Global Campus Europe

KATHOLIEKE UNIVERSITEIT LEUVEN

European Master's Degree in Human Rights and Democratisation
A.Y. 2018/2019

MUT O A LA GÀBIA

How denial of referendum entails deprivation of freedom of expression

Author: Natalia Montesinos Reina
Supervisor: Koen Lemmens

‘Freedom of expression itself, as a right or independent guarantee, is eminently conflictive. It is designed to disturb, annoy, challenge, compile, endanger and damage the rights of third parties’[1].

‘[Freedom of expression] is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance, broadmindedness without which there is no democratic society’[2] [3].

[1] S Mir Puig, M Corcoy Bidasolo, ‘Protección Penal de la Libertad de Expresión e Información’ (Tirant lo Blanc, Valencia 2012)

[2] Case 5493/72 *Handyside v. UK* [1976] ECHR

[3] Case 15890/89 *Jersild v. Denmark* [1994] ECHR

ACKNOWLEDGMENTS

With this thesis, I put an end to a fantastic adventure that extends over a year. Enjoying the expertise of all the professionals that I came across, I have been immersed in a constant intellectual challenge. However, I have not only gained knowledge in the area of human rights, which, to be honest, has been much. Instead, this experience has also been an enriching stage of self-knowledge and personal development. Throughout this period, I have been confronted with some first-time experiences and obstacles to overcome: adaptation to two countries, instruction in a foreign language and nostalgia for family and friends. That is why I want to dedicate some lines to thank all those who have accompanied and supported me during this experience.

First, I would like to thank my thesis advisor Professor Koen Lemmens of the Katholieke Universiteit of Leuven. Primary, for accepting the supervision of my thesis, but above all for offering me honest criticism and be always willing to solve all my doubts.

Secondly, I would like to express my deepest gratitude to three members of the EIUC Community. On the one hand, to Doctor Chiara Altafin and Doctor Wiebke Lamer, who helped me with every single trump I felt unwilling to face. On the other hand, to Stephania Saccarola the most chatty, funny and professional librarian. Lastly, thank the three of them for always offering the best version of themselves.

Subsequently, I want to thank my friends, for not letting the distance cool our relationship but for, instead, making me come to consider their friendship more valuable than ever. Additionally, I am incredibly grateful to my amazing family for never stop believing in me, offering me words of support and loving me beyond reason.

Lastly but foremost, to my boyfriend, who from the moment he decided to accompany me on this adventure, became my primary and indispensable support. It has been my shoulder to mourn and my impulse to continue. However, above all, he has turned into the person with whom I have shared, and I want to continue sharing all the successes that the future holds for me. I love him, madly.

Natalia Montesinos Reina

Leuven, 15th July 2019

EXPRESSIONS OF PRIOR KNOWLEDGE

This section provides the reader with definitions of concepts and abbreviations that will be used all along with the investigation and, consequently, it is interesting to know them in advance.

- Assemblea Nacional de Catalunya (ANC): the Catalan National Assembly is an organization that was created on the 10th March 2012, aimed at uniting the independence movement from civil society[4].
- Audiencia Nacional: the National Audience is a unique jurisdictional body that deals, throughout the Spanish territory, with the most socially serious crimes. Among others, it prosecutes terrorism, organized crime, drug trafficking, crimes against the Crown or economic crimes[5].
- Batasuna: Union or Unity was the name that the political party Euskal Herritarrok adopted on the 23rd June 2001[6].
- Comités de Defensa de la República (CDR): the Defense Committees of the Republic are citizen assemblies whose objective is, quoting their own words, ‘the defence of the republic in a peaceful but forceful way’[7].
- Convergència Democràtica de Catalunya (CDC): Democratic Convergence of Catalonia is a political party that was created on the 28th March 1976. Its ideology was Christian humanist, personalist and Catalan nationalist[8].

---

[4] Assemblea Nacional Catalana, ‘Assemblea Nacional Catalana’ <https://assemblea.cat/index.php/historia/?lang=es>

[5] Consejo General del Poder Judicial, ‘Qué Es La AN’ <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Audiencia-Nacional/Informacion-institucional/Que-es-la-AN/>

[6] In Eusko Auñamendi Entziklopedia Funtsa - Bernardo Estornés Lasa, ‘Batasuna’ <http://aunamendi.eusko-ikaskuntza.eus/eu/batasuna/ar-563/>

[7] G Ubieto, ‘Comités de Defensa de la República, Los “soviets” de la “Revolució dels Somriures”’ [2017] El Periódico <https://www.elperiodico.com/es/politica/20171107/comites-defensa-referendum-soviets-revolucio-somriures-6409012>

[8] Convergència Democràtica de Catalunya, ‘Història - Convergència’ <http://convergencia.cat/historia/>

- Convergència i Unió (CiU): Convergence and Union was the fusion of two political parties of Catalan nationalist ideology: Convergència Democràtica de Catalunya, liberal and centre-right and Unió Democràtica de Catalunya, Christian democrats. It was created in 1978 and dissolved in 2015[9].
- Candidatura d'Unitat Popular (CUP): The Nomination of Popular Unit is a political assembly organization, of national scope, which works for 'an independent, socialist, ecologically sustainable, territorially balanced and destructive country of patriarchal domination'[10].
- CECOT: The acronym means Regional Business Confederation of Terrassa. It is an employer association aimed at ensuring the competitiveness and interests of its companies[11].
- Ciudadanos: Citizens is a political party created in 2006. It is self-described as a progressive liberal, democratic, constitutionalist and pro-European[12]. It is situated on the right of the Spanish political spectrum.
- Comisiones Obreras (CCOO): Workers Commissions is the first 'employees' union of Spain in terms of affiliates. They jointly defend their interests and are aimed at achieving a more just, democratic and participatory society[13].
- Confederación General del Trabajo (CGT): General Confederation of Work is a workers' union that, according to their own words, tries to change a society that is unequal, unfair and authoritarian[14].
- Demòcrates de Catalunya: Democrats of Catalonia is a political party born in 2015, as a result of a split of the Unió Democràtica de Catalunya. A democrat-Christian and independentist ideology characterize them[15].

---

[9] Convergència i Unió, 'Història' <https://web.archive.org/web/20060615193555/http://www.ciu.cat/historia.php>
[10] Candidatura d'Unitat Popular, 'Què és la CUP?' <http://cup.cat/que-es-la-cup>
[11] CECOT, 'Qui Som? CECOT' <http://institucional.cecot.org/Qui-Som>
[12] Ciudadanos, 'Nuestros Valores' <https://www.ciudadanos-cs.org/nuestros-valores>
[13] Confederación Sindical de Comisiones Obreras, 'Quienes Somos' <https://www.ccoo.es/Nuestra·organización/¿Quiénes_somos*>
[14] Confederación General del Trabajo, 'Quiénes Somos' <http://cgt.org.es/quienes-somos>
[15] Demòcrates de Catalunya, 'Prova d'ADN' <https://democrates.cat/wp-content/uploads/2017/07/DEMOCRATES-EILA.pdf>

- ❖ E.PO.CA: Popular Army of Catalonia was a Catalan armed group borned in the 60s, whose main aim was the territorial secession[16].
- ❖ Escoles Obertes: Open Schools was an initiative to guarantee the opening of schools on 1st October, mobilizing families, neighbours and teachers[17].
- ❖ Esquerra Republicana de Catalunya (ERC): Republican Left of Catalonia is a political party founded in 1931 whose objective is a fairer and more solidarity society. To achieve these goals, the independence of Catalonia is considered necessary[18].
- ❖ ETA: Group aimed at achieving the Basque independence from Spain through armed force[19].
- ❖ Generalitat: Catalan political institution formed by the executive and legislative powers[20].
- ❖ Guardia Civil: Civil Guard is a faction of the security forces and bodies of the state. Its military connection and national scope characterize it. It depends both on the Ministry of Interior and of Defense[21].
- ❖ Herri Batasuna: Town Unity was an electoral coalition whose members were the political parties of ANV, ESB, HASI and LAIA together with independent members. It was formed to face the 1979 Spanish elections, and its main characteristics are to be nationalist and populist, whose decisions are taken in an assembly way[22].

---

[16] Gran Enciclopèdia Catalana, 'Exèrcit Popular Català' <https://www.enciclopedia.cat/EC-GEC-0522757.xml>

[17] ACN, 'La Plataforma 'Escoles Obertes' Fa Una Crida per Garantir l'obertura Dels Col·legis Electorals l'1-O' [2017] El Punt Avui <https://www.elpuntavui.cat/societat/article/5-societat/1248544-la-plataforma-escoles-obertes-fa-una-crida-per-garantir-l-obertura-dels-col-legis-electorals-l-1-o.html>

[18] Esquerra Republicana, 'Què Som' <https://www.esquerra.cat/ca/que-som>

[19] G.D. Olmo, '7 Momentos para Entender qué fue ETA, el Grupo Armado que Quiso Separar al País Vasco de España y Francia' [2018] BBC <https://www.bbc.com/mundo/noticias-internacional-43985393>

[20] Generalitat de Catalunya, 'Història de La Generalitat' <https://web.gencat.cat/ca/generalitat/historia/>

[21] Ministerio del Interior, 'Conoce a La Guardia Civil' <http://www.guardiacivil.es/es/institucional/Conocenos/index.html>

[22] In Eusko Auñamendi Entziklopedia Funtsa - Bernardo Estornés Lasa, 'Herri Batasuna' <http://aunamendi.eusko-ikaskuntza.eus/eu/herri-batasuna/ar-59231/>

- Iniciativa Catalunya Verds - Esquerra Unida i Alternativa (ICV- EUiA): Green Catalonia Initiative - United and Alternative Left is a coalition of leftist and ecologist nature[23].
- Juezas y Jueces para la Democracia: Judges for Democracy is a professional association whose main objectives, according to its wording, are: to work for a genuinely functional judicial organization and the democratization of the legal career[24].
- Junts pel Sí (JxSí): Together for the yes was an electoral coalition formed in 2015, to obtain a majority in the Catalan Parliament that would defend the independence of the territory. It included the political parties PDeCAT and ERC, as well as personalities not affiliated with any political formation[25].
- Mancomunitat de Catalunya: Federation of Catalonia was a Catalanist foundation aimed at the recovery of the self-government institutions that were banned back in 1714[26].
- Moviment d'Esquerra (MES): Leftist Movement is a political party born in 2014 that defines its members as 'Catalan socialist sovereigns'[27].
- Òmnium Cultural: Cultural Omnic is a civil association whose goal is the Defense of the rights and freedoms of the Catalan citizens. It promotes education and culture[28].
- Pactos de la Moncloa: Moncloa Covenants were a set of two agreements, signed in 1977. The first dealt with sanitation and reform of the economy. The second ruled on legal and political action[29].

---

[23] ICV y EUiA Acuerdan Presentarse en Coalición' [2019] La Vanguardia <https://www.lavanguardia.com/local/barcelona/20111005/54226516956/icv-y-euia-acuerdan-presentarse-en-coalicion.html>
[24] Juezas y Jueces para la Democracia, 'Asociación' <http://www.juecesdemocracia.es/asociacion-jpd/>
[25] Gran Enciclopèdia Catalana, 'Junts Pel Sí' <https://www.enciclopedia.cat/EC-GEC-21786573.xml>
[26] Albert Balcells, 'El Projecte d'Autonomia de la Mancomunitat de Catalunya del 1919 i el seu Context Històric' (2010) <https://www.parlament.cat/document/cataleg/48003.pdf>
[27] Moviment d'Esquerres, 'Qui Som?' <https://mesesquerres.cat/qui-som/>
[28] Òmnium, 'Presentació' <https://www.omnium.cat/ca/presentacio/>
[29] MÁ Noceda, 'Los Pactos de La Moncloa, El Acuerdo Que Cambió España Hace 40 Años' [2017] El País <https://elpais.com/politica/2017/10/20/actualidad/1508514039_177535.html>

- Partido Popular (PP): 'People's Party succeeded the ‘Alianza Popular’ party, thus becoming the liberal, conservative and right-wing option of the political spectrum. Along with the PSOE, has led the almost bipartisan Spanish political system[30].
- Partit Socialista de Catalunya (PSC): In 1978, the Socialist Party of Catalonia was founded. According to their own words, they define themselves as democrats, progressives, left-wing, pro-European, feminist, ecologist, supportive and enterprising. They also defend the principles of freedom, equality and solidarity[31].
- PDY/FETÖ: FETÖ is a hypothetical terrorist organization, which is made responsible by the Turkish government for the attempted coup in Turkey 2016. It is attributed to the Gülen movement, that is why it is usually named Gülenist Terror Organization/Parallel State Structure[32].
- PIMEC: is an employer confederation of micro, small and medium enterprises[33].
- PKK: is the party of the workers of Kurdistan which, since 1984, has been fighting for the creation of a state of its own[34].
- Partit Demòcrata (PDeCAT): Democratic Party is a political formation born in 2016, of Catalanist, humanist and independentist ideology[35].
- Plataforma pel Dret de Decidir: Platform for the Right to Decide has the goal of widening the basis of Catalan sovereignty and raising public awareness of the exercise of the right to decide[36].

---

[30] Partido Popular, ‘Historia’ <http://www.pp.es/conocenos/historia>
[31] Partit dels Socialistes de Catalunya, ‘Principios y Valores’ <http://www.socialistes.cat/es/pagina/principis-i-valors>
[32] Commissioner for Human Rights, ‘Memorandum on the Human Rights Implications of the Measures Taken under the State of Emergency in Turkey’ (2016) <https://rm.coe.int/16806db6f1>
[33] PIMEC, ‘Quiénes Somos’ <https://www.pimec.org/es/institucion/nosotros/quienes-somos>
[34] ‘Por qué los kurdos son un nuevo foco de tensión entre Estados Unidos y Turquía y cómo esto puede afectar a Siria’ [2019] BBC <https://www.bbc.com/mundo/noticias-internacional-46796399>
[35] Partit Demòcrata, ‘Presentació’ <https://www.partitdemocrata.cat/web/presentacio/>
[36] Plataforma pel Dret de Decidir, ‘Qui Som’ <http://plataformapeldretdedecidir.cat/qui-som/>

- Unión General de Trabajadores (UGT): General Union of Workers is a confederate employees organization formed in 1888[37].
- Unió Sindical Obrera de Catalunya (USOC): Labor Union of Catalonia is an association whose goal is to defend all the affiliated employees that belong to the organization[38].
- VOX: As they define it on their website, the project of this political formation consists of 'defending Spain, the family and life; reducing the State intervention and guaranteeing equality among Spaniards'[39].

[37] Unión General de Trabajadores, 'Qué Es UGT' <http://www.ugt.es/que-es-ugt>
[38] Unió Sindical Obrera de Catalunya, 'Història' <https://usoc.cat/usoc/historia/>
[39] VOX, 'Qué Es VOX' <https://www.voxespana.es/espana/que-es-vox>

ABSTRACT

‘Mut i a la gàbia’ is a Catalan expression, commonly used in the informal context, which is aimed at forcefully imposing silence. The two nouns comprised in it, together with the copulative nexus that unites them provide its meaning. ‘Mut’ means mute and ‘gàbia’ stands for a cage. Therefore, if literally interpreting the idiom, the message would be not to talk but also to be placed aside. However, when turning the ‘i’ into an ‘o’, the sense of the expression shifts. The locution no longer compels the receiver to remain silent. Instead, it proposes the receptor a disjunctive decision: either to remain quiet or to face imprisonment.

The election of the title is by no means a matter of coincidence. Nowadays, Spain seems to consistently present this dichotomous choice to any citizen that dares to go beyond the mere acceptance and conformism, regarding the current state of affairs. In light of this situation, the recoil that freedom of expression is suffering within the country mentioned above is the primary goal of the ongoing investigation.

This regression shows every sign of being common to all the acts and behaviours covered by the right. In this regard, the cases of either Pablo Hásel or Valtonyc should be highlighted. They both are singers that have faced the charges of glorification of terrorism, because of the content of their lyrics[40]. The latter being also condemned for insults and slander to the crown and non-conditional threats[41]. In the same line, Guillermo Martínez-Vela - the director of ‘El Jueves’ - was prosecuted on account of the crimes of obloquy, due to some of the contents published in his satire magazine[42].

---

[40] Audiencia Nacional, ‘Sentencia 8/2014 de 31 de marzo’ (2014)

[41] Audiencia Nacional, ‘Sentencia 4/2017 de 21 de febrero ’(2017)

[42] J Gónzalez Úbeda, ‘España Tiene Muchísimo que Mejorar en Cuanto a Separación de Poderes’ [2017] El Jueves <https://www.publico.es/sociedad/entrevista-director-jueves-espana-muchisimo-mejorar-separacion-poderes.html>

Likewise, Tamara and Adrià Carrasco - pro-independence activists - were accused of committing terrorism and rebellion, because of protest acts they performed as members of 'Comités de Defensa de la República', an organization that is aimed at the proclamation of the Catalan Republic[43]. Finally and constituting the most current and transcendent of the cases, there is the 'Causa Especial 20907/2017'. In it, the prosecution targets the leaders and promoters of the Catalan independence movement on the grounds of rebellion, sedition and disobedience as a result of the noncompliance concerning both the central government guidelines and the decisions of the courts of justice.

Due to the extensive variety of cases, it is incredibly complex to examine them as a homogeneous group. Therefore, the target of this investigation will be the last proceeding mentioned. The restrictions of the political secessionist discourses and actions are becoming more frequent in Catalonia, mainly when they embody claims on the right to self-determination. That is why this investigation will try to determine whether the Spanish crimes of rebellion, sedition and disobedience collide with the right to freedom of expression, either by its literal content or by the judges' interpretation.

To be able to resolve such an inquiry, the successive study consists of three chapters. The first section will deal with a brief historical background on the Catalan history, since different past events caused the birth and growth of the Catalan nation which, in turn, constituted the reasons to claim Catalonia's independence. After that, will follow an analysis of the legislation that regulates and defines the scope and limits of the universal right in the territory. Lastly, the trial on the holding of the 1st October referendum will be examined, according to the provisions studied in the previous section.

[43] 'La Audiencia Nacional deja de Investigar a Tamara Carrasco y Adrià Carrasco' [2018] La Vanguardia <https://www.lavanguardia.com/politica/20181107/452790186087/audiencia-nacional-deja-investigar-tamara-carrasco-adria-carrasco.html>

All in all, this research has the goal of determining if the prosecution of the Causa Especial constitutes a breach of either International, European or National Law with regards to freedom of expression or if, on the contrary, it respects all its provisions. That is why the subsequent investigation can be double-labelled. On the one hand, it could be qualified as expository because it will first explain all the legal provisions relating to the topic at stake. On the other hand, it is endowed with a qualitative nature, provided that it is not a comparison of multiple actions but a single, in-depth examination.

About its sources, both first and secondary ones will be used. The firsts ones will be the International, the European and the National legislation. The second ones, the jurisprudence that has arisen from these texts, as the latter do pose questions regarding the extension of some of its provisions and only later opinions of the judges, address these. Likewise, articles and essays of academia will be consulted.

Lastly, as for the scope, it must necessarily be narrowed down to the micro-sociological field that is the Catalan territory, due to its unique nature and the absence, in the Catalan or Spanish territory, of any conflict alike which could be correlated to and which happens to occur in a synchronous time frame.

Keywords: 1-O, Catalonia, Causa Especial, Disobedience, Freedom of Expression, Independence, Politics, Rebellion, Referendum, Repression, Sedition, Self-determination, Spain.

INDEX

ACKNOWLEDGMENTS **2**

EXPRESSIONS OF PRIOR KNOWLEDGE **4**

INTRODUCTION **10**

ABSTRACT **13**

I. A BRIEF HISTORICAL BACKGROUND OF CATALONIA **15**

II. FREEDOM OF EXPRESSION **24**

2.1 UNIVERSAL SPHERE 26

2.1.1 Universal Declaration of Human Rights (UDHR) 26

2.1.2 International Covenant on Civil and Political Rights (ICCPR) 29

2.2 EUROPEAN SPHERE 31

2.2.1. European Convention of Human Rights (ECHR) 32

2.2.2 Charter of Fundamental Rights of the European Union (CFRUE) 38

2.3 NATIONAL SPHERE 39

2.3.1 National Constitution 40

2.3.2 Catalan Statute of Autonomy 45

2.3.3 Criminal Code 46

2.3.4 National Emergency Law 49

III. CAUSA ESPECIAL 20907/2017 **52**

3.1 PRESENTATION OF THE DEFENDANTS AND THEIR LAWYERS 52

3.2 LEGAL FACTS 55

3.2.1 September 2017 55

3.2.2. October 2017 57

3.2.3 November 2017 62

3.2.4 December 2017 63

3.2.5 May and April 2017 64

3.2.6 May 2018 to February 2019 65

3.3 PRESENTATION OF THE TRIBUNAL, ACCUSATIONS AND REQUESTS FOR PUNISHMENT 67
3.4 ANALYSIS 69
3.4.1 Rebellion 70
3.4.2 Sedition 75
3.4.3 Disobedience 79

IV. CONCLUSIONS 82

BIBLIOGRAPHY 85

I. A BRIEF HISTORICAL BACKGROUND OF CATALONIA

Before deepening into the status of freedom of expression in Catalonia and Spain, it is imperative to familiarize the reader with the history and context of both territories. Otherwise, it may be difficult to understand the way things developed.

Catalonia is today part of Spain. Still, for ages, this has not been the situation. Catalan territory has either been sovereign or under the domination of a nation - different from the one that was ruling or governing the rest of Spain's land. In the 10th century, the Catalan Counties became independent from the Carolingian Empire when breaking the relation of vassalage that they maintained[44].

Years later, in 1137, because of the marriage of Ramon Berenguer IV - count of Barcelona - and Peronella d'Aragó, Catalonia and Aragon became a single kingdom[45 46]. Along the next century, the main governmental institutions were settled: 'Generalitat', 'Corts' and Municipal Councils[47 48]. In 1469, the wedlock between Ferran II and Isabel de Castilla united the Kingdom of Aragon with the Kingdom of Castilla, thus becoming Spain as it is known today[49].

Later on, in the 18th century, a new conflict arose. Charles II of Habsburg died without offspring and this caused a vacuum of power which, consequently, led to a dispute

---

[44] J M Salrach i Marès, 'La Formació de la Societat Feudal. Segles VI-XII' a *Història, Política, Societat i Cultura dels Països Catalans* (Fundació Enciclopèdia Catalana, Barcelona 1998) 99

[45] J M Salrach i Marès, op. cit. 215

[46] R Sarobe, 'Ramon Berenguer IV i Peronella: La Unió Dinàstica' a *Som una nació. Catalunya Triomfant. De la independència a l'Expansió Mediterrània* (Edicions 62, Barcelona 2006) 88

[47] E Belenguer i Cebrià i C Cuadrada i Majó, 'La Forja dels Països Catalans' a *Història, Política, Societat i Cultura dels Països Catalans* (Fundació Enciclopèdia Catalana, Barcelona 1996) 51-52

[48] J Sanahuja, 'La Diputació del General' a *Som una nació. Catalunya Triomfant. De la independència a l'Expansió Mediterrània* (Edicions 62, Barcelona 2006) 197-199

[49] H Kamen, 'España y Cataluña. Historia de una Pasión' (La Esfera de los Libros, Madrid 2014)

between the two potential successors of the king. On the one hand, there was Charles III of Austria and, on the other hand, Philippe of France. The first had the support of Catalonia and the second, enjoyed the backing of the rest of Spain and France[50] [51]. In the end, Philippe of France was the one that was crowned and, as a punishment for not being the preferred candidate among the Catalans, he decided to abolish their Constitutions and Institutions[52].

