

# THE MINOTAUR OF '78

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REPORT ON INSTITUTIONAL VIOLENCE BY THE  
SPANISH STATE AGAINST CATALONIA'S PROCESS  
OF SELF-DETERMINATION, 2015-2017

Initiative of the mayor offices of  
Sabadell, Cerdanyola del Vallès, Argentona, Sant Martí Sarroca and Soriguera



*“The Minotaur is an important figure in History and today. It is power. Sometimes it is masked and adopts benevolent, peaceful guises (...) This is the exception. It generally keeps its distance and commands respect, and more respect with every day that goes by (...) Abstract in theory, it is an everyday reality that one must know how to manage. There are peoples who are familiar with it and others that don't know what to do with it. This latter is the historical case of Catalonia.”*

J. Vicens Vives, Notícia de Catalunya

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# 1. INTRODUCTION

Ever since the consultation held on the 9<sup>th</sup> of November 2014 on the relationship between Catalonia and the Spanish State, which the government of Catalonia held on a non-binding basis, the Spanish State's judicial and political persecution of Catalan institutions and the pro-independence movement has entered an unprecedented upward spiral. A host of political and social organisations have pointed to this problem within a political framework in which, when faced with a massive request to exercise the right to self-determination within a process of democratising the institutions, such as the process underway in Catalonia, the sole response from the institutions of the Spanish State has been repression. Numerous international organisations and authorities on civil and political rights, such as the Ombudsman of Catalonia and the UN Human Rights Council, have condemned the lack of democratic guarantees in Catalonia in view of the increasing judicial, police and political harassment of the Catalan institutions, entities and public services.

In fact, the suspension of human rights in the resistance to the pro-independence movement in Spain has been noted numerous times by the European Committee for the Prevention of Torture due to the lack of legal safeguards and the inability to investigate whether or not numerous people within the circle of the *Abertzale* left had been treated in a inhumane, cruel or degrading fashion. Specifically, the Spanish State has been mentioned on numerous occasions in international reports condemning cruel, inhumane and degrading treatment.<sup>1</sup> Likewise, in relation to the Catalan pro-independence movement, the State has been condemned over a lack of guarantees of article 3 of the ECHR which prohibits torture,<sup>2</sup> known as the *Garzón* Case.

The purpose of this report is to serve as reference material for the societal dissemination and collectivisation of information on this situation. It aims to offer a broad perspective on the State apparatus and repression, working with sources of information centred on the complaints filed by individuals and organisations that have been the victims of State repression. It also seeks to politicise repression and the court system, because one of the objectives of the State is precisely to depoliticise counterhegemonic politics to make this issue an exclusive matter of the courts. From this twofold perspective, as a democratic struggle, this report aims to also serve as a tool to raise the international community's awareness of the conflict underway in Catalonia.

Even though some materials have already been written on the topic, the reports published to date have either focused on specific deeds which occurred on the 1<sup>st</sup> of October – Report by the Attention Service for the Victims of Police Aggression on the 1<sup>st</sup> of October of the Barcelona Town Hall, Summary Report of the Ombudsman's Actions around the 1st of October, Report by the International Limited Observation Mission (ILOM) drawn up by The Hague Centre for Strategic Studies (HCSS) – or they have covered a longer period of time. However, their sights have been trained solely on Barcelona, and they have taken a narrow view of State violence, specifically by not including repression in relation to elected officials and members of the executive, or actions by the far right, or the application of article 155 of the Spanish Constitution. Furthermore, they have used a methodology that draws from mixed sources of information – newspapers, complaints filed, State actions, etc. – as in the case of the report by the Xarxa Som Defensores entitled “Violació de drets civils i polítics durant el mes de setembre i octubre del 2017” (Violation of civil and political rights during the months of September and October 2017).

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<sup>1</sup> (CCPR/C/79/Add.61) (CPT/Inf(2003)22) (CAT/C/CR/29/3) (E/CN.4/2004/56/Add.2) (E/CN.4/2005/62/Add.1) (CPT/Inf(2007)28) (A/HRC/10/3/Add.2) (CAT/C/ESP/CO/5) (CPT/Inf(2011)11) (CAT/C/ESP/CO/6)

<sup>2</sup> ECHR ruling David Martínez Sala et al., 2 November 2004.

To date, there have also been attempts from the institutional sphere to promote other mechanisms to gather information and complaints. The Parliament of Catalonia approved a Parliamentary Investigative Committee to investigate the events of the 1st of October as part of a proposed resolution,<sup>3</sup> but the Spanish government's application of article 155 of the Spanish Constitution (SC) dissolved the Parliament, and the proposed resolution was nullified by the Constitutional Court. Likewise, the government of Catalonia created a Governmental Commission to investigate the same events on the 1st of October, but the Spanish government's application of article 155, with the dissolution of the government and the National Court's imprisonment of the Regional Minister of Justice, has prevented any investigative measure of the facts from moving forward. There was an attempt to promote an Investigative Commission on the events of the 1<sup>st</sup> of October in Spain's Congress of Deputies, but the votes against it from the PP, PSOE and C's prevented the commission from being created.

The fact that there are no materials that report on the State violence from such a broad perspective, in terms of both the timeframe and the kind of actions, complicates the essential task of raising the international community's awareness of the conflict from the vantage point of human rights.

## Law as a counterhegemonic tool

After World War II, the Universal Declaration of Human Rights was signed as a mechanism of reparation and to prevent a repetition of the crimes committed by Fascism in all its guises – governments, armies, legislations, etc. – during the period between World War I and 1948. The Declaration of Human Rights is a response to the Fascism that had led Europe to an unprecedented state of war and authoritarianism. Since the Universal Declaration of Human Rights, the International Covenants of 1966 and the other international human rights conventions, there has been a clear materialisation of positive law in favour of international human rights law. However, it is obvious that today this construct is an embryonic framework, incomplete and unfulfilled by progressive movements, and all too often regressive movements as well.

In the strategy that seeks to continue the headway in these rights, the guarantees should be extended in a threefold direction, as posited by Luigi Ferrajoli:<sup>4</sup> 1) towards a guarantee of all rights, not only the rights of freedom but also social rights (social constitutionalism alongside liberal constitutionalism), 2) towards a guarantee of rights before all powers, not only public powers but also private powers (the constitutionalism of private law alongside the constitutionalism of public law), and 3) guarantees at all levels of law and internationally. This expansion, as always, will require social pressure and a political struggle, which we feel a part of, in a historical line that has conquered rights through so many generations of socialist, feminist and ecological protest movements and revolts. After all, no right has ever been just handed to us.

The history of the rule of law, democratic constitutionalism and human rights can be read as the history of a long struggle against the absolutism of power, indeed against all forms of power: political power, judicial power, police power, as well as even economic and business power. In all cases, the fundamental rights have also been framed as the law of the weakest and as a counter-power, boundaries on and links to powers which would otherwise be absolute. However, this struggle does not always progress forward. In southern Europe, the combination of the economic crisis, deindustrialisation, globalisation of the economy,

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<sup>3</sup> Entered in the register with number 72032, but not published in either the Official Gazette of the Parliament of Catalonia or the Official Gazette of the Government of Catalonia.

<sup>4</sup> Ferrajoli, Luigi "Sobre los derechos fundamentales" Cuestiones constitucionales 2015, UNAM, Mexico.

limits on the public deficit, the pillaging of the public treasury by corruption, and neoliberal economic constitutionalism is leading to an erosion of the guarantees of social rights which had traditionally been established.<sup>5</sup> The deterioration of the Greek social security system after successive memoranda is a good example of the normative violation of the social rights of Europeans, social rights which are also fundamental rights. We are aware of this.

Yet beyond this widespread erosion of the guarantee of social rights in southern Europe, in Catalonia in recent years this has been joined by a threat to civil and political rights, called first-generation rights. The underlying reason is the Catalan people's exercise of the right to self-determination. This is a debate which we shall not discuss in this report despite our full conviction that it is a valid right against which different institutional actors from the Spanish State in all their power, even those which are not strictly institutional, have deployed a strategy that includes the destruction of all kinds of individual fundamental rights. This dire circumstance is what has led us to this document.

A framework of denial of the individual political rights which are recognised in international and European human rights texts, and even in the 1978 Spanish Constitution, is used when denying a collective right such as self-determination. Rights are being violated, and there is a lack of guarantees of protection by the institutions which are supposed to keep watch over these rights. What is more, as can be seen, many of the violated rights come from the functioning and initiatives of the judicial authority, which should act as a check and control on the State powers. Our rights have been proclaimed, but their effectiveness is highly questionable.

This report, drawn up based on the complaints filed by people who have been the victims of State violence and repression, seeks to be yet another contribution to the struggle described above to construct and expand rights. This is based on the conviction that condemning the situation in Catalonia today is tantamount to condemning the lack of effectiveness of the majority of commitments and good intentions that were meant to be enshrined in democratic constitutionalism in the second half of the 20<sup>th</sup> century. Documenting, analysing and debating, as we shall strive to do in this report, is but a tentative attempt to build a guarantee of those violated rights, because when unconstitutionality does not kick in, as is happening today in Catalonia, there are ways for society to guarantee rights, to protect our own rights. And this report also seeks to open up this way, since it has been expressed in many of the protest initiatives and defences of rights from the autumn of 2017. In any case, we know that the struggle to guarantee democratic rights in Catalonia is a struggle to guarantee democratic rights everywhere, because the debates and conflicts that have arisen exist in some form in all the struggles to reconquer sovereignty in southern Europe, and probably in the Mediterranean as a whole. This report is our contribution.

## Methodology

The goal of this report is to assemble materials meant to raise international awareness of the political conflict in Catalonia from a broad perspective on the repression by the Spanish State.

We mean State in the broad sense, as a set of legal, political, functionary, media and social mechanisms that operate to maintain the status quo. First, delimiting the State as an apparatus shaped by diverse stakeholders is a perspective of analysis which we justify via a theoretical framework constructed using specific cases that have occurred in the Spanish State. Secondly, we conceptualise the apparatus through all the mechanisms that have activated

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<sup>5</sup> Noguera, Albert "El bienestar económico y social en las sociedades del s. XXI" Lex social, 2017, Madrid.

it which act in a coordinated fashion to block the process of Catalonia's self-determination based on the proceeding undertaken against the consultation held on the 9th of November 2014.

We incorporate all of these elements to analyse the State repression around the blocking of the process of self-determination of Catalonia through the legal proceeding undertaken against the consultation held on the 9th of November 2014, which continues today. Therefore, this report does not solely centre on the measures targeted at political and social agents who are publicly in favour of independence but also includes all the actions carried out by the Spanish State apparatus to block the process of self-determination in Catalonia – such as those taken against the educational community or against the institutions of the Government of Catalonia.

The report consists in five distinct parts: the first part outlines the reasons behind the report and the practical methodology used; the second part draws from practical cases to develop a summary of the status of civil and political rights in the Spanish State based on the process of self-determination in Catalonia; the third part focuses on analysing the Spanish State through a common thread based on the logic of exceptionalism and the historical construction of the crime of rebellion; the fourth part is a case study constructed through legal proceedings against the pro-independence movement currently underway and reports filed against the repression of the State, meant as an extensive apparatus; and the final part includes conclusions and recommendations.

The sources used are the specialised literature, reports from international organisations on matters involving civil and political rights, reports already drawn up by different actors on repression in Catalonia, direct access to police and judicial actions undertaken in this sphere, and direct access to complaints and grievances filed by citizens and official publications such as the Official State Gazette in relation to the legislative and executive provisions handed down by the State. In order to write the chapter on the far right, confidential sources were used which shall not cite in order to protect the safety of the victims.

The fourth chapter is a case study created with a territorial dimension spanning all the Catalan-speaking lands, with a particular focus on Catalonia. The analysis is divided into seven strands: 1) state repression within the framework of the institutions' exercise of the right to self-determination; 2) state repression within the framework of people's exercise of the right to self-determination, preparation and holding the referendum on the 1st of October; 3) state repression within the framework of the institutions' exercise of freedom of expression and political participation; 4) state repression within the framework of the people's exercise of freedom of expression and political participation; and 5) state repression through a crusade for symbology.

## **2. A VIEW FROM POLITICAL AND CIVIL RIGHTS**

The events described and analysed in this report occurred within a context of weak civil and political rights. A deep-seated democratic culture and respect for political and cultural diversity within the institutional sphere has never truly taken root in the Spanish State since the dictatorship, among other reasons because of the original sin of the pact with the dictatorship in the genesis of the Regime of '78. The validity of a system of civil and political rights is demonstrated precisely when there are different options than those represented by the regime and the political majorities, or when there are options which question the very political and economic framework. In 2015, 2016 and 2017, we have had many warning signs that the system of guarantees called upon to protect democratic political action, primarily by institutions, like freedom of expression and the right to political participation, judicial independence and the independence of the public prosecutor's office, neutrality and the democratic disposition of the police forces, were not heading in the right direction. Below we shall flesh out each of these issues with the most important alarms sounded in recent years, which will allow us to define the Spanish framework on rights and freedoms within which the process of self-determination has unfolded.

### **2.1 THE CRUSADE AGAINST FREEDOM OF EXPRESSION IN THE SPANISH STATE**

In 2015, the Spanish legislature approved the reform of the Penal Code through Organic Laws 1/2015 and 2/2015 dated the 30th of March. Among other realms, they modified crimes of public disorder, hate crimes and crimes of terrorism, including the notion of the incitement of terrorism. Organic Law 4/2015 dated the 30th of March was simultaneously approved, which protects citizen security and expands the administration's capacity to punish behaviours which fall within the sphere of the right to protest.

The 2015 report on the Spanish State by the UN Human Rights Committee mentioned its concern with the dissuasive effect that approval of the Law on Citizen Security and the subsequent reforms of the Penal Code could have on freedom of expression, association and peaceful assembly.

The 2016 report by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye, expressed concern with the reforms of the Spanish penal laws specifically in relation to the law on the crime of inciting terrorism. In the same vein, in its 2016/2017 report on the Spanish State, Amnesty International also suggested that there are unjustified restrictions on freedom of information, assembly and expression around the aforementioned legislative reforms, and it documented several examples.

On the 23<sup>rd</sup> of June 2016, the Parliament of Catalonia approved Resolution 183/XI on the persecution of elected officials, in which it condemned the obvious violation of Catalan elected officials' fundamental rights of political expression in view of the judicial persecution undertaken by the Spanish institutions.

In February 2017, more than 200 university criminal law professors from the Spanish State signed a manifesto entitled “Cassandra as Symptom”,<sup>6</sup> in which they warned that the public prosecutor office’s and the judiciary’s interpretations of the crime of incitement of terrorism ran counter to both the Constitution and international human rights treaties.

In April 2017, the Catalan Ombudsman issued an extraordinarily harsh compilatory report entitled “Setbacks on human rights: Freedom of expression of elected officials and separation of powers in the Kingdom of Spain”, which reviewed the cases of the puppet masters Alfonso Lázaro de la Fuente and Raúl García Pérez and the tweeter Casandra.

In September 2017, two international experts, the aforementioned David Kaye and Alfred de Zayas, issued a new communiqué on the status of rights in the Spanish State in relation to the Catalan political process. This report stated that the measures adopted by the Spanish State run counter to individual fundamental rights and limit the right to information and debate at a critical juncture in Spain’s democracy.

## 2.2 POLICE VIOLENCE WITHIN THE FRAMEWORK OF PROTEST

The police culture in the Spanish State is weighed down by the ballast of an excess use of force, disproportionality and a lack of respect for the act of protesting and its importance in a society that claims to be democratic.

One of the concerns specifically cited in the 2015 report by the UN Human Rights Committee is condemnations over the use of excessive force by the agents of the State, including torture and abuse, especially within the framework of citizen protests. The Committee stresses the weakness of the investigations into these complaints and punishments and expresses its concern over the shortcomings in the forensic testing in cases in which human rights violations are being investigated by agents of the State. It also underscores the fact that police officers accused of the crime of torture have been pardoned, which contributes to a sense of impunity among the agents of the State.

In Catalonia, the issue of public order has been the subject of a sweeping citizen debate which was shifted to the Parliament of Catalonia as part of the committee tasked with studying models of security and public order in 2014. This committee’s conclusions included a ban on the use of rubber bullets by police forces.

There is a particular danger of limiting freedom of expression in this sphere. Amnesty International has documented the case of Judge Ricardo de Prada, who was the target of an investigation in April 2016 after he stated in a public act that he shared the conclusions of international organisations on the barriers that prevent investigations of crimes of torture. Likewise, the Barcelona judge Frederic Vidal was the target of a proceeding by the General Council of the Judiciary (GCJ) for having described the police action on the 1st of October as “terrorism” in an informal conversation among judges.

The report issued by the team at The Hague Centre of Strategic Studies (HCSS) in its capacity as international observer during the referendum on the 1<sup>st</sup> of October – the International Limited Observatory Mission (ILOM) – expressed its concern over the Spanish State’s actions to stop the referendum and the violations of fundamental civil and political rights. The report refers explicitly to police actions, the takeover of the finances of the Government of Catalonia, the Constitutional Court’s systematic suspensions of laws approved by the Parliament of Catalonia and the takeover of the Mossos d’Esquadra (Catalan regional police force), among others.

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<sup>6</sup> The manifesto was published on the website of this digital newspaper with a link to the list of names: [http://www.eldiario.es/tribunaabierta/Carrerosintoma\\_6\\_609349070.html](http://www.eldiario.es/tribunaabierta/Carrerosintoma_6_609349070.html)

### 2.3 LACK OF JUDICIAL INDEPENDENCE

In the organisation of the Spanish judicial system, the members of the State's high magistracies are particularly important in political cases, either because they sit at the peak of the judicial pyramid and are therefore ultimately in charge of establishing the definitive interpretative doctrine, or because since the people they investigate have immunity, they are directly in charge of cognizance on the case. These high magistracies are where there is a clear lack of independence from the major political parties in the State and the interests of the Spanish Executive.

The General Council of the Judiciary is in charge of deciding on the appointments to the high magistracies (members of the Supreme Court and Higher Courts of Justice, as well as the presidents of the Provincial Courts). The GCJ is comprised of 20 members chosen by the Congress of Deputies and the Spanish Senate, that is, by the political parties.

The Independent Judicial Forum, an association of judges from the Spanish State who are particularly concerned with dissociating the courts' bodies of governance from the political parties, drew up an extensive report about this issue in 2016 in which they documented examples of the logic of appointments through nepotism or political affinity in the vast majority of high magistracies of the State, especially those related to the penal jurisdiction in which the political representatives ultimately behind these appointments have to be investigated and, if needed, judged.<sup>7</sup>

What is more, in the Spanish system there are revolving doors between the public prosecutor's office and the judiciary, and between the judiciary and the executive power, which even further muddies judicial independence. Carlos Lesmes, the current president of the General Council of the Judiciary, was the public prosecutor until 1993, when he started as a magistrate. During the government of Jose M. Aznar, from the Partido Popular (PP), he was the director general of the Ministry of Justice from 1996 to 2004. That is, he was a direct member of the PP's first executive. Before serving as a judge on the Supreme Court, Manuel Marchena, the president of the Criminal Court of the Supreme Court, was a public prosecutor and specifically had been the head of the office of Attorney General Jesús Cardenal during Aznar's government. When the government changed, he rose directly to the magistracy of the Second Court of the Supreme Court.

Manuel Maza, Attorney General between November 2016 and November 2017, had been the magistrate in the Second Court of the Supreme Court since 2002 and personally signed the grievances against the Catalan government and Catalan parliamentary committee for the crime of rebellion. Since the grievances have ultimately been sent to this same Court for investigation and prosecution, his fellow judges on the court are in charge of ruling on it.

In Catalonia, the Higher Court of Justice, which is in charge of judging the cases against the Catalan government and MPs, was presided over by Miguel Ángel Gimeno, from Judges for Democracy, when his first mandate came to an end in late 2015. He was not renewed, counter to tradition, and in his place a more conservative magistrate was appointed, Jesús M. Barrientos, who had taken advantage of the hearing prior to his appointment to express his concern over the independence process.

All of these considerations are also contained in the reports issued by the GRECO,<sup>8</sup> the Group of States against Corruption of the Council of Europe, in 2016 and 2017, which criticise the fact that the Spanish State is doing nothing to suggest a remedy for the shortcomings that have repeatedly been detected in the reports, and which consider the GCJ's lack of independence, the opacity of the appointments to the high magistracy and the lack of minimal independence of the Attorney General all problematic.

<sup>7</sup> <http://www.forojudicialindependiente.es/wpcontent/uploads/2016/11/LaindependenciadelPoderJudicialenEspana%CC%83a.QuejadeFJlCCJE.pdf>

<sup>8</sup> <https://rm.coe.int/16806ca04a>

The Spanish Supreme Court is not a jurisdictional body; it is not part of the judicial system nor is it actually regulated by the same law that regulates judges and magistrates. Its members do not necessarily come from legal careers and are chosen directly by the State bodies (central legislature, central executive and GCJ). In 2012–2017, it was presided over by Francisco Pérez de los Cobos, a member of the Partido Popular and the brother of Diego Pérez de los Cobos, who was in charge of coordinating the police operations on the 1st of October and a senior official in the PP's central government. Likewise, Andrés Ollero, who previously spent 17 years as a MP in the Congress of Deputies representing the Partido Popular, is currently the magistrate of the court.

The Constitutional Court was the institution that was changed the most when the competencies to enforce its decisions were expanded to include a punitive capacity and even the suspension of authorities and public officials through Organic Law 15/2015. This reform, which, despite the individual votes of three magistrates, was validated by the Constitutional Court itself in a ruling, has been profoundly criticised by swaths of civil society and bodies within the Council of Europe, such as the Venice Commission (<https://www.coe.int/bg/web/portal/-/critical-analysis-of-amendments-to-spain-s-constitutional-court-venice-commission>).

In March 2017, a sweeping majority of the plenary of the Parliament of Catalonia approved motion 107/XI, which condemned such a high degree of politicisation in the top echelons of the Spanish judicial system, the Constitutional Court and the public prosecutor's office, and suggested that it was verging on an authoritarian rule of law in relation to the cases associated with Catalonia's exercise of the right of self-determination.

## **2.4 LACK OF INDEPENDENCE OF THE PUBLIC PROSECUTOR'S OFFICE**

The public prosecutor's office is not part of the judiciary, but its actions clearly influence the outcome of judicial activity. It is a hierarchical body at the top of which is the Attorney General. This position is directly appointed by the central executive and has traditionally been given to people whose political leanings share an affinity with the central government.

The approach to criminal policy in relation to the Catalan case has been one of the core issues in the relationship between the central government and the Attorney General. The Attorney General Eduardo Torres Dulce resigned in December 2014 over discrepancies with the instructions that the Minister of Justice gave him about Catalonia. He was replaced by Consuelo Madrigal until November 2016, when she was likewise not renewed because of her disagreements with the Ministry. Martín Rodríguez Sol was the chief public prosecutor of Catalonia in 2013 when he publicly stated that the citizens of Catalonia had the right to decide on independence. He was suddenly stripped of his position by the Attorney General.

### 3. A CRITICAL VIEW TO SHED LIGHT ON THE CURRENT STATE OF AFFAIRS

The normality of exception has become a core feature of contemporary political rationality. Exceptionalism is permanent; it has lost its temporary nature to become the rule. That is, the exception is now the rule.<sup>9</sup> Governance now entails resorting to extraordinary measures as if we were in an ongoing crisis. The matrix of political domination today reveals this tendency towards the state of exception. The materialisation<sup>10</sup> of the state of exception is where law and fact are confounded, where law and exception become indistinguishable. It carves out a space which is not protected by the law. The sovereign, who can decide on the exception, can exclude any group or groups he wishes from rights within the sphere of his domain. The sovereign has the capacity to reduce the other to a subject with no rights. Therefore, once they are excluded from the protection of the law, these people can be beaten, denigrated, harassed... The most obvious example is the application of article 155 of the SC, as an exceptional juridical solution to resolve the Catalan people's mobilisation against their domination. Paradoxically, the solution to the effects of domination is more domination. In Spain, this general framework is coupled with a problem of authoritarianism which has been dragging on since the initial creation of the nation state as we know it today.

