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'Extraditing Ponsati to Spain is not a clear cut process and involves certain procedures'.

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The Extradition of Clara Ponsati Reprised

A second European Arrest Warrant (EAW) seeking St Andrews academic Clara Ponsati has been issued by Spain. The first EAW was withdrawn in June last year following a decision of a German court in the case of former Catalan President Carles Puigdemont. Professor Ponsati is accused of the crime of sedition arising from her role in the referendum held in Catalonia in October 2017.

There are two main differences between Spain's first attempt and the present one. The first is that in October Spain's Supreme Court convicted and sentenced nine Catalan separatist leaders for sedition, misuse of public funds and contempt of court. The second is that Spain is now seeking Ponsati for sedition, whereas she was originally sought for the crimes of rebellion and misuse of public funds. These two developments appear to have led the Spanish authorities to believe that they will be successful this time around.

Spain's success is far from certain however. There are a number of arguments that Ponsati's lawyers will make at Edinburgh Sheriff Court in opposition to her extradition. These will be framed by the Extradition Act 2003. It is the legal basis of the process in the UK and contains a number of grounds which can bar an extradition.

One of the grounds likely to be relied upon is that the warrant issued by Spain is for the purpose of prosecuting Ponsati for her political opinions or that her trial will be prejudiced on account of them. This rule is what remains of the traditional political offence exception to extradition in UK law. Notably, the Framework Decision creating the EAW system contains no reference to a political exception.

A second argument likely to be made is that Ponsati's extradition to Spain will lead to a violation of her human rights. Particularly it may be argued that a fair trial is impossible on account of the prominence of the referendum and its consequences. The right to be free from torture and inhuman punishment may also be argued in light of the prisons in which she may be held.

Finally, it may be argued that the double criminality principle of extradition is not satisfied in Ponsati's case. That provides that an extradition will only take place if the crime at issue is found in both the requesting and requested countries.

The fate of these arguments, and thus Ponsati herself, is unclear. What is certain is that the EAW system is based upon mutual trust and recognition whereby EU states hold the criminal justice systems of their partners in considerable respect. Only exceptionally will arguments against extradition within the EU succeed. Whilst the Catalanian referendum was undoubtedly an event of considerable magnitude, at first glance it appears that Ponsati's case may not meet any of the tests that could prevent her from being returned to Spain. The challenge facing her legal team is to convince a sheriff otherwise.