During the firsts years of the 20th century, there were manifold events of great political relevance. Primary, on the 6th April 1914, 'Mancomunitat de Catalunya' was created[53]. Succeeding that, on 14th April 1931 the president of the Catalan territory, Francesc Macià, proclaimed the Catalan Republic inside Spain and agreed with the central government in Madrid, to draft a Statute of Autonomy that would set the rules and institutions for this new nation[54] [55] [56]. Three years later, on the 6th October 1934, within a central right-wing government in Madrid, the then President of Catalonia, Lluís Companys, restated a Catalan State in the Federal Spanish Republic[57].

In 1936, a coup d'état followed by three years of civil war, established General Franco as the Head of State[58]. His fascist dictatorship was characterized by repression, autarchy and misery. It was only from the 60s on, that some governmental policies opened its borders to the external market. Then, Catalonia became the economic engine of the

---

[50] J Albareda i Salvadó, 'Desfeta Política i Embranzida Econòmica. Segle XVIII' a *Història, Política, Societat i Cultura dels Països Catalans* (Fundació Enciclopèdia Catalana, Barcelona 1995) 132-134

[51] MA Martí, 'El Setge de Barcelona i l'Onze de Setembre' a *Som una Nació. Catalunya Oprimida. De Felip V a Franco* (Edicions 62, Barcelona 2006) 16

[52] J Albareda i Salvadó, op.cit. 192-193

[53] G Caballer, 'La Mancomunitat de Catalunya' a *Som una Nació. Catalunya Triomfant. Temps de Rebel.lia i Autogovern* (Edicions 62, Barcelona 2006) 182-188

[54] Ismael E. Pitarch, 'El President Macià i El Parlament de Catalunya' (2009)

[55] J M Roig Rosich, 'Segona República i Guerra Civil' a *Història de la Catalunya Contemporània. De la Guerra del Francès al Nou Estatut* (Pòrtic Biblioteca Universitària, Barcelona 2006) 310

[56] O Dueñas, 'La Proclamació de la República Catalana' a *Som una Nació. Catalunya Triomfant. Temps de Rebel.lia i Autogovern* (Edicions 62, Barcelona 2006) 220

[57] H Raguer i Suñer, 'De la Gran Esperança la Gran Ensulsiada 1930-1939' a *Història, Política, Societat i Cultura del Països Catalans* (Fundació Enciclopèdia Catalana 1999) 34-36

[58] Cabanellas M, Decreto 1936

country and, therefore, lots of people decided to migrate there from other parts of Spain [59] [60].

In 1975, in the aftermath of a dictatorship - that only ended because of the death of its ruler and that lasted 36 years - a change of leader took place. According to Franco's wishes, Juan Carlos de Borbón was appointed as his successor and he was compelled to rule according to the principles of the previous regime[61] [62]. Therefore, his monarchy was meant to be characterized by being traditional, Catholic, social and representative.
Despite the context in which this replacement in power occurred, the shift in itself has always been considered the turning point towards a popular regime: Spain becomes a newborn democracy or so-called.

Shortly after the King's designation, several reforms materialized and two of them were of special relevance. First of all, the approval and entry into force of the Law of Political Reform that implied the legalization of the parties and the self-liquidation of the Francoist courts[63]. Then, the enactment of the Law of Amnesty that pardoned every crime motivated by a political intention, regardless of the outcome it could have had[64].

Later on, the first democratic elections since the dictatorship were held and, among the representatives of the most voted political parties, seven members were chosen to elaborate a draft of the Constitution[65].

---

[59] C Molinero i Ruiz i P Ysàs i Solanes, 'De la Dictadura a la Democràcia 1960-1980' a *Història, Política, Societat i Cultura del Països Catalans* (Fundació Enciclopèdia Catalana, Barcelona 1998) 44

[60] J M Roig Rosich, op.cit. 423

[61] Jefatura del Estado, Ley 62/1969, de 22 de julio, por la que se provee lo concerniente a la sucesión en la Jefatura del Estado 1969

[62] J M Roig Rosich, op.cit. 471

[63] Jefatura del Estado, Ley 1/1977, de 4 de enero, para la Reforma Política 1977

[64] Jefatura del Estado, Ley 46/1977, de 15 de octubre, de Amnistía 1977

[65] Congreso de los Diputados, 'Elaboración y Aprobación de la Constitución Española de 1978' <http://www.congreso.es/consti/constitucion/elaboracion/index.htm>

In this context, the ‘Pactos de la Moncloa’ were signed. On the one hand, freedom of expression, right to assembly and right to political association were decriminalized and on the other hand, transfers of competences to the different regions of Spain started to be negotiated[66].

Soon after, the Constitution was ratified by its national citizens and came into force[67]. According to its first article, Spain became a ‘social, democratic and lawful State, whose main values are freedom, justice, equality and political pluralism’ and, even though it established the territory as indivisible, it ‘recognizes and guarantees the right to autonomy of the nationalities and regions that make it up’ in its second passage[68]. Likewise, freedom of expression, right to meeting, right to association and right to political affiliation were acknowledged and granted within the articles 20, 21, 22 and 23, respectively[69].

At this point, the democratic system was *de iure* established. Nevertheless, during its firsts years, it had to face an important threat. On the 23rd of February 1981, a failed coup d’état was starred by some agents of ‘Guardia Civil’ led by lieutenants Antonio Tejero and Jaime Milans del Bosch. However, when it came into the ears of the King, he ordered - as the chief of the Armed Forces - the withdrawal of troops and condemned the military uprising. In doing so, Bosch retired his contingent and, the next morning, Tejero surrendered[70] [71] [72].

---

[66] Ministerio de la Presidencia, ‘Cumplimiento del Programa de Actuación Jurídica y Política de los Pactos de la Moncloa’ <http://www.mpr.gob.es/servicios2/publicaciones/vol18/pag_02.html#titulo8>
[67] Constitución Española 1978
[68] ibid.
[69] ibid.
[70] ‘23-F: Las 18 Horas que España no Puede Olvidar’ [2016] Público <https://www.publico.es/politica/23-f-18-horas-espana.html>
[71] ‘Un 23-F de Hace 35 Años’ [2016] RTVE <http://www.rtve.es/noticias/20160219/23-hace-30-anos/223731.shtml>
[72] ‘Recuerdos y Anécdotas Del 23-F’ [2006] El Mundo <https://www.elmundo.es/elmundo/2006/02/23/espana/1140651449.html>

Meanwhile, in Catalonia the growth of the desire for self-government and autonomy was evident. A year after the Spanish Constitution was approved, and as a result of the previous claims for autonomous government, Catalonia obtained permission to elaborate its own Statute[73]. Ever since, the struggles to obtain greater independence became constant.

The first regional democratic elections were won by 'Convergència i Unió', whose ideology was Catalan nationalist[74]. The political party remained in power until 2003[75] [76] [77]. That year, under the tripartite mandate composed of PSC, ERC and ICV-EUiA, the reform of the Catalan Statute was promoted and became a reality[78]. However, the 'Partido Popular', the Ombudsman, Aragon, Balearics, Valencian Community, the Rioja and Region of Murcia, filed an unconstitutionality appeal against the text[79]. As a result, on the one hand, there was a manifestation of 'Plataforma pel Dret a Decidir', defending the motto 'Som una nació i diem PROU! Tenim el dret de decidir sobre les nostres infraestructures'[80], whose affluence was estimated amid 200.000 and 700.000 [81]. On the other hand, the Spanish Constitutional Court ruled on the case and declared the lack of legal effectiveness of the references in the preamble of the Statute of Catalonia to 'Catalonia as a nation' and to 'the national reality of Catalonia', considered

[73] Jefatura del Estado, Ley Orgánica 4/1979, de 18 de diciembre, de Estatuto de Autonomía de Cataluña 1979

[74] Parlament de Catalunya, 'Eleccions Al Parlament 1980-2017' <https://www.parlament.cat/document/composicio/150360.pdf>

[75] Generalitat de Catalunya, Edicto de 21 de Noviembre de 2003, por el que se Hacen Públicos los Resultados Correspondientes a la Proclamación de Electos al Parlamento de Cataluña de la Circunscripción de Lleida y Barcelona 2003 23581

[76] Generalitat de Catalunya, Edicto de 24 de noviembre de 2003, por el que se Hacen Públicos los Resultados Correspondientes a la Proclamación de Electos al Parlamento de Cataluña de la circunscripción de Girona y Tarragona 2003 23583

[77] Partit dels Socialistes de Catalunya, Esquerra Republicana de Catalunya and Iniciativa per Catalunya Verds, 'Acord per a un Govern Catalanista i d'Esquerres a la Generalitat de Catalunya' <http://www.ub.edu/OGC/Catalunya_VII_leg_Tinell.pdf>

[78] Jefatura del Estado, Ley Orgánica 6/2006, de 19 de julio, de Reforma del Estatuto de Autonomía de Cataluña 2006 172

[79] Recurso de Inconstitucionalidad n.o 8045-2006, en Relación con Diversos Preceptos de la Ley Orgánica 6/2006, de 19 de Julio, de Reforma del Estatuto de Autonomía de Cataluña.' 34930

[80] 'Plataforma Pel Dret de Decidir', loc. cit.

[81] R Vilaregut Sáez, 'Memòria i Emergència En l'independentisme Català. El Cas de La Plataforma Pel Dret de Decidir' (Tesi Doctoral en Ciències Polítiques, UB 2011

unconstitutional expressions collected in more than fourteen articles and reinterpreted the meaning of other twenty-seven[82].

On the 10th July 2010, 'Òmnium Cultural' called up for another demonstration to show discontent regarding the aforementioned court ruling. This time, the catchphrase was 'Som una nació. Nosaltres decidim' and between 1.100.000 and 1.500.000 people were mobilized[83] [84] [85].

On the elections celebrated on the 28th November of that same year, the tripartite Government came to its end and Artur Mas, the leader of CiU became the Catalan President[86]. During his mandate, he managed to approve a bill for the creation of a Catalan fiscal pact[87]. In the face of this proposal, the pro-independence moods were revived. Thus, the dyad of September 11, 'Catalunya, nou Estat d'Europa' had more than 600.000 and less than 2.000.000 attendees[88] [89] [90].

Soon after that, on the 25th November, elections were held. Artur Mas won the poll again, together with 'Esquerra Republicana de Catalunya', thanks to the commitment to

---

82 Tribunal Constitucional, 'Sentencia 31/2010, de 28 de Junio' (2010)

83 'Decenas de Miles de Personas se Manifiestan en Barcelona Contra la Sentencia del Estatut' [2010] RTVE <http://www.rtve.es/noticias/20100710/decenas-miles-personas-se-manifiestan-barcelona-contra-sentencia-del-estatut/339210.shtml>

84 E Belmonte, 'Masiva Manifestación en Barcelona en Apoyo al Estatut y Contra el Constitucional' [2010] El Mundo <https://www.elmundo.es/elmundo/2010/07/10/barcelona/1278761492.html>

85 M Pons, 'Somos una Nación, Nosotros Decidimos' [2010] El Nacional <https://www.elnacional.cat/es/efemerides/somos-una-nacion-nosotros-decidimos_173064_102.html>

86 Generalitat de Catalunya, 'Eleccions Al Parlament de Catalunya 2010' <http://www.gencat.cat/governacio/eleccions/eleccions2010/resultats2010/09AU/DAU09999CM_L2.htm>

87 'El Parlament Aprueba El Pacto Fiscal' [2012] La Vanguardia <https://www.lavanguardia.com/politica/20120725/54330063011/parlament-aprueba-pacto-fiscal.html>

88 À Piñol, 'El Independentismo Catalán Logra una Histórica Exhibición de Fuerza' [2012] El País <https://elpais.com/ccaa/2012/09/11/catalunya/1347375808_419590.html>

89 J Pi, 'Masiva Manifestación por la Independencia de Catalunya' [2012] La Vanguardia <https://www.lavanguardia.com/politica/20120911/54349943522/diada-manifestacion-independencia-catalunya.html>

90 J Oms, V Mondelo, G González, 'El Clamor Independentista Colapsa Barcelona' [2012] El Mundo <https://www.elmundo.es/elmundo/2012/09/11/barcelona/1347377095.html>

hold a quest for self-determination[91]. Thus, during his tenure, he tried to carry out several initiatives to prepare the consultation: a declaration of sovereignty[92], an acclamation of the right to decide the sovereignty of Catalonia[93], a referendum prediction for November 9 and the approval of a law of queries[94] [95].

Likewise, the demonstrations in favour of the right to decide were not stopped. On the one hand, there were the ones held on a regular basis every year, during the day of September 11. In 2013 it was the 'Via Catalana cap a la Independència', convened by the ANC and with between 600.000 and 1.500.000 protesters[96] [97] [98]. In 2014, under the shape of a V - meaning will (voluntat), vote (vot) and victory (victòria) - and the message 'Ara és l'hora, units per un nou país' between 520.000 and 1.800.000 activists were gathered jointly by ANC and 'Òmnium Cultural'[99] [100] [101]. On the other hand, ANC

---

[91] Generalitat de Catalunya, 'Eleccions Al Parlament de Catalunya' (2012) <https://www.gencat.cat/governacio/resultats-parlament2012/09AU/DAU09999CM_L1.htm>

[92] M Roger, 'El Parlament Aprueba por Amplia Mayoría la Declaración Soberanista' [2013] El País <https://elpais.com/ccaa/2013/01/23/catalunya/1358960994_203672.html>

[93] N Villanueva, 'El Tribunal Constitucional Suspende la Declaración Soberanista Del Parlamento Catalán' [2013] ABC <https://www.abc.es/espana/abci-tribunal-constitucional-suspende-declaracion-ruptura-parlamento-catalu na-201608011425_noticia.html>

[94] R De Miguel, 'La Democracia Española Ante Su Mayor Desafío' [2017] El País <https://elpais.com/politica/2017/09/30/actualidad/1506797545_651643.html>

[95] Jefatura del Estado, Ley 10 / 2014, de 26 de septiembre, de Consultas Populares no Referendarias y Otras Formas de Participación Ciudadana 2014

[96] J Pi, 'Catalunya Muestra Su Via Al Mundo' [2013] La Vanguardia <https://www.lavanguardia.com/politica/20130911/54382311472/via-catalana-realidad.html>

[97] A Ruiz Valdivia, 'Diada 2013: La Delicada Situación Política de Cataluña y el Problema de Encaje en España' [2013] Huffington Post <https://www.huffingtonpost.es/2013/09/11/cataluna-diada_n_3898346.html>

[98] 'La Generalitat Dice que 1,6 Millones de Personas Secundan la Vía Catalana, Mientras Interior Baraja 600.000' [2013] ABC <https://www.abc.es/local-cataluna/20130911/abci-cadena-humana-cataluna-201309111829.html>

[99] 'La Diada de Catalunya, En Directo' [2014] El Diario <https://www.eldiario.es/catalunya/Diada-Catalunya-11-S-Via_Catalana_13_301799820_3224.html>

[100] 'Las Cifras de la Via Catalana 2014: 1,8 Millones' [2014] La Vanguardia <https://www.lavanguardia.com/politica/20140911/54414923722/cifras-via-catalana.html>

[101] 'Miles de Catalanes Forman La "V" de la Diada Para Pedir la Consulta' [2014] 20 Minutos <https://www.20minutos.es/noticia/2234936/0/diada-cataluna/debate-soberanista/directo/>

and 'Associació de Municipis per a la Independència' collected more than 750.000 signatures for, in case they were unable to hold the query, declare independence[102].

However, the central Government, on the one hand, banalized each and every attempt of the Catalan Government to gain more autonomy. On the other hand, it brought them to the Constitutional Court, who declared them contrary to the law[103]. Vox, UPyD and 'Manos Limpias' also filed complaints in the same line[104].

Nonetheless, the query remained and was held with a participation of around 2.305.000 people[105] [106] [107]. Because of that, the General Prosecutor of the State initiated a complaint against Artur Mas, Joana Ortega and Irene Rigau, accusing them of disobedience, prevarication, embezzlement and usurpation of functions[108].

At the same time, in the light of this and, after the denial of Rajoy to run an agreed consultation, Mas decided to call elections. The winner of the voting turned out to be 'Junts pel Sí'[109] [110]. Its political programme was based on the unitary roadmap, whose

---

[102] B Zaldua, 'La ANC Entrega al Parlament 750.000 Peticiones de Independencia' [2014] Arainfo <https://arainfo.org/la-anc-entrega-al-parlament-750-000-peticiones-de-independencia/>
[103] Tribunal Constitucional, 'Sentencia 42/2014 de 25 de marzo' (2014) 38
[104] 'VOX Presenta una Querella Criminal contra Mas por "Rebelión y Sedición"' [2014] Europa Press <https://www.europapress.es/nacional/noticia-vox-presenta-querella-criminal-contra-mas-rebelion-sedicion-20141013114139.html>
[105] 'El 81% de Los Votantes de La Consulta Alternativa, 1,8 Millones, Apoyan La Independencia de Cataluña' [2014] RTVE <http://www.rtve.es/noticias/20141110/81-votantes-consulta-del-9n-18-millones-apoyan-independencia-cataluna/1045120.shtml>
[106] A Ruiz, P Machuca, V Rodríguez, 'Resultados 9N: Más de 1,6 Millones de Catalanes Dice "SÍ SÍ" a la Independencia' [2014] Huffington Post <https://www.huffingtonpost.es/2014/11/09/resultados-9n_n_6130000.html?utm_hp_ref=es-9n-consulta>
[107] 'Resultados Del 9N: La Independencia se Impone con un 81% de los más de 2,3 Millones de Votos' [2014] La Vanguardia <https://www.lavanguardia.com/politica/20141110/54419122198/resultados-9n.html>
[108] 'Querella de Fiscalía Contra Mas, Ortega y Rigau' [2014] La Vanguardia <https://www.lavanguardia.com/politica/20141121/54420097003/querella-fiscalia-mas-ortega-rigau.html>
[109] Generalitat de Catalunya, 'Eleccions al Parlament de Catalunya 2015' <http://www.gencat.cat/governacio/resultatsparlament2015/resu/09AU/DAU09999CM_L1.htm>
[110] Presidencia del Gobierno, Real Decreto 13/2016, de 11 de enero, por el que se nombra Presidente de la Generalitat de Cataluña a don Carles Puigdemont i Casamajó 2016

main aim was the drawing of the path towards the achievement of independence. In this sense, the solemn beginning of the process was declared in parliamentary session and its validity renewed, after being declared unconstitutional[111] [112].

[111] M Marraco, 'El Constitucional Suspende la Resolución Independentista y Advierte de Responsabilidad Penal a los 21 Altos Cargos Catalanes' [2015] El Mundo <https://www.elmundo.es/espana/2015/11/11/56438962e2704e59138b4643.html>

[112] 'El Parlament Aprueba una Moción Independentista que sus Propios Letrados Cuestionan' [2016] Expansión <http://www.expansion.com/catalunya/2016/04/07/570650c9ca47414c658b463c.html>

II. FREEDOM OF EXPRESSION

Different occasions and several domains have tried to define freedom of expression, all of them agreeing to consider it as a qualified right. Three consequences derive from the previous sentence: advantages, disadvantages and uncertainty. First, this diversity of regulation sources could provide the possibility of filling the blank spaces that the previous have left. At the same time, this situation could lead to a misunderstanding of the scope and limits of such a prerogative. Finally and due to its nature, the governments can interfere with this provision only if subjected to a three-step test: legality, legitimacy and proportionality[113] [114] [115] [116] [117].

In light of this situation, the territory is bound to act following all the regulations it has agreed upon. Therefore, they all need to be analyzed comprehensively and harmoniously. However, sometimes even such an interpretation is not enough to know, precisely, which materializations of freedom of expression are allowed and which ones are forbidden. It is then that jurisprudence plays a significant role.

Given that neither the regulations nor their case-law enjoy equal status, it is crucial to be aware of the primacy rules that govern them.

Regarding the laws, article 5 of the Organic Law of Judicial Power states that the Spanish Constitution occupies the top position of the hierarchical triangle[118]. Secondly, there are the decree laws[119], together with organic laws, which rule on fundamental rights and freedoms. Both the statutes of autonomy and the legislation enabling the

---

[113] UNGA, Universal Declaration of Human Rights 1948, article 29
[114] UNGA, International Covenant on Civil and Political Rights 1966, article 19.3
[115] Council of Europe, European Convention on Human Rights 1950, article 10.2
[116] Institutions and Member States of the European Union, Charter of Fundamental Rights of the European Union 2000, article 52.1
[117] Constitución española, artículos 20.1.4, 53.1 y 55.1
[118] Jefatura del Estado, Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial 1985
[119] Constitución española, op.cit. artículo 86.

signature of international treaties belong to the latter category[120]. Consequently, the international treaties would seem to hold the third position in the enforcement power. However, it is a bit more complicated than that. While it is true that the organic laws are the ones that grant the permission to become a member of any agreement of international law[121], once the consent is provided, the treaty gains supremacy. Therefore, in the particular agreement field, the international treaty is entrusted with more power to legislate than it is to the Spanish Constitution[122]. Next, there are the ordinary laws and regulations. Finally, and just to help them provide a ruling, the judges can also resort to customs and general principles of law.

As for the case-law then, the rulings of the international tribunals are the superior law. Among them, the determination of its mastery is settled according to the principles of *lex posterior* and *lex specialis*. Subsequent, there is the jurisprudence of the Constitutional Court, which deals with the guarantees provided therein. Succeeding, there are the Superior Tribunal cases, that are the ultimate appeal in every jurisdictional order[123]. Next, there is the 'Audiencia Nacional'. After it, the Superior Tribunals, which embodies the final appeal to the average citizen regarding the scope of every Autonomous Community, but the first when dealing with gauged personalities[124]. Finally, the Provincial Hearing and the First Instance usually prosecute minor matters, as they are, respectively, the second and first tribunal that individuals can claim to.

Taking the aforementioned into account, in order to find out whether Spain is operating against the freedom of expression, two examinations should be carried out. On the one hand, of all the treaties it is a member and, on the other hand, of all the jurisprudence relevant to the country. Thus, landmark judgments of the European Court of Human Rights, the European Court of Justice, the Spanish Supreme Court, the Spanish Constitutional Court and the Catalan Higher Court of Justice will be collected.

---

[120] Constitución española, op.cit. artículo 81.
[121] Constitución española, op. cit. artículo 93.
[122] Constitución española, op. cit. artículo 96.
[123] Ley Orgánica 6/1985, op. cit. artículo 53.
[124] Ley Orgánica 6/1985, op. cit. artículo 70.

2.1 UNIVERSAL SPHERE

After World War II, States feared, not in vain, the insurgency of conflicts like those that had just lived. The Cold War was a fact, and its most magnificent instrument was the arms race starred by the United States and Russia. Given this situation, the States agreed that the best way to prevent an armed conflict would be the creation of a unique authority to which both protagonists were subject. As a result, they created the United Nations.

Thus it is not surprising that, once the international treaties are signed for the countries, they become part of the national law. Therefore, the agreements require the States both to take positive measures and to adequate the national legal ordering to the international provisions[125]. In the Spanish case, it is also necessary to officially publish the convened text[126].

2.1.1 Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights was the result of the commitment of the States, members to the United Nations, to never let the atrocities of the Second World War happen again. That is the reason why already in 1948 the first text of international scope ever written about human rights was adopted.

