



SPAIN'S MISUSE OF THE JUDICIARY AS REGARDS CATALONIA

For years, the Spanish Government has repeatedly avoided any dialogue on Catalonia's political demands on the grounds of legalistic arguments. The Spanish Government's ideological misinterpretation and misuse of the legal system it claims to uphold has become blatantly patent in its actions against the Catalan Government in the run-up to and the wake of the 1st October referendum.

1. Biased interpretation of the Constitution to negate a referendum

The Spanish Government deliberately ignores the fact that the Spanish Constitution does not prohibit a referendum or a popular consultation. Articles 92 and 149.1.32, for instance, allow for a referendum to be organised by the Spanish Government or for the competence to do so to be transferred to a regional Government. The Spanish Government's restricted interpretation of the Constitution is reinforced by the staggering politicization of the Spanish Constitutional Court. To illustrate this point, it is worth noting that Mr Andrés Ollero Tassara, the Judge in charge of the ruling on the Catalan Law on the Referendum had been a member of parliament of the Popular Party for 17 years, prior to his appointment to the Court in 2012.

2. Judicial prosecution and petitions of jail for activities which are not a crime

To call, organise and hold a referendum is not a crime in Spain. The Spain's parliament expressly legalised the matter by means of the Organic Law 2/2005, which modified the Criminal Code in order to remove those articles (506 bis, 521 bis and 576 bis), which had previously considered this matter a crime. In spite of this, the Spanish authorities arrested 14 senior Catalan government officials for alleged collusion with the organisation of Catalonia's 1 Oct. referendum, and ordered some 800 Catalan mayors to appear before Court. Moreover, this order came from the Spanish Attorney General, instead of the Catalan High Court of Justice, which is the competent authority.

3. Spain's Attorney General opens an investigation on crimes of sedition

As established in Article 544 of the Criminal Code, peaceful and orderly demonstrations do not constitute a crime of sedition, which entails a sentence of between four and fifteen years of jail. Furthermore, pursuant to the Organic Law 6/1985 on the Judiciary and the Spanish Criminal Code, the National Court (*Audiencia Nacional*) does not have the authority to judge this type of crime. Nevertheless, on Monday 16th October, a Judge sent the president of the ANC (Catalan National Assembly), Jordi Sànchez, and the president of Òmnium Cultural, Jordi Cuixart, to prison without bail, as petitioned by the prosecution.

4. Deployment of Spanish police and military police (Guardia Civil) in Catalonia

The deployment of more than 10,000 members, since mid-September, of Spain's police and Guardia Civil to Catalonia goes against the principles of proportionality,



opportunity and congruence established in Organic Law 2/1986 covering security forces. Beyond that, Articles 38 and 42 of this Law –invoked by the Spanish Ministry of Interior to defend these police measures- are not applicable in Catalonia since the entry into force of the amended Statute of Autonomy of Catalonia of 2006, as they contravene the provisions of Article 164.

5. Appointment of a Coronel serving in the Spanish Ministry of Home Affairs to direct the Catalan police (Mossos d'Esquadra)

In the run-up to the 1st October referendum, several attempts took place to assume direct control of the Catalan police by the Spanish Ministry of Home Affairs. The supreme command of the Mossos d'Esquadra belongs to the Government of Catalonia, as established by the Statute of Autonomy of Catalonia, which is -in terms of rank and nature- an Organic Law passed by both the Spanish Parliament and Senate and part of the constitutional framework itself. A prosecutor cannot go against its provisions and decide how the police or security forces should be organised.

6. Intervention in the Government of Catalonia without following the proper constitutional procedures

The actions of the Spanish Government directed at attempting to control of the Catalan police as well as blocking Catalonia's access to its own resources must be interpreted as an undeclared intervention of the Catalan self-government outside the legal procedures established by Article 155 of the Spanish Constitution. The use of this article, however, must be approved by the overall majority of the Senate.

Another example of how constitutional procedures have not been respected in regards to Catalonia's self-government can be found in the ruling of the Spanish Constitutional Court in 2010 that voided the reformed Statute of Autonomy of Catalonia of 2006 of all its meaning, thus becoming the basis for the current situation. That ruling altered the content of a text adopted in accordance with all constitutional procedures (it was passed by the Catalan Parliament, approved by an absolute majority in both the Spanish Parliament and Senate, and ratified afterwards by the people of Catalonia in a referendum). As a result, the citizens of Catalonia have been, since 2010, the only people in Spain ruled by a Statute they did not vote (hence contrary to the established procedures and therefore unconstitutional).

7. Search and opening of private postal correspondence without judicial order

From 19th September to 1st October, the Civil Guard opened private letters addressed to thousands of citizens, searched government offices and private companies, and intercepted the postal delivery of subscription magazines in an attempt to seize all materials related to the vote. These activities constitute a violation of the right to privacy and the secrecy of communications recognised in Article 18 of the Spanish Constitution.



8. Closure of websites, threats to media and seizure of electoral materials

The Spanish police searched Catalan media establishments as well as the premises of printing companies, while identifying journalists covering political gatherings as well as police actions. Spanish police forces also shut down hundreds of websites and confiscated electoral materials and propaganda. These actions contravene Article 20 of the Spanish Constitution, which protects the rights to freedom of expression and freedom of information.

9. Banning and cancellation of public events

During the weeks prior to the holding of the referendum several public events were banned in Catalonia, Madrid, Valencia and Vitoria. Such bans violate the rights of assembly and demonstration protected by Article 21 of the Spanish Constitution and governed by Organic Law 9/1983, as well as the right to political participation as outlined in Article 23 of the Spanish Constitution.

10. Misuse of the mandate and powers of the Constitutional Court

The Spanish Constitutional Court has made an excessive use of the powers it received in the “*ad casum*” reform of 2015, and which the Venice Commission already questioned in its Opinion 827/2015 of 13th March 2017.

- The Venice Commission stated that the fines provided for in the reform were so high that they could be considered criminal sanctions, especially if applied recurrently. However, in its use of this power in the Catalan context, the Constitutional Court set daily fines of €6,000-€12,000 to Catalan public officials.
- Given the criminal nature of these measures, the Venice Commission stated that the imposition of fines should be accompanied of the guarantees provided for in article 6 of the European Convention on Human Rights. This has not been the case in the Constitutional Court’s measures against Catalan officials:
 - Art. 6(1) ECHR states the need for an independent and impartial Court. However, in this case, the Court adopting the enforcement measures and the Court having issued the initial ruling were one and the same.
 - Art. 6(3) ECHR, provides for the right to have time and the necessary facilities for the preparation of a defence. However, in the recent cases in Catalonia, fines were imposed without the possibility of prior defence.

11. Political interferences in the proper functioning of the judiciary.

As shown by the *EU Justice Scoreboard* published by the European Commission in April 2017, only 30% of Spaniards believe in the independence of justice in Spain. In the same vein, the Council of Europe’s Group of States against Corruption (GRECO) reported in June 2017, that Spain had only partially implemented 25% of the Group’s previous recommendations regarding judicial independence, while completely ignoring the remaining 75%.



12. Failure to respect unfavourable rulings

The Spanish State's zeal when it comes to recentralizing powers through the Constitutional Court, contrasts with its reluctance to comply with court rulings when these are unfavourable to its interests. There are currently 34 rulings by Spanish Courts in favour of Catalonia, which the Spanish Government simply ignores (3 on education, 24 on social services, 3 on environmental matters and 4 on culture).