Sociologically speaking, Alfons Aragoneses,<sup>11</sup> a history of law professor at the Universitat Pompeu Fabra, explains that the Spanish State embodies the metaphor of the legal palimpsest which Bonaventura de Sousa used when referring to Mozambique. The notion of palimpsest harks back to the reuse of parchments in the Middle Ages, when this material was so scarce; what had been written before was erased so the parchment could be written on again, yet part of the previous text always remained. In the Spanish State, despite the regulation brought about by the Constitution, a given legal culture and way of viewing the law has survived among justice professionals, judges and prosecutors. Furthermore, this system will continue to survive, especially among judges and public prosecutors, most of whom are conservative, with a pyramidal gerontocratic scheme in which the old judges always modulate the decisions of their younger peers, allowing the 19th-century legal culture to survive within the framework of a Constitution in the 21<sup>st</sup> century.

The question of independence did not enter the Spanish Penal Code until the late 19th century. At that time, with the birth of political Catalanism via the "Memorial de Greuges" (1885), the message to the queen regent (1888) and the bases for a Catalan regional constitution of Manresa (1892), there was a change in the legislative action of the State. The reform of the Penal Code with the Law dated the 1st of January 1900 introduced a third section in article 248 referring to the crime of rebellion, which stipulated that *"attacks against the integrity of the Spanish Nation or the independence of all or part of its territory, under a single fundamental law and a single representation of its personality as a nation"* were also considered acts of rebellion. It also stipulated that if the crime was committed by a newspaper with texts or drawings or by the activity of associations, the publications could be abolished and the associations shuttered. This reform allowed situations such as September 1902, when penal proceedings were launched against the authors of a poster announcing a Catalanist event in Borrassà which ended *"we do not doubt that with true unity and faith in the national cause of Catalonia, victory will be ours; meantime, our cries should be 'Long live autonomy and long live Catalonia'"*. The author of the text was accused of the crime of rebellion, as the prosecutor stated that these cries concealed *"plots to strip the Ministers of the Crown of their constitutional faculties and attack the integrity of the Spanish Nation"*.

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<sup>9</sup> Agamben, Giorgio "Estado de Excepción" PreTextos, 2004.

<sup>10</sup> Atilas, José "Apuntes para abandonar el derecho", Educación Emergente, 2016.

<sup>11</sup> Aragoneses, Alfons "Continuidad y discontinuidad del pasado en la justicia del presente" dins de "Derecho, memoria histórica y dictaduras" coord Federico Fernández-Crehuet López. Granada 2009.

Later, in 1906, after the attack waged by the soldiers from the Barcelona military garrison against the editorial staff of the satirical weekly *El Cucut* over a joke on the defeat of the Spanish army in Morocco, the regime reacted not by punishing the military but by enacting the law on jurisdictions dated the 23<sup>rd</sup> of March 1906. This penal law defined a new crime of insulting the Spanish Nation and its symbols, anthem and flag, while also penalising any apologies for “crimes or “criminals”. This also included any direct, allusive or veiled opinions expressed publicly or by the press.

The Primo de Rivera dictatorship (1923-1930) fleshed out this law by stipulating that crimes against the security and “*Unity of the Fatherland*” shall always be judged via court martial, while banning Catalan in public acts and also punishing “*the dissemination of separatist ideas through education or the preaching of doctrines*”. This perverse system was repealed by the Republic (1931-1939) and then restored by the Franco dictatorship (1939-1978), with military tribunals as the basic tool of political persecution. During the Franco regime, tens of thousands of proceedings were judged, most of them in the period prior to 1945, with more than 3,300 executions, the majority of them convicted for the crime of rebellion. This idea was constructed based on a particular interpretation which stated that those who defended the Spanish Republic had “rebelled” against the military regime established precisely by the actual rebels. In the last stage of the Franco regime, the military jurisdiction, the Tribunal of Public Order (1963-1977), also came into play simultaneously to judge crimes of sedition, rebellion, public disorder and illegal propaganda. This Tribunal became into the National Court in 1977.

The Transition stated these essential principles of unity of the Spanish Nation in article 2 of the Constitution and acritically took on this legal and judicial baggage with complete continuity, unlike the rupture that had indeed happened with the proclamation of the Second Republic. Since then and for many long years, the struggle against the Basque pro-independence movement has served as a litmus test where measures against terrorism have coexisted alongside true expressions of authoritarianism, such as the closure of newspapers and the illegalisation of political parties.

Via a Senate amendment, the 1995 Penal Code sought to introduce the requirement of the use of violence to define the crime of rebellion. However, this has not prevented the fact that this precise concept, crime of rebellion, which allows for punishment of up to 25 years of prison, was cited in the grievances filed by the Attorney General against the government of Catalonia and the Parliamentary Committee on the independence process, while it also used special jurisdictions (the Supreme Court instead of the Higher Court of Justice for those with immunity, and the National Court instead of the local Barcelona courts by those without immunity). This approach has been harshly criticised by the most prominent university chairs and professors of criminal law in Spain in the manifesto entitled “Criminal Legality and the Independence Process”, led by the chairs from Madrid and Granada, Javier Álvarez and María Luisa Maqueda.<sup>12</sup>

This entire process in recent years reveals continuity in the State’s actions in its responses to Catalonia’s national claims with criminal legislative and judicial measures, with a curtailment of the scope of freedom of expression and political action when dealing with Catalanism. This is bringing the current monarchy increasingly into line with the democratic system of the monarchy of the Restoration more than 100 years ago, which was hardly respectful of the rights of political freedom.

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<sup>12</sup> [https://www.peticiones24.com/legalidad\\_penal\\_y\\_proceso\\_independentista](https://www.peticiones24.com/legalidad_penal_y_proceso_independentista)

## **4. INVENTORY OF STATE REPRESSION AGAINST THE PRO-INDEPENDENCE MOVEMENT**

### **4.1 STATE REPRESSION WITHIN THE FRAMEWORK OF THE INSTITUTIONS' EXERCISE OF THE RIGHT TO SELF-DETERMINATION**

**1.- The proceeding over the 9<sup>th</sup> of November.** In 2014, the government of the Generalitat prepared a non-binding consultation on Catalonia's relationship with the Spanish State, scheduled for the 9<sup>th</sup> of November. In the weeks prior to the consultation, the Constitutional Court suspended the consultation at the request of the central government and forced the government of the Generalitat to halt the voting. The consultation was nonetheless held on the 9<sup>th</sup> of November, led by volunteers using the infrastructures and means that the government of the Generalitat had provided for that purpose. There were almost 7,000 polling stations, and a total of 2,035,290 people turned out to vote. The Attorney General's office filed accusations against the president of the Generalitat, Artur Mas; the Regional Minister of the Presidency, Francesc Homs; the Regional Minister of Education, Irene Rigau; and the Regional Minister of Governance, Joana Ortega, giving rise to two different proceedings given the fact that Francesc Homs was a member of the Spanish Congress at the time of the trial and therefore enjoyed immunity.

In the proceeding against Artur Mas, Joana Ortega and Irene Rigau in the Civil and Penal Courts of the Higher Court of Justice of Catalonia (PA 1/2016) the Attorney General's office filed an accusation, along with a civil accusation filed by the Spanish police unions. The Court handed down its ruling on the 13<sup>th</sup> of March 2017, condemning the three accused parties of the crime of disobedience of authority and fining them 36,000, 30,000 and 24,000 euros, respectively; they were also banned from holding any public office or post for two years. The accused parties were absolved of the crime of prevarication. The President of the Higher Court of Justice of Catalonia wrote the opinion, which was appealed and is still pending definitive ruling by the Supreme Court.

In the proceeding against Francesc Homs in the Second Court of the Supreme Court (special case 3/20249/2016), the accusation was filed by the Attorney General's office. The Court handed down its ruling on the 22<sup>nd</sup> of March 2017, condemning him to a fine of 30,000 euros and banning him from holding public office for a period of one year and one month. The ruling did not allow for any appeal since it was first handed down by the uppermost body within the Spanish judiciary. The opinion was written by the president of the Second Court of the Supreme Court.

In 2017, at the request of the unionist entities Catalan Civil Society and the Association of Catalan Lawyers, the State Court of Audit opened an accounting liability proceeding in which Artur Mas, Francesc Homs, Joana Ortega, Irene Rigau and six other civil servants are asked to defray the expenses stemming from the consultation held on the 9<sup>th</sup> of November 2014. This sum was tentatively set at 5.4 million euros, and the monies were disbursed from the assets of the investigated parties even though the case has not yet been definitively resolved and no amount has been claimed in the penal proceedings in which the four parties were accused.

The opening of this proceeding was dictated by Margarita Mariscal de Gante, now a member of the State Court of Audit, who was the Minister of Justice in the government of the Partido Popular between 1996 and 2000.

**2.- Complaint against Meritxell Borràs over the preparations for the referendum.** Based on the publication of an announcement by the Department of Governance of the Government of Catalonia of a framework agreement to purchase urns for the Parliament of Catalonia elections, the public prosecutor's office filed a complaint against Meritxell Borràs, the Regional Minister of Governance, and Francesc Esteve, the Secretary General of the Department of Governance, for disobedience of authority, prevarication and embezzlement of public resources. The Civil and Penal Court of the Higher Court of Justice of Catalonia admitted the complaint and ordered an investigation according to this court's preliminary inquiries 3/2017.

**3- Complaint against the Committee over the law on the referendum.** On the 6<sup>th</sup> of September 2017, the plenary of the Parliament of Catalonia voted on and approved the law on the referendum on self-determination. On the 12<sup>th</sup> of September, the public prosecutor's office filed a new complaint against the president of the Parliament, Carme Forcadell, and the bureau members Simó, Barrufet, Nuet and Guinó, for disobedience of authority and prevarication. This complaint was admitted by the Civil and Penal Court of the Higher Court of Justice of Catalonia that same day, and was added to the two cases on non-compliance with the decisions of the Constitutional Court on debates in Parliament like voting on the conclusions of the committee of the constituent process or resolutions on the referendum. Finally, these three proceedings were referred to the Supreme Court for joint prosecution in special case 20907/2017.

**4- Complaint against the government over the preparations for the referendum.**  
- Immediately after the approval of the law on the referendum on self-determination, the members of the government of the Generalitat de Catalunya handed down the decrees on calling the referendum on the 1<sup>st</sup> of October along with supplementary measures, which were taken on in a collegial fashion. For this reason, on the 12<sup>th</sup> of December 2017, the State's Attorney of Catalonia filed a complaint against all the regional ministers, including the president and vice-president, for crimes of disobedience of authority, prevarication and embezzlement of public resources. This complaint, which was admitted as indeterminate proceedings 41/2017 on the same day it was filed, was added to the complaint already open against Meritxell Borràs and Francesc Esteve, preliminary inquiries 3/2017, heard by magistrate Mercedes Armas.

**5.- Complaint against the electoral syndicate.** With the Constitutional Court's tentative suspension of the law on the referendum on self-determination and the decrees approved by the government, the Court also suspended the appointment of the members of the electoral syndicate who had been approved by the Parliament of Catalonia in its session on the 6<sup>th</sup> of September to act as the election monitoring body for the referendum scheduled on the 1<sup>st</sup> of October. The members of the syndicate accepted the Parliament's appointment and worked for several days in this capacity without remuneration until they were terminated by the Constitutional Court and asked to refrain from further action. Even though the syndicate did not perform the functions it was initially expected to after mid-September, or on election day, or in their mission of announcing the results, the public prosecutor's office filed a complaint on the 14<sup>th</sup> of September against the five regular members of the syndicate for crimes of disobedience, usurpation of function and embezzlement of public resources. Examining Magistrate's Court no. 15 of Barcelona opened up preliminary inquiries 974/2017, in which the members of the syndicate were stated to be the subjects of the investigation;

it is still open for investigation of the proceeding. What is more, the Constitutional Court imposed daily coercive fines of 12,000 euros on each of the members of the syndicate.

**6.- Investigation of 712 mayors.-** On the 13th of September, the Attorney General of Spain ordered the four provincial Attorneys General of Girona, Barcelona, Lleida and Tarragona to summon the 712 mayors who had notified the Generalitat of their willingness to provide venues for the referendum to be held on the 1st of October to provide statements, as they were being investigated for the crime of disobedience. The specific accusation was disobedience of the decisions taken by the Constitutional Court. Those summoned in Catalonia – there are a total of 947 municipalities – include the mayor's office of Badalona (215,634 inhabitants), Sabadell (208,246 inhabitants) and Girona (98,255 inhabitants). The first statements were on the 18th of September, and they were held successively on subsequent days, despite the fact that some mayors did not appear and the public prosecutor's office did not summon all of them. These investigation proceedings by the public prosecutor's office have not yet been judged.