Its title helped to uncover its true nature, considering that a declaration has no binding powers[127]. Nevertheless, later on, and together with the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the General

[125] A A Cançado Trindade, 'The Seven Decades of the Universal Declaration of Human Rights (1948-2018) and the Necessary Preservation of its Legacy' (2018) 97-140 Revista Facultad Direito UFMG

[126] Constitución española, artículo 96

[127] J Von Bernstorff, 'The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law' (2018) 903-924 The European Journal of International Law

Assembly of the United Nations grouped them as the International Bill of Human Rights.
Nowadays it is admitted to have reached the status of customary law since most of the countries have ratified it and believe it to be legally compelled by it -*opinio iuris*- and they tend to act according to it -practice-[128].

Regarding its content, when faced with any uncertainty, the text demands domestic law to adopt the necessary legislation to suppress it. Meanwhile, the Declaration highlights the need for better coordination between the different organisms that supervise its enforcement. In this sense, it manages towards the avoidance of jurisdictional conflicts, as well as procedural duplicity or controversial interpretation.
As for the values of the text, it claims the indivisibility, interdependence and interrelation of the rights stated within it. In turn, this means that no hierarchy of fundamental rights is settled. Therefore, the balancing exercise is of the utmost importance[129]. Besides, the 1st World Congress of Human Rights held at Teheran (1968) and the 2nd World Congress celebrated in Vienna (1993) confirmed such a nature.

About its content and concerning freedom of expression precisely, it ought to be taken into consideration article 19:

> **Everyone** has the right to freedom of opinion and expression; this right includes freedom to hold opinions without **interference** and to seek, receive and impart information and ideas through any media and regardless of frontiers[130].

When examining the previous statement, many conclusions arise. First of all, there is no concretion on the comprehensiveness of the word ‘everyone’, nor there is any clue of the scope of the expression ‘interference’. Second, even though it enables people to search for data, it is only the government who, ultimately, can guarantee this access, by

[128] Cançado Trindade, loc. cit.
[129] Von Bernstorff, loc. cit.
[130] UNGA, Universal Declaration of Human Rights 1948

making its documents public. Following, it permits the spreading through media, but it does not make available free tools to do so.

In trying to overcome the weaknesses and the uncertainty of the provision, the first thing that comes to mind is to search for jurisprudence. Nevertheless, none of the two tribunals of international scope deal with this issue.

As a last resort, when no case-law may turn out helpful, it is time to look for later regulation. However, it would be a useless attempt since, although there are following documents on this topic, they are always written in abstract terms: it is the State the one who has to fill in the blank spaces and define the broad concepts.

About the limitations on the right, while none is provided in article 19, there are some in provision 29:

> [...] 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Therefore, three limits are established. First, in case two rights collide, one might limit the other. Second, the arguments for doing so must be based on national peace, security and morals. Lastly, this constriction is also possible whenever counteracting the United Nations values. These restrictions, however, due to the lack of hierarchy among the rights, always constitute a case by case ponderation.

2.1.2 International Covenant on Civil and Political Rights (ICCPR)

This treaty, together with the International Covenant on Economic, Social and Cultural Rights was signed and ratified in 1966 and entered into force ten years later. However, only the ICCPR is of concern here, as it deals with freedom of expression, being its article 19 of especially remarkable importance:

> Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities it may, therefore, be subject to **certain** restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the **rights and reputation of others**; (b) For the protection of **national security** or of **public order** or of **public health or morals**[131].

This clause only incorporates a novelty for the one analyzed above: it enumerates some of the ways that freedom of expression can adopt. However, this is a step forward towards the granting of the claim. As it is not a *numerus clausus* listing, but it ensures compliance with a minimum right and, at the same time, makes it possible for the State to grant other kinds of manifestations, to go way beyond.

In this article, many abstract concepts constrict freedom of expression.

First of all, the word ‘certain’ opens the door to any limitation. After that, the terms ‘rights of others’, ‘reputation’, ‘national security’, ‘public order’, ‘public health’ and ‘public morals’ do not help to delimit the number of behaviours that may be subject to constraints. Instead, it provides the government with plural excuses on which to legitimize its future prohibitions on the right. It should be concluded therefore that, in all the precepts analyzed previously, the conditions of legality and legitimacy are met. However, so many purposes are considered legitimate - national security, disorder or

[131] UNGA, International Covenant on Civil and Political Rights 1966

crimes, territorial integrity, health, morals, public safety, reputation or rights of others, prevention of the disclosure of information received in confidence, maintenance of the authority and impartiality of the judiciary - that it leads to questioning whether the third requirement, the need, is fulfilled or if, on the contrary, the limits on speech are imposed more often than when strictly unavoidable.

In this regard, General Comment n.10 of the Office of the High Commissioner for Human Rights shall be brought to light. In it, the expert expresses two concerns relating to the obligation of States to submit reports describing the current situation of the country concerning the rights foreseen in the treaty[132]. First, he underlines the threatening possibility of the State controlling the media. Second, he argues that, even though most of the countries provide their citizens with constitutional guarantees on freedom of expression, these are not clear enough to determine the scope on the right[133].

Regarding legal security, however, two essential breakthroughs are achieved.

First, with the expression 'provided by law', a requirement is established. If the government needs to restrict any conduct, it must prior legislate on its potential limitation. Thus, there is a legal certainty of bannable manners. In this line, the High Commissioner pointed out that the restrictions 'may not put in jeopardy the right itself' [134]. Nevertheless, evidence collected by the Special Rapporteur on Promotion and Protection of Freedom of Expression demonstrated that the trend is opposite to this goal. He listed up to five behaviours contrary to it: negatively characterizing expression as treasonous, taking legal action or prosecuting, applying repressive measures against the press, inflicting harm to the media personnel or performing operations contrary to academic freedom[135].

[132] International Covenant on Civil and Political Rights, op. cit. article 40

[133] A Wehbé,' Increasing International Legal Protections for Freedom of Expression' [2018] Notre Dame Journal of International and Comparative Law

[134] ibid.

[135] UNCHR, 'Report of the Special Rapporteur on the protection and promotion of the right to Freedom of Opinion and Expression' (1999) UN Doc E/CN.4/1999/64

Second, as the ICCPR is a treaty-body, is provided with the possibility of drafting periodical reports regarding the countries' respect for human rights, and so it did with Spain. This statement was released in 2015, and several of its conclusions are of worth mention.
First, it highlights the lack of recommendations regarding human right defenders, freedom of expression or right to peaceful assembly in the previous Spanish report.
Following, it points out the rise of demonstrations when compared with 2011 and their outcomes: both allegations of excessive use of force and beatings, insults and arrests of journalists, carried out by police officers. In light of this situation, the commissioner of the Council of Europe for Human Rights ordered two actions. On the one hand, the draft of norms in a more precise way, to know what can be considered proportionate use of force. On the other hand, a clear identification of the police.
Finally, they suggested the reconsideration of 'Ley de Seguridad Ciudadana'. However, Spain still passed the regulation.

As for the case-law, there is again no tribunal endowed with the concrete competence for dealing with this treaty.

2.2 EUROPEAN SPHERE

Seen the potential effectivity of the just established United Nations and, encouraged by speeches such as the Schuman Declaration, the integration of European States was decided to be strengthened. In this sense, the countries drafted and ratified both the European Convention of Human Rights and the Charter of Fundamental Rights.

2.2.1. European Convention of Human Rights (ECHR)

The Council of Europe, whose aim was to become a common platform for democracy, the rule of law and fundamental rights, was set up in 1949. A year after, it gave birth to this treaty. With regards to freedom of expression is of utmost importance its article 10:

> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by **public** authority and regardless of frontiers. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary[136].

If compared to the previous articles examined, it includes one different concept: public. With this addition, it would seem that the scope of interference has been narrowed, as the hindrances of the private sphere are not taken into account when considering the factors that prevent the exercise of freedom of expression from being enjoyed. However, its extension is indeed curtailed by its second clause together with the following article 17:

> Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention[137].

As for article 10.2, it can only indirectly restrict freedom of expression, because it requires a previous ponderation on the rights at stake.

An example of this balance is the judgement of Sadak and Others v. Turkey, in 2001, where the dichotomy was starred by the territorial integrity and the freedom of

[136] Council of Europe, European Convention on Human Rights 1950

[137] ibid.

expression[138]. In it, the claimants, who were members of the Democracy Party, had their parliamentary impunity removed on the grounds of committing treason against the State [139]. While they were placed in detention pending trial, the Constitutional Court disintegrated their political party. Following, the public prosecutor formally accused them of treason against the State, due to their supposed engagement in activities and statements supporting the Workers' Party of Kurdistan (PKK). Finally, the judges convicted the claimants to 15 years of prison alleging their belonging to an armed gang [140], even though the prosecution had never before charged them with the crime, and the Court of Cassation confirmed the decision. In light of this, the European Court understood that there was a violation of the right to a fair trial. Therefore, it was not necessary to get to know if any other infringement of rights pleaded by the accusation had occurred.

Similar circumstances characterized the judgment of Sahin Alpay v. Turkey. In it, freedom of expression was again faced with territorial integrity[141]. However, its outcome was completely different. In this case, the applicant was a critical journalist who taught politics in a private university in Istanbul and worked for the Zaman newspaper. After a failed military coup carried out by the Peace at Home Council - a part of the Turkish armed forces - the prosecution accused FETÖ/PDY of such an action and, therefore, criminal investigations against them, started. Shortly after, the Government declared the State of Emergency and closed down Zaman because it considered it to be Gülenist media. On the same day, the police arrested the claimant, accused of belonging to FETÖ/PDY and, after an interview by Istanbul Security Directorate and the Magistrate Court, was placed in pre-trial detention. Sahin Alpay denounced his imprisonment several times and it was only after two years of confinement, that the Tribunals acknowledged that there had been a violation of the right to liberty and security, as well as the right to freedom of expression and freedom

[138] *Sadak and Others v. Turkey* (App nos. 29900/96, 29901/96, 29902/96 and 29903/96) ECHR 17 July 2001

[139] Turkish Criminal Code, article 125.

[140] Turkish Criminal Code, op. cit. article 168.

[141] *Sahin Alpay v. Turkey* (App no. 16538/17) ECHR 20 March 2018

of the press. Nevertheless, the magistrates that should have applied the sentence, ignored its content. In appealing to the European Court, the latter stated that even the declaration of State of Emergency was not enough reason to order pre-trial detention. Therefore, they asseverated that there had been a violation of the right to freedom of expression.

Regarding the protection of the rights of others, there is the case of Appleby and Others v UK[142]. Its claimants asked for authorization to campaign to the manager of a privately owned company, which was set in a public location, but the latter denied it. In the face of this negative, they alleged the violation of freedom of expression, freedom of assembly and association and right to an effective remedy. However, the Court's Assessment established that in those circumstances the State had no obligation to intervene therein.

Facing a more sensitive topic, there is the opposition between freedom of expression and the protection of morals, embodied by the case of Herri Batasuna and Batasuna vs. Spain[143]. Therein, two political parties, founded in 1986 and 2001, were suspended and its headquarters closed, as a result of the 'Audiencia Nacional' orders. Immediately after, the Supreme Court dissolved the parties, at the Government's request. This order was grounded on the violation of several precepts of a law, aimed at ensuring that political organizations operated in line with the democratic constitutional requirement and human rights. Both parties appealed, together with the Basque Government. Nevertheless, the higher judiciary instances reaffirmed the legitimacy of the dissolution. Likewise, when addressing the European Court, it considered, first, that the retrospection is only forbidden when dealing with criminal matters and, second, that the interference was by law and followed a legitimate aim. However, it agreed with the defendants in considering that the law itself, as well as its retrospective application, entailed a governmental intervention within the right of freedom of association. As for the freedom of expression, the tribunal only added that the methods used by the parties

[142] *Appleby and Others v UK* (App no. 44306/98) ECHR 6 May 2003
[143] *Herri Batasuna and Batasuna vs. Spain* (App nos. 25803/04 and 25817/04) ECHR 30 June 2009

to exercise it - the armed struggle - fell outside the means protected. All in all, the magistrates held that there had been no violation of neither article 10 nor 11.

Narrowing the scope to the Catalan cases, there are still two judgments worth mentioning. On the one hand, there is the case of Riera Blume and Others v. Spain[144]. In it, freedom of conscience is confronted with the protection of morals and health. The applicants were recruited by an organization and their families believe it to be a sect. Therefore, they denounce it to the police and the latter, after carrying out an investigation, arrested a number of people, among them, the claimants. Succeeding that, the detainees were retained in a hotel for ten days, the firsts three not being even allowed to leave the room, to undergo a psychological examination. When freed, the claimants denounced their imprisonment and, even though the national courts did not favour them, the European Court did. On the other hand, there is the case of Barberà, Messegué and Jobardo vs. Spain[145]. Therein, in the context of a murder investigation, the three applicants were detained and charged with belonging to a terrorist organisation called E.PO.CA. Because of the nature of their accusation, they were held incommunicado and they were not allowed to have lawyer's assistance[146]. While in custody, they admitted having taken part in the murder, but when appearing before the tribunal, they retracted their confessions. Despite it, and refusing to apply them the Amnesty Law, the 'Audiencia Nacional' convicted them on the grounds of murder and assistance to armed gangs. All things considered, the European Court of Human Rights, even though it disregarded the violation of the presumption of innocence, it ruled in favour of the claimants, denouncing that the proceedings did not satisfy the requirements of a fair and public hearing.

---

[144] *Riera Blume and Others vs. Spain* ECHR 14 October 1999

[145] *Barberà, Messegué and Jobardo vs. Spain* (App no. 10590/83) ECHR 6 December 1988

[146] Jefatura del Estado, Real Decreto Legislativo 19/1979, de 23 de noviembre, por el que se modifica parcialmente el Real Decreto-ley 1/1977, de 4 de enero, que creó la Audiencia Nacional, y se prorroga la vigencia de la Ley 56/1978, de 4 de diciembre, de medidas especiales en relación con los delitos de terrorismo cometidos por grupos armados

To sum up, the European Court of Human Rights ruled: first, on the favour of Sadak on the grounds of fair trial; following, on the support of Alpay regarding his violation of freedom of expression; next, against Appleby alleging the non-interference of public powers within private property; succeeding, against Herri Batasuna and Batasuna regarding freedom of expression and freedom of association; subsequently, it sided with Riera Blume and Others and finally, it ruled opposite to Spain in Barberà, Messegué and Jobardo.

Oppositely, article 17, in its conception, was meant to be a trump to the so-called enemies of freedom[147]. Therefore, it constituted the direct way to restrict a right - also called the 'guillotine effect' - as it did not take into consideration any of the factual circumstances. That is the reason why the provision is said to contain a categorical exclusion on freedom of expression[148]. In this regard, Moreen Cheema and Adeel Kamran argue that the previously mentioned section compels the States to constrain freedom of expression whenever hate speech or Holocaust denial occurs. The grounds for claiming such an obligation is the fact that 'rhetoric could lead to action and speech could head towards conduct'[149]. In other words, discourses could promote insult and later incitement.

For this provision to be applicable, however, it must be brought up together with the right that is believed to be abused. In light of this, restrictions are legitimate only if aimed at respecting other rights. Nevertheless, such an executive prerogative seems to facilitate its overuse, condemning discourses as hate speech - even though they cannot fall into the category - or widening the reasons that lie behind the maintenance of public order. Indeed, there has been an increase in the applicability of article 17. Nowadays, it

---

[147] K Vasak, 'La Convention Européene des Droits de '(Paris 1964)

[148] H Cannie, D Voorhoof, *The abuse clause and freedom of expression in the European Human Rights Convention: an added value for democracy and human rights protection?* (29th edn Netherlands Quarterly of Human Rights, Netherlands 2011) 54–83

[149] M Cheema, A Kamran, *The Fundamentalism of Liberal Rights: Decoding the Freedom of Expression Under the European Convention for the Protection of Human Rights and Fundamental Freedoms* (Loyola University Chicago International Law Review, Chicago 2014) 11

is no longer only an answer to fascist threats but also to anything aimed at undermining the spirit of the text, especially antisemitism, racism and Islamophobia.

Thus, while many totalitarian ideologies develop around these kinds of ideas and, by eliminating them from its roots, they would not cause any problems, such a dismiss would arise some drawbacks. First, if consistently applying this article, no context examination on the case would take place or, if it did, it would be entirely superficial. Second and as a consequence of the first, disproportionate punishments would derive from it. Third and last, the role of the European Court of Human Rights would gain much more protagonism than it should, since it is the domestic judiciary the one that can appreciate better its national peculiarities.

However, contrary to what is defended by the authors mentioned above, in none of the cases examined, there is an appliance of article 17, and consequently, no disproportionate punishments can derive from its non-application. Lastly, with regards to the Court's role, it is indeed subsidiary as it may be.

Nonetheless, other conclusions do arise. First, in the Sadak's and Appleby's cases, it is evident that when faced with a situation of freedom of expression, the magistrates try to avoid getting to know the merits of the matter. They prefer to decide the ruling regarding procedural grounds - and, whenever that is not possible, resolve based on related and less abstract rights, for instance, right to a fair trial or the administration duties towards the citizen. Secondly, it establishes the power of the legislator to limit the extension of the right to freedom of expression. Finally, it is stated that the right to freedom of speech confronts with two areas. On the one hand, with individual civil rights, such as the right to honour or privacy. On the other hand, with the collective ones, for instance, the public order.

2.2.2 Charter of Fundamental Rights of the European Union (CFRUE)

Created in 2000 by the European Parliament, the Council and the Commission, the Charter of Fundamental Rights has the primary goal of turning the European values into enforceable provisions.

Regarding freedom of expression, it is of remarkable importance the role of article 11 together with section 52.1:

> 11.1. Everyone has the right to freedom of **expression**. This right shall include freedom to hold **opinions** and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 2. The freedom and pluralism of the media shall be respected[150].
>
> 52.1 Any limitation of the exercise of the rights and freedoms recognized by this Charter must be established by law and respect the essential content of its rights and freedoms. While respecting the principle of proportionality, limitations may only be introduced when they are necessary and effectively meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.

As further stated in the Charter, the aim, extension and limits of the clause above are the same as the ones foreseen in the UDHR[151].

However, there are slight differences. On the one hand, according to its implementation, legal persons are enabled its access. On the other side and following the literal wording of the precept, there are two others. First, even though no reference is made regarding the possibility to seek data, freedom and pluralism of media is mentioned, what enhances the chances to receive and impart information. Therefore, it is a double-sided right that applies both to the speaker and the audience.

---

[150] Institutions and Member States of the European Union, Charter of Fundamental Rights of the European Union 2000

[151] L Woods, 'Freedom of Expression and Information' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing, London 2014) 311–340

Regarding its content, neither the word 'expression' nor the word 'opinion' have been described. Nevertheless, it can be learned from the case law and later comments that the first includes political, artistic and commercial speech as well as the means of transmission, while the second also comprehends scientific, historical, moral and religious content since whatever is stated is not need to be previously proven[152].
In this sense, positive obligations from the State may arise, whenever its action could contribute to public debate. One of the most evidence duties is to grant the freedom to access governmental information. Such an obligation permits and encourages, in turn, pluralism of media.

Concerning the establishment of limitations, it is only possible if meeting three requirements. First, they ought to be necessary, which means that a pressing social need has motivated it. The State enjoys a margin of appreciation and, therefore, it will be the one considering whether it can fall inside the scope of the adjective. Second, it must be precise enough prescribed by law as to fulfil the criteria of publicity, accessibility predictability and foreseeability. Lastly, it needs to be proportionate, meaning that there are no less burdensome measures which could be equally effective.

Finally, about its case-law, although individuals can turn to this court, no jurisprudence exists concerning the matter, as the topics of such a nature are usually entrusted to the European Court of Human Rights.

2.3 NATIONAL SPHERE

In this realm, several regulations need to be taken into account and analyzed according to the hierarchy of sources. Therefore, first of all, the examination of the Spanish Constitution is provided together with its two highest courts case-law. After that, the analysis of the organic laws that somehow legislate on freedom of expression, these

[152] ibid.

being the Catalan Statute of Autonomy, the Criminal Code and the National Emergency Law.

2.3.1 National Constitution

Once the Spanish dictatorship was over, the king and the just legalized political parties came together to draft the Constitution. The text entered into force in December 1978 and established that the country would become a social and democratic State, ruled by a parliamentary monarchy. Among the values defended therein, there is freedom of expression, legislated in article 20.1:

> The following rights are recognized and protected: a) the right to freely express and spread thoughts, ideas and opinions through words, in writing or by any other means of reproduction. [...]. 2. Any form of prior censorship may not restrict the exercise of these rights[153].

As for the positive aspects, the national text provides different means through which freedom of expression can be exercised and, the most positive about it, is that they are not presented as a closed list but as examples. Therefore, it allows other kinds of manifestations. The prohibition of imposing prior censorship also constitutes a huge step forward.

Regarding the shortcomings, two elements should be considered. First, the lack of comments about interference, either by public or private figures and second, the non-existence of comments concerning the capability of seeking information.

After having analyzed its actual content, its limitations need to be tackled. Because, even though the same provision does not settle them, they do confront many trumps, which are foreseen in articles 20.1.4, 53.1 and 55.1, respectively:

[153] Constitución española, op. cit. artículo 20.1.

> These freedoms [right to freely express and spread thoughts] are limited by respect for the rights recognized in this Part [Fundamental Rights], by the legal provisions implementing it, and especially by the right to honour, to privacy, to the own image and the protection of youth and childhood[154].

> [...] Only by an act - which in any case must respect their essential content - could the exercise of such [fundamental] rights and freedoms be regulated, which shall be protected following the provisions of section 161(1) a) [Unconstitutionality appeal][155].

> The rights recognized in section(s) 17 [personal freedom] [...] may be suspended when a state of emergency or siege (martial law) is declared under the terms provided in the Constitution. Subsection 3 of section 17 [being informed about the reasons of detention, not being compelled to make any statement and guaranteeing legal assistance] is excepted from the foregoing provisions in the event of the declaration of a state of emergency[156].

In the first restriction, the citizen is not provided with any legal certainty. It is a case by case examination in which whenever two rights are colliding; there will be a ponderation and, according to the circumstances of each situation, one or other will prevail. However, when looking for the synopsis of the provision, more information is provided[157]. In it, the citizen gets to know for sure which aspects are taken into consideration when performing the ponderation of freedom of expression against honour, intimacy or own image.

The text establishes two red-lines and two guidelines. On the one hand, it declares that whenever insult or defamatory ratings come into play, or unnecessary aspects of private life are revealed, the speech will be restricted. On the other hand, it establishes that the occupation of the defamed and the expressions used for doing so will necessarily be matters that ought to be considered. In this regard, there is the judgment 136/1994, 9th May[158]. The case concerned the clash between the right to honour and the right to

---

[154] Constitución española, op. cit. artículo 20.1.4.
[155] Constitución española, op. cit. artículo 53.1.
[156] Constitución española, op. cit. artículo 55.1.
[157] Congreso de los Diputados, 'Sinopsis artículo 20' <http://www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=20&tipo=2>
[158] Tribunal Constitucional, 'Sentencia 136/1994, de 9 de mayo' (1994)

freedom of expression. In it, the claimant, head of the opposition, criticized the actions of the then town leader. Hence, the statement was issued regarding the management of municipal affairs. In the face of such circumstance, the mayor filed a complaint. To rule on it, the judges balanced the rights at stake and, decided that the right to free expression of the opposition prevailed before the right to honour.

Regarding the second limitation, it foresees that it is only the essential content of the rights that demands respect. However, there is no clue with regards to which are considered to be the principal and fundamental elements that cannot be violated. Therefore, it is also impossible to know in advance whether constitutional protection will be granted.

About it, there are two cases of right to demonstration worth mentioning. On the one hand, there is judgement 193/2011, 12th December[159]. Therein, a campaign against the current regulation of unemployment and its consequent social policies had been occurring since February 2010, from Monday to Friday either from 11.00 to 13.00 or from 19.00 to 21.00. In July 2010, the applicant notified the Government Delegation of his intention to keep on doing the demonstration throughout August. Faced with this information, the Public Administration ruled three consequences. First, it decided not to grant permission for the manifestations foreseen from the 21st August on. Second, to limit the duration of the gatherings and, finally, to prohibit both the traffic cuts and the use of megaphones. In light of this, the applicant alleged that he had seen his right violated. Answering to that, the defendant pleaded that the demonstrations caused disorders and restrictions in the movement of people, together with the disruption of public order. He argued that under the manifestations, emergency services could not arrive on time, public transport could not function adequately, normalized supply to shops was not possible and lastly, that neighbours were complaining about the situation. Analyzed and weighted the rights confronted, the final decision was to reject the protection to the applicant.

[159] Tribunal Constitucional, 'Sentencia 193/2011, de 12 de diciembre' (2011)

On the other hand, there is judgment 24/2015, 16th February[160]. The decision contained therein had to determine, specifically, whether the prohibition of the parades announced for several days violated the freedom of assembly[161]. The applicant grounded his claim for two reasons. First, the fact that the notification of the repealing administrative resolution was untimely. Second, the lack of due motivation. Likewise, the defendant argued as well on two motives. Primary, it stated its inadmissibility alleging procedural aspects. Besides, it held that demonstrations on the same topics and intentions had been carried out before by the claimants and, therefore, the repetition of the same manifestation did not bring anything new. The judges answered to both of the questions arisen by the claimant. About the time of the notification; while they agreed that the term had not been respected, they highlighted that this breach entailed not a violation of the Constitution, but only the non-compliance of the organic law that established the term. As for the second issue, the judges replied that the limitation on the prerogative was legitimate as long as it respected its essential content, it was necessary, and it was proportionate. Seen the arguments of both parties, the judges decided to rule in favour of the applicant.

Additionally, there is a crime of sedition and one of glorifying terrorism of remarkable importance. As for the first, there is judgment 5156/1988, 4th July[162]. In it, a Union of Field Workers called for a general strike, grounded on the lack of funds for employment. The mayor of the town decided to engage in the action. Therefore, he issued a decree ordering the suspension of the local activity. The showdown took place and, indeed, every event stopped. However, the town hall doors remained open throughout the day. In light of this, the burgomaster was prosecuted and charged with sedition under articles 222.1, 223.1 and 224 of the Criminal Code of 1944[163]. The

[160] Tribunal Constitucional, ‘Sentencia 24/2015, de 16 de febrero’ (2015)
[161] Jefatura del Estado, Ley Orgánica 9/1983, de 15 de julio, reguladora del derecho de reunión 1983
[162] Tribunal Supremo, ‘Sentencia 5156/1988, de 4 de julio’ (1988)
[163] Ministerio de Justicia, Decreto de 23 de diciembre de 1944 por el que se aprueba y promulga el “Código Penal, texto refundido de 1944”, según la autorización otorgada por la Ley de 19 de julio de 1944 1944

claimant appealed the decision alleging procedural reasons as well as wrong applicability of the charges. All things considered, the judges established that the only possible active subject of such infringement was the public official. It also dictated that to qualify an individual as guilty of the crime mentioned above; he should have suspended or ceased the provision of public services of recognized and unavoidable necessity temporarily. As a result, and due to the lack of explanation of the strike's consequences, being these crucial to the determination of the crime accused of, the judges ruled on the applicant's favour.

Concerning the second, there is the judgment 748/2015, 19th February[164]. In this pronouncement, the accused uploaded songs on YouTube, supporting terrorist organizations such as GRAPO, ETA, Al Qaeda, 'Terra Lliure' or RAF, claiming them to be the victims of the democratic system. Due to this, the tribunals condemned him on the grounds of glorifying terrorism[165]. In light of this, he appealed alleging the violation of freedom of expression, communication and information. When ruling, the judges affirmed that, although the Constitution protects the right to express different opinions and even permits non-respect and non-adherence to the legal system, it can not allow songs that support or praise terrorist actions, that justify the existence of the individuals who perpetrate the crime or that ask them to commit such acts again.

Lastly, judgment 1070/2019, 2nd April[166] also needs to be taken into account since, in it, the court decided on the possible limitation on the right to freedom of expression by the legislator. On this occasion, the defendant posted messages on Twitter expressing disconformity regarding the current society. Because of it, the prosecution charged him with the glorification of terrorism, but the judges declared him innocent. Faced with this situation, the accusation appealed the decision, and the new tribunal found the incriminated guilty. As a result, the defendant appealed again on the grounds of due process, freedom of expression and procedural reasons. The court finally found him

[164] Tribunal Supremo, 'Sentencia 748/2015, de 19 de febrero' (2015)
[165] Ley 10/1995, op.cit. artículo 578
[166] Tribunal Supremo, 'Sentencia 1070/2019, de 2 de abril' (2019)

accountable, dismissing all the defendant's allegations. They maintained that when it comes to actions of sufficient gravity that, in turn, may involve an injury or danger, the lawmaker can intervene to guarantee the integrity of legal rights or goods. Moreover, restriction of speech can also be legitimate whenever there is a danger for coexistence.

Meanwhile, the article also provides the nationals with the opportunity to issue an unconstitutional appeal if they believe that any judicial ruling or legislative act is contrary to the core fundamental rights. In this regard, when checking out the brief of the article, it is clear that an enhanced or preferential warranty protects the rights foreseen in articles 14 to 30 of the Spanish Constitution. Indeed, they can claim the violation twice[167]. First, filing an ordinary jurisdictional protection remedy. It must be unique, preferential and summary. However, only in the criminal, social and military jurisdictions, it is ensured. Second, they can file a writ of amparo, after exhaustion of the judicial process.

As for the final constriction, the precept is very concrete, as it cites all the provisions that would be suspended in the case of the declaration, either of a state of emergency or a state of siege. Nevertheless, the circumstances which can lead to proclaim such a contingency are not listed. Neither they are specified in any other article of the Constitution. Instead, it is an organic act, the one that is entrusted with that mission.

2.3.2 Catalan Statute of Autonomy

As it has been previously explained in 'A Brief Historical Background of Catalonia', the Catalan Statute of Autonomy was first drafted to recover the competencies that had been withdrawn from them. However, among those, there were no provisions related to fundamental rights, since they are the exclusive competence of the central State.

[167] Congreso de los Diputados, 'Sinopsis artículo 53' <http://www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=53&tipo=2>

Therefore, the Catalan text, in its article 4, refers and submits the content of the Spanish Constitution in the topic:

> The public authorities of Catalonia must promote the full exercise of the freedoms and rights recognized in this Statute, the Constitution, the European Union, the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and the other international treaties and agreements subscribed by Spain that recognize and guarantee fundamental rights and freedoms[168].

2.3.3 Criminal Code

In November 1995, the Parliament approved the current Spanish Criminal Code. Since then, it has undergone several reforms. However, it is only the latest version of it the one that will be considered below. Likewise, not all of its content will be analyzed but just the limits set to freedom of expression which are, in turn, considered grave breaches of the law. Therefore, it is rebellion, sedition, hate speech and glorification of terrorism that will be following examined.

Regarding the first crime, the Criminal Code states that:

> Those who rise violently and publicly for any of the following purposes are guilty of the crime of rebellion: 1. To repeal, suspend or modify the Constitution in whole or in part.[...] 5. Declare the independence of a part of the national territory[169].

At first sight, the article has a thorough and profound wording that does not seem to give rise to interpretations or to the exercise of the discretionary power of those who are obliged to apply such a provision. However, when reading carefully, this possibility becomes manifest as the term violence can accommodate different materializations of it, and by not delimiting it, overuse can occur.

Nevertheless, when examining the jurisprudence, no other cases arise. There have been some accusations and charges of rebellion, but all of them were dismissed in the end. Therefore, there is no previous case-law that can help to delimitate the crime.

[168] Ley Orgánica 6/2006, loc.cit.
[169] Jefatura del Estado, Ley Orgánica 10/1995, de 23 de noviembre del Código Penal 1995, artículo 472

Requiring lesser intensity there is the crime of sedition, legislated in article 544, which foresees the following:

> Culprits of sedition are those who, without being included in the crime of rebellion, rise publicly and **tumultuously** to prevent, by force or outside of legal means, the application of the laws or any authority, official corporation or public official, legitimate exercise of their functions or compliance with their agreements, or administrative or judicial decisions[170].

This section only has a weak point, and it is the incorporation of the adjective 'tumultuous'. It does not determine how many people must participate or be in the place of commission of the act of sedition, to be considered as such.

Moreover, even though this crime has been charged to some accused, in the end, it has always been disregarded. Therefore, its scope is still difficult to determine.

Next, as for the hate speech provision, the Code determines that:

> They will be punished [for hate speech] [...] a) Those who publicly foment, promote or incite directly or indirectly to hate, [...] b) Those who produce, elaborate, possess for the purpose of distributing [...] material or supports that by their content are suitable to directly or indirectly encourage or incite hatred [...] c) Publicly deny, gravely trivialize or glorify the crimes of genocide, crimes against humanity or against persons and property protected in the event of armed conflict, or exalt their authors [...] 2. They will be punished [...] a) Those who damage the dignity of people through actions that involve humiliation, contempt or discredit [...] b) Those who praise or justify by any means of public expression or dissemination of crimes that have been committed by a group[171].

Any of the expressions collected fall into the most profound abstraction, except the mention of the crimes of genocide, crimes against humanity or crimes against persons and property protected in the event of armed conflict, since international treaties have previously defined them. In this way, through argumentation, an infinity of behaviours could be subsumed under the previous article.

---

[170] Ley Orgánica 10/1995, op. cit. artículo 544

[171] Ley Orgánica 10/1995, op. cit. artículo 510

Nevertheless, in light of this situation, jurisprudence comes into play. The judgement 646/2018 of the Supreme Court establishes that the limits on the right are only legitimate when colliding with other fundamental rights, which are worth more in-depth protection[172]. Moreover, the case 501/2019, of the Provincial Audience of Valencia, determines that article 510 of the Criminal Code has the goal of protecting human dignity[173]. Therefore, incitement to violence is not required, but only encouragement to hate. Hence, to promote animadversion against a 'person or people, because of skin colour, ethnicity, religion, disability, ideology, sexual orientation or victim's condition' is reason enough to appreciate concurrence of hate speech.

Lastly, judgement 177/2015 declares that 'when faced with behaviours that can be potentially considered hate speech, these conducts must undergo a constitutional control, to determine whether the discourse is a legitimate political option or if, on the contrary, its main aim is to encourage hostility and hate'[174].

Likewise, the glorification of terrorism is considered a type of hate speech[175]. Therefore, article 478 limits speech, whenever it meets the requirements established in its provision:

> 1. The glorification or public justification of the crimes included in the Articles 572 to 577 [terrorism] or those who have participated in its execution, or the performance of acts that entail **discredit**, **disparagement** or **humiliation** of the **victims** of terrorist crimes or of their **family members**, will be punished by imprisonment of one to three years and a fine of twelve to eighteen months. The judge may also agree on the sentence, during the period of time that he himself indicates, or some of the prohibitions foreseen in article 57 [accessory penalties][176].

The precept does not clarify several of the concepts included in it. On the one hand, 'discredit', 'disparagement' and 'humiliation' are words that define the feeling that the

---

172 Tribunal Supremo, 'Sentencia 646/2018, de 14 de diciembre' (2018)
173 Audiencia Provincial de Valencia, 'Sentencia 501/2019, de 20 de mayo' (2019)
174 Tribunal Constitucional, 'Sentencia 177/2015, de 22 de julio' (2015)
175 Tribunal Supremo, 'Sentencia 59/2019, de 16 de enero' (2019)
176 Ley Orgánica 10/1995, op. cit. artículo 578

action produces on its victim. Therefore, it is entirely subjective and up to the latter whether the activity performed has created the necessary consequences for being placed inside the scope of the crime. On the other hand, neither 'victims' nor 'family members' are delimited in its significance.

Nevertheless, to clarify the scope of the provision, jurisprudence needs to be consulted. In this regard, judgement 224/2010 of the Supreme Court understands that the banned discourse is the one aimed at 'the extermination of the different'[177]. Later on, the Tribunal declared that whenever the speech has 'capacity to encourage, even indirectly, a favourable climate for hate', it may be considered as hateful[178] [179]. In this sense, Organic Law 2/2015 also widened the scope of the crime - by not considering necessary to use public means to spread the message, but to make it public - and hardened the punishments[180].

Moreover, the judiciary states that the fact that the country has already suffered from terrorist attacks, legitimizes further restrictions when aimed at restricting its apologia since this justification of armed conflict constitutes a real threat. Therefore, even when there is no encouragement to violence or to committing the crime, the restriction can be legitimate. However, there must exist, at least, an abstract risk[181]. To establish the existence of the jeopardy, the context, the intent, the transmitter's condition and potential consequences ought to be taken into account. Hence, it is a case-by-case examination.

2.3.4 National Emergency Law

This law was passed only six years after the reestablishment of democracy in the country. Because of that, in its articles, stability prevails over many fundamental rights.

---

[177] Tribunal Supremo, 'Sentencia 224/2010, de 3 de marzo' (2010)

[178] Tribunal Supremo, 'Sentencia 52/2018, de 31 de enero' (2018)

[179] Tribunal Supremo, 'Sentencia 354/2017, de 17 de mayo' (2017)

[180] Jefatura del Estado, Ley Orgánica 2/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, en materia de delitos de terrorismo 2015

[181] Tribunal Supremo, 'Sentencia 79/2018, de 15 de febrero' (2018)

Regarding freedom expression, there are several articles worth analyzing. First of all, there is provision 4:

> The Government, [...] may declare the state of alarm, in all or part of the national territory, when there are any of the following severe alterations of normality: a) Catastrophes, calamities or public misfortunes, such as earthquakes, floods, urban and forest fires or major accidents; b) Health crises, such as epidemics and dangerous contamination situations; c) Paralysis of essential public services for the community, when the provisions of articles twenty-eight, two [right to strike] and thirty-seven, two [right to adopt collective conflict measures] of the Constitution, and any of the other circumstances or situations contained in this article are not guaranteed; d) Situations of shortages of products of first necessity[182].

In the section quoted above, the situations in which the alarm state will be declared are clearly described. Nevertheless, this kind of regulation does not enjoy the same position in the primacy regulation scale nor the same strength, as the Constitution does. Therefore, it is not complicated for the Government to change the content of such a law at their mercy.

Following, there is clause 13.1, where the procedure to declare the state of alarm is settled:

> When the free exercise of the rights and liberties of citizens, the normal functioning of democratic institutions, the public services essential to the community, or any other aspect of public order, are so severely altered that the exercise of ordinary powers is insufficient to reestablish and maintain it, the Government [...] may request from the Congress of Deputies authorization to declare a state of emergency[183].

This provision, while it broadens the margin of appreciation of the Government, it narrows the judicial security of the citizen, as almost any action can be justified and legitimized by this article.

---

[182] Jefatura del Estado, Ley Orgánica 4/1981, de 1 de junio, de los estados de alarma, excepción y sitio 1981, artículo 4
[183] Ley Orgánica 4/1981, op. cit. artículo 13.1

Finally, section 32.1, foresees the conditions and procedure under which a declaration of a state of siege can occur:

> When an insurrection or act of force occurs against or threatens the sovereignty or independence of Spain, its territorial integrity or the constitutional order, which can not be resolved by other means, the Government [...] may propose to the Congress of Deputies the declaration of a state of siege[184].

In this clause, it is positive the fact that the acclamation is stated as an *ultima ratio*. However, there is no way of knowing where the threshold is placed, regarding such a consideration. Therefore, the Government can always allege to have exhausted all the other remedies and nationals will not be able to know whether that is true or not, as they ignore which tools must have been used unsuccessfully, before resorting to such a mechanism.

After having seen all the articles, the only thing left to do is ascertain whether this rule has ever been applied. Indeed, it was, but only once, during the socialist Government of Zapatero, to put an end to the strike of the essential public service of air transport[185] [186]. To do so, a real decree was approved, whose applicability would last for 15 days, and its extension covered the control of all towers of the airports of the network managed by the public business entity 'Spanish Airports and Air Navigation (AENA)'. Therefore, every AENA employee was considered to be military personnel[187]. As a result, their political rights were limited, among them, freedom of association or the right to run for elections.

---

[184] Ley Orgánica 4/1981, op. cit. artículo 32.1

[185] 'El Gobierno declara el Estado de Alarma' [2010] El Mundo <https://www.elmundo.es/elmundo/2010/12/04/espana/1291425368.html>

[186] F J Pérez, 'El artículo 116: los estados de alarma, excepción y sitio' [2017] El País <https://elpais.com/politica/2017/10/10/actualidad/1507628557_312077.html>

[187] Jefatura del Estado, Ley Orgánica 13/1985, de 9 de diciembre, de Código Penal Militar 1985

III. CAUSA ESPECIAL 20907/2017

This trial, commonly known as the case of the independentist process, prosecutes the Catalan political leaders on the grounds of rebellion, sedition, embezzlement, criminal organization and disobedience.

3.1 PRESENTATION OF THE DEFENDANTS AND THEIR LAWYERS

Oriol Junqueras i Vies, vice-president and Raül Romeva i Rueda, foreign affairs adviser, are represented by Andreu Van den Eynde Adroer and Estefanía Torrente Guerrero. The former has been a lawyer of the Bar Association of Barcelona since 1998 and, for 17 years, he has defended and given specific advice in criminal matters[188]. The latter has been a lawyer since 2016[189].

Jordi Turull i Negre, presidency adviser, Josep Rull i Andreu, territory and sustainability adviser and Jordi Sànchez Picanyol, president of ANC, entrusted their legal assistance to Jordi Pina Massachs, Ana Bernaola Lorenza, Francesc Homs i Molist and Miriam Company Marsá. Jordi Pina became a lawyer in 1989, and he has always dealt with criminal matters ever since. He was a deputy of the Board of the Bar Association of Barcelona[190]. Ana Bernaola has been a lawyer since 2001. She was also a deputy of the Board Bar Association of Barcelona, in the criminal law section, between 2007 and 2010[191]. Francesc Homs was the general secretary and presidency adviser of the Generalitat de Catalunya between 2010 and 2015. Nowadays, he is a lawyer

---

[188] Van den Eynde A, 'Van Den Eynde. Dret Penal' <https://eynde.es/es/sobre-mi/>

[189] Consell Comarcal del Bages, 'Perfil i Trajectòria Professional Dels Alts Càrrecs de l'Administració Del Consell Comarcal Del Bages' (2017)

[190] Molins Advocats, 'Molins. Defensa Penal.' <http://www.molins-silva.com/jordi-pina-massachs-abogado-y-socio-molins-defensa-penal-barcelona/>

[191] Molins Advocats, 'Molins. Defensa Penal.' <http://www.molins-silva.com/ana-bernaola-lorenzo-abogada-penalista-molins-silva-defensa-penal-madrid/>

specialized in criminal and public law and a member of the Legal Advisory Commission of the Generalitat de Catalunya[192]. Finally, Miriam Company became a lawyer in 2015, and she is specialized in criminal defence[193].

Dolors Bassa i Coll, work, social affairs and families adviser, is being defended by Mariano Bergés Tarilonte. He became a lawyer in 2001 and, since then, he has usually dealt with criminal proceedings related to business activities, professional negligence and reckless crime[194].

Joaquim Forn i Chiarello, interior adviser, and Meritxell Borràs i Solé, governance adviser, are represented by Javier Melero Merino, Judit Gené Creus and Francesc Homs i Molist. The first has been a lawyer for 27 years, and most of his cases dealt with heritage and socioeconomic order[195] and she is a lawyer specialized in criminal law[196].

Jordi Cuixart Navarro, president of 'Òmnium Cultural' is assisted by three lawyers. Marina Roig Altozano, who became a lawyer in 1995. Her areas of expertise are economic criminal law, crimes against public administration, money laundering and penitentiary law. Currently, she is the president of the criminal law section of the Bar Association of Barcelona[197]. Alex Solà Paños, who has been a lawyer since 1992. He is a member of the Commission for the Defense of the Rights of the Person and the Free

---

192 Tarba. Consultoria Jurídica i Tècnica SL, 'Tarba. Consultoria Jurídica i Tècnica.' <https://www.tarba.eu/es/la-firma/>
193 Molins Advocats, 'Molins. Defensa Penal.' <http://www.molins-silva.com/miriam-company-marsa-abogada-penalista-molins-silva-defensa-penal-barcelona/>
194 Thomson Reuters, 'Legal Today' <http://www.legaltoday.com/colaboradores/berges-tarilonte#>
195 Emérita Legal, 'Emérita Legal' <https://www.emerita.legal/abogado/javier-melero-merino-16507>
196 Melero & Gené Advocats, 'Profesionales. Quiénes Somos.' <http://mgadvocats.com/profesionales?lang=es>
197 Roig&Bergés&Martínez, 'Roig&Bergés&Martínez' <https://www.rbmpenalistas.com/socios.cfm>

Exercise of the Advocacy[198]. Lastly, Benet Salellas Vilar, who became a lawyer in 2003, was a deputy in the Catalan Parliament during the XI legislature[199].

Carme Forcadell i Lluís, president of the Parliament, chose Raimon Tomás Vinardell and Olga Arderiu Ripoll to defend her. He is a lawyer specialized in criminal and public law and a member of the Directive Board of the Catalan Association of Democratic lawyers[200]. She became a criminal lawyer in 1998 and, between 2008 and 2017, she was vice president of the criminal law section of the Culture Commission in the Bar Association of Barcelona[201].

Carles Mundó i Blanch, justice adviser, hired the assistance of Josep Riba Ciurana. He became a lawyer in 1992, specialized in sanction procedures for doping in front of international and national federations and of the Court of Arbitration Sport (CAS)[202].

Santiago Vila i Vicente, company and knowledge adviser, entrusted his defence to Pablo Molins Amat and Juan Segarra Monferrer. The former has been a lawyer since 1986, always dealing with criminal law cases[203]. The latter became a lawyer in 2002. He is a member of the criminal law section in the Bar Association of Barcelona[204].

---

198 Gabinet d'Estudis Legals, 'Membres. L'Equip' <http://estudislegals.com/sobre-nosaltres/membres.html>

199 Salellas i Associats SL Advocats, '¿Quiénes Somos?' <https://www.salellasadvocats.cat/es-ES/quienes-somos.html>

200 ibid.

201 MDA & Lexartis. Advocats penalistes., 'Equipo' <http://www.mda-advocats.com/equipo/>

202 Morales. Abogados Penalistas., 'Equipo.' <http://www.moralesabogadospenalistas.com/equipo/>

203 Molins Advocats, 'Molins. Defensa Penal.' <http://www.molins-silva.com/abogado-pablo-molins-socio-director-molins-silva-defensa-penal-barcelona/>

204 Molins Advocats., 'Molins. Defensa Penal.' <http://www.molins-silva.com/juan-segarra-monferrer-abogado-penalista-en-molins-silva-defensa-penal-barcelona/>

3.2 LEGAL FACTS

Even though the referendum was held on the 1st October, many of the accusations that fall on the defendants respond to events that occurred in previous days. Thus, the following is a summary of the facts that motivated such complaints.

3.2.1 September 2017

On the 6th of September, there was the presentation and approval of the Law of the Binding Referendum of Self-Determination on the Independence of Catalonia, with the absence of the unionist block in the voting procedure[205] [206]. However, two days after it was declared illegal by the Constitutional Court. The reasons alleged were the breach of both the Parliament Regulation and previous judgements of the Court[207]. On that same day, took place the approval of the Law of Legal and Foundational Transience of the Republic, which would enter into force in case the 'yes' won the referendum[208].

