

In the Name of Unity

**Spain's Campaign of Repression and Use of
Anti-Terrorism Charges Against the
Catalan Self-Determination Movement**

July 2024



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In the Name of Unity: Spain's Campaign of Repression and Use of Anti-terrorism Charges Against the Catalan Self-Determination Movement

Published: July 2024

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1. Executive summary

For decades, but particularly in the years since the 2017 referendum, citizens in Catalonia have witnessed a marked deterioration of human rights. Freedoms of press, speech, opinion, association and assembly, the rights to liberty and security of persons, and the right to a fair trial have all been weakened as the Spanish state has attempted to quash Catalan self-determination. The increasing criminalization of political dissent in Spain, