

Report on the political situation and the violation of fundamental rights in Catalonia

This document has been drafted by a number of Catalan civil society organizations, with no ties to political parties, committed to defending the democratic right of Catalans to decide their political future.

The document has been prepared in order to inform various international organizations about the will of the majority of the people of Catalonia. This will is reflected in the mandate received by the elected representatives of Catalonia's democratic institutions and the Government of Catalonia. We express our conviction that international organizations will carefully monitor events in connection with the exercise of the democratic will of the people of Catalonia.

Catalonia's Institutional Tradition

Catalonia's national reality was forged over the centuries on the basis, among other things, of its own long-standing legal tradition, and the age-long production of norms; and also of the existence of institutions, that lasted until the suppression of Catalonia's public law following the military defeat of Catalonia in 1714 at the hands of the Bourbon army. The establishment thereafter of an occupation administration opened the way to the transition, starting with the Decree of "Nueva Planta" (or new Government), to convert Catalonia into a province of the Kingdom of Spain and the denial of the national character of Catalonia. This situation has only been partially amended in the few attempts at decentralization in the last hundred years (the "Mancomunitat" between 1914 and 1923, the Republican Generalitat government between 1931 and 1939; and the current Generalitat government since 1977). The parliamentary tradition dates back to the 13th century, although its roots may be traced back to the 11th century, which makes it one of the oldest parliaments in the world - if not the oldest one.

Recognition of Catalonia as a nation

The Parliament of Catalonia, reflecting the feeling and the will of the citizens of Catalonia, defined Catalonia as a nation by an ample majority in the Preamble to the Statute of Autonomy. The Spanish Constitution, in article 2, recognizes the national reality of Catalonia as a nationality. Catalonia's respect for the 1978 Spanish Constitution should not therefore mean any relinquishment of this status as a nation or of its right to decide its political future (Resolutions of the Parliament of Catalonia 98/III of 12 December 1989, 229/III in 1991, and the Resolution adopted on 1 October 1998, in which the plenary of the Parliament of Catalonia proclaimed for the first time Catalonia's right to self-determination, on the occasion of the 50th anniversary of the Universal Declaration of Human Rights).

The 2006 Statute and the 2010 Judgment

A new Statute of Autonomy was approved by referendum by the people of Catalonia in 2006. The Spanish Constitutional Court considered in Judgment 31/2010 of 28 June, that a significant part of this Statute was incompatible with the 1978 Spanish Constitution. The judgment was issued by a court on which several irregularities were reported (including the violation of the provisions of the Spanish Constitution and Organic Law 2/1979, of 3 October as regards its composition).

The Judgment violates Article 152.2 of the Spanish Constitution itself, because it modifies the will of the people expressed in Catalonia through a binding referendum. As a result of the changes imposed by the Constitutional Court on the text adopted by the Catalan and Spanish Parliaments and ratified by referendum, the Statute in force derives from a Constitutional Court judgment that annulled 14 articles and reinterpreted 27 others, devalued the definition of Catalonia as a nation and mentions the «indissoluble unity of Spain» eight times. The most elementary principles of deference to democratic legislative power, and of respect for norms adopted democratically, were thus ignored.

Popular rejection of the Judgment

After the aforementioned judgment, once the Spanish judicial authorities had refused to recognise the national character of Catalonia, and the 1978 Constitutional pact had been breached, Catalan society expressed its will in a series of massive demonstrations demanding the national recognition of Catalonia, and the power to decide its political future.: among others, the demonstration on 10 July 2010 and those on 11 September 2012, 2013, 2014, 2015 and 2016. These expressed, in a massive and sustained manner, the desire to attain independence by peaceful and democratic means.

Response of the Catalan institutions to popular demands, and persecution by the State in the courts

The Catalan authorities tried to respond to these massive and repeated popular mobilizations. In 2012, after receiving an electoral and parliamentary mandate to hold a poll, they first tried to agree with the Spanish authorities on the holding of a referendum on independence, in accordance with the constitutional provisions in force in Spain. The mechanism chosen was to request the transfer to the Government of Catalonia of the power to call the referendum.