On the 20th September, at 8.00 a.m., the judge Juan Antonio Ramírez Sunyer - who was in charge of investigating the preparation for the referendum - ordered the Operation Anubis to take place, which consisted in the register of the headquarters of the Economy department by the 'Guardia Civil' as a result of an entourage of the Court of Instruction number 13. After that, the magistrate requested the detention of 14 people.

---

[205] Parlament de Catalunya, Llei 19/2017, del 6 de setembre, del referèndum d'autodeterminació 2017

[206] A Puente, 'El Parlament Aprueba La Ley Para Convocar El Referéndum Ante Los Escaños Vacíos de La Oposición' [2017] El Diario <https://www.eldiario.es/catalunya/politica/Parlament-aprueba-ley-convocar-referendum_0_683832202.html>

[207] Abogado del Estado, Recurso de inconstitucionalidad 4334-2017 2017

[208] Parlament de Catalunya, Llei 20/2017, del 8 de setembre, de Transitorietat Jurídica i Fundacional de la República 2017

The detainees were members of the Government, employees of the Centre of Telecommunications and Information Technologies, representatives of different companies or affiliates to ERC. All 14 asked for an *habeas corpus* procedure, due to the irregularity of the arrests. Nevertheless, the judiciary denied it to everyone. Nowadays, they are on probation.

On that same day, there was also a failed attempt to register the headquarters of CUP by agents of the 'Guardia Civil' dressed as civilians and the riot section of the National Police, without a court order.

In the face of these events, a concentration of thousands of people - according to sources between 40.000 and 60.000 - took place in front of the Economy's main office. It is not clear whether it was a spontaneous act or a planned call-up by 'Assemblea Nacional de Catalunya' and 'Òmnium Cultural'. During the demonstration, three cars of the 'Guardia Civil' - which had been parked in front of the headquarters, had not been locked and had weapons inside - were destroyed by the protesters.

Given the circumstances, Jordi Sànchez and Jordi Cuixart offered themselves to act as mediators. First, they suggested creating a human barrier, so that both the 'Guardia Civil' and the judicial committee, that were inside the headquarters, could leave without any problem. However, the 'Guardia Civil' refused, considering that the measure lacked sufficient security. Meanwhile, Montserrat del Toro - judicial secretary of the 13th Tribunal Committee - exited the building on the roof, intending to access the adjacent building, the Colosseum. So she could hide among the crowd that was leaving the theatre at that same time. After that, around 23:45, the two leaders of the civic associations asked permission from the 'Guardia Civil' to get on the two wrecked cars, to convince the objectors to leave and, thus, dissolve the demonstration.

The next morning, the ‘Guardia Civil’ could finally exit through the main door. Shortly after, the consequences of the previous day’s events came. On the one hand, the ‘Audiencia Nacional’ filed a complaint about sedition against Sànchez and Cuixart. On the other hand, Josep Lluís Trapero - principal of the ‘Mossos d'Esquadra’ - and Teresa Laplana - highest authority of the Catalan police - were accused of sedition, based on the insufficiency of the ‘Mossos’ device, provided for the registration of the Economy headquarters.

Likewise, that same morning, the reactions at the state level were known. First, Mariano Rajoy declared that the holding of the referendum would not take place. Later, Juan Ignacio Zoido and Íñigo Méndez de Vigo argued that the event of the previous day was a tumultuary manifestation[209] [210] [211].

3.2.2. October 2017

The events that took place on the 1st October started in the early morning and, on some occasions, even the day before: volunteers and families decided to occupy schools, to prevent authorities from closing them. At 4.00 a.m., according to the information provided by ‘Escoles Obertes’, 1134 schools were seized. However, the central Government reports a figure of only 160 schools.

At 5.00 a.m., it is estimated that about 50 vehicles of the ‘Guardia Civil’ were already leaving the port of Barcelona. Around 7.30 a.m., the ‘Mossos d'Esquadra’ went to the Ministry of Education, and they drew up an act in which they ruled out closing the

---

[209] L Pellicer, ‘Los 14 Detenidos En La Operación Contra La Organización Del Referéndum’ [2017] El País <https://elpais.com/ccaa/2017/09/20/catalunya/1505896269_248253.html>

[210] J García, ‘20-S: El Acelerador Del “Procés”’ [2018] El País <https://elpais.com/ccaa/2018/09/20/catalunya/1537435891_087433.html>

[211] J Pi, ‘20-S: El Día Que Aceleró El Choque Del Procés a Través de Sus Protagonistas’ [2018] La Vanguardia <https://www.lavanguardia.com/politica/20180920/451884483592/20s-dia-acelero-choque-protagonistas.html>

space by the presence of too many people inside. Thus, even though Josep Lluís Trapero gave orders to act following the order issued by the Superior Court of Justice of Catalonia[212] - which established that the 'Mossos' should prevent the referendum from happening and should require the material related to the vote - his subordinates, finally, limited themselves to taking minutes in the occupied schools[213]. At 8.30, National Police also started to intervene in schools.

Before the polling stations opened, at 8.15 a.m., the 'Generalitat' informed that the elections would be held on the universal census. Therefore, citizens would not see their voting rights limited to their usually associated electoral table. Instead, they would be able to exercise it in an alternative way, in any other electoral college, since the supervision of the system would be carried out through a mobile app. In light of such a declaration, the central Government delegitimized the referendum, since it considered irregular the change of the norms 45 minutes before the voting. At the same time, the 'Guardia Civil' hindered and tried to prevent the proper functioning of the Internet, and the mobile app previously mentioned, so the voting could not be held.

Despite the circumstances, the 'Generalitat' managed to open 73% of the 2315 planned polling stations. When confronted with this secessionist success, Colonel Diego Pérez de los Cobos summoned the representatives of the 'Mossos d'Esquadra', National Police and 'Guardia Civil' to a meeting in the Government's Delegation in Catalonia, on the grounds of the coordinated police device settled to boycott the referendum. Neither Trapero nor Ferran López - Head of the Territorial Superior Police Station - assisted to it, though they asked in writing for help to their counterparts in the two other national bodies.

---

[212] Tribunal Superior de Justicia de Cataluña, 'Diligencias Previas 3/2017' (2017)
[213] Ministerio del Interior y Generalitat de Catalunya, 'Acta de la Sesión Extraordinaria de la Junta de Seguridad de Cataluña Del Día 28 de Septiembre de 2017' 2017

Throughout the day, 319 schools were closed, 92 of them by the National Police and the 'Guardia Civil'. To do so, the National Police used force, even rubber balls, in several schools intending to break the human chains that the demonstrators had formed to shield the schools. As a result of it and according to the Medical Emergency Service, 844 people were injured, out of whom 14 were 'Guardia Civiles', and 19 were National Police officers. Nonetheless, only 73 of the total amount of wounded people denounced the aggression.

The reactions to those events were immediate. The demonstrations followed one another from the midday period. On the one hand, there were the ones contrary to the secession of Catalonia from Spain. Those took place in Plaça Catalunya, in Barcelona and in Plaza Mayor, in Madrid. On the other hand, there were the ones in favour of the right to decide and against the repression, that were performed in Puerta del Sol and in front of Valencia's town hall. Likewise, protesters engaged in scratches in hotels where 'Guardia Civil' and National Police were staying, and CGT called on strike for 3rd October, as a sign of disagreement with the police violence used[214] [215] [216].

After the time to vote ended, a press conference of Turull, Junqueras and Romeva, was held. In it, the provisional results of the referendum were made public: 2.020.144 votes for yes, (90,09%); 176.565 for no, (7,87%); 45.586 were blank, (2,03%) and 20.129 were null (0,89%)[217].

---

[214] M Noguer, 'Rajoy Recurre a la Fuerza Policial para Descabezar el Referéndum Ilegal' [2017] El País <https://elpais.com/ccaa/2017/10/01/catalunya/1506820373_674242.html>

[215] D Fonseca, 'Los Hitos que han Marcado el Referéndum de Cataluña' [2017] El País <https://elpais.com/ccaa/2017/10/01/catalunya/1506821947_308965.html>

[216] S Quitian, 'Vergüenza o la Derrota de Rajoy, en la Prensa Internacional' [2017] La Vanguardia <https://www.lavanguardia.com/politica/20171001/431714570415/prensa-internacional-referendum-1o.html>

[217] 'Referéndum Catalunya 2017: Consulta Los Resultados' [2017] La Vanguardia <https://www.lavanguardia.com/politica/20171001/431688032104/referendum-1-o-en-directo.html>

On the 3rd October, ANC, 'Òmnium Cultural', CCOO, UGT, USOC, PIMEC and CECOT, among others, called for a strike, to perform a country stop. Such an act was intended to show discontent with the police action on 1st October and to attract the attention of the international public. The demonstrations took place under the motto 'the streets will always be ours' with an attendance of approximately 700.000 people[218] [219] [220]

A week later, in light of the results of the poll held on the 1st October, president Puigdemont, according to the Law of the Referendum, declared Catalonia's independence. However, immediately after having done so, he suspended its effects to start a dialogue with the Spanish Central Government[221]. The latter's response consisted of the request to clarify if, indeed, the Catalan president had declared the Republic. It also warned that, in case of not obtaining a clear answer, it would proceed to apply article 155 of the Constitution, which legitimizes the Spanish Central Government to compel, using the measures required, Catalonia to comply with the law[222] [223].
At the same time, 'Junts pel Sí' and CUP signed a Declaration of Independence[224].

Shortly after, on the 16th October, Trapero, Laplana, Sànchez and Cuixart appeared and testified in court. Afterwards, judge Carmen Lamela imposed conditional freedom to Trapero and Laplana. However, she sent Sànchez and Cuixart to preventive prison on

---

[218] M Noguer, 'El Independentismo Toma La Calle En Cataluña' [2017] El País <https://elpais.com/ccaa/2017/10/03/catalunya/1507020168_018957.html>
[219] C Montañés, 'Huelga General en Catalunya: Últimas Noticias en Directo' [2017] El Periódico <https://www.elperiodico.com/es/politica/20171003/huelga-general-3-octubre-2017-cataluna-directo-6326497>
[220] 'Sindicatos y Entidades Convocan una Huelga General en Catalunya para el Martes' [2017] El Periódico <https://www.elperiodico.com/es/politica/20171001/huelga-paro-general-cataluna-6325237>
[221] 'Discurso Íntegro en el que Puigdemont Declara la Independencia de Cataluña y la Suspende para Apelar al Diálogo' [2017] El País <https://elpais.com/politica/2017/10/10/actualidad/1507658001_128339.html>
[222] 'La Respuesta Del Gobierno a La Carta de Puigdemont' [2017] El Diario <https://www.eldiario.es/politica/respuesta-Gobierno-carta-Puigdemont_0_698880259.html>
[223] Constitución Española, op. cit. artículo 155
[224] S Quitian, 'Junts Pel Sí y La CUP Firman La Declaración de Independencia de Catalunya' [2017] La Vanguardia <https://www.lavanguardia.com/politica/20171010/431969621960/junts-pel-si-cup-firman-declaracion-de-independencia.html>

the grounds of sedition, for the acts that occurred on the 20th and 21st September. She accused them of encouraging the masses, of preventing the register issued by judge Ramírez Sunyer from happening. According to Lamela, both leaders were in front of the protests: ‘they did not constitute an isolated citizen protest, casual or peacefully convened in disagreement to police actions’ but they ‘are framed within a complex strategy in execution of the road map designed to obtain the independence of Catalonia’ [225].

On the 27th October, took place the reading of the joint proposal of ‘Junts pel Sí’ and CUP, whose positive side stated ‘We constitute the Catalan republic, as an independent and sovereign state, of democratic and social right’ and whose executive part was aimed at opening a constitutive process. After that, the voting procedure finished, the result of which was the approval, with 70 favourable votes, two blanks, ten negative and the abstention of PSC, PP and ‘Ciudadanos’[226].

On that same day, when facing these events, Mariano Rajoy applied article 155 of the Constitution and under its protection, ceased Puigdemont, and the rest of the members of the Government dissolved the Parliament and called Catalan elections for 21st December[227].

Three days later, the State Attorney General's Office presented two complaints, both on the grounds of sedition, rebellion and embezzlement. The first, before the Supreme Court against the politicians that retained their granted privilege, who were Carme Forcadell and the Bureau of the Catalan Parliament[228]. The second, before the

---

[225] F J Pérez, Ó López Fonseca, ‘La Juez Envía a la Cárcel a Jordi Sànchez y Jordi Cuixart, Líderes de ANC y de Òmnium, por Sedición’ [2017] El País <https://elpais.com/politica/2017/10/16/actualidad/1508137356_829076.html>

[226] P Ríos, À Piñol, ‘El Parlament de Cataluña Aprueba la Resolución para Declarar la Independencia’ [2017] El País <https://elpais.com/ccaa/2017/10/27/catalunya/1509105810_557081.html>

[227] ‘Cronología. Los 218 Días de La Primera Aplicación Del Artículo 155 de La Constitución’ [2018] Público <https://www.publico.es/espana/cronologia-218-dias-primera-aplicacion-articulo-155-constitucion.html>

[228] Fiscalía General del Estado, ‘Querella 116’

‘Audiencia Nacional’ and against those that no longer enjoyed such status, who were Carles Puigdemont and his former advisers[229].
On that same day, Puigdemont left Spain to move to Belgium[230].

3.2.3 November 2017

On the 2nd November, judge Carmen Lamela summoned Carles Puigdemont to testify along with the other thirteen former advisers[231]. After the statements, she decided to order preventive detention for Junqueras and seven other former counsellors[232].

About the rest of the accused, as they were already in Belgium and did not attend the citation, judge Lamela issued a European Arrest Warrant against them[233]. Given these circumstances, Antoni Comín, Clara Ponsatí, Lluís Puig and Meritxell Serret went to visit the Belgian police, who released them with precautionary measures[234].

On the 8th November, the Constitutional Tribunal declared the nullity of the Law of Legal and Foundational Transience of the Republic[235]. The next day, they dictated elusive prison for Carme Forcadell on bail of 150,000 euros. Likewise, they also decreed bail for the other four former parliamentarians, in this case, worth 25,000 euros

[229] Fiscalía General del Estado, ‘Querella 118’
[230] ‘Cronología del Periplo de Puigdemont: de su Marcha a Bruselas a su Detención en Schuby’ [2018] Público <https://www.publico.es/politica/cronologia-del-periplo-puigdemont-marcha-bruselas-detencion-schuby.html>
[231] ‘La Audiencia Cita el Jueves y Viernes a Puigdemont y sus Exconsellers para Declarar por Rebelión’ [2017] RTVE <http://www.rtve.es/noticias/20171031/audiencia-cita-jueves-viernes-puigdemont-exconsellers-para-declarar-rebelion/1631564.shtml>
[232] M Pinheiro, ‘La Jueza Decreta Prisión Incondicional para Junqueras y Siete Exconsellers’ [2017] El Diario <https://www.eldiario.es/politica/decreta-prision-incondicional-Junqueras-consellers_0_703779702.html>
[233] ‘El Juez Retira la Euroórden para Puigdemont para Evitar que Bélgica Restrinja los Delitos que le Imputa el Supremo’ [2017] Público <https://www.publico.es/politica/juez-retira-orden-detencion-europea-puigdemont.html>
[234] ibid.
[235] Tribunal Constitucional, ‘Sentencia 124/2017, de 8 de noviembre’ (2017)

and together with the following obligations: to appear weekly before the courts, to not leave the national territory and to deliver their passport. Lastly, Joan Josep Nuet was granted a provisional release[236].

On the 24th November, Pablo Llarena became the judge in charge of the investigation of Carles Puigdemont, the 13 former advisers and Jordi Sànchez and Jordi Cuixart. Thus, the action was no longer under the jurisdiction of the 'Audiencia Nacional' but of the Supreme Court, with the only exception of Trapero and Laplana, who would still be under Lamela's supervision[237].

3.2.4 December 2017

On the 4th December, preventive prison was confirmed for Oriol Junqueras, Joaquim Forn, Jordi Sànchez and Jordi Cuixart. The other former counsellors were granted a 100.000 euros bail[238].

On the next day, Llarena ordered the withdrawal of the European Arrest Warrants. He argued that, since the crime had been attributed to several people and it was endowed with an integrated legal unit, any chance to provide different answers had to be avoided [239].

---

[236] Tribunal Supremo, 'Auto resolviendo sobre la situación personal de D.a María Carme Forcadell Lluis, D. Lluís Corominas Díaz, D. Lluis Guinó i Subirós, D.a Anna Isabel Simó Castelló, D.a Ramona María Barrufet i Santacana, y D. Joan Josep Nuet i Pujals' (2017)

[237] Consejo General del Poder Judicial, 'El Magistrado del Tribunal Supremo Pablo Llarena Asume las Investigaciones Sobre los Exmiembros del Govern de Cataluña y los Presidentes de ANC y Òmnium que Instruía la Audiencia Nacional'

[238] Consejo General del Poder Judicial, 'El Magistrado del Tribunal Supremo Mantiene la Prisión Provisional de Junqueras, Forn y los Presidentes de ANC y Òmnium'

[239] Consejo General del Poder Judicial, 'El Magistrado del Tribunal Supremo Pablo Llarena Deja sin Efecto las Euro-Órdenes Contra Puigdemont y los Exconsellers que se Encuentran en Bélgica'

On the 21st December, elections were held. The victory was for the pro-independence bloc, which won 47.49% of the votes, against the 43.49% obtained by the self-styled constitutionalist bloc[240].

The day after, Llarena decided to expand the ‘Causa Especial’ with the imputation of Artur Mas, Marta Rovira - General Secretary of ERC -, Anna Gabriel - spokeswoman of CUP -, Marta Pascal - General Coordinator of PDeCAT -, Mireia Boya - president of the parliamentary group of CUP - and Neus Lloveras - president of the association of municipalities for independence[241].

3.2.5 May and April 2017

On the 23rd May, Llarena declared four indictments. First, based on the crime of rebellion, he imputed Carles Puigdemont, Oriol Junqueras, Joaquim Forn, Jordi Turull, Raül Romeva, Clara Ponsatí, Josep Rull, Antoni Comín, Dolors Bassa, Jordi Sànchez, Jordi Cuixart, Carme Forcadell and Marta Rovira. Second, on the grounds of embezzlement and disobedience, he accused Meritxell Borràs, Lluís Puig, Carles Mundó, Santi Vila and Meritxell Serret. Third, he charged Lluís Maria Corominas, Lluís Guinó, Anna Simó, Ramona Barrufet, Joan Josep Nuet, Mireia Boya and Anna Gabriel with the crime of disobedience. Finally, he ordered unconditional prison for Jordi Sànchez, Jordi Cuixart, Oriol Junqueras, Joaquim Forn, Jordi Turull, Josep Rull, Raül Romeva, Dolors Bassa and Carme Forcadell alleging flight risk [242].

---

[240] Generalitat de Catalunya, ‘Eleccions Al Parlament de Catalunya 2017’ <http://gencat.cat/economia/resultats-parlament2017/09AU/DAU09999CM.htm>

[241] G Liñán, ‘Llarena Imputa Mas, Rovira, Gabriel, Boya, Pascal y Lloveras’ [2017] El Nacional <https://www.elnacional.cat/es/politica/imputados-rovira-mas-boya-gabriel-lloveras-pascal_223692_102.html>

[242] Tribunal Supremo, ‘Auto de procesamiento de 21 de marzo de 2018’ (2018)

On the same day, Llarena also reactivated the European Arrest Warrants suspended on 5th December and issued a new one against Marta Rovira[243].

On the 25th March, motivated by the recently reactivated order, took place the arrest of Puigdemont, who afterwards was transferred to the prison of Neumünster[244].

On the 5th April, Puigdemont was released on bail of 75.000 euros. The judge in charge of deliberating on his extradition came to know about both of the crimes that supported the demand. On the one hand, regarding the provision of rebellion, analyzed based on the elements of the German high treason crime, he maintained that the requirement of violence did not occur. On the other hand, regarding the embezzlement, he estimated the extradition adequate[245].

3.2.6 May 2018 to February 2019

Judge Llarena decided to investigate the defendants declared *in absentia* - Puigdemont, Comín, Puig, Serret, Ponsatí, Rovira and Gabriel - independently[246].

Meanwhile, after four failed attempts to appoint a Catalan president - starred by Carles Puigdemont[247], Jordi Sànchez[248], Jordi Turull[249] and again, Jordi Sànchez[250] - the Catalan

[243] M Pinheiro, O Solé Altimira, 'El Juez Dicta la Detención Internacional de Rovira y Reactiva la Euroorden Contra Puigdemont y Cuatro Exconsellers' [2018] El Diario <https://www.eldiario.es/catalunya/politica/juez-Llarena-orden_0_753125216.html>

[244] A Carbajosa, 'Puigdemont, Detenido en Alemania tras Entrar en Coche desde Dinamarca' [2018] El País <https://elpais.com/politica/2018/03/25/actualidad/1521973804_797756.html>

[245] E Müller, A Carbajosa, 'La Justicia Alemana Niega la Rebelión y Deja en Libertad a Puigdemont' [2018] El País <https://elpais.com/politica/2018/04/05/actualidad/1522947756_734813.html>

[246] Tribunal Supremo, 'Providencia Magistrado Instructor' (2018)

[247] Tribunal Constitucional, 'Auto 5/2018, de 27 de enero' (2018)

[248] Tribunal Supremo, 'Auto de 9 de marzo' (2018)

[249] S Quitian, 'El Parlament Rechaza la Investidura de Jordi Turull tras la Abstención de la CUP' [2018] La Vanguardia <https://www.lavanguardia.com/politica/20180322/441828264201/parlament-catalunya-rechaza-investidura-jordi-turull-cup.html>

[250] Tribunal Supremo, 'Auto 12 de abril' (2018)

Parliament chose Quim Torra. With his appointment, the application of article 155 of the Spanish Constitution came to an end[251].

On the 10th July, Puigdemont, Junqueras, Turull, Rull, Romeva and Sànchez were suspended on their public functions[252].
On the 19th July, Llarena rejected the extradition of Puigdemont to be tried only for the crime of misappropriation of public funds. He also withdrew the arrest warrants against Comín, Puig, Serret, Ponsatí and Rovira[253].

On the 25th October, it was agreed to dismiss the case for Mas, Lloveras and Pascal[254].

On the 27th December, those prosecuted for the crime of disobedience were referred to the Superior Court of Justice of Catalonia[255].

On 12th February began the trial of the Catalan independence process[256].

---

[251] 'El Gobierno Permite el Final del 155 al Publicar el Nombramiento de los Consellers de la Generalitat' [2018] El Diario <https://www.eldiario.es/catalunya/politica/Gobierno-publica-nombramiento-consejeros-Generalitat_0_777622251.html>
[252] Consejo General del Poder Judicial, 'El Juez del Tribunal Supremo Pablo Llarena Acuerda la Suspensión de Funciones de Carles Puigdemont y de los Otros Cinco Diputados Procesados por Rebelión'
[253] Tribunal Supremo, 'Auto de 19 de julio' (2018)
[254] Consejo General del Poder Judicial, 'El Tribunal Supremo Confirma la Conclusión del Sumario de la Causa del "Procés" y Abre el Juicio Oral a los Procesados'
[255] Tribunal Supremo, 'Auto de 27 de diciembre' (2018)
[256] 'Comienza el Juicio del "Procés"' [2019] El Periódico <https://www.elperiodico.com/es/politica/20190212/comienza-juicio-proces-primer-dia-7299311>

3.3 PRESENTATION OF THE TRIBUNAL, ACCUSATIONS AND REQUESTS FOR PUNISHMENT

The Supreme Court is the highest appeal in every jurisdictional order, except for guarantees and constitutional rights, which are entrusted to the Constitutional Court[257].