In some of these summons by the public prosecutor's office, the parties were unable to access the content of the proceeding prior to the time of their statements because the proceeding was not even physically located in the public prosecutor's offices. This was condemned, for example, by the six mayors summoned by the public prosecutor's office of Balaguer on the 20th of September 2017.

**7.- Complaint against the municipal entities.** On the 14th of September, the public prosecutor's office filed a complaint against Neus Lloveras, the mayor of Vilanova i la Geltrú and president of the Association of Municipalities for Independence, and Miquel Buch, mayor of Premià de Mar and President of the Catalan Association of Municipalities, for the crimes of disobedience, embezzlement of public resources and prevarication. The deeds accused include emails that these entities sent to their member town halls after the Constitutional Court suspended the election on the 1st of October, in which either they asked about the availability of venues to hold the referendum or shared legal reports that endorsed a favourable interpretation of the legality of the referendum. The complaint also asked for the closure of the websites of both associations. The Higher Court of Justice of Catalonia, which held authority because Neus Lloveras was a MP in the Parliament of Catalonia, admitted the complaint without agreeing to any precautionary measures. The investigated parties are awaiting a summons to provide their statements.

**8.- Operation Anubis.** - On the 20th of September, the Civil Guard arrested 20 people and conducted 41 searches as part of Operation Anubis ordered by Examining Magistrate's Court no. 13 of Barcelona in preliminary inquiries 118/2017. Those arrested included the Secretary General of the Economy, Josep M. Jové; the Secretary of the Treasury, Lluís Salvadó; the Secretary General of Labour, Lluís Ginesta; two heads of the Centre of Telecommunications and Information Technologies (CTTI), David Franco and David Palanques; and the head of communication of the Department of Governance, Joan Ignasi Sánchez. The searches were conducted at sites such as the headquarters of the Department of Economy, the Department of Labour and the Secretariat of the Treasury. All of the arrested persons were released by the Examining Magistrate's Court pending the results of the investigation opened, which has remained secret for many months. The government's communications in the aforementioned areas have been seized as part of this investigation.

This judicial proceeding was initiated by a private individual's report against the Senator for the ERC, Santiago Vidal, over his statements at numerous public events on the arrangements being made by the government of the Generalitat to prepare for independence. With the preliminary investigation, a complaint against Carles Viver Pi-Sunyer, director of the

Institute of Studies of Self-Governance, was added, and the preparations for holding the referendum on the 1st of October were also investigated. This is currently the main target of the investigation, followed by the crimes of disobedience, embezzlement of public resources and prevarication, even though in July 2017, when faced with a request from the CUP to access the proceedings, the judge himself stated that *“the purpose of this case is neither political organisation nor the calling of a referendum, nor is it a general case against those who directly or indirectly had an interest in it”*.

**9.- Proceedings over the acts of the Catalan Ministry of the Economy.** On the 20th and 21st of September, there were protest demonstrations over Operation Anubis. The largest one was held throughout the entire day of the 20th and the night of the 20th and 21st on Barcelona’s Rambla Catalunya in front of the headquarters of the Regional Ministry of the Economy. This demonstration, made up of thousands of people, was held simultaneous to the action of the judicial commission of court number 13 and caused minor damage to three police vehicles owned by the Civil Guard. This was interpreted by Central Examining Magistrate’s Court no. 3 of the National Court as a crime of sedition (preliminary inquiries 82/2017) because the Court established the thesis that civil society organised via these massive demonstrations sought *“to ensure the referendum was held, and with it the proclamation of a Catalan republic, independent from Spain, aware that they were carrying out an action outside lawful means, impeding the application of the legal system as a whole and in particular the fundamental rule of all Spaniards, the Constitution”*.<sup>13</sup>

The examining magistrate understood that the presidents of the pro-sovereignty entities which had called for the demonstrations, who are members of civil society, namely Jordi Cuixart from Òmnium Cultural and Jordi Sànchez, participated actively in this event as the main promoters and drivers of it, and she determined that they would be sent to prison on the 16th of October 2017 after they appeared voluntarily in the National Court. In this same proceeding, the head of the Mossos d’Esquadra, Major Josep L. Traperó, and the intendant of the same force, Teresa Laplana, were also accused as it was deemed that their acts of omission on the day of the events voluntarily contributed to the materialisation of these demonstrations. After hearing their statements, the magistrate agreed to release the heads of the Mossos d’Esquadra with precautionary measures. In late November, the Supreme Court asked the National Court to forward it the part of the proceedings related to the two imprisoned defendants, which was added to case 20907/2017 and is being pursued as a crime of rebellion by the Catalan government and the Parliamentary Bureau.

**10.- Complaint over rebellion in the National Court.**- Within the framework of preliminary inquiries 82/2017, mentioned above, the Attorney General filed a complaint against all the members of the government of the Generalitat (regional ministers, vice president and president) for the crime of rebellion once the referendum had been held, and especially after the Catalan Republic was proclaimed on the 27th of October. The magistrate Carmen Lamela was able to summon only part of the government (since the president and four regional ministers were in Brussels) on the 2<sup>nd</sup> of November, and after taking their statements she decided to send Oriol Junqueras, Jordi Turull, Raül Romeva, Josep Rull, Dolors Bassa, Meritxell Borràs, Joaquim Forn and Carles Mundó to prison as provisional prisoners accused of crimes of rebellion, sedition and embezzlement of public resources. The regional minister Santi Vila, who had resigned before the declaration of independence, was released after paying bail of 50,000 euros.

The thesis upheld by the judge revolved around the idea that *“after the regional elections of Catalonia on the 27th of September 2015, the coalition government made up of Junts pel Sí (...) and CUP made public the fact that their objective was to achieve the independence of Catalonia*

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<sup>13</sup> From the interlocutory dated 16 October 2017 on the imprisonment of Jordi Cuixart and Jordi Sànchez issued by the magistrate Camen Lamela Díaz.

*within eighteen months by holding a referendum on this question previously, and if the referendum was positive independence would be declared (...) even considering the possibility (...) of a democratic conflict with broad citizen support geared at generating political and economic instability, which would force the State to accept negotiations for separation or, in its absence, a forced referendum which would also allow them to declare independence”.*<sup>14</sup> The target of the investigation and incrimination is none other than the roadmap developed by the government to democratically attain the Catalan Republic. In late November, the Supreme Court asked the National Court to forward it the part of the proceedings related to the imprisoned regional ministers and vice president, which was added to case 20907/2017 and is being pursued as a crime of rebellion against the Parliamentary committee.

**11.- Complaint over rebellion in the Supreme Court.**- The Attorney General also filed a complaint for the crimes of rebellion, sedition and embezzlement of public resources against the members of the Parliamentary bureau who had authorised the vote on the resolution, including the proclamation of the Catalan Republic. Since they still had immunity, despite the application of article 155 of the Spanish Constitution, the Supreme Court declared that it held the authority (contradicting the criterion established until then that those with immunity were investigated by the Higher Court of Justice of Catalonia) and opened up special case 20907/2017, citing the president of the Parliament, Carme Forcadell; the vice president, Lluís Guinó; the former vice president, Lluís Corominas; and the secretaries Anna Simó, Ramona Barrufet and Joan Josep Nuet as those under investigation for these crimes. The investigating magistrate, Pablo Llarena, agreed to release them after they paid bail of 150,000 to 25,000 euros, with the exception of Joan Josep Nuet. The magistrate accepted the public prosecutor’s thesis, focusing the debate on the exercise of the right to self-determination. “It is obvious that the promoters of the procedure for independence could never trust that their goal would succeed by lawful means. Consequently, the accused parties could only aspire to achieve their aspirations via two instruments.

*The first would consist in a negotiated route with the State government. However, the possibility was derailed (...) because article 2 of the Spanish Constitution stipulates (...) the indissoluble unity of the Spanish Nation. (...) In any case, given that the result it was going to yield could not secure the recognition of the legal system currently in force, the accusatory hypothesis that the intention of the promoters of the process could only be to achieve a de facto situation in order to later impose its political acceptance was well-grounded. (...) it would only be achievable via the incorporation of a new element, namely citizen mobilisation.”*<sup>15</sup>

In late November, magistrate Llarena added to his special case the part of the proceeding from the National Court on the accused prisoners (Jordi Sànchez, Jordi Cuixart, regional ministers and vice president), whom he summoned. After ensuring compliance with the Spanish Constitution, he released some of them on the 4<sup>th</sup> of December 2017 with bail of 100,000 euros. Specifically, he kept the Vice President Oriol Jonqueras, the Minister of the Interior Joaquim Forn, and the civil society leaders Jordi Cuixart and Jordi Sánchez in prison. The interlocutory issued by this magistrate to maintain imprisonment<sup>16</sup> clearly states that the conduct being investigated is the pro-independence movement, when he says that “*in the case analysed, factors converge that enable a reasonable judgement of risk of criminal reoffence to be established for all of the investigated parties. On the one hand, all of the investigated parties in the proceeding share and recognise that they still have the same aspiration that spurred the behaviour under investigation, namely the desire for the territory of the Autonomous Community in which they live to serve as the territorial base of a new Republic.*”

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<sup>14</sup> Interlocutory dated 2 November 2017 by magistrate Camen Lamela Díaz on the imprisonment of the vice president and regional ministers.

<sup>15</sup> Interlocutory dated 9 November by Pablo Llarena on freedom of the members of the Committee.

<sup>16</sup> Interlocutory dated 4 December by Pablo Llarena on maintaining imprisonment.

## 4.2 STATE REPRESSION WITHIN THE FRAMEWORK OF THE PEOPLE'S EXERCISE OF THE RIGHT TO SELF-DETERMINATION, PREPARATION AND HOLDING THE REFERENDUM ON THE 1ST OF OCTOBER

**12.- Examination 2/2017 of the senior prosecutor.** On the 8<sup>th</sup> of September 2017, once the Referendum and Transitory Laws had been approved by the Parliament of Catalonia the preceding days, the State's Attorney of Catalonia, based on the jurisprudence of the Constitutional Court, ordered the Civil Guard, the National Police and the Mossos d'Esquadra to carry out all the investigations needed to prevent the referendum from being held. What is more, this was grounded upon the stipulation that any act, even one carried out by a private individual, that was aimed at preparing or holding the referendum on self-determination would be considered a sign of a crime of disobedience. On the days of the election campaign for the referendum, this led the Civil Guard and the National Police to seize thousands of posters and propaganda materials on the "yes" option in the referendum from the streets, and to stop, identify and seize groups of citizens who were hanging posters, as well as the sites where these posters were stored. Just to cite one example, on the 15<sup>th</sup> of September, the Civil Guard entered a printing house in Barcelona and took 43,000 campaign posters for the referendum. There are no indications that these seizures had been judicialized or formalised in any administration proceeding.

**13.- Searches of printing houses.** On the 9<sup>th</sup> of September, in compliance with the aforementioned examination, the Civil Guard entered the editorial office of the weekly *El Valleng* from Valls to carry out a search that had been approved by the Police Court of Tarragona at the request of the public prosecutor's office, in the search for information associated with preparations for the referendum. On that same day, the Civil Guard entered Indugraf Offset printing house in Constantí. On the 15<sup>th</sup> of September, the Civil Guard searched three printing houses located in L'Hospitalet de Llobregat, Sant Feliu de Llobregat and the Poble Nou neighbourhood of Barcelona. On the 20<sup>th</sup> of September, another printing house in Bigues i Riells was searched.

**14.- Encroachment in the media.** Based on the complaint filed by the public prosecutor's office against the entire government over the organisation of the referendum, in preliminary inquiries 3/2017 of the Higher Court of Justice of Catalonia, and at the request of the public prosecutor's office, the Court agreed to issue precautionary measures on the 13<sup>th</sup> of September involving the suspension of different websites providing information on the referendum (such as *garanties.cat*) and to ban the dissemination of institutional propaganda, even in private media. Some media outlets' failure to heed this order led to visits by Guardia Civil agents, who identified the journalists working on the editorial teams at *Nació Digital*, *El Punt Avui*, *Racó Català*, *Elnacional*, *Vilaweb* and *Llibertat.cat*.

The Media Cat Yearbook has drawn up a report<sup>17</sup> on violations of freedom of expression suffered by the media, journalists and other news agents reported in the collaborative 2017 Censorship Map between the 6<sup>th</sup> of September – when the plenary of the Parliament approved the Referendum and Transitory Laws – and the 1<sup>st</sup> of November – one month after the referendum. The sources, which have been checked and confirmed, come from entries made by the affected media outlets or information online.

The report includes 110 cases in just two months, 63 of which directly affected journalists or media outlets; 33 of which are aggressions, intimidations or threats, which particularly heightened after the 20<sup>th</sup> of September; and most of which were targeted at television and

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<sup>17</sup> [https://www.media.cat/wp-content/uploads/2017/12/Informe\\_1-O\\_CAT.pdf](https://www.media.cat/wp-content/uploads/2017/12/Informe_1-O_CAT.pdf)

public radio. On the 1st of October, the day of the referendum, two aggressions against journalists perpetrated by the State security corps were reported.

The report also outlines 11 cases associated with judicial resolutions and actions of the State police forces which obstruct freedom of the press.

The remaining 47 entries refer to cases which do not directly affect the press but refer to the closure of websites, both institutional and privately owned.

**15.- Suspension of websites.** On the days prior to the referendum, hundreds of websites were closed in a combined action by the public prosecutor's office, the Spanish police forces, Examining Magistrate's Court no. 13 in the case against the referendum and the Higher Court of Justice of Catalonia. The closure of some domains had indeed been ordered by the Higher Court of Justice, but the majority of the closures went much further without either explanations or a place to ascertain where to appeal them, given that the closures were not related to any reasoned decision, either administrative or judicial. One example is the case of the website of *Alerta Solidària*, an anti-repression organisation of the pro-independence left.

Also around the same time, ten people were summoned to the police headquarters in Girona and Barcelona under investigation for a crime of disobedience for having duplicated the suspended websites. The *Partit Pirata* (Pirate Party) filed a grievance on this matter with the Directorate General of Communications Networks, Contents and Technologies of the European Commission, which was accepted on the 31<sup>st</sup> of October with reference CHAP 2017 02960.

**16.- Police repression of polling stations on the 1st of October.** On the 27<sup>th</sup> of September 2017, the Penal Court of the Higher Court of Justice of Catalonia handed down an interlocutory as part of preliminary inquiries 3/2017 which ordered the National Police, the Civil Guard and the *Mossos d'Esquadra* to prevent the use of venues to hold the referendum on the 1<sup>st</sup> of October called by the Government of the Generalitat de Catalunya. Specifically, the resolution – which was appealed by the Government of the Generalitat and was not firmly in place by the 1<sup>st</sup> of October – authorised the aforementioned security forces and corps to prevent venues from being opened, to close them and to requisition the materials found there which might be used to hold the referendum. It also mentioned the need to respect other activities which were being held in these venues. This resolution did not authorise any action in relation to the people who were located at these sites, nor did it at any time suspend the fundamental right of assembly, nor did it authorise either eviction or the use of any kind of force against the citizens gathered at these sites.

With this backdrop, the heads of the police forces of the Civil Guard and the National Police, without any justification whatsoever, without any concern for rights or respect for the guiding principles of police action (art. 5.2.c of law 2/1986 on security forces and corps), and without any kind of legal authorisation on the days and hours prior to the start of election day, decided to implement a strategy of collective punishment towards the people assembled in the polling stations because of their stance defending the right to vote in the referendum on self-determination called for that date. They did so by inflicting on them all kinds of violent behaviours directly using the agents' feet and hands and through the use of the regulation defences, rubber bullets or tear gas, with the specific aim of causing them physical and mental suffering and to humiliate those who were directly affected, as well as everyone participating in the mobilisations in defence of the right to vote that were held at more than 2,000 polling stations around Catalonia.

The physical and psychological violence used, which continued throughout the entire election day, was not even instrumental in an orderly plan to gradually close the polling stations, which was not achieved, but instead sought collective punishment by transmitting a sense of panic and emotional shock to the citizens who were committed to defending the right to vote in the referendum. It should be noted that despite the fact that the indiscriminate criteria of the police actions fostered the sense of collective punishment, some of the polling stations that were, in fact, the target of police repression were chosen because of their political significance: the schools where the two leading authorities of the country voted (Sant Julià de Ramis for President Puigdemont and Nostra Llar school in Sabadell for Carme Forcadell, and CEIP Verd secondary school in Girona, which is where the daughters of the President of the Generalitat study).

The fact that the actions were disproportionate, brutal and unjustified and put at risk and directly affected the physical and psychological integrity of people who were peacefully congregated, who under no circumstances had had been stripped of their right to assembly, and who were limiting their actions to publicly defending their right to vote, has been reported by numerous external actors such as Human Rights Watch,<sup>18</sup> Amnesty International,<sup>19</sup> the Assembly of the Council of Europe and several MPs from the Westminster Parliament who were present at the voting.

From the images and testimonies that the international media and reports have gathered, it can clearly be seen that many times the agents acting in the interventions at different polling stations chose the **women** present at the polling stations as the victims of their disproportionate physical and psychological violence, and as the targets of the punishment they wanted to inflict. It can also clearly be seen that during the action, not only did they take advantage of these targets' obvious physical disadvantage to exercise greater brutality, but they also engaged in abusive behaviours, including touching them sexually, in order to further aggravate their suffering and that of their families at the sites. By doing so, they thus pursued two quite different aims: inflicting particular punishment against women, taking advantage of the ease provided by their physical difference with the agents acting and the special indignation and humiliation that comes with being the public victim of violent sexual touching; simultaneously, they also prompted the defensive actions of family members and friends accompanying these chosen victims to thus create and provoke situations of physical contact with the agents who were mistreating and humiliating them, which supposedly justified their continuing this intervention.<sup>20</sup>

We have drawn up a brief table of the police interventions which used violence against the people gathered at the polling stations. This is a tentative list of the towns where the use of violence by the police corps can clearly be established either because we have had access to court reports or because there is documentary proof online. There was further police action against polling stations on the 1<sup>st</sup> of October, and therefore this list may be expanded in the future.

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<sup>18</sup> <https://www.hrw.org/es/news/2017/10/12/espana-la-policia-utilizo-la-fuerza-de-manera-excesiva-en-cataluna>

<sup>19</sup> <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/1-oamnistia-internacional-denuncia-uso-excesivo-de-la-fuerza-por-parte-de-policia-nacional-y-guar/>

<sup>20</sup> Such as report no. 806968/2017 AT USCGIRONA

<b>TOWN (number of inhabitants)</b>	<b>POLICE FORCE</b>	<b>SPECIAL WEAPONS</b>
<b>Alt Camp</b>		
Vilabella (760)	Civil Guard	
Cabra del Camp (1113)	Civil Guard	
<b>Alt Empordà</b>		
Garrigàs (435)	Civil Guard	
<b>Anoia</b>		
Sant Martí Sesgueioles (371)	Civil Guard	
<b>Bages</b>		
Callús (2.052)	Civil Guard	
Castellgalí (1995)	Civil Guard	
Fonollosa (251)	Civil Guard	
Sant Joan de Vilatorrada (10.759)	Civil Guard	
<b>Baix Camp</b>		
Mont-roig del Camp (11.521)	Civil Guard	Tear gas
<b>Baix Ebre</b>		
Roquetes (8.165)	Civil Guard	
<b>Baix Empordà</b>		
La Tallada d'Empordà (451)	Civil Guard	
<b>Baix Llobregat</b>		
Sant Andreu de la Barca (27.434)	Civil Guard	
Sant Esteve Sesrovires (7.644)	Civil Guard	
<b>Barcelonès</b>		
L'Hospitalet de Llobregat (254.804)	National Police	
Barcelona (1.608.746)	National Police	Rubber bullets
<b>Conca de Barberà</b>		
Sarral (1.587)	Civil Guard	

<b>Gironès</b>		
Aiguaviva (763)	Civil Guard	Tear gas
Girona (98.255)	National Police	
Sant Julià de Ramis (3.455)	Civil Guard	
<b>Maresme</b>		
Dosrius (3.697)	Civil Guard	
<b>Montsià</b>		
Sant Carles de la Ràpita (14.718)	Civil Guard	
<b>La Noguera</b>		
Menàrguens (847)	Civil Guard	
Ponts (2.638)	Civil Guard	
<b>Pla de l'Estany</b>		
Esponellà (456)	Civil Guard	
<b>Ribera d'Ebre</b>		
Móra la Nova (3.104)	Civil Guard	
<b>El Segrià</b>		
Alcarràs (9.297)	Civil Guard	
Lleida (138.144)	National Police	
<b>El Tarragonès</b>		
Renau (148)	Civil Guard	
Tarragona (131.094)	National Police	
<b>Vallès Occidental</b>		
Castellbisbal (12.277)	Civil Guard	
Sabadell (208.246)	National Police	
<b>Vallès Oriental</b>		
Campins (470)	Civil Guard	
Vilalba Saserra (684)	Civil Guard	

The Department of Health of the Generalitat de Catalunya reports that **1,066 people** <sup>21</sup> were injured by police violence at the polling stations on the 1<sup>st</sup> of October according to the information filed by their medical and healthcare professionals. Of all the injured persons, five were categorised as serious: one case of acute myocardial infarction at La Mariola in Lleida, one case of an orbital trapdoor and upper right maxillary fracture affecting the eye-ball in Barcelona (case of Roger Espanyol, who ended up losing his sight in one eye due to the injury caused by a rubber bullet), one case of cranioencephalic and abdominal trauma with hypertensive crisis, also in Barcelona, one case of cranioencephalic trauma with the loss of consciousness in Girona, and one case of trauma to the right back and muscle trauma to the right trapezius, also in Barcelona.

In the judicial responses, there was a disparity of criteria by judicial district. We have information on three of the judicial districts with the most police violence: Barcelona, Girona and Lleida.

In the Barcelona judicial district, there is one court case open to investigate the deeds at Examining Magistrate's Court no. 7, despite the opposition of the public prosecutor's office. All the reports are gathered in a single proceeding, preliminary inquiries 1439/2017, with separate parts for each of the polling stations where police violence occurred. They include 26 polling stations and **130 injured persons filing reports**, broken down as follows according to when the case was opened:

- IES Jaume Balmes, c. Pau Claris, 121: 4 injured persons
- Escola Prosperitat, c. del Molí, 59: 5 injured persons
- Centre de Formació d'Adults Freire, c. Via Favència, 254: 1 injured person
- Escola Oficial d'Idiomes, Av. Jordà, 18: 4 injured persons
- Escola Mediterrànea, Passeig Marítim, 5: 16 injured persons
- CEIP Tibidabo, c. Joaquim Valls, 21-23: 2 injured persons
- CEIP Estel, c. Felip II, 49-51: 9 injured person  
(damage to the facilities was also reported)
- IES Joan Fuster, Pç. Ferran Reyes, 2: 8 injured persons
- CAP El Guinardó, c. Teodoro Llorente, 26: 10 injured persons
- CEIP Ramon Llull, c. Consell de Cent, 490: 19 injured persons
- Serveis Centrals del Departament d'Ensenyament, c. Via Augusta, 202: 6 injured persons
- CEIP Aiguamarina, c. Casals i Cuberó, 265: 1 injured person
- CEIP Víctor Català, c. De la Font de Canyelles, 28: 1 injured person
- IES Pau Claris, Passeig de Lluís Companys, 18: 9 injured persons
- CEIP Els Horts, Rambla Prim, 217: 2 injured persons
- CEIP Marenostrom, Passeig Valldaura, 12: no injured persons

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<sup>21</sup> [http://premsa.gencat.cat/pres\\_fs/vp/docs/2017/10/20/11/15/232799c8-755f-4810-ba56-0a5bbb78609c.pdf](http://premsa.gencat.cat/pres_fs/vp/docs/2017/10/20/11/15/232799c8-755f-4810-ba56-0a5bbb78609c.pdf)

- Centre Educatiu Projecte, c. Yebra, 10: 4 injured persons
- Escoles Pies de Sant Antoni, Ronda de Sant Pau, 72: 4 injured persons
- CEIP Àgora, c. del Marne, 2: 10 injured persons
- Escola de Joves Trinitat Vella, c. Sunyol i Gras, 3: 1 injured person
- IES Joan Boscà, Av. Esplugues, 40 / Ausiàs March, Av. Esplugues, 38: 2 injured persons
- CEIP Mas Casanovas, c. Mas Casanovas, 61-63: 1 injured person
- CEIP Tomás Moro, c. Miguel Hernández, 7-11: no injured persons
- CEIP Dolors Monserdà - Santa Pau, Av. Vallvidrera, 9: no injured persons
- CEIP Pau Romeva, c. Pisuerga, 1: 7 injured persons
- Escola Infant Jesús, c. Avenir, 19: 4 injured persons

In the Girona judicial district, the result of the police actions in Girona, Sant Julià de Ramis and Aiguaviva are registered in Examining Magistrate's Court no. 2, with a total of 243 injured persons who have filed complaints and supplied medical reports. The court opened a legal proceeding for each polling station affected, which has given rise to the following preliminary inquiries: 1434/17 (Aiguaviva), 1518/17 (Sant Julià), 1440/17 (Narcís Xifra), 1513/17 (Taialà), 1511/17 (Pedret), 1512/17 (Ernest Lluch), 1525/17 (Verd), 1516/17 (Joan Bruguera) and 1514/17 (Dalmau Carles). In parallel, in a private accusation, the town halls of Girona, Sant Julià and Aiguaviva have filed a complaint for crimes of torture, injuries and violations of fundamental rights, which were gathered together in preliminary inquiries 1511/2017. In all of these proceedings, the court is still taking the victims' statements and has asked the National Police to report on the authors of the deeds and the exact events as they happened.

