



European Master's Degree in Human Rights and Democratisation

2009/2010

# BETWEEN SYMBOLISM AND REAL JUSTICE

---

LAW ON HISTORICAL MEMORY IN  
SPAIN

**Maitane Vilela**



**Universiteit Utrecht**

Supervisor Anja Mihr



## **ABSTRACT**

The aim of this paper is to evaluate the Law on Historical Memory in Spain from the point of view of the instruments the law offers for the victims to achieve reparation. After almost seventy years since the Civil War started, the silence of the Spaniards about the crimes of the past, that has characterised its transition to democracy, has been definitively broken with the adoption of the Law on Historical Memory. However, in this research it will be argued that the Law on Historical Memory is more a symbolic step than a real transitional justice mechanism. This paper is based on academic debates about the compliance of the Law on Historical Memory with international standards and with the demands of the civil society. These two elements are here the criteria to assess the possibilities of prosecuting the crimes of the past and the administrative measures adopted by the referred law. This paper will put special attention on the ongoing debates that are placing Spain in the centre of attention of the international community regarding the attempts to bring the crimes of the Civil War and the Dictatorship before the Courts and the validity of the 1977 Amnesty Law.

**Key words:** Spanish Transition, Transitional Justice, Historical Memory, International Human Rights Law, impunity, moral redress.

## **NOTE**

All the translations from the Spanish to the English have been made by the author, Maitane Vilela.

Spanish surnames are written in the form used by the authors themselves, thus either using only one or both two surnames. For example, Javier Chinchón Álvarez is referred to as Chinchón, whereas José Antonio Martín Pallín is referred to as Martín Pallín.

## ABBREVIATIONS

AI	Amnesty International
ARMH	Asociación por la Recuperación de la Memoria Histórica (Association for the Recovery of Historical Memory)
CAT	Convention Against Torture
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights.
ERC	Esquerra Republicana de Catalunya (Republican Left of Catalonia )
ETA	Euskadi Ta Askatasuna (Basque Country and Freedom)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICHR	Inter-American Court of Human Rights
ICJ	International Commission of Jurists
IU	Izquierda Unida (United Left)
ICV	Iniciativa per Catalunya Verds (Initiative for Catalonia Greens)
NGO	Non-Governmental Organisation
PP	Partido Popular (People's Party)
PSOE	Partido Socialista Obrero Español (Spanish Socialist Workers Party)
UDHR	Universal Declaration of Human Rights
UN	United Nations

## TABLE OF CONTENTS

1 INTRODUCTION.....	1
1.1 RESEARCH QUESTION.....	5
1.2. METHODOLOGY.....	6
2 THE CONTENT OF THE LAW .....	9
2.1. THE NAME OF THE LAW .....	11
2.2. THE EXPLANATION OF REASONS .....	12
2.3. THE BODY OF THE LAW.....	13
3 INTERNATIONAL STANDARDS: CRIMINAL JUSTICE .....	19
3.1. NULLITY OF THE JUDGEMENTS .....	20
3.1.1. <u>Nullity through a legislative decision</u> .....	24
3.1.2. <u>Nullity through a judicial decision</u> .....	28
3.2. CRIMINAL LAW: PROSECUTION OF THE CRIMES OF THE CIVIL WAR AND THE DICTATORSHIP .....	32
3.2.1. <u>The Garzón Case</u> .....	33
3.2.2. <u>Definition of the crimes</u> .....	35
3.2.3. <u>Imprescriptibility of the crimes</u> .....	41
3.2.4. <u>Validity of the Amnesty Law</u> .....	42
4 CIVIL SOCIETY: SYMBOLIC REPARATION AND ADMINISTRATIVE MEASURES .	47
4.1. ACKNOWLEDGEMENT .....	49
4.1.1. <u>General recognition of injustice and declaration of illegitimacy</u> .....	50
4.1.2. <u>Declaration of redress and individual recognition</u> .....	52
4.2. SYMBOLS AND PUBLIC MONUMENTS .....	54
4.2.1. <u>The Valley of the Fallen</u> .....	57
4.3. ADMINISTRATIVE ASPECTS OF THE LOCATION AND IDENTIFICATION OF VICTIMS: PUBLIC POLICY.....	58
5 CONCLUSIONS.....	64
BIBLIOGRAPHY .....	69
ANNEX.....	79