Given the refusal of the Spanish authorities, the Catalan authorities passed through Parliament Act 10/2014, on popular polls other than referendums and other forms of citizen participation. This Act implements Article 122, on popular polls, in the Statute of Autonomy of Catalonia and gave legal cover to the decree convening the non-binding popular poll on the political future of Catalonia. The Bill was approved with 106 votes in favour and 28 against. The poll was provisionally suspended three days later by the Constitutional Court, in response to an appeal of unconstitutionality submitted by the Spanish Government against certain articles of this Act and against the decree calling the poll. Both were later annulled by the same body in Judgment 138/2015 of 11 June.

The Catalan Government was determined to fulfil the mandate for which it had been elected; this mandate emanated from the main clause of President Artur Mas' investiture agreement, and he decided on 14 October to replace this poll by a citizens' participatory process organized by the Generalitat of Catalonia, in accordance with articles of the Act that had not been suspended. It was to include a poll with the same question as before, and that was to take place the same day. The Catalan government's involvement in the participatory process was halted on 4 November by a Constitutional Court injunction, at the request of the Spanish Government.

This poll took place on November 9, 2014. It was carried out by 42,000 volunteers, and 2,344,828 people (about 42% of the electorate) took part, 81% of whose votes being in favour of independence.

Twelve days after the process started, the top prosecutor in Catalonia, by order of the Chief State Attorney, laid penal charges against four members of the Government for disobedience, corruption and embezzlement. The trials of the former President of the Generalitat, Artur Mas, former Vice President Joana Ortega, former Minister of the Presidency Francesc Homs and former Minister of

Education Irene Rigau took place in February 2017, and they were widely regarded as political; the defendants face debarment from public office and considerable monetary fines.

The poll had the support of the vast majority of local authorities, as 920 municipalities, 36 county councils, the General Council of Aran and all for provincial councils adopted motions in favour of convening the polls.

In recent months, over 400 pro-independence elected officials at municipal level have been charged by the Spanish authorities for their actions in support of the independence process. The elected officials have been reported for actions carried out in the framework of democratic mandates of council plenaries.

Despite this expression of popular will, the prosecutor has laid criminal charges for the expression of opinions favourable to the independence of Catalonia in the context of Catalonia's representative institutions, for the use of symbols - by these institutions – associated with setting up of the Catalan Republic and even for measures to foster political debate inside these same institutions. The prosecutor has on occasion acted in flagrant contradiction with parliamentary prerogatives laid down in the Statute of Autonomy of Catalonia and the Rules of Order of the Parliament of Catalonia.

Violations by Spain of the rights of the Parliament of Catalonia and its members

In a number of attacks on the Catalan institutions, the Spanish Constitutional Court has declared unconstitutional or has suspended much of the legislative work of the Parliament of Catalonia in the last five years, including Acts unrelated to the Spanish territorial model, such as Act 17/2015 on the effective equality between men and women or Decree-Law 24/2015 against energy poverty. In all, between 2012 and 2017 the Spanish Government appealed against more than 35 Catalan Acts.

Article 21 of the Universal Declaration of Human Rights recognizes the right to take part in government through freely chosen representatives, who must enjoy the necessary protection to implement its mandate. Article 23.1 EC also recognizes this right, which is projected on the recognition of the inviolability of the Members of the Parliament of Catalonia in Article 57.1 of the Statute of Autonomy of Catalonia. However, the Constitutional Court urged state prosecutors to lay charges against the Speaker of the Parliament of Catalonia for allowing a debate in the House on the conclusions of a parliamentary committee on the constituent process. In January 2017 the TC urged prosecutors to lay further charges against the Speaker, along with four members of the Bureau, for allowing the October 2016 debate on a referendum on the independence of Catalonia. The prosecutors interpreted this request, laying charges against three of the four members identified by the TC. The omission of the fourth member is based on his political stance, in the prosecutors' own words. This illustrates the degree of politicization of the current Spanish prosecutors' offices.

These serious events take place while the Spanish Government reiterates that it will do whatever it takes to prevent the holding of a referendum on the independence of Catalonia.

It is worth recalling in this memorandum that the Spanish Government has failed to comply with numerous rulings of the Spanish Constitutional Court, the Supreme Court and the High Court in favour of Catalonia. In all, thirty-four sentences: three refer to university student grants, three to the environment, four to culture and twenty-four to social services.

The judicialization of political disputes

The Spanish authorities offers no possibility of an agreed settlement of this dispute, even as regards the articulation of a democratic process with sufficient guarantees under the monitoring of neutral

institutions to allowing the channelling of a democratic decision by the Catalans as to Catalonia's political future.