In the Lleida judicial district, the court on call was Examining Magistrate's Court no. 4. While on call, it received a complaint submitted by 37 victims at the polling station located in the regional services of Labour and Social Affairs in Lleida (preliminary inquiries 1415/2017), which was admitted to be heard on the 20<sup>th</sup> of November; a complaint (preliminary inquiries 1343/2017) by a victim at the polling station located in Cappedon (now at Examining Magistrate's Court no. 1); and a complaint from 4 victims from the polling station of La Mariola adult education centre (preliminary inquiries 1344/2017), including a man who was evacuated by helicopter to the intensive care unit in Barcelona (now at Examining Magistrate's Court no. 3). We have reports of around 50 requests over citizen reports from the 1st of October throughout the entire Lleida region, but we have no specific references to these complaints.

In parallel, Examining Magistrate's Court no. 4 of Lleida has opened an investigation against the Mossos d'Esquadra over their inactivity on the 1st of October, which has led to two searches of their headquarters by Civil Guard agents. Similar proceedings against the Mossos d'Esquadra have been opened based on complaints by private individuals in the following Examining Magistrate's Courts: Cerdanyola no. 7, Santa Coloma de Gramenet no. 1, El Prat de Llobregat no. 4, Gavà no. 3, Vilanova i la Geltrú no. 2, Sabadell no. 2, El Vendrell no. 3, Reus no. 1, Gadesa and la Seu d'Urgell no. 2, according to information from the Higher Court of Justice of Catalonia.

### 4.3 STATE REPRESSION WITHIN THE FRAMEWORK OF THE INSTITUTIONS' EXERCISE OF FREEDOM OF EXPRESSION AND POLITICAL PARTICIPATION

**17.- Complaint against the constituent process.** In the first half of 2016, the Parliament of Catalonia assembled a committee to study the constituent process as agreed in resolution 1/XI dated the 9<sup>th</sup> of November, which had opened the legislature. When it finished its inquiry, the committee issued conclusions on the constituent process. The State government asked the Constitutional Court to order the Parliament to cease this activity on the 19<sup>th</sup> of July 2016. In the Parliament of Catalonia's plenary session on the 26<sup>th</sup> of July, two parliamentary groups requested that the agenda be changed to include a vote on the conclusions of the committee to study the constituent process. The president of the Parliament, Carme Forcadell, agreed. The public prosecutor's office filed a complaint against Carme Forcadell alleging disobedience of authority and prevarication before the Higher Court of Justice of Catalonia, which cited her as under investigation within the framework of proceeding 1/2016 of the Civil and Penal Court.

**18.- Joan Coma case.** Joan Coma is a councillor in the Vic Town Hall (43,287 inhabitants). In the course of a municipal plenary session in favour of a joint motion to support Parliament of Catalonia decision 1/XI, he stated that civil disobedience had to be used and that "eggs have to be broken to make an omelette". A councillor from Plataforma per Catalunya, a far-right group, reported him to the National Court. At the request of the public prosecutor's office of the National Court, Central Examining Magistrate's Court no. 2 opened a case against Joan Coma for the crime of inciting sedition for his statements in the plenary session. Preliminary inquiries 122/2015 led to Joan Coma's arrest, and he was transferred to Madrid on the 28<sup>th</sup> of December 2016. Finally, the proceeding was tabled by the investigating magistrate himself on the 3<sup>rd</sup> of April 2017.

**19.- Complaint against the bureau over the Referendum.** On Tuesday the 14<sup>th</sup> of February 2017, the plenary of the Constitutional Court agreed to nullify all the agreements of the Parliament of Catalonia in the general political debate in October 2016, which included asking the government of the Generalitat to call a referendum in 2017. The public prosecutor's office filed a new complaint on the 23<sup>rd</sup> of March, this time against the president of the Parliament, Carme Forcadell, as well as against the other members of the bureau who voted in favour of admitting the debate on the resolutions that were now nullified. They included Lluís Corominas, Anna Simó and Ramona Barrufet. Another member of the bureau who voted in favour of admitting the debate on the resolutions on the referendum, Joan Josep Nuet, was excluded from the complaint, because according to the public prosecutor's office, he was not striving to "*carry forward a political project that shows utter contempt for the 1978 Constitution*", given that he did not support the resolution as the pro-independence members of the bureau did. The prosecutor insists that Nuet did not "*seek to join the political project to unilaterally rupture the constitutional system*" based on his "*history as a MP*" during "*the present legislature, before and after the events that motivated the complaint*". However, the examining magistrate at the time that the complaint was admitted did also cite MP Nuet as a party under investigation. This proceeding, also for disobedience of authority, was added to the previous one.

**20.- Proceeding over a hate crime in Reus.** This is a report (269/2017) sent to the courts by the National Police Corps for hate crimes, coercion and embezzlement. Examining Magistrate's Court no. 2 has opened a proceeding (preliminary inquiries 1111/2017) and summoned the mayor of Reus, seven town councillors, four firefighters and two gym workers, a

total of 14 citizens, to make statements as the targets of investigation. The elected officials were summoned over their public statements against the actions of the Spanish police and because they signed a manifesto asking the Spanish police to vacate Reus. The firemen are accused of having participated in the mobilisations wearing their public uniforms and using public equipment, and the two gym workers are accused for having refused entrance into the gym to police agents in their free time and reimbursing these agents' registration fees. The accusation of a hate crime is constructed based on the premise that "*with this kind of statement, politicians generate attitudes in citizens that encourage the harassment of public servants and strengthen the separatist feeling around certain minorities, such as the State Security Forces and Corps*".

**21.- Proceeding against teachers in La Seu d'Urgell over a hate crime.**- Examining Magistrate's Court no. 1 of La Seu d'Urgell has accused eight teachers from La Seu d'Urgell of the crime of inciting hate according to the report filed by several parents to the Civil Guard (some of the parents are members of the Civil Guard themselves). The accused parties are the headmaster and four teachers at Albert Vives School, one teacher from Pau Claris School and the headmaster of La Salle School. The teachers have been declared to be under investigation.

**22.- Proceeding over coercion in Pineda de Mar.**- For the time being, this is an investigation by the public prosecutor's office in which four town councillors from Pineda de Mar have been summoned to provide statements: three from the PSC (Carme Aragonès, Jordi Masnou and Sílvia Bioasca) and one from the ERC (Mònica Palacín). On the 2<sup>nd</sup> of October, there was a citizen concentration in Pineda de Mar in front of the Cheking Mont-Palau Hotel to condemn the previous day's police actions and ask that the officers not be housed in Pineda. The town councillors met with the hotel management to negotiate a departure and were reported for coercing the police force. The public prosecutor's office has yet to determine whether or not to send the case to court.

**23.- Proceeding over the role of the Local Police in Argentona.**- The head of the Local Police of Argentona, Pere Anglada, and mayor Eudald Calvo have been summoned by the public prosecutor's office for the crime of disobedience, obstruction of justice and prevarication for having given agents of the police corps instructions to allow voting on the 1st of October. The public prosecutor's office has yet to determine whether or not to send the case to court.

#### **4.4 STATE REPRESSION WITHIN THE FRAMEWORK OF THE PEOPLE'S EXERCISE OF FREEDOM OF EXPRESSION AND POLITICAL PARTICIPATION**

**24.- Arran and the headquarters of the PP.**- On the 27<sup>th</sup> of March 2017, after having notified the media, around 30 members of the leftist pro-independence youth organisation, Arran, held a public protest at the headquarters of the Partido Popular in Barcelona, where they wanted to give several cardboard urns to the representatives of this political party as a symbol of the referendum. Based on these actions, six youths were arrested and prosecuted in preliminary inquiries 399/2017 at Examining Magistrate's Court no. 11 of Barcelona. They were accused of damage, public disorder and attempted breaking and entering. The case is still open and the written accusation has yet to be formulated.

**25.- Suspension of a political event in Valencia.**- On the 13<sup>th</sup> of September, the CUP planned to hold a political event in Mare de Déu square in Valencia, which consisted in rea-

ding a manifesto and having the deputies Anna Gabriel and Mireia Vehí interact with the media. This event was being held at the same time and with the same format in Barcelona, Perpignan and Ciutat de Mallorca.

Only in Valencia was the event halted by National Police agents, who did not allow it to be held, alleging that it violated regulations and had been banned by the Spanish government delegation in Valencia.

**26.- Threat against a political event in Tarragona.**- On the night of the 14<sup>th</sup> of September, an event was held in the Tarraco Arena in Tarragona with 10,000 people to kick off the election campaign for the “yes” vote on the referendum, with the participation of all the pro-independence forces. Prior to the event, the Spanish government delegation in Catalonia warned that it was illegal and would have legal consequences. The public prosecutor’s office of Tarragona opened up investigative proceedings against the organisers.

**27.- Suspension of a political event in Vitoria.**- On the 15<sup>th</sup> of September, Anna Gabriel, the spokeswoman for CUP-CC and a MP, held a lecture on the referendum of Catalonia in the Basque city of Vitoria. The event was held in a venue owned by the city. The Spanish government delegation asked the Court of Vitoria to suspend the event as a precautionary measure with the argument that the referendum’s unlawfulness meant that an event to disseminate it could not be held. This request was admitted by the judge, who ordered the event suspended as it was being held and sent the local police there to interrupt the event and prevent it from continuing. This decision was adopted as a precautionary measure by Administrative Law Court no. 1 of Vitoria as part of ordinary proceeding 899/2017. A definitive decision on the substance of this case is still pending.

**28.- Suspension of a political event in Torredembarra.**- On the 16<sup>th</sup> of September, a CUP political event was scheduled outdoors in Torredembarra. A few hours prior to the start of the event, the local police appeared and cut off the public electrical supply for the event on instructions from the public prosecutor’s office. The event, in which the Parliament of Catalonia MP Joan Garriga appeared, was held anyway using alternative energy sources. In late November, six members of the CUP received notification that disciplinary administrative proceedings were initiated against the Torredembarra Town Hall, which could reach sanctions of up to 7,000 euros, for actions associated with political propaganda over the referendum.

**29.- Police harassment at the CUP headquarters.**- On the 20<sup>th</sup> of September, a national police patrol appeared in front of the headquarters of the political party CUP as it was distributing posters for the referendum campaign. After the police agents intercepted a few packages, they tried to enter the premises without a legal order and were denied entry by the workers and party members present. Hundreds of people soon cut off the street to protest, when before their eyes around 100 agents of the national police force wearing riot gear were deployed, who remained there for four hours without any explanation. These events were reported by the CUP and are being investigated by Examining Magistrate’s Court no. 9 of Barcelona as preliminary inquiries 899/17.