‘Causa Especial’ is being judged by the Second Chamber of this tribunal, which is the criminal chamber. It must be known that its jurisdiction comprises, among other topics: ‘the resources of cassation, revision and other extraordinary ones in penal matters that establishes the Law’ and ‘the instruction and prosecution of the cases against the president of the Government, presidents of the Congress and the Senate, president of the Supreme Court and of the General Council of the Judicial Power, president of the Constitutional Court, members of the Government, deputies and senators, council members of the Judicial Power, magistrates of the Constitutional Court and the Supreme Court, president of the National Court and of any of its chambers and of the Superior Courts of Justice, State Attorney General, prosecutors of the Supreme Court Chamber, president and counselors of the Court of Accounts, president and councilors of the Council of State and Ombudsman, as well as of the causes that, if applicable, determine the Statutes of Autonomy’[258].

In this trial, the jurisdiction of the Supreme Court is justified because of the political positions held by the accused.

[257] Consejo General del Poder Judicial, ‘Tribunal Supremo’ <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/>

[258] Consejo General del Poder Judicial, ‘Salas Ordinarias - Sala Segunda - Funciones’ <http://www.poderjudicial.es/portal/site/cgpj/menuitem.65d2c4456b6ddb628e635fc1dc432ea0/?vgnextoid=3e5b2daed2278510VgnVCM1000006f48ac0aRCRD&vgnextfmt=default&vgnextlocale=es_ES>

About the litigation, the accused face three different allegations: the popular accusation, the state advocacy and the prosecution.
Concerning the first, it is embodied by the political party VOX, represented in the court by its secretary-general, Francisco Javier Ortega Smith-Molina, and the deputy secretary of legal affairs, Pedro Fernández Hernández[259] [260]. According to them, the accused should be divided into three groups. Primarily, Oriol Junqueras, Jordi Turull, Raül Romeva, Josep Rull, Dolors Bassa and Joaquim Forn ought to be charged with rebellion, criminal organization and embezzlement. Consequently, they ask for them seventy-four years of imprisonment together with twenty years of absolute disqualification for public office and of special disqualification. Secondly, they believe that Jordi Cuixart, Jordi Sànchez and Carme Forcadell deserve sixty-two years of imprisonment, in addition to twenty years of absolute disqualification for public office and of special disqualification, on the grounds of rebellion and criminal organization. Lastly, they demand Meritxell Borràs, Carles Mundó and Santi Vila to be condemned for criminal organization and embezzlement, thus facing twenty-four years of imprisonment, plus twenty years of special disqualification and of absolute disqualification for public office, in conjunction with a 216.000€ fine.

Regarding state advocacy, it demands five different convictions. For Oriol Junqueras, it claims him to be condemned to sedition and embezzlement and, therefore, to be punished with twelve years of imprisonment and of absolute disqualification. With respect to Jordi Turull, Raül Romeva, Josep Rull, Dolors Bassa and Joaquim Forn, it asks to sentence them to sedition and embezzlement, with a penalty of eleven years and a half of imprisonment and absolute disqualification. About Jordi Sànchez and Jordi Cuixart, it charges them with sedition added to eight years of imprisonment and of absolute disqualification. When considering Carme Forcadell, it also requests her to be

[259] 'Javier Ortega Smith-Molina' Libertad Digital <https://www.libertaddigital.com/personajes/javier-ortega-smith-molina/>.
[260] 'Pedro Fernández, Vicesecretario Jurídico de VOX, Cabeza de Lista Al Congreso Por Zaragoza' <https://www.voxespana.es/noticias/pedro-fernandez-vicesecretario-juridico-de-vox-cabeza-de-lista-al-congreso-por-zaragoza-20190322>.

punished due to sedition but it raises the condemn two years. Finally, it accuses Meritxell Borràs, Carles Mundó and Santi Vila of embezzlement and disobedience and demands for them seven years of imprisonment, ten years of absolute disqualification, a 30.000€ fine and twenty months of special disqualification for public office.

In relation to prosecution, it groups the accused into four condemns. First, it charges Oriol Junqueras with rebellion and embezzlement and it asks for twenty-five years of imprisonment and of absolute disqualification. Secondly, it requests sixteen years of imprisonment and of absolute disqualification, due to rebellion and embezzlement, for Jordi Turull, Raül Romeva, Josep Rull, Dolors Bassa and Joaquim Forn. In regard to Jordi Sànchez, Jordi Cuixart and Carme Forcadell, prosecution demands a condemn based on rebellion along with seventeen years of imprisonment and of absolute disqualification. Eventually, it requests for Meritxell Borràs, Carles Mundó and Santi Vila, to be convicted for embezzlement and disobedience, as well as sixteen years of absolute disqualification, a 30.000€ fine and twenty months of special disqualification for public office.

Even though there are more defendants than the ones that have been previously exposed, only those being currently prosecuted by the Spanish Supreme Court have been taken into consideration.

3.4 ANALYSIS

This section will examine the crimes of rebellion, sedition and disobedience. This diagnosis will follow the different phases stated at the Spanish Criminal Code for the resolution of a legal case. These stages are eliminatory, in the sense that, if the first is not overcome, the conduct is already considered not typable. Therefore, it is no longer necessary to get to know about the next ones. In this case, however, to carry out an analysis as detailed as possible, all steps will be studied.

At the same time, when conducting the subjective reviewing, the investigation will discriminate on the charges that the political and civil leaders held.

3.4.1 Rebellion

The first thing that should be studied is whether the facts constituted a voluntary action or if, on the contrary, were not willful. Given the circumstances, none of the causes that foresee the exclusion of the act concur: neither the irresistible force nor the reflex movements nor the unconsciousness. Therefore, it must be determined if the conduct can fall under the scope of a crime.

On the one hand, the *actus reus* demands the fulfilment of the specific requirements as well as the criminal disapproval of the conduct.

As for the first, there must have been a violent and public uprising to, in this case, declare the independence of a part of the national territory. Regarding the last two requirements - its publicity and its intent - there is no doubt that they had been met. However, when the action is labelled as violent, a great controversy awakes. While it is true that the demonstrations held in front of the Economy headquarters led to the deterioration of three cars of the 'Guardia Civil', so is the fact that, beyond this episode, there was no exercise of violence by the protesters. On the contrary, it was the National Police and 'Guardia Civil' the ones that did use excessive force against the protesters to prevent the holding of the referendum.

Concerning the criminal disapproval, it must be taken into account that the referendum took place because the political party ruling at the time, had won the democratic elections after promising the held of the balloting.

On the other hand, the *mens rea* only concerns willful acts. In this case, it is evident that the referendum was possible thanks to the previous preparation carried out by the independentist sphere. Nevertheless, about the demonstration held on September 20 and

21, it is not clear whether Sànchez and Cuixart led it or if it was a spontaneous call up that gathered the people there. Be it as it may, knowing who indeed led the parade is not essential to convict on the grounds of rebellion. As stated in the Spanish Criminal Code, in case the conductors are not known, those who exercise management or representation functions will be considered as such[261].

Once the actions performed have been the object of study, it is the turn to question the possible existence of causes of justification, be it justifiable defence, state of necessity or fulfilment of a claim, or lawful exercise of a prerogative. Neither of the first two exemptions are applicable here. Nevertheless, the realization of a right could be brought up.

Following, on a second instance, a three-phase process must be carried out to determine the guilt of the embedding. First of all, the knowledge of the accused on the unlawfulness of the crime attributed to him or her ought to be proven. Secondly, the act needs to be imputable to the defendant. Lastly, there shall be no circumstances of unenforceability.

About the vice president, aware of the impossibility of carrying out a referendum under the protection of the Organic Law 2/1980[262], pushed for the elaboration of a law, together with the deputies of the parliament, that would provide them with the legal framework to celebrate it. That is why the Law of the Binding Referendum of Self-Determination on the Independence of Catalonia was approved. Nevertheless, two days later, the courts declared it unconstitutional.

Notwithstanding the above, according to the hierarchy of the norms that apply to Spain, international laws and treaties enjoy primacy over any other type of rules. Therefore, the claim of self-determination must be taken into account, since it is a universal right that could safeguard the illegality that Spanish laws understand that occurs. For it to be

---

[261] FJ Álvarez García, AC Andrés Domínguez, PM De La Cuesta Aguado, A Gutiérrez Castañeda, C Sánchez Morán, B San Millán Fernández, V Ileana Dipse, *Código Penal y Ley Penal Del Menor* (23rd edn, Tirant Lo Blanch 2015)

[262] Jefatura del Estado, Ley Orgánica 2/1980, de 18 de enero, sobre regulación de las distintas modalidades de referéndum 1980

applicable, the holder of the prerogative and its duty bearer need to be identified, and also the consequences that its granting could entail. However, it is not yet clear neither who is entitled to the right to self-determination - as there is no legal definition on the concept of people - nor the follow-up actions that would derive from it[263]. In light of this, Junqueras could argue to have acted under the shelter of the texts mentioned above, at the time of issuing the laws, to enable the holding of the referendum. Thus, his acts would not be considered illegal. Moreover, even in the case that the approval of these laws would not fall under the protection of the international treaties, the concurrence of prohibition error could be argued, since the scope of the right to self-determination is not clear.

For the imputability, it ought to be said that none of the causes that could exempt it are present, these being: the minority of age, abnormal or psychic alteration and transient mental disorder, full intoxication and alteration of the perception of birth or childhood.

Lastly, no circumstances of unenforceability exist, neither insurmountable fear nor an exculpating state of need.

Regarding the president of the Catalan Parliament, she read and passed laws whose aim was the effective creation of the Catalan Republic. In doing so, she did not follow the usual procedures, but the abbreviated ones and, in some cases, the approval of these was carried out without the presence of the opposition. About the content of the laws and the president's awareness of its illegality, what has been mentioned in the vice president's section needs to be reproduced. As for the process adopted, even though it prevented the interposition of some of the appeals that are usually allowed, the prohibition was completely legal, because the parliamentary majority had previously accepted such a denial. Regarding the last point, the Parliament Regulation foresees that attending to the voting procedures is not only a right but a duty as well. Therefore, since it was the parliamentarians themselves who decided to leave the chamber, their absence

[263] D Thürer, T Burri, 'Self-Determination' (2008) Oxford Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e873>

constitutes, on the one hand, a breach of their duties and, on the other side, a violation of their right by the Parliament[264].
Regarding the imputability and enforceability, neither the causes that could exempt the first nor the second materialized.

Concerning the former advisors, none of them participated in violent acts. Their accusation is due to the essential role they played because of their position, both by promoting and allowing. The knowledge of the facts described both for Junqueras and Forcadell is again applicable to their conduct.
Lastly, regarding the imputability and enforceability, none of the causes foreseen for either of them occur.

Thirdly, modifying circumstances of responsibility must be taken into account since they can aggravate or mitigate liability. In this case, three articles of the Spanish Criminal Code could be applicable[265]. On the one hand, articles 20.7 and 21st since they establish that, whoever commits a crime due to the fulfilment of a duty or in the legitimate exercise of a right, will see his or her responsibility attenuated. On the other hand, article 22nd states that to prevail the public nature of the culprit will be an aggravating motive of accountability.

As for the concurrence of crimes, this final phase does not apply to this investigation, as only rebellion, sedition and rebellion are being studied, and they are not complementary but subsidiary crimes. Therefore, no simultaneity would ever be possible between any of the three offences.

All in all, it must be understood that there is no crime of rebellion. Such consideration arises for a host of reasons.

[264] Generalitat de Catalunya, Reglament del Parlament de Catalunya
[265] Jefatura del Estado, Ley Orgánica 10/1995 de 23 de noviembre 1995

In the first place, because in none of the conducts that are prosecuted, there is violence. In this way, all the elements necessary to accommodate the behaviours in the crime above no longer concur.

Secondly, about criminal disapproval, although today this requirement is indeed met in the Spanish legislation, so is the fact that its criminalization should be reconsidered. In case of a positive response to that, it ought to be determined whether the prosecuted acts fall under the shelter of exercise of duty, foreseen in article 20.7 of the Criminal Code. For the latter provision to be applicable, the accused must have been trapped in between two self-excluding assignments. On the one hand, lies an obligation derived from the job. On the other hand, there is a commitment not to act according to that same obligation, as it constitutes a crime[266]. In the case at hand, it could be argued that the politicians were confronted with both the duty to represent the citizens and the responsibility to act according to law.

However, there are five further requisites for the exempt from being applicable[267]. First, it constitutes a legitimate exercise of the right, meaning that there is a legal title that enables the action. As for the politicians, the condition is fulfilled, as the parliamentarians only enjoyed this condition, after a law granted it to them. Secondly, it ought to be a personal right - right to participate in politics and right to self-determination - confronted to an objective right - the preservation of the legality -. Finally, and embodying the trump, the action shall be legitimate, meaning that its application is not possible if, any regulation regarding the concrete action prosecuted, has expressly banned it. The fourth and fifth conditions would be to act with due diligence and to try to protect a right as worth it as the one breached, respectively.

As for the right to self-determination, its invocation could also occur. In this sense, the acts perpetrated could be under the protection of international law. However, such an

---

[266] Guias Juridicas Wolters Kluwer, 'Ejercicio Legítimo de un Derecho, Oficio o Cargo' <https://guiasjuridicas.wolterskluwer.es/Content/Documento.aspx?params=H4sIAAAAAAAEAMtMSbF1jTAAAUMjUyMLtbLUouLM_DxbIwMDCwNzA7BAZlqlS35ySGVBqm1aYk5xKgAVq0ZeNQAAAA==WKE#I10>

[267] Iberley, 'El Cumplimiento de un Deber o el Ejercicio de un Derecho como Causa de Justificación de los Delitos <https://www.iberley.es/temas/cumplimiento-deber-ejercicio-derecho-causa-justificacion-delitos-48331>

allegation would be controversial. On the one hand, when dealing with facts whose aim is to decide the political future of the Catalan people, these would be under the protection of the power of self-determination. On the other hand, since the Spanish State is the guarantor of this right, having acted without its authorization, could entail the denial of such coverage. Be it as it may, it is clear that the content of this right could have led to confusion. Due to that, the prohibition error, foreseen in article 14.3 of the Criminal Code, could be pleaded as well.

According to jurisprudence, this exemption can be applied in two different ways: directly or indirectly[268]. As for the first, the error must occur regarding the content of a prohibitive rule. In the case at hand, the allegation of this provision is not possible, since the shelter potentially provided by the international laws has a positive content. Concerning the second, the mistake shall be about the justification cause. Therefore, it could be brought up whenever it is sufficiently proved. To do so, the possibility of the author to be informed about the right shall be analyzed[269], according to the vincibility of the mistake which, in turn, depends on the urgency to act and the access to information capable of underlining the wrongfulness[270]. When examining the circumstances of the case, neither necessity nor impossibility to access information concur. Hence, this exemption must be disregarded.

3.4.2 Sedition

Again, the analysis must begin by stating that, in effect, the acts perpetrated were the result of voluntary action. Thus, none of the causes that foresee the exclusion of the behaviour are met: neither the irresistible force nor the reflex movements nor the unconsciousness. Once this is established, it must follow the determination of whether the practice prosecuted coincides with any of the crimes provided for in the Spanish Criminal Code.

---

[268] Audiencia Provincial de Madrid, 'Sentencia 208/2007, de 31 de julio' (2007)
[269] Tribunal Supremo, 'Sentencia 755/2003, de 28 de mayo' (2003)
[270] Tribunal Supremo, 'Sentencia 601/2005, de 11 de mayo' (2005)

First of all, the *actus reus* demands the fulfilment of the specific considerations as well as the criminal disapproval of the conduct.

As for the requirements, there must be an unrestricted and tumultuous uprising that prevents, by force or illegally, compliance with the laws or the legitimate functions of public officials. About the open condition, no doubt was satisfied in all of the acts that have given rise to the accusation. Instead, when discussing the tumultuous qualification, it is clear that this adjective was not appropriate. According to the Spanish dictionary, a behaviour can be labelled as such if it is performed by a more or less numerous group of people who act in a disorganized manner[271]. Therefore, none of the events can be considered under the scope of the adjective, as they were anything but disorganized.

Regarding the demonstrations in September and according to the claimant's words, Jordi Sànchez and Jordi Cuixart were the ones who performed the call-up. Thus, no anarchy lied behind the gathering and, if argued otherwise, the accusation would contradict itself. However, even in the case that such authorship could not be proved, the manifestation would still not be described as tumultuous, as although there was no clear leader, the protesters organized themselves to relieve one another. About the referendum, there is no doubt that without proper management, it could not have been held.

Finally, concerning the consequences, the concentration of 20th and 21st September and the holding of the referendum on 1st October must be analyzed separately. About the first, the officials in charge of the registry could develop the task entrusted, even though they did not consider it safe to leave the building until the next day, due to the gathering of people at the door of the construction. Therefore, the consequences required did not happen. As for the second, the non-compliance of the laws and judiciary decisions is indisputable.

---

[271] Real Academia Española, 'Diccionario de La Lengua Española' <https://dle.rae.es/?id=atxUXas>

For the criminal disapproval, it must be taken into account - just as it was when discussing rebellion - that the referendum took place as a result of the fulfilment of an electoral promise which, at the time, granted the parliamentary majority to the independence movement.

As for the *mens rea*, it is again restricted to willful acts. In this case, there is no doubt that by holding the referendum, the Government was disobeying the laws, as well as the judicial decisions. Not so in the case of the demonstrations on 20th and 21st September, since such a congregation did not impede the registration that the authorities had to perform.

On a second stage, it is the culpability that should be determined. However, given that neither of the conducts fulfilled the conditions for being considered seditious, it is pointless to determine whether a justification cause lied down them. Still, if someone argued that the requirements for sedition were met, it could nevertheless be alleged the fulfilment of or legitimate exercise of a right.

Concerning the vice president, it is impossible for him to claim ignorance about the illegality that, according to Spanish legislation, was taking place. Since, before the effective holding of the referendum, every one of the laws that made it possible was resorted to, later being declared unconstitutional. However, the ultimate resort was, again, the protection guaranteed by the right to self-determination of peoples. That is why Junqueras could think that his acts were under the protection of international law. Besides, even if he was wrong - by his behaviour falling outside the scope of the right - a mistake of prohibition could be alleged, due to the level of abstraction regarding the definition of its extension. Nevertheless, both the justification and the excuse ought to be disregarded, based on the argumentation exposed regarding the crime of rebellion.
Concerning imputability, none of the exemption causes occur. Likewise, no circumstances of unenforceability are met.

About the president of the Catalan Parliament, what was previously stated in the rebellion analysis is applicable in this section. She was aware that the content of the laws passed was not following the Spanish legislation. However, she could have trusted on the coverage of international laws.
As for the imputability and enforceability, neither of them could be alleged, since none of the causes that foresee their application are met.

Relating to the former advisors, they did participate in the breach of Spanish laws, being aware of doing it. However, the belief that international law protected them or, failing this, that there was a concurrence of an error of prohibition could be invoked again.
Finally, about the unimputability and unenforceability, it should be stated that none of them proceeded.

In the third phase, modifying circumstances of responsibility come into play. In this section, articles 20.7, 21 and 22 should be brought up again, the first two being attenuating and the last one, aggravating.

As for the concurrence of crimes, as stated above, does not apply to this investigation.

To sum up, the perpetration of the crime of sedition is not appreciated. The previous statement is grounded on the reasons showing up next.
First of all, the required tumultuous element of the public rising is not fulfilled. Second, the consequences needed to occur - being the impossibility to conduct the public's official duties - did not happen either. Therefore, as the conditions are cumulative, the actions performed can no longer be placed under the scope of the crime mentioned above.

To end, the charges against Jordi Sànchez and Jordi Cuixart deserve an aside consideration. Currently, the call up for a demonstration in front of the Economy headquarters has not been able to be attributed in a proven way to either of the two.
Once the authorship is determined, if positively proven, the *mens rea* would be analyzed again, since the intention behind the gathering could respond to the crime of sedition. Otherwise, it would be ruled out. In either case, however, a further circumstance must be proven in order to determine the *actus reus*: the concentration's goal had to be the prevention of the exercise of the duties entrusted to the public civil service from happening - in this case, the registration of the seat - fact which has already been proven to the contrary. So, any of the routes aimed at establishing the criminality of the act become invalid.

3.4.3 Disobedience

As it has been done in the previous analysis, the first question to be resolved is to determine if there has been an action or if, on the contrary, the conduct was unwillful. In this case, neither the allegation of irresistible force nor the reflex movements nor the unconsciousness would succeed.
In light of the established the above, it is time to analyze whether any of the criminal types provided for in the Spanish Criminal Code foresee a suitable clause for the reported behaviour.

For the *actus reus* to occur, the conduct must comply with the requirements of the offence that can potentially be imputed, and it also has to be criminally disapproved.
Regarding the first, the behaviour about to be punished should consist of the refusal of public officials to comply with judicial resolutions. As for the illegal objection, they could again have alleged the application of the international treaties or, failing that, the argumentation of the prohibition error. Nevertheless, reproducing what has been stated for rebellion and sedition, neither of the excuses are applicable.

About the *mens rea*, it is necessary to take into account that it is restricted to willful acts. Given the situation, it is clear that the former advisors acted in the way they did as a result of a personal choice since some others resigned from their positions.

About the causes of justification, neither legitimate defence nor a state of necessity are present. However, the defendants could allege the fulfilment of a right or its actual exercise. Still, it has been proved that these excuses would not be suitable for the situation.

On a second stage of the examination, a three-phase analysis must be carried to establish the liability. First, collect evidence that proves the awareness of the accused regarding the unlawfulness of his behaviour. Second, the act must somehow be linked to the accused. Finally, determine that no circumstances of unenforceability are applicable.

Regarding the former advisors, all of them were conscious that they were acting against the law and the Spanish judicial decisions, as both of them are accessible to the broad public. However, it comes again into play the matter of the scope of the international right to self-determination.
Ultimately, neither the causes of unimputability nor unenforceability occur.

When entering into the third phase of the analysis, the consideration of modifying circumstances of responsibility is crucial due to the role they can play, either in aggravating or in mitigating liability. Here, three articles of the Spanish Criminal Code must be taken into account[272]. Section 20.7 and 21st limit the responsibility on the grounds of due fulfilment of a duty. Alternatively, article 22nd aggravates the liability of the person that used his or her public office to take advantage.

[272] Ley Orgánica 10/1995, op.cit. artículos 20.7, 21 y 22

Regarding the last step, the concurrence of crimes, as stated before, is not part of the object of study.

To conclude, the appreciation of the crime of disobedience lies on the excellent argumentation of two defences. In the first place, the invocation of the right to self-determination and, secondly, the legitimate exercise of a license. However, according to the same arguments stated both regarding the crime of rebellion and sedition, they ought to be disregarded.
Therefore, disobedience did occur and cannot be justified under either the right to self-determination nor the legitimate exercise of power. Likewise, neither the aggravations nor the mitigations are applicable. On the one hand, article 22 of the Criminal Code hardens the punishment whenever the perpetrator has taken advantage of his status as a public official. However, this circumstance is already part of the criminal type, so that it can not lead as well to an increase in penalty. Besides, articles 20.7 and 21 of the same compilation are not either suitable, since their use is grounded on the same reasons as the legitimate exercise of power. Therefore, if one is not pertinent, no more is the other.

IV. CONCLUSIONS

After months of research, trying to gather as much information as possible about the right to freedom of expression, its extension and application in the Spanish state, there are multiple and different conclusions that one can reach.