The democratic mandate received by the elected representatives of the Catalan institutions and by the Government of Catalonia responds to the will of Catalan society, expressed at the polls in the elections of 27 September 2015, in which votes for political options favourable to the independence of Catalonia amounted to 47·8%, while the political forces opposed to it won 39·11%, and the remaining 13·09% of the votes went to political parties that did not position themselves either for or against independence.

The Spanish Government, without having challenged the legitimacy of the party manifestos presented at these elections or the outcome, is preventing the implementation of the electoral mandate democratically expressed by the majority of the people of Catalonia.

Overall, we believe there is enough factual evidence to consider that the Spain has displayed conscious and repeated malpractice as regards the respect for democratic principles firmly established in the European context and fully accepted by various international bodies, in relation to the people of Catalonia and the democratically chosen representative institutions in recent years, in the context of the relevant legal framework, as set out below:

(a) Spain does not respect freedom of expression and opinion

Article 19 of the Universal Declaration of Human Rights recognizes the right to freedom of opinion and expression, which is essential in building a democratic political community; and this recognition is reiterated in Article 19.1 of the International Covenant on Civil and Political Rights, in Article 10 of the European Convention on Human Rights, in Article 11.1 of the Charter of Fundamental Rights of the European Union, in the Charter of Paris for a New Europe (adopted at the meeting held on 19 to 21 November 1990 by the heads of State or Government of the states participating in the Conference on Security and Cooperation in Europe), and in Article 20 of the 1978 Spanish Constitution. Nevertheless, the Spanish authorities have laid criminal charges in connection with various expressions favourable to the creation of a Catalan Republic by political representatives in a number of Catalan institutions, both regional and local.

(b) Spain prevents the free exercise of political representation

Article 21 of the Universal Declaration of Human Rights recognizes the right of political participation through freely chosen representatives, which includes the protection of these representatives so as to make such participation effective, as reiterated in Article 25 of the International Covenant on Civil and Political Rights. In addition, Article 23.1 of the Spanish Constitution also recognizes this right, which is reflected in the guarantee of the inviolability of the members of the Parliament of Catalonia in Article 57.1 of the Statute of Autonomy of Catalonia. However, Spanish authorities have laid criminal charges in respect of opinions expressed and votes cast by the Speaker and part of the Bureau of the Parliament of Catalonia.

(c) Spain does not guarantee the impartiality of justice

Spain undertook, in signing the Charter of Paris, to build, consolidate and strengthen democracy as the only system of government, while accepting that democracy requires justice to be administered impartially. However, as explained above, the Spanish institutions have repeatedly prevented the expression of the democratic will of the Catalans, and the Constitutional Court, acting in a partial and biased way since Judgment 31/2010, has blocked a significant part of the decisions taken democratically by the Parliament of Catalonia and its other democratically elected authorities.

Moreover, the Concluding Document of the Copenhagen Meeting of the CSCE Conference on the Human Dimension (29 June 1990) highlights the conviction of participating states, which include the Kingdom of Spain, that the rule of law does not mean merely a formal legality, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression. It also states that democracy is an inherent element of the rule of law. However, as explained above, the Spanish authorities have repeatedly prevented the democratic expression of the citizens of Catalonia regarding its political future, have denied any recognition of the democratically elected Catalan institutions as representatives of the majority will of the people of Catalonia, and have sought the prosecution of elected officials for expressing their support for the Catalan Republic or for applying measures of democratic participation in relation to the Catalans' right to decide as regard their political future.

February 2017

<http://estudiscatalans.blogspot.com/p/report2017.html>)

(Hi ha una versió catalana del text <http://estudiscatalans.blogspot.com/p/informe2017.html>)

(Les entitats que s'hi vulguin adherir ho poden comunicar fent un comentari, per part d'una persona autoritzada -amb adreça electrònica, que no serà publicada-, en aquesta pàgina. Les seves denominacions s'afegiran a sota de la llista de les entitats autores de l'Informe)



Organisations signatories of this document:

1. «Fundació Catalunya. Fons per a la Defensa dels Drets dels Catalans», (Catalonia Foundation. Fund for the Defence of the Catalans' Rights), a private non-profit registered by the Justice Department of the Generalitat of Catalonia with No. 2414, whose registered office is in Rambla de Catalunya 31, principal 1a, 08007 Barcelona, and on its behalf, Sra. Xesca Crespí Oliver, in her capacity as President of the Board of Trustees.
2. «Fundació Congr s de Cultura Catalana», (Congress of Catalan Culture Foundation), a private non-profit foundation registered by the Justice Department of the Generalitat of Catalonia with No. 134, whose registered office is in Rambla de Catalunya 31, principal 1a, 08007 Barcelona, and on its behalf, Sr. Miquel Strubell i Trueta, in his capacity as President of the Board of Trustees.
3. «Fundaci  Societat i Cultura», (Society and Culture Foundation), a private non-profit foundation registered by the Justice Department of the Generalitat of Catalonia with No. 203, whose registered office is in carrer del Consell de Cent, 347 s/ , 08007 Barcelona, and on its behalf, Sr. V ctor Cucurull Miralles, in his capacity as director of the Foundation.
4. «Associaci  Catalana per a la Defensa dels Drets Humans», (Catalan Association for the Defence of Human Rights), a private non-profit association registered by the Registre d'Associacions de Barcelona with No. 8.505, whose registered office is in carrer de la Portaferrissa, 18, entl. 2a, 08002 Barcelona, and on its behalf, Sra. Marion Hohn, in her capacity as President of the Association.
5. «Associaci  Independentista Sobirania i Just cia» (Sovereignty and Justice pro-Independence Association), a private non-profit association registered by the Registre d'Associacions of the Generalitat de Catalunya with No. 38.836, in the Registre de Grups d'Inter s de la Generalitat de Catalunya with No. 663 and in the EU Transparency Register with ID No. 250079424511-11 (date 15/11/2016), whose registered office is in carrer de la Provid ncia, 42, 08024 Barcelona, and on its behalf, Sra. Isabel-Helena Mart  i Castell, in her capacity as President of the Association.
6. «Assemblea Nacional Catalana» (Catalan National Assembly), a private non-profit association registered by the Department of Justice of the Generalitat de Catalunya with No. 46.548, and in the EU Transparency Register with ID No. 602541324089-94 (date 26/10/2016), whose registered office is in carrer de la Marina 315, 08025 Barcelona, and on its behalf, Sr. Jordi S nchez i Picanyol, in his capacity as President of the Association.
7. «Plataforma pel Dret de Decidir (PDD)» (Plataform for the Right to Decide), a private non-profit association registered in the Registre d'Associacions de Barcelona with No. 34373, whose registered office is in carrer Major, 10, Sant Sadurn  de l'Heura 17118 Girona, and on its behalf, Sr. Ignasi Aureli Argem  Roca, in his capacity as President of the Association.
8. «Centre Internacional Escarr  per les Minories  tniques i les Nacions – CIEMEN» (International «Escarr » Centre for Ethnic Minorities and Nations), a private non-profit association registered by the Department of Justice of the Generalitat de Catalunya with No. 4208, whose registered office is in carrer de Rocafort, 242 bis, 08029 Barcelona, and on its behalf, Sr. David Minoves i Lluci , in his capacity as President of CIEMEN.
9. «ICEC, International Commission of European Citizens», a private non-profit association, registered in the Dutch speaking Commercial Court of Brussels with official company number 662.395.875, and with registered office in BE-1000 Brussels (Drukpersstraat 20), represented by Sra. Anna Arqu , in her capacity as official spokesperson for the Catalan countries.
10. «The Catalan Centre of the PEN Club Writers Association» (PEN Catal ), a non-profit association registered in the Register of Associations of the Generalitat of Catalonia with No. 8550,

whose registered office is in carrer Canuda, 6, 5a, Barcelona, and on its behalf Carmen Arenas Noguera, in her capacity as President of the Association.

11. «Drets» (Rights), a non-profit association registered in the Departament de Justícia de la Generalitat with No. 53,543, whose registered office is in carrer de Balmes, 224, 3er, 1era, 08006 Barcelona, and on its behalf Sergi Blazquez Quevedo, in his capacity as President of the Association.

12. «Federació d'Organitzacions Catalanes Internacionalment Reconegudes» (FOCIR, Federation of Internationally Recognized Catalan Organizations), a non-profit association registered in the Barcelona Register with No. 238, whose registered office is in Via Laietana, 54 (Office 213), 08003 Barcelona, and on its behalf, Sra. Mònica Sabata i Fernàndez, in her capacity as President of the Federation.