**30.-** Manel Riu, a language teacher in the secondary school in Tremp, was arrested by the Civil Guard for the crime of inciting hatred online and was released to the Court of Tremp. This was based on his comments and photos on Twitter of his encounter with the Civil Guard at a petrol station, where he had complained about the events on the 1st of October.

**31.-** A man and a woman were arrested by the Civil Guard for the crime of inciting hate online for having posted on Facebook photographs with comments on the Civil Guard’s

actions on the 1<sup>st</sup> of October. The actions are currently at the public prosecutor's office of Lleida.

**32.-** Two young men were cited by the Civil Guard for the crime of inciting hate for having made a painting entitled "Fora la Guàrdia Civil" (Civil Guard, Go Away). This proceeding has been filed by Examining Magistrate's Court no. 1 of Girona, report 2017/476-228 of the Judiciary Police of Girona.

#### **4.5 STATE REPRESSION THROUGH A CRUSADE FOR SYMBOLOGY**

**33.- Proceeding against the town councillors of Badalona.** In the negotiations of the work calendar with the workers' representatives, the Town Hall of Badalona (215,600 inhabitants) agreed to make the 12<sup>th</sup> of October, a Spanish national holiday, a work day for employees who wanted it. This decision was contested by the Government Legal Office, which asked for a precautionary suspension of this decision in Administrative Law Court no. 14 of Barcelona, which accepted it through the interlocutory dated the 11<sup>th</sup> of October 2016. This decision ordered that under no circumstances could the municipal premises be open on the 12<sup>th</sup> of October. As a sign of their disagreement, six town councillors from the governing team, all of them in favour of independence or sovereignty, went to open the municipal offices to attend to citizens on the 12<sup>th</sup> of October 2016. In response, Examining Magistrate's Court no. 4 of Badalona opened up preliminary inquiries 1047/2016 and summoned the six councillors to make declarations as the parties under investigation for the crime of disobedience of authority. Once the investigation had concluded, this same court tabled the case with the understanding that the six councillors' behaviour did not constitute a crime. On appeal from the public prosecutor's office, the higher court, in this case the Eighth Section of the Provincial Court of Barcelona, emended this previous decision in a resolution dated the 21<sup>st</sup> of April 2017 and ordered the case to be sent to oral trial, as it believed, counter to the criterion of the examining magistrate, that there were indeed indications of disobedience. The case is still awaiting trial.

**33.- The *estelada* (flag of the pro-independence movement) in Berga.-** In September 2012, the plenary session of the Town Hall of Berga (16,175 inhabitants) reached an agreement to keep the *estelada* flag hanging on the balcony of the Town Hall. In September and December 2015, during the two electoral processes, the Board of Elections asked the Town Hall to remove the *estelada* flag during the election period after receiving a complaint filed by the unionist party. In compliance with the agreement reached in the plenary, Mayor Montserrat Venturós did not heed this request and was accused and even arrested so her statement could be taken. As part of preliminary inquiries 288/2015, Examining Magistrate's Court no. 1 of Berga agreed to table the proceeding with the understanding that the mayor's behaviour was not criminal. On appeal from the public prosecutor's office, the higher court, in this case the Seventh Section of the Provincial Court of Barcelona, emended the previous decision in a resolution dated the 28<sup>th</sup> of April 2017, which ordered that the case be sent to oral trial as it deemed that there were indeed indications of a crime of disobedience. The case is still awaiting trial.

**34.- Photos of the King.-** On the Catalan National Day, the 11<sup>th</sup> of September 2016, as the event of the pro-independence left in Barcelona ended, several persons attending it burned images of King Felipe VI as an act of political rejection of the monarchy. Five people were identified, and after not voluntarily appearing at the summons, they were arrested by Central Examining Magistrate's Court no. 4 of the National Court for the crime of injury

against the Crown. In April 2017, the judge agreed to table the case. In a similar situation, two youths from Mallorca were also arrested for burning photos of the monarch at the celebrations of Mallorcan National Day on the 31<sup>st</sup> of December 2016. This case was also tabled by the National Court six months later.

**35.- Santiago Espot.-** In May 2015, at the end of the King's Cup football match between FC Barcelona and the Athletic Club of Bilbao in Barcelona, there was massive whistling during the Spanish national anthem and the anthem of the king of Spain. This action had been promoted by Catalunya Acció, a platform led by Santiago Espot. Espot himself was accused of the crime of injuring the Crown and insulting Spain as part of preliminary inquiries 8/2016 of Central Examining Magistrate's Court no. 4 of the National Court. Even though the investigating magistrate, Fernando Andreu, had initially determined that the deeds did not constitute a crime and had tabled the case, after an appeal from the public prosecutor's office, the Third Section of the Penal Court of the National Court ordered the proceeding to be sent to oral trial. The trial is scheduled for the 12<sup>th</sup> of December 2017 before the Central Penal Court (PA 23/2017) with a requested fine of 14,400 euros. Parallel to that is the disciplinary administrative proceeding with a proposed resolution of a 90,000-euro fine.

**36.- Case of the tribute to Julià Babia.-** Central Examining Magistrate's Court no. 6 (National Court) opened preliminary inquiries 37/2017 for the incitement of terrorism against seven people, six in favour of independence and one musician. This stemmed from a report from the Civil Guard information unit on their participation in a tribute to Julià Babia, an independence activist who died in a traffic accident in 1987 and whom the Spanish police associate with Terra Lliure (a former armed Catalan nationalist separatist organisation), even though during his lifetime Babia had never been either accused or convicted. The proceeding is underway, and statements are currently being gathered from the individuals under investigation.

**37.- The resolutions of the Board of Elections.-** At the request of certain political parties, in the resolution dated the 29<sup>th</sup> of November 2017, the Provincial Board of Elections of Barcelona banned the Barcelona Town Hall from expressing its solidarity with political prisoners, as it deemed that this could distort the electoral process. From this perspective, it has banned certain banners and the use of yellow (the colour showing support for the pro-independence movement) in the fountains and façades of the Barcelona Town Hall. Likewise, in its resolution on the 24<sup>th</sup> of November 2017, the Central Board of Elections banned the Catalan public media from using the expression "exile" to refer to the members of the government currently in Brussels ("government in exile", "exiled regional ministers", etc.) and from using the expression "imprisoned regional ministers" to refer to the members of the government who are currently imprisoned on the orders of the Supreme Court.

## 4.6 STATE REPRESSION THROUGH THE SUSPENSION OF SELF-GOVERNANCE (ARTICLE 155 OF THE SPANISH CONSTITUTION)

The application of Article 155 of the Spanish Constitution has served as the spearhead of the Spanish State's intervention in the Catalan institutions. This constitutional article has never been applied until now, which has allowed the State to enter terra incognita in its unprecedented application of the article.

Despite the novelty of the application of this article, the SC provides for the mechanisms with which it should be implemented and applied. In this sense, numerous jurists have noted the unconstitutionality of the formula that the Spanish government has used to initiate application of article 155.<sup>22</sup>

In the first place, the prior request from the Spanish government to the Senate does not indicate constitutional obligations and does not define either the framework or the purpose of the measures, as stipulated in the SC. What is more, it does not fall within the role of the Senate as provided for in the Constitution itself, which is to modulate and assess the intensity with which the measures that the government carries out should be applied. In this sense, the decree on the application of article 155 is deliberately unspecific, authorising the government to apply measures with all the latitude it wants. This framework of article 155 opens the doors to arbitrariness in the decisions taken by the Spanish government.

Secondly, despite the fact that the application of article 155 SC is based on article 2 of the SC, the indissolubility of the Spanish State, it cannot ignore the other articles in the SC, such as freedom of expression and the territorial division of the State. In this sense, measures like dissolving the Parliament of Catalonia and calling elections can only be taken by the party with the democratic legitimacy to do so, in this case the President of the Generalitat and the people of Catalonia. Article 155 was planned to be applied restrictively and specifically; under no circumstances can the measures be generic and expansive.

Thirdly, article 155 should be applied as a temporary measure based on a logic of exceptionalism, not as a permanent measure. Dissolving the Parliament of Catalonia, ousting the government and senior officials and calling elections are in no way provisional measures. What is more, the decree mentions the possibility that the measure will be applied until the Spanish government no longer deems it necessary. Therefore, the measure chosen by the Spanish government to ensure that the constitutional framework prevails is being undertaken while violating the very principles of that same Constitution. What is more, the lack of specificity and the strong potential for arbitrariness, the prevalence of the indissolubility of the State over other fundamental rights, and the application of definitive measures without a time limit, as envisaged by the government in its application of article 155, leads to the total suspension of the Catalan institutions within a context of extraordinarily high vulnerability in the face of the repressive potentiality of the Spanish State.

To date, according to the inventory of the CAT Association of Public Servants, a total of 196 people who used to hold senior positions in the Government of the Generalitat, temporary staff serving the government, and the President and the regional ministers<sup>23</sup> have all been dismissed; the Parliament was dissolved<sup>24</sup> and therefore the 71 legislative initiatives under consideration have been paralysed;<sup>25</sup> a total of 23 organisations have been eliminated; and the President, the Vice President, the government and the Administration of the Generalitat have been taken over.<sup>27</sup> What is more, all the activity underway by the Government has been paralysed.

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<sup>22</sup> Curiously, and because of the way it was adopted, namely by dissolving a parliamentary chamber, this sparks the terrible paradox that those who are directly affected, the Parliament of Catalonia, cannot access protection via an appeal on the grounds of unconstitutionality, as the Parliament itself was dissolved using precisely the rule which they believe is abusive. The parliamentary group Unidos Podemos from the Congress of Deputies of Madrid has filed an appeal on the grounds of unconstitutionality. An action in the Administrative Law Court filed before the Supreme Court by a group of citizens and a group of MP's who have been stripped of their posts through the application of article 155 SC on protection of fundamental rights is still pending.

The goal in applying article 155 was to totally suspend the Generalitat in combination with other measures that had already been implemented, such as control over accounts and the previous control over credit activities by the Spanish Ministry of the Economy.<sup>28</sup> In this sense, application of article 155 extends far beyond a response to the process of self-determination in Catalonia. In terms of proportionality, as it is being implemented, article 155 is a totally disproportionate measure which entails the application of an exceptional state regime which constitutes a frontal attack against the Catalan institutions and the civil and political rights of the people of Catalonia.

This state of exception opens up a space which allows a series of measures to be applied that extend beyond the law and hover between judicial and the extra-judicial. The application of article 155 creates an indeterminate zone between law and fact, between law and force, between law and reason of state. This indistinct legal zone is the terrain where the sovereign exercises his reason of domination. Article 155, or the permanent state of exception, makes it possible for domination to be normalised and allows for depoliticization through repression. The state of exception is a device of domination which draws from the law to legitimise the exercise of violence.<sup>29</sup>

That is, article 155 makes possible a series of legal practices that legitimise the State's extra-judicial actions. Thus, State violence is legitimised as a means of guaranteeing the continuity of the regime.

#### 4.7 STATE REPRESSION VIA THE FAR RIGHT

Ever since the process of self-determination in Catalonia entered the institutional dynamic after the elections on the 27<sup>th</sup> of September 2015, the activity of the far right has increased. Since September 2017, with the referendum on the 1st of October drawing near, the aggressions have multiplied.