Primarily, the prerogative of freedom of expression is only possible thanks to the convergence of different fields. It is, therefore, an interdisciplinary object of study in which philosophy, politics and law participate. For this reason, the existence of a democracy that guarantees a division of powers is necessary for its effective fulfilment. Likewise, the ideal regime would reduce to a minimum the limitation of the parliaments of its citizens and, in the case of being forced to censor the expression, the constraint needs to meet the criteria of legality, legitimacy and proportionality.

Concerning the substantive aspects, high levels of abstraction surround the set of legislation on freedom of expression. In the first place, by not regulating absolute rights, the content of the latter may be limited, in case of colliding with other provisions. Faced with this situation, a weighting of the rights is carried out, and it is determined which one should prevail.

In this regard, when analyzing the 'Causa Especial', it is clear that for the different accusations, freedom of expression and of manifestation are confronted with the security and integrity of the national territory. For this reason, they charged the prisoners with rebellion, sedition and disobedience. However, according to the analysis carried out previously, the conditions required to ascribe the conduct of the defendants to any of the first two crimes are not fulfilled. In view of this, it is no longer necessary to consider a balancing between the right to freedom of expression and the right to security and integrity of the national territory, for the simple reason that the latter right has not been violated. Nevertheless, when considering disobedience, as the behaviour of

the defendants does coincide with the provisions foreseen, the weighting comes into play. In this situation, it is very complicated to know in advance whether the subject is covered or not by the freedom of expression and therefore, to determine if the right has been violated. As if that was not enough, it adds to this legal uncertainty, the lack of international guidelines regarding the content of this right, since the laws of inter or multinational scope grant a high level of appreciation to the states.

In light of this, even though the citizen has been provided with many and different tools to which it can resort to, it is in the end, the national State the one that will be deciding how to act. Not only because the territory enjoys discretionary powers, but also due to the lack of legal enforcement that international decisions suffer. Meaning that, although the measures agreed on fall outside the scope of internal facultative decisions, no further mechanisms can be entrusted the task of compelling the states to apply them. Moreover, even in those cases in which they could push for the compliance since the enrollment to both the treaties and the organizations are on a voluntary basis, they do not want to risk the resign of any country. Otherwise, they would not dispose of any tool to be able to supervise the territory's behaviour.

Additionally, many international mechanisms do not allow individuals to interpose their own claims, but they only permit the states to do so. Even in the cases they allow personal petitions, in order to gain access to the tools that the supranational treaties created, people ought to deplete all possible national appeals. Such an obligation, even though it reinforces the country sovereignty, entails the pass by of many years during which the citizen is granted neither legal certainty nor genuine justice.

Therefore, frequently, the most effective measure for a change is the 'shaming and blaming' that society can star. Since against them, even repression proves useless. As Alexis de Tocqueville pointed out already two centuries ago, 'in our days, an oppressed

citizen has only one mean to defend himself, which is to address the entire nation, and if the latter is deaf, the human race'.[273]

[273] A Magdaleno Alegría, 'Los Límites de las Libertades de Expresión e Información en el Estado Social y Democrático de Derecho' (Colección Monografías, Madrid 2006)

BIBLIOGRAPHY

Articles:
A A Cançado Trindade, 'The Seven Decades of the Universal Declaration of Human Rights (1948-2018) and the Necessary Preservation of its Legacy' (2018) 97-140 Revista Facultad Direito UFMG

A Balcells, 'El Projecte d'Autonomia de la Mancomunitat de Catalunya del 1919 i el seu Context Històric' (2010) <https://www.parlament.cat/document/cataleg/48003.pdf>

A Wehbé,' Increasing International Legal Protections for Freedom of Expression' [2018] Notre Dame Journal of International and Comparative Law

C Gayà, ' Escac a la Llibertat d'Expressió' (2018) Connexions

D J Harris, M O'Boyle, E P Bates, C Buckley, 'Law of the European Convention on Human Rights', [2014] Oxford University Press

D Spielmann, 'Recent trends in the case-law of the European Court of Human Rights. Is the Universal Declaration of Human Rights obsolete?' (2010) 167–188 Revista Facultad Direito UFMG, 56

D Thürer, T Burri, 'Self-Determination' (2008) Oxford Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e873>

H Cannie, D Voorhoof, *The abuse clause and freedom of expression in the European Human Rights Convention: an added value for democracy and human rights protection?* (29th edn Netherlands Quarterly of Human Rights, Netherlands 2011)

I E Pitarch, 'El President Macià i El Parlament de Catalunya' (2009)

J L Gómez Mompart, 'L'Inici de la Llibertat d'Expressió a l'Estat Espanyol' (1987) Col.legi de Periodistes de Catalunya

J Martí Gómez, 'Els Límits de la Llibertat d'Expressió' (1984) Premsa i Justícia

J Von Bernstorff, 'The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law' (2018) The European Journal of International Law

L Woods, 'Freedom of Expression and Information' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing, London 2014)

M Cheema, A Kamran, *The Fundamentalism of Liberal Rights: Decoding the Freedom of Expression Under the European Convention for the Protection of Human Rights and Fundamental Freedoms* (Loyola University Chicago International Law Review, Chicago 2014)

O Hoxhaj, 'Freedom of Expression' (2013) 168-177 Tribuna Juridică 3.6

Books:
A Magdaleno Alegría, ‘Los Límites de las Libertades de Expresión e Información en el Estado Social y Democrático de Derecho’ (Colección Monografías, Madrid 2006)

FJ Álvarez García, AC Andrés Domínguez, PM De La Cuesta Aguado, A Gutiérrez Castañeda, C Sánchez Morán, B San Millán Fernández, V Ileana Dipse, *Código Penal y Ley Penal Del Menor* (23rd edn, Tirant Lo Blanch 2015)

F Ramos Méndez, ‘El Sistema Procesal Español’ (Atelier, Barcelona 2013)

H Kamen, ‘España y Cataluña. Historia de una Pasión’ (La Esfera de los Libros, Madrid 2014)

K Vasak, ‘La Convention Européene des Droits de l’Homme’ (Paris 1964)

S Mir Puig, M Corcoy Bidasolo, ‘Protección Penal de la Libertad de Expresión e Información’ (Tirant lo Blanc, Valencia 2012)

Case law:
Abogado del Estado, Recurso de inconstitucionalidad 4334-2017 2017

Appleby and Others v UK (App no. 44306/98) ECHR 6 May 2003

Audiencia Nacional, ‘Sentencia 4/2017 de 21 de febrero ’(2017)

Audiencia Nacional, ‘Sentencia 8/2014 de 31 de marzo’ (2014)

Audiencia Provincial de Madrid, ‘Sentencia 208/2007, de 31 de julio’ (2007)

Audiencia Provincial de Valencia, ‘Sentencia 501/2019, de 20 de mayo’ (2019)

Barberà, Messegué and Jobardo vs. Spain (App no. 10590/83) ECHR 6 December 1988

Case 15890/89 *Jersild v. Denmark* [1994] ECHR

Case 5493/72 *Handyside v. UK* [1976] ECHR

Fiscalía General del Estado, ‘Querella 116’

Fiscalía General del Estado, ‘Querella 118’

Herri Batasuna and Batasuna vs. Spain (App nos. 25803/04 and 25817/04) ECHR 30 June 2009

Recurso de Inconstitucionalidad n.o 8045-2006, en Relación con Diversos Preceptos de la Ley Orgánica 6/2006, de 19 de Julio, de Reforma del Estatuto de Autonomía de Cataluña.’

Riera Blume and Others vs. Spain ECHR 14 October 1999

Sadak and Others v. Turkey (App nos. 29900/96, 29901/96, 29902/96 and 29903/96) ECHR 17 July 2001

Sahin Alpay v. Turkey (App no. 16538/17) ECHR 20 March 2018

Tribunal Constitucional, 'Auto 5/2018, de 27 de enero' (2018)

Tribunal Constitucional, 'Sentencia 124/2017, de 8 de noviembre' (2017)

Tribunal Constitucional, 'Sentencia 136/1994, de 9 de mayo' (1994)

Tribunal Constitucional, 'Sentencia 177/2015, de 22 de julio' (2015)

Tribunal Constitucional, 'Sentencia 193/2011, de 12 de diciembre' (2011)

Tribunal Constitucional, 'Sentencia 24/2015, de 16 de febrero' (2015)

Tribunal Constitucional, 'Sentencia 31/2010, de 28 de junio' (2010)

Tribunal Constitucional, 'Sentencia 42/2014 de 25 de marzo' (2014)

Tribunal Superior de Justicia de Cataluña, 'Diligencias Previas 3/2017' (2017)

Tribunal Supremo, 'Auto 12 de abril' (2018)

Tribunal Supremo, 'Auto de 19 de julio' (2018)

Tribunal Supremo, 'Auto de 27 de diciembre' (2018)

Tribunal Supremo, 'Auto de 9 de marzo' (2018)

Tribunal Supremo, 'Auto de procesamiento de 21 de marzo de 2018' (2018)

Tribunal Supremo, 'Auto resolviendo sobre la situación personal de D.a María Carme Forcadell Lluis, D. Lluís Corominas Díaz, D. Lluis Guinó i Subirós, D.a Anna Isabel Simó Castelló, D.a Ramona María Barrufet i Santacana, y D. Joan Josep Nuet i Pujals' (2017)

Tribunal Supremo, 'Providencia Magistrado Instructor' (2018)

Tribunal Supremo, 'Sentencia 1070/2019, de 2 de abril' (2019)

Tribunal Supremo, 'Sentencia 224/2010, de 3 de marzo' (2010)

Tribunal Supremo, 'Sentencia 354/2017, de 17 de mayo' (2017)

Tribunal Supremo, 'Sentencia 5156/1988, de 4 de Julio' (1988)

Tribunal Supremo, 'Sentencia 52/2018, de 31 de enero' (2018)

Tribunal Supremo, 'Sentencia 59/2019, de 16 de enero' (2019)

Tribunal Supremo, 'Sentencia 755/2003, de 28 de mayo' (2003)

Tribunal Supremo, 'Sentencia 646/2018, de 14 de diciembre' (2018)

Tribunal Supremo, 'Sentencia 748/2015, de 19 de febrero' (2015)

Tribunal Supremo, ‘Sentencia 755/2003, de 28 de mayo’ (2003)

Tribunal Supremo, ‘Sentencia 79/2018, de 15 de febrero’ (2018)

Turkish Criminal Code

Documentaries:
A Elfa, R Belis, R. ‘Llibertats empresonades’ (2018) Corporació Catalana de Mitjans Audiovisuals

A Longoria, G Olivares ‘Dos Cataluñas’ (2018) Netflix

Encyclopedias:
C Molinero i Ruiz i P Ysàs i Solanes, ‘De la Dictadura a la Democràcia 1960-1980’ a *Història, Política, Societat i Cultura del Països Catalans* (Fundació Enciclopèdia Catalana, Barcelona 1998

E Belenguer i Cebrià i C Cuadrada i Majó, ‘La Forja dels Països Catalans’ a Borja de Riquer i Permanyer (dir), *Història, Política, Societat i Cultura dels Països Catalans* (Fundació Enciclopèdia Catalana, Barcelona 1996)

G Caballer, ‘La Mancomunitat de Catalunya’ a *Som una Nació. Catalunya Triomfant. Temps de Rebel.lia i Autogovern* (Edicions 62, Barcelona 2006)

Gran Enciclopèdia Catalana, ‘Exèrcit Popular Català’
<https://www.enciclopedia.cat/EC-GEC-0522757.xml>

Gran Enciclopèdia Catalana, ‘Junts Pel Sí’ <https://www.enciclopedia.cat/EC-GEC-21786573.xml>

H Raguer i Suñer, ‘De la Gran Esperança la Gran Ensulsiada 1930-1939’ a *Història, Política, Societat i Cultura del Països Catalans* (Fundació Enciclopèdia Catalana 1999)

Iberley, ‘El Cumplimiento de un Deber o el Ejercicio de un Derecho como Causa de Justificación de los Delitos
<https://www.iberley.es/temas/cumplimiento-deber-ejercicio-derecho-causa-justificacion-delitos-48331>

In Eusko Auñamendi Entziklopedia Funtsa - Bernardo Estornés Lasa, ‘Batasuna’
<http://aunamendi.eusko-ikaskuntza.eus/eu/batasuna/ar-563/>

In Eusko Auñamendi Entziklopedia Funtsa - Bernardo Estornés Lasa, ‘Herri Batasuna’
<http://aunamendi.eusko-ikaskuntza.eus/eu/herri-batasuna/ar-59231/>

J Albareda i Salvadó, ‘Desfeta Política i Embranzida Econòmica. Segle XVIII’ a *Història, Política, Societat i Cultura dels Països Catalans* (Fundació Enciclopèdia Catalana, Barcelona 1995)

JM Roig Rosich, ‘Segona República i Guerra Civil’ a *Història de la Catalunya Contemporània. De la Guerra del Francès al Nou Estatut* (Pòrtic Biblioteca Universitària, Barcelona 2006) 310

JM Salrach i Marès, 'La Formació de la Societat Feudal. Segles VI-XII' a Borja de Riquer i Permanyer (dir), *Història, Política, Societat i Cultura dels Països Catalans* (Fundació Enciclopèdia Catalana, Barcelona 1998)

J Sanahuja, 'La Diputació del General' a *Som una nació. Catalunya Triomfant. De la independència a l'Expansió Mediterrània* (Edicions 62, Barcelona 2006)

MA Martí, 'El Setge de Barcelona i l'Onze de Setembre' a *Som una Nació. Catalunya Oprimida. De Felip V a Franco* (Edicions 62, Barcelona 2006)

J M Roig Rosich, 'Segona República i Guerra Civil' a *Història de la Catalunya Contemporània. De la Guerra del Francès al Nou Estatut* (Pòrtic Biblioteca Universitària, Barcelona 2006)

Real Academia Española, 'Diccionario de La Lengua Española' <https://dle.rae.es/?id=atxUXas>

R Sarobe, 'Ramon Berenguer IV i Peronella: La Unió Dinàstica' a *Som una nació. Catalunya Triomfant. De la independència a l'Expansió Mediterrània* (Edicions 62, Barcelona 2006)

Legislation:

Cabanellas M, Decreto 1936

Constitución Española 1978

Council of Europe, European Convention on Human Rights 1950

Generalitat de Catalunya, Edicto de 21 de noviembre de 2003, por el que se Hacen Públicos los Resultados Correspondientes a la Proclamación de Electos al Parlamento de Cataluña de la Circunscripción de Lleida y Barcelona 2003 23581

Generalitat de Catalunya, Edicto de 24 de noviembre de 2003, por el que se Hacen Públicos los Resultados Correspondientes a la Proclamación de Electos al Parlamento de Cataluña de la circunscripción de Girona y Tarragona 2003 23583

Generalitat de Catalunya, Reglament del Parlament de Catalunya

Institutions and Member States of the European Union, Charter of Fundamental Rights of the European Union 2000

Jefatura del Estado, Ley 1/1977, de 4 de enero, para la Reforma Política 1977

Jefatura del Estado, Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil 2000

Jefatura del Estado, Ley 10 / 2014, de 26 de Septiembre, de Consultas Populares no Referendarias y Otras Formas de Participación Ciudadana 2014

Jefatura del Estado, Ley 46/1977, de 15 de octubre, de Amnistía 1977

Jefatura del Estado, Ley 62/1969, de 22 de julio, por la que se provee lo concerniente a la sucesión en la Jefatura del Estado 1969

Jefatura del Estado, Ley Orgánica 2/1980, de 18 de enero, sobre regulación de las distintas modalidades de referéndum 1980

Jefatura del Estado, Ley Orgánica 2/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, en materia de delitos de terrorismo 2015

Jefatura del Estado, Ley Orgánica 4/1981, de 1 de junio, de los estados de alarma, excepción y sitio 1981

Jefatura del Estado, Ley Orgánica 9/1983, de 15 de julio, reguladora del derecho de reunión 1983

Jefatura del Estado, Ley Orgánica 10/1995, de 23 de noviembre del Código Penal 1995

Jefatura del Estado, Ley Orgánica 13/1985, de 9 de diciembre, de Código Penal Militar 1985

Jefatura del Estado, Ley Orgánica 4/1979, de 18 de diciembre, de Estatuto de Autonomía de Cataluña 1979

Jefatura del Estado, Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial 1985

Jefatura del Estado, Ley Orgánica 6/2002 de Partidos Políticos 2002

Jefatura del Estado, Ley Orgánica 6/2006, de 19 de julio, de Reforma del Estatuto de Autonomía de Cataluña 2006 172

Jefatura del Estado, Real Decreto 1510/1976, de 1 de julio, por el que se dispone el cese del Presidente del Gobierno, don Carlos Arias Navarro, a petición propia 1976

Jefatura del Estado, Real Decreto 1561/1976, 3 de julio, por el que se designa Presidente del Gobierno a don Adolfo Suárez González 1976

Jefatura del Estado, Real Decreto Legislativo 19/1979, de 23 de noviembre, por el que se modifica parcialmente el Real Decreto-ley 1/1977, de 4 de enero, que creó la Audiencia Nacional, y se prorroga la vigencia de la Ley 56/1978, de 4 de diciembre, de medidas especiales en relación con los delitos de terrorismo cometidos por grupos armados

Ministerio de Justicia, Decreto de 23 de diciembre de 1944 por el que se aprueba y promulga el "Código Penal, texto refundido de 1944", según la autorización otorgada por la Ley de 19 de julio de 1944 1944

Ministerio del Interior y Generalitat de Catalunya, 'Acta de la Sesión Extraordinaria de la Junta de Seguridad de Cataluña Del Día 28 de Septiembre de 2017' 2017

Parlament de Catalunya, Llei 19/2017, del 6 de setembre, del referèndum d'autodeterminació 2017

Parlament de Catalunya, Llei 20/2017, del 8 de setembre, de Transitorietat Jurídica i Fundacional de la República 2017

Presidencia del Gobierno, Real Decreto 13/2016, de 11 de enero, por el que se nombra Presidente de la Generalitat de Cataluña a don Carles Puigdemont i Casamajó 2016

UNCHR, 'Report of the Special Rapporteur on the protection and promotion of the right to Freedom of Opinion and Expression' (1999) UN Doc E/CN.4/1999/64

UNGA, International Covenant on Civil and Political Rights 1966

UNGA, Statute of the International Court of Justice 1945

UNGA, Universal Declaration of Human Rights 1948

News:

‘23-F: Las 18 Horas que España no Puede Olvidar’ [2016] Público <https://www.publico.es/politica/23-f-18-horas-espana.html>

‘Comienza el Juicio del “Procés”’ [2019] El Periódico <https://www.elperiodico.com/es/politica/20190212/comienza-juicio-proces-primer-dia-7299311>

‘Consuelo Madrigal, Una Fiscal “Intachable”, afín al PP y Querida en la Profesión’ [2017] La Información <https://www.lainformacion.com/espana/consuelo-madrigal-una-fiscal-intachable-afin-al-pp-y-querida-en-la-profesion_lwcbkd31lkw3p4z107mqz/>

‘Cronología. Los 218 Días de La Primera Aplicación Del Artículo 155 de La Constitución’ [2018] Público <https://www.publico.es/espana/cronologia-218-dias-primera-aplicacion-articulo-155-constitucion.html>

‘Cronología del Periplo de Puigdemont: de su Marcha a Bruselas a su Detención en Schuby’ [2018] Público <https://www.publico.es/politica/cronologia-del-periplo-puigdemont-marcha-bruselas-detencion-schuby.html>

‘Decenas de Miles de Personas se Manifiestan en Barcelona Contra la Sentencia del Estatut’ [2010] RTVE <http://www.rtve.es/noticias/20100710/decenas-miles-personas-se-manifiestan-barcelona-contra-sentencia-del-estatut/339210.shtml>

‘Discurso Íntegro en el que Puigdemont Declara la Independencia de Cataluña y la Suspende para Apelar al Diálogo’ [2017] El País <https://elpais.com/politica/2017/10/10/actualidad/1507658001_128339.html>

‘El 81% de Los Votantes de La Consulta Alternativa, 1,8 Millones, Apoyan La Independencia de Cataluña’ [2014] RTVE <http://www.rtve.es/noticias/20141110/81-votantes-consulta-del-9n-18-millones-apoyan-independencia-cataluna/1045120.shtml>

‘El Gobierno declara el Estado de Alarma’ [2010] El Mundo <https://www.elmundo.es/elmundo/2010/12/04/espana/1291425368.html>

‘El Gobierno Permite el Final del 155 al Publicar el Nombramiento de los Consellers de la Generalitat’ [2018] El Diario <https://www.eldiario.es/catalunya/politica/Gobierno-publica-nombramiento-consejeros-Generalitat_0_777622251.html>

‘El Juez Retira la Euroórden para Puigdemont para Evitar que Bélgica Restrinja los Delitos que le Imputa el Supremo’ [2017] Público <https://www.publico.es/politica/juez-retira-orden-detencion-europea-puigdemont.html>

‘El Parlament Aprova Convocar una Consulta d’Autodeterminació la Pròxima Legislatura’ [2012] El Punt Avui <http://www.elpuntavui.cat/article/3-politica/17-politica/579546-el-parlament-aprova-convocar-una-consulta-dautodeterminacio-la-proxima-legislatura.html>

‘El Parlament Aprueba el Pacto Fiscal’ [2012] La Vanguardia <https://www.lavanguardia.com/politica/20120725/54330063011/parlament-aprueba-pacto-fiscal.html>

‘El Parlament Aprueba una Moción Independentista que sus Propios Letrados Cuestionan’ [2016] Expansión <http://www.expansion.com/catalunya/2016/04/07/570650c9ca47414c658b463c.html>

‘La Audiencia Cita el Jueves y Viernes a Puigdemont y sus Exconsellers para Declarar por Rebelión’ [2017] RTVE <http://www.rtve.es/noticias/20171031/audiencia-cita-jueves-viernes-puigdemont-exconsellers-para-declarar-rebelion/1631564.shtml>

‘La Audiencia Nacional deja de Investigar a Tamara Carrasco y Adrià Carrasco’ [2018] La Vanguardia <https://www.lavanguardia.com/politica/20181107/452790186087/audiencia-nacional-deja-investigar-tamara-carrasco-adria-carrasco.html>

‘La Diada de Catalunya, En Directo’ [2014] El Diario <https://www.eldiario.es/catalunya/Diada-Catalunya-11-S-Via_Catalana_13_301799820_3224.html>

‘La Generalitat Dice que 1,6 Millones de Personas Secundan la Vía Catalana, Mientras Interior Baraja 600.000’ [2013] ABC <https://www.abc.es/local-cataluna/20130911/abci-cadena-humana-cataluna-201309111829.html>

‘La Respuesta Del Gobierno a La Carta de Puigdemont’ [2017] El Diario <https://www.eldiario.es/politica/respuesta-Gobierno-carta-Puigdemont_0_698880259.html>

‘Las Cifras de la Via Catalana 2014: 1,8 Millones’ [2014] La Vanguardia <https://www.lavanguardia.com/politica/20140911/54414923722/cifras-via-catalana.html>

‘Miles de Catalanes Forman La “V” de la Diada Para Pedir la Consulta’ [2014] 20 Minutos <https://www.20minutos.es/noticia/2234936/0/diada-cataluna/debate-soberanista/directo/>

‘Por qué los kurdos son un nuevo foco de tensión entre Estados Unidos y Turquía y cómo esto puede afectar a Siria’ [2019] BBC <https://www.bbc.com/mundo/noticias-internacional-46796399>

