought against Iñaki Rivera were fully **unfounded**, but also, they were merely aimed at persuading professor Rivera and his team at OSPDH to **desist** from monitoring the human rights situation inside the penitentiary centers of Catalonia.

Some key elements clearly pointed out such a purpose.

The first element concerns the disproportionate, excessive and unreasonable **nature** of the **claim**. As a result of his participation in a TV program, Riviera was accused of defamation and slander with publicity, which is punished with imprisonment according to the Spanish Criminal Code, for merely pointing out the existence of ill-treatment and torture in Catalan prisons, as previously denounced by several international organizations, and affirming that torture can only be carried out by a public official as precisely stated by Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the second criminal proceeding the plaintiffs even requested 500,000 € in damages.

The second element refers to the existence of **multiple proceedings** initiated by the plaintiff and other associated parties in relation to similar matters. Between late December 2018 and May 2019, Rivera received a criminal complaint (*denuncia*) and three request for conciliation, which later resulted in two criminal proceedings. The complaints and the requests were filed by three different prison officers associations in relation to the same facts occurred on November 29, 2018.



On this regard, it is worth mentioning the **imbalance of power** between the parties with the plaintiffs' organizations having a more powerful position than the defendant, especially financially.

Last, Rivera faced continuous **intimidation, harassments** and **threats** which required the protection of the Mossos d'Esquadra, the autonomous police of Catalonia. On top of that, he spent years defending the suits, accumulating significant legal fees and suffering the psychological costs.

Unfortunately, even though the lawsuits were eventually dismissed in court, both the judicial and extra judicial harassment have caused long lasting harmful effects to Rivera's personal and professional life.