From September to December 2017, a total of 125 criminal actions were tallied at pro-unio-nist demonstrations – including aggressions, threats and coercions – against both individuals and political organisations, and around 67 reports have been filed. The discrepancy between the number of reports filed – around 70 – and the number of aggressions tallied – slightly over 100 – can be explained by the victims' fear of filing reports.<sup>30</sup>

The contexts of the aggressions are diverse, and they have been targeted at individuals in public spaces – public transport, the streets, etc.; in the guise of graffiti and signs on homes and/or the material assets of public and private individuals; and, the most innovative phenomenon, within demonstrations and calls to support the unity of Spain and Spanish identity. Indeed, there has been a shift in the usual sphere of action of the aggressions, which until now were only waged by groups or events clearly on the far right. In contrast, many

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<sup>23</sup> List of and links to Resolutions and Royal Decrees on termination: RESOLUTION EMC/2591/2017, dated 7 November; RESOLUTION PRE/2602/2017, dated 28 October; RESOLUTION PRE/2601/2017, dated 28 October; RESOLUTION PRE/2600/2017, dated 28 October; RESOLUTION PRE/2597/2017; RESOLUTION PRE/2603/2017, dated 28 October; RESOLUTION PRE/2595/2017, dated 28 October; RESOLUTION PRE/2604/2017, dated 28 October; RESOLUTION PRE/2598/2017, dated 28 October; RESOLUTION PRE/2599/2017, dated 28 October; RESOLUTION PRE/2596/2017, dated 28 October; RD 954/2017, dated 31 October; Order INT/1038/2017, dated 28 October; RD 945/2017, dated 27 October; Decree 170/2017, dated 27 October; Decree 169/2017, dated 27 October; Decree 168/2017, dated 27 October; Decree 167/2017, dated 27 October; Decree 166/2017, dated 27 October; RD 943/2017, dated 27 October; Decree 164/2017, dated 27 October; RD 942/2017, dated 27 October.

<sup>24</sup> RD 946/2017, dated 27 October, on calling elections of the Parliament of Catalonia and its dissolution.

<sup>25</sup> RD 946/2017, dated 27 October.

<sup>26</sup> RD 946/2017, dated 27 October.

<sup>27</sup> Resolution dated 27 October 2017, of the Presidency of the Senate; RD 944/2017, dated 27 October.

<sup>28</sup> Order HFP/878/2017, dated 15 September.

<sup>29</sup> Atilas 2016 Idem.

<sup>30</sup> The sources that confirm the figures are being kept secret in order to guarantee their anonymity and the physical integrity of the victims who filed the reports

recent aggressions have taken place at pro-union events and demonstrations held across society with the support of the far right. The main actor in these events in Catalonia is an organisation called Societat Civil Catalana (SCC), a pro-Spain platform which supports “Spanishness” and is working to build an organised movement that promotes anti-independence mobilisations.

The SCC, which has had direct ties with the far right since it was founded in 2014 – according to investigations by Jordi Borràs,<sup>31</sup> a journalist who is an expert on the far right – has been a catalyst behind the unionist movement. Despite its direct contact with the far right, political parties like the Partido Popular, the Partit Socialista de Catalunya and Ciutadans have had no compunction about regularly participating in their demonstrations.

Journalists and citizens have been attacked, urban furniture has been damaged and other signs of collective violence have also occurred at the unionist and pro-Spain events that the SCC has promoted around Catalonia. The main Societat Civil Catalana events in Catalonia and the aggressions since the referendum was called are summarised in the following table:

EVENTS	INCIDENTS	SUPPORT BY POLITICAL STAKEHOLDERS
8 October, Barcelona	<p>Clashes with the Mossos d’Esquadra and among the demonstrators.</p> <p>Damage to urban furniture.</p> <p>Aggressions against a female journalist from TV3 and a photojournalist.</p> <p>Fascist cries and chants, and cries and chants against the government of the Generalitat.</p> <p>(Source: media and material posted online)</p>	<p>Partido Popular, Partit Socialista de Catalunya and C’s, and groups on the far right such as</p> <p>Falange Española</p> <p>de las JONS, PxC, VOX and Democracia Nacional.</p>

<sup>31</sup> Borràs, J “Desmuntant Societat Civil Catalana” Ed. Saldonar, 2015.

EVENTS	INCIDENTS	SUPPORT BY POLITICAL STAKEHOLDERS
29 October, Barcelona	<p>Harassment and incidents at the headquarters of Catalunya Ràdio.</p> <p>Aggression against the BTV team.</p> <p>Aggressions at the CIC school of Barcelona.</p> <p>Fascist cries and chants, and cries and chants against the government of the Generalitat.</p> <p>Aggression against a female employee of the FCG (Catalonia railways).</p> <p>Aggression against a Sikh citizen on Carrer Casp.</p> <p>Aggression against two South Americans in Plaça Sant Jaume.</p> <p>Aggression against a taxi driver on Carrer Casp.</p> <p>Aggression against another person in Plaça Catalunya.</p> <p>(Source: media and material posted online)</p>	<p>Partido Popular, Partit Socialista de Catalunya and C's, and groups on the far right such as Falange Española de las JONS, PxC, VOX and Democracia Nacional.</p>
10 November, Sabadell	<p>Aggression against a female journalist from Germany who was confused with a journalist from TV3.</p> <p>(Source: media and material posted online)</p>	<p>Partido Popular, Partit Socialista de Catalunya and C's.</p>

In the majority of cases, the attitude of the police forces has been overly passive, such as at the gathering of far-right groups in front of the CUP headquarters on Barcelona's Carrer Casp on the 2<sup>nd</sup> of December 2017. The CUP asked the Home Office, the Board of Elections and the Mossos d'Esquadra to ban the event, since a Political Council – the top governing and decision-making body of the CUP – was going to be held at its headquarters. However, none of the institutions responded by banning the event and thus avoiding the potential danger entailed by this kind of gathering within the context of aggressions and conflicts with the far right in recent months. The space ultimately had to be defended via citizen mobilisation, since that same morning even the Mossos d'Esquadra allowed the far-right demonstration to reach the pavement right across the street from the headquarters.

Even though Catalonia is the main focal point of aggressions and actions, the far right has also showed its face in all the Catalan-speaking regions. In the region of Valencia, the impunity of the far right and the connivance of the State security forces are everyday facts which directly affect the lives of its citizens. However, lately, the process of self-determination in Catalonia has been met with increased activity from the far right.

On the 13<sup>th</sup> of September of 2017, at an event on the referendum held with the participation of the MP from the CUP-CC, Anna Gabriel, graffiti threats targeted at the MP appeared near the premises where the event was held.<sup>32</sup> The police presence was scant and the space was defended by the anti-fascist movement in Valencia in order to ensure the MP's safety. Despite the absence of the police at this afternoon event, that same morning the Local Police of Valencia had prevented a symbolic action in the city centre, as described above.

On the 9<sup>th</sup> of October, at the demonstration for the National Day of Valencia, there were serious incidents and aggressions by the far right against the demonstrators. The far right acted with impunity by committing multiple aggressions, such that the event had to be cancelled. A huge demonstration<sup>33</sup> was held in response on the 28<sup>th</sup> of October, led by the platform created ad-hoc called "Valencia against fascism and in defence of freedoms".

In Palma, at an event organised by the CUP on the 26<sup>th</sup> of September as part of the campaign for the referendum on self-determination, there was a gathering of the far right to prevent the event from being held. Furthermore, on the 3<sup>rd</sup> of December, the café-bar La Tertúlia was also marred with fascist graffiti which pointed to the space as the refuge of the recently created Committee in Defence of the Republic of Palma.

We do not view the surge in the far right within the context of claims for the right to self-determination and Catalanism as either coincidental or new but instead as part of the historical relations between the State elites and the far right, which is the heir to and defender of the Franco regime. Xavier Vinader, a journalist who specialises in this topic, explained the far right as a political actor which acts in defence of the status quo and is therefore often used by the current ruling elite to halt structural changes.

In the history of the Spanish State since the Constitution enacted by the Regime of '78, there have been two key junctures when the elites that held the State power and the far right worked together in a visibly coordinated fashion to stop political processes involving change: in the context of the Basque independence movement in the 1970s and 1980s, and in the region of Valencia during the Transition. We believe that, just like in other historical times of change, the process of self-determination in Catalonia profoundly questions the political legitimacy of the State, and the State is using all the mechanisms at its disposal to halt it. Thus, the far right finds its fit within this logic of the imposition of State power and is waging a low-intensity war through aggressions, threats and its constant presence.

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<sup>32</sup> <http://elmon.cat/politica/amenacenmortannagabriellenciaacteavordel1o>

<sup>33</sup> [https://www.ara.cat/paisvalencia/Milersvalenciansmanifestenfeixismellibertats\\_0\\_1895810656.html](https://www.ara.cat/paisvalencia/Milersvalenciansmanifestenfeixismellibertats_0_1895810656.html)

## 5. CONCLUSIONS

I.- Based on the information compiled in this report, very superficially in some cases, we can tally a total of 120 people under criminal investigation, in addition to the 712 mayors, which means a total of 832 **people under investigation**, the vast majority of them regional or municipal elected officials. These proceedings are somehow associated with decisions taken on allowing the exercise of the right to self-determination or the expression of related ideas. There are no equivalent proceedings against those who are against the exercise of the right to self-determination or the expression of related ideas, which clearly demonstrates the repressive State apparatus' stance against the exercise of the right to self-determination and its expressions.

II.- After public servants' use of physical violence against individuals on the 1<sup>st</sup> of October, the public healthcare system reported **1,066 people injured**; we know that at least 400 of them have filed a report in the criminal justice system. All of them were injured by the Spanish police as they were exercising their right to self-determination. There are no equivalent situations in relation to citizens who are against the exercise of this right.

III.- The repressive State apparatus, made up of all its police and judicial actors, is fully positioned in the political struggle to prevent the exercise of the right to self-determination. In the penal sphere, which usually exerts the harshest repression, jurisdictions have been modified to centralise some proceedings at the top of the judiciary. Furthermore, types of crime from the past have been revived, and acts deemed criminal to protect minorities have been reinterpreted to protect the police forces. These acts are always undertaken with a significant "chilling effect", as it is called by the United States Supreme Court, on the exercise of the fundamental rights of expression and political participation. In a unified front comprised of several political parties (PP, PSOE and C's), the Spanish legislature has gotten involved in this explosion of repression by applying article 155 SC, generating unified action among all the powers of the Spanish State, even those that are not strictly institutional.

IV.- The brutal level of violence exercised questions the very legitimacy of the Regime of '78, which is comprised of all these powers. On the one hand is the conservative violence of the law,<sup>34</sup> a violence that seeks to maintain the Regime, while on the other is a violence that creates law. The violence on the 1st of October justified the subsequent application of 155 SC.

V.- The current social order stemming from article 155 SC is not the outcome of the resolution of the social conflict; that is, the problem which led to the conflict, namely the denial of sovereignty for Catalonia, has not been resolved. To the contrary, after a heavy-handed use of violence, it may seem like the conflict has waned, but in reality, we are witnessing pacification by force. Therefore, this regional regime does not stem from a social pact but from the systematic use of the repressive facet of the State. This normality is violence.

VI.- The system of rights and freedoms established by the international and European human rights texts incorporated into the 1978 Spanish Constitution is clearly at risk after the deployment of strategies of institutional violence by the Spanish State within the context of denying Catalonia's right to self-determination. There are insufficient institutional guarantees of these rights and freedoms, as revealed at different points in this report.

VII.- One of the prime objectives of any attempt to achieve justice must be the recognition that these rights have been violated. The dissolution of the Parliament of Catalonia when it

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<sup>34</sup> Benjamin, Walter "Crítica de la violencia" Biblioteca Nueva, 2011.

had agreed to establish a committee to investigate this affair, the ban on creating an inter-departmental committee within the government of Catalonia, the ousting of the governing bloc and the statement of the deeds on the 1<sup>st</sup> of October as a secret matter by the institutions of the Spanish State all prove to be enormous hindrances to detecting these attacks on the fundamental rights and freedoms. This report aims to be a first step from municipal governments committed to this task of recognition, to serve as the foundation of the subsequent stages of reparation and the establishment of guarantees that it will not be repeated.

VIII.- It would be difficult to establish a situation of full guarantees unless the underlying conflict that has sparked the legal exceptionalism described in this report is resolved. That is, the violations of rights described have taken place within the framework of the denial of a collective right: the right to exercise sovereignty. As long as this right continues to be denied, this state of exception will continue to be applied, along with the Spanish State's massive violation of the fundamental rights of the citizens committed to this struggle.

IX.- Paradoxically, the more State repression, the more self-determination is legitimised. Philosophy of law professor Neus Torbisco recalls: "*Thus, the fact of being a nation is not the main argument justifying independence, nor is the right to decide; the main arguments are inequality and the lack of equal collective freedom and dignity. (...) The right to leave is therefore justified not so much by the existential risk but because the burden of continuing a relationship within the framework of subordination is simply unjust.*"<sup>35</sup>

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<sup>35</sup> Torbisco, Neus "Autodeterminació, secessió i drets humans" in Idees 42, Barcelona 2016.

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