‘Querella de Fiscalía Contra Mas, Ortega y Rigau’ [2014] La Vanguardia <https://www.lavanguardia.com/politica/20141121/54420097003/querella-fiscalia-mas-ortega-rigau.html>

‘Rajoy Rechaza El Pacto Fiscal Por Ser “Contrario a La Constitución”’ [2012] El País <https://elpais.com/politica/2012/09/20/actualidad/1348144748_908210.html>

‘Recuerdos y Anécdotas Del 23-F’ [2006] El Mundo <https://www.elmundo.es/elmundo/2006/02/23/espana/1140651449.html>

‘Referéndum Catalunya 2017: Consulta Los Resultados’ [2017] La Vanguardia <https://www.lavanguardia.com/politica/20171001/431688032104/referendum-1-o-en-directo.html>

‘Resultados Del 9N: La Independencia se Impone con un 81% de los más de 2,3 Millones de Votos’ [2014] La Vanguardia
<https://www.lavanguardia.com/politica/20141110/54419122198/resultados-9n.html>

‘Sindicatos y Entidades Convocan una Huelga General en Catalunya para el Martes’ [2017] El Periódico <https://www.elperiodico.com/es/politica/20171001/huelga-paro-general-cataluna-6325237>

‘Un 23-F de Hace 35 Años’ [2016] RTVE
<http://www.rtve.es/noticias/20160219/23-hace-30-anos/223731.shtml>

‘VOX Presenta una Querella Criminal contra Mas por “Rebelión y Sedición”’ [2014] Europa Press <https://www.europapress.es/nacional/noticia-vox-presenta-querella-criminal-contra-mas-rebelion-sedicion-20141013114139.html>

A Carbajosa, ‘Puigdemont, Detenido en Alemania tras Entrar en Coche desde Dinamarca’ [2018] El País <https://elpais.com/politica/2018/03/25/actualidad/1521973804_797756.html>

À Piñol, ‘El Independentismo Catalán Logra una Histórica Exhibición de Fuerza’ [2012] El País <https://elpais.com/ccaa/2012/09/11/catalunya/1347375808_419590.html>

A Puente, ‘El Parlament Aprueba La Ley Para Convocar El Referéndum Ante Los Escaños Vacíos de La Oposición’ [2017] El Diario
<https://www.eldiario.es/catalunya/politica/Parlament-aprueba-ley-convocar-referendum_0_683832202.html>

A Ruiz Valdivia, ‘Diada 2013: La Delicada Situación Política de Cataluña y el Problema de Encaje en España’ [2013] Huffington Post
<https://www.huffingtonpost.es/2013/09/11/cataluna-diada_n_3898346.html>

A Ruiz, P Machuca, V Rodríguez, ‘Resultados 9N: Más de 1,6 Millones de Catalanes Dice “SÍ SÍ” a la Independencia’ [2014] Huffington Post
<https://www.huffingtonpost.es/2014/11/09/resultados-9n_n_6130000.html?utm_hp_ref=es-9n-consulta>

B Zaldua, ‘La ANC Entrega al Parlament 750.000 Peticiones de Independencia’ [2014] Arainfo <https://arainfo.org/la-anc-entrega-al-parlament-750-000-peticiones-de-independencia/>

C Álvarez, ‘Decenas de Miles de Personas se Manifiestan por el Centro de Barcelona en Apoyo del Estatuto Catalán’ [2006] El Mundo
<https://www.elmundo.es/elmundo/2006/02/18/espana/1140285928.html>

C Montañés, ‘Huelga General en Catalunya: Últimas Noticias en Directo’ [2017] El Periódico
<https://www.elperiodico.com/es/politica/20171003/huelga-general-3-octubre-2017-cataluna-directo-6326497>

Consejo General del Poder Judicial, ‘El Juez del Tribunal Supremo Pablo Llarena Acuerda la Suspensión de Funciones de Carles Puigdemont y de los Otros Cinco Diputados Procesados por Rebelión’

Consejo General del Poder Judicial, ‘El Magistrado del Tribunal Supremo Mantiene la Prisión Provisional de Junqueras, Forn y los Presidentes de ANC y Òmnium’

Consejo General del Poder Judicial, ‘El Magistrado del Tribunal Supremo Pablo Llarena Asume las Investigaciones Sobre los Exmiembros del Govern de Cataluña y los Presidentes de ANC y Òmnium que Instruía la Audiencia Nacional’

Consejo General del Poder Judicial, ‘El Magistrado del Tribunal Supremo Pablo Llarena Deja sin Efecto las Euro-Órdenes Contra Puigdemont y los Exconsellers que se Encuentran en Bélgica’

Consejo General del Poder Judicial, ‘El Tribunal Supremo Confirma la Conclusión del Sumario de la Causa del “Procés” y Abre el Juicio Oral a los Procesados’

D Fonseca, ‘Los Hitos que han Marcado el Referéndum de Cataluña’ [2017] El País <https://elpais.com/ccaa/2017/10/01/catalunya/1506821947_308965.html>

E Belmonte, ‘Masiva Manifestación en Barcelona en Apoyo al Estatut y Contra el Constitucional’ [2010] El Mundo <https://www.elmundo.es/elmundo/2010/07/10/barcelona/1278761492.html>

E Müller, A Carbajosa, ‘La Justicia Alemana Niega la Rebelión y Deja en Libertad a Puigdemont’ [2018] El País <https://elpais.com/politica/2018/04/05/actualidad/1522947756_734813.html>

F J Pérez, ‘El artículo 116: los estados de alarma, excepción y sitio‘ [2017] El País <https://elpais.com/politica/2017/10/10/actualidad/1507628557_312077.html>

F J Pérez, Ó López Fonseca, ‘La Juez Envía a la Cárcel a Jordi Sànchez y Jordi Cuixart, Líderes de ANC y de Òmnium, por Sedición’ [2017] El País <https://elpais.com/politica/2017/10/16/actualidad/1508137356_829076.html>

G D Olmo, ‘7 Momentos para Entender qué fue ETA, el Grupo Armado que Quiso Separar al País Vasco de España y Francia’ [2018] BBC <https://www.bbc.com/mundo/noticias-internacional-43985393>

G Liñán, ‘Llarena Imputa Mas, Rovira, Gabriel, Boya, Pascal y Lloveras’ [2017] El Nacional <https://www.elnacional.cat/es/politica/imputados-rovira-mas-boya-gabriel-lloveras-pascal_223692_102.html>

G Ubieto, ‘Comités de Defensa de la República, Los “soviets” de la “Revolució dels Somriures”’ [2017] El Periódico <https://www.elperiodico.com/es/politica/20171107/comites-defensa-referendum-soviets-revolucio-somriures-6409012>

I Bethencourt, ‘La Manifestació del 18F del 2006: El Principi de la Fi de la Via Estatutària’ [2016] L’Unilateral <http://unilateral.cat/2016/03/01/la-manifestacio-del-18f-del-2006-el-principi-de-la-fi-de-la-via-estatutaria/>

ICV y EUiA Acuerdan Presentarse en Coalición’ [2019] La Vanguardia <https://www.lavanguardia.com/local/barcelona/20111005/54226516956/icv-y-euia-acuerdan-presentarse-en-coalicion.html>

J García, ‘20-S: El Acelerador Del “Procés”’ [2018] El País <https://elpais.com/ccaa/2018/09/20/catalunya/1537435891_087433.html>

J Gónzalez Úbeda, ‘España Tiene Muchísimo que Mejorar en Cuanto a Separación de Poderes’ [2017] El Jueves <https://www.publico.es/sociedad/entrevista-director-jueves-espana-muchisimo-mejorar-separacion-poderes.html>

J Oms, V Mondelo, G González, ‘El Clamor Independentista Colapsa Barcelona’ [2012] El Mundo <https://www.elmundo.es/elmundo/2012/09/11/barcelona/1347377095.html>

J Pi, ‘20-S: El Día Que Aceleró El Choque Del Procés a Través de Sus Protagonistas’ [2018] La Vanguardia <https://www.lavanguardia.com/politica/20180920/451884483592/20s-dia-acelero-choque-protagonistas.html>

J Pi, ‘Catalunya Muestra Su Via Al Mundo’ [2013] La Vanguardia <https://www.lavanguardia.com/politica/20130911/54382311472/via-catalana-realidad.html>

J Pi, ‘Masiva Manifestación por la Independencia de Catalunya’ [2012] La Vanguardia <https://www.lavanguardia.com/politica/20120911/54349943522/diada-manifestacion-independencia-catalunya.html>

L Pellicer, ‘Los 14 Detenidos En La Operación Contra La Organización Del Referéndum’ [2017] El País <https://elpais.com/ccaa/2017/09/20/catalunya/1505896269_248253.html>

M Marraco, ‘El Constitucional Suspende la Resolución Independentista y Advierte de Responsabilidad Penal a los 21 Altos Cargos Catalanes’ [2015] El Mundo <https://www.elmundo.es/espana/2015/11/11/56438962e2704e59138b4643.html>

M Macià ‘Todos los casos de censura de la libertad de expresión en España’ [2018] El Nacional <https://www.elnacional.cat/es/politica/censura-espana-libertad-expresion-casos_276510_102.html>

MÁ Noceda, ‘Los Pactos de La Moncloa, El Acuerdo Que Cambió España Hace 40 Años’ [2017] El País <https://elpais.com/politica/2017/10/20/actualidad/1508514039_177535.html>

M Noguer, ‘El Independentismo Toma La Calle En Cataluña’ [2017] El País <https://elpais.com/ccaa/2017/10/03/catalunya/1507020168_018957.html>

M Noguer, ‘Rajoy Recurre a la Fuerza Policial para Descabezar el Referéndum Ilegal’ [2017] El País <https://elpais.com/ccaa/2017/10/01/catalunya/1506820373_674242.html>

M Pinheiro, ‘La Jueza Decreta Prisión Incondicional para Junqueras y Siete Exconsellers’ [2017] El Diario <https://www.eldiario.es/politica/decreta-prision-incondicional-Junqueras-consellers_0_703779702.html>

M Pinheiro, O Solé Altimira, ‘El Juez Dicta la Detención Internacional de Rovira y Reactiva la Euroorden Contra Puigdemont y Cuatro Exconsellers’ [2018] El Diario <https://www.eldiario.es/catalunya/politica/juez-Llarena-orden_0_753125216.html>

M Pons, ‘Somos una Nación, Nosotros Decidimos’ [2010] El Nacional <https://www.elnacional.cat/es/efemerides/somos-una-nacion-nosotros-decidimos_173064_102.html>

M Roger, ‘El Parlament Aprueba por Amplia Mayoría la Declaración Soberanista’ [2013] El País <https://elpais.com/ccaa/2013/01/23/catalunya/1358960994_203672.html>

N Villanueva, ‘El Tribunal Constitucional Suspende la Declaración Soberanista Del Parlamento Catalán’ [2013] ABC <https://www.abc.es/espana/abci-tribunal-constitucional-suspende-declaracion-ruptura-parlamento-cataluna-201608011425_noticia.html>

P Ríos, À Piñol, ‘El Parlament de Cataluña Aprueba la Resolución para Declarar la Independencia’ [2017] El País <https://elpais.com/ccaa/2017/10/27/catalunya/1509105810_557081.html>

R De Miguel, ‘La Democracia Española Ante Su Mayor Desafío’ [2017] El País <https://elpais.com/politica/2017/09/30/actualidad/1506797545_651643.html>

R Moreno, ‘Rosa María Seoane Sustituirá a Edmundo Bal en la Acusación por el Procés.’ [2018] Confilegal <https://confilegal.com/20181205-rosa-maria-seoane-sustituira-a-edmundo-bal-en-la-acusacion-por-el-proces/>

S Quitian, ‘El Parlament Rechaza la Investidura de Jordi Turull tras la Abstención de la CUP’ [2018] La Vanguardia <https://www.lavanguardia.com/politica/20180322/441828264201/parlament-catalunya-rechaza-investidura-jordi-turull-cup.html>

S Quitian, ‘Junts Pel Sí y La CUP Firman La Declaración de Independencia de Catalunya’ [2017] La Vanguardia <https://www.lavanguardia.com/politica/20171010/431969621960/junts-pel-si-cup-firman-declaracion-de-independencia.html>

S Quitian, ‘Vergüenza o la Derrota de Rajoy, en la Prensa Internacional’ [2017] La Vanguardia <https://www.lavanguardia.com/politica/20171001/431714570415/prensa-internacional-referendum-1o.html>

T Sust, ‘La Desafección Crece y Genera un Goteo de Grupos Independentistas’ [2009] El Periódico <https://www.elperiodico.com/es/politica/20090525/la-desafeccion-crece-y-genera-un-goteo-de-grupos-independentistas-229424>

Reports:

Amnesty International ‘Actualización de la situación en Cataluña’ <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/actualizacion-de-la-situacion-en-cataluna/>

Congreso de los Diputados, ‘Elaboración y Aprobación de la Constitución Española de 1978’ <http://www.congreso.es/consti/constitucion/elaboracion/index.htm>

Consejo General del Poder Judicial, ‘Guía Para Medios de Comunicación’ (2019)

Consell Comarcal del Bages, ‘Perfil i Trajectòria Professional Dels Alts Càrrecs de l’Administració Del Consell Comarcal Del Bages’ (2017)

Fiscalía General del Estado, ‘Fidel Ángel Cadena Serrano’ <https://www.fiscal.es/fiscal/PA_WebApp_SGNTJ_NFIS/descarga/Fiscal de Sala Fidel Cadena Serrano.pdf?idFile=fc80cdd8-1ea3-4ea3-b8f3-f4be6e5d2cce>

Fiscalía General del Estado, ‘Jaime Moreno’ <https://www.fiscal.es/fiscal/PA_WebApp_SGNTJ_NFIS/descarga/Fiscal de Sala Jaime Moreno Verdejo.pdf?idFile=bd90d602-ddf4-46f7-952b-84b0f0b46a0d>

Generalitat de Catalunya, 'Eleccions Al Parlament de Catalunya' (2012) <https://www.gencat.cat/governacio/resultats-parlament2012/09AU/DAU09999CM_L1.htm>

Generalitat de Catalunya, 'Eleccions Al Parlament de Catalunya 2010' <http://www.gencat.cat/governacio/eleccions/eleccions2010/resultats2010/09AU/DAU09999CM_L2.htm>

Generalitat de Catalunya, 'Eleccions al Parlament de Catalunya 2015' <http://www.gencat.cat/governacio/resultatsparlament2015/resu/09AU/DAU09999CM_L1.htm>

Generalitat de Catalunya, 'Eleccions Al Parlament de Catalunya 2017' <http://gencat.cat/economia/resultats-parlament2017/09AU/DAU09999CM.htm>

Ministerio de la Presidencia, 'Cumplimiento del Programa de Actuación Jurídica y Política de los Pactos de la Moncloa' <http://www.mpr.gob.es/servicios2/publicaciones/vol18/pag_02.html#titulo8>

Parlament de Catalunya, 'Eleccions Al Parlament 1980-2017' <https://www.parlament.cat/document/composicio/150360.pdf>

Partit dels Socialistes de Catalunya, Esquerra Republicana de Catalunya and Iniciativa per Catalunya Verds, 'Acord per a un Govern Catalanista i d'Esquerres a la Generalitat de Catalunya' <http://www.ub.edu/OGC/Catalunya_VII_leg_Tinell.pdf>

Tribunal de Oposiciones al Cuerpo de Abogados del Estado, 'Relación de Opositores que han Superado el 5o Ejercicio de las Pruebas Selectivas para Ingreso en el Cuerpo de Abogados del Estado.' (2016) <https://www.mjusticia.gob.es/cs/Satellite/Portal/1292427940246?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadervalue1=attachment%3B+filename%3DLISTADO_DE_APROBADOS_5o_EJERCICIO.pdf>

UNCHR, 'Memorandum on the Human Rights Implications of the Measures Taken under the State of Emergency in Turkey' (2016) <https://rm.coe.int/16806db6f1>

Thesis:

R Vilaregut Sáez, 'Memòria i Emergència En l'independentisme Català. El Cas de La Plataforma Pel Dret de Decidir' (Tesi Doctoral en Ciències Polítiques, UB 2011

Websites:

'Artículo 20 de la Constitución Española' Fundación Acción Pro Derechos Humanos <https://www.derechoshumanos.net/constitucion/articulo20CE.htm>

'Javier Ortega Smith-Molina' Libertad Digital <https://www.libertaddigital.com/personajes/javier-ortega-smith-molina/>

'Javier Zaragoza' Libertad Digital <https://www.libertaddigital.com/personajes/javier-zaragoza/>

'Libertad de Expresión en España' Amnistía Internacional <https://www.es.amnesty.org/en-que-estamos/espana/libertad-de-expresion/>

‘Pedro Fernández, Vicesecretario Jurídico de VOX, Cabeza de Lista al Congreso por Zaragoza’ <https://www.voxespana.es/noticias/pedro-fernandez-vicesecretario-juridico-de-vox-cabeza-de-lista-al-congreso-por-zaragoza-20190322>

ACN, ‘La Plataforma ’Escoles Obertes’ Fa Una Crida per Garantir l’obertura Dels Col·legis Electorals l’1-O’ [2017] El Punt Avui <https://www.elpuntavui.cat/societat/article/5-societat/1248544-la-plataforma-escoles-obertes-fa-una-crida-per-garantir-l-obertura-dels-col-legis-electorals-l-1-o.html>

Assemblea Nacional Catalana, ‘Assemblea Nacional Catalana’ <https://assemblea.cat/index.php/historia/?lang=es>

Candidatura d’Unitat Popular, ‘Què és la CUP?’ <http://cup.cat/que-es-la-cup>

CECOT, ‘Qui Som? CECOT’ <http://institucional.cecot.org/Qui-Som>

Ciudadanos, ‘Nuestros Valores’ <https://www.ciudadanos-cs.org/nuestros-valores>

Confederación General del Trabajo, ‘Quiénes Somos’ <http://cgt.org.es/quienes-somos>

Confederación Sindical de Comisiones Obreras, ‘Quienes Somos’ <https://www.ccoo.es/Nuestra·organización/¿Quiénes_somos>

Congreso de los Diputados, ‘Sinopsis artículo 20’ <http://www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=20&tipo=2>

Congreso de los Diputados, ‘Sinopsis artículo 53’ <http://www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=53&tipo=2>

Consejo General del Poder Judicial, ‘Qué Es La AN’ <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Audiencia-Nacional/Informacion-institucional/Que-es-la-AN/>

Consejo General del Poder Judicial, ‘Salas Ordinarias - Sala Segunda - Funciones’ <http://www.poderjudicial.es/portal/site/cgpj/menuitem.65d2c4456b6ddb628e635fc1dc432ea0/?vgnextoid=3e5b2daed2278510VgnVCM1000006f48ac0aRCRD&vgnextfmt=default&vgnextlocale=es_ES>

Consejo General del Poder Judicial, ‘Tribunal Supremo’ <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/>

Convergència Democràtica de Catalunya, ‘Història - Convergència’ <http://convergencia.cat/historia/>

Convergència i Unió, ‘Història’ <https://web.archive.org/web/20060615193555/http://www.ciu.cat/historia.php>

Demòcrates de Catalunya, ‘Prova d’ADN’ <https://democrates.cat/wp-content/uploads/2017/07/DEMOCRATES-EILA.pdf>

Emérita Legal, ‘Emérita Legal’ <https://www.emerita.legal/abogado/javier-melero-merino-16507>

Esquerra Republicana, ‘Què Som’ <https://www.esquerra.cat/ca/que-som>

Gabinet d’Estudis Legals, ‘Membres. L’Equip’ <http://estudislegals.com/sobre-nosaltres/membres.html>

Generalitat de Catalunya, ‘Història de La Generalitat’ <https://web.gencat.cat/ca/generalitat/historia/>

Juezas y Jueces para la Democracia, ‘Asociación’ <http://www.juecesdemocracia.es/asociacion-jpd/>

MDA & Lexartis. Advocats penalistes., ‘Equipo’ <http://www.mda-advocats.com/equipo/>

Melero & Gené Advocats, ‘Profesionales. Quiénes Somos.’ <http://mgadvocats.com/profesionales?lang=es>

Ministerio de Fomento, ‘Adif’ <http://www.adif.es/es_ES/conoceradif/conoceradif.shtml>

Ministerio del Interior, ‘Conoce a La Guardia Civil’ <http://www.guardiacivil.es/es/institucional/Conocenos/index.html>

Molins Advocats, ‘Molins. Defensa Penal.’ <http://www.molins-silva.com/abogado-pablo-molins-socio-director-molins-silva-defensa-penal-barcelona/>

Molins Advocats, ‘Molins. Defensa Penal.’ <http://www.molins-silva.com/ana-bernaola-lorenzo-abogada-penalista-molins-silva-defensa-penal-madrid/>

Molins Advocats, ‘Molins. Defensa Penal.’ <http://www.molins-silva.com/jordi-pina-massachs-abogado-y-socio-molins-defensa-penal-barcelona/>

Molins Advocats., ‘Molins. Defensa Penal.’ <http://www.molins-silva.com/juan-segarra-monferrer-abogado-penalista-en-molins-silva-defensa-penal-barcelona/>

Molins Advocats, ‘Molins. Defensa Penal.’ <http://www.molins-silva.com/miriam-company-marsa-abogada-penalista-molins-silva-defensa-penal-barcelona/>

Morales. Abogados Penalistas., ‘Equipo.’ <http://www.moralesabogadospenalistas.com/equipo/>

Moviment d’Esquerres, ‘Qui Som?’ <https://mesesquerres.cat/qui-som/>

Museu d’Història de Catalunya, ‘La Memòria D’un País’ <http://www.mhcat.cat/exposicions/la_memoria_d_un_pais>

Òmnium, ‘Presentació’ <https://www.omnium.cat/ca/presentacio/>

Pacte Nacional pel Referèndum. Catalonia ‘Pacte Nacional pel Referèndum’ <https://pactepelreferendum.cat/>

Partido Popular, ‘Historia’ <http://www.pp.es/conocenos/historia>

Partit dels Socialistes de Catalunya, ‘Principios y Valores’ <http://www.socialistes.cat/es/pagina/principis-i-valors>

Partit Demòcrata, ‘Presentació’ <https://www.partitdemocrata.cat/web/presentacio/>

PIMEC, ‘Quiénes Somos’ <https://www.pimec.org/es/institucion/nosotros/quienes-somos>

Plataforma pel Dret de Decidir, ‘Plataforma pel Dret de Decidir’ <http://plataformapeldretdedecidir.cat/>

Plataforma pel Dret de Decidir, ‘Qui Som’ <http://plataformapeldretdedecidir.cat/qui-som/>

Roig&Bergés&Martínez, ‘Roig&Bergés&Martínez’ <https://www.rbmpenalistas.com/socios.cfm>

Salellas i Associats SL Advocats, ‘¿Quiénes Somos?’ <https://www.salellasadvocats.cat/es-ES/quienes-somos.html>

Tarba. Consultoria Jurídica i Tècnica SL, ‘Tarba. Consultoria Jurídica i Tècnica.’ <https://www.tarba.eu/es/la-firma/>

Thomson Reuters, ‘Legal Today’ <http://www.legaltoday.com/colaboradores/berges-tarilonte#>

Unión General de Trabajadores, ‘Qué Es UGT’ <http://www.ugt.es/que-es-ugt>

Unió Sindical Obrera de Catalunya, ‘Història’ <https://usoc.cat/usoc/historia/>

Van den Eynde A, ‘Van Den Eynde. Dret Penal’ <https://eynde.es/es/sobre-mi/>

VOX, ‘Qué Es VOX’ <https://www.voxespana.es/espana/que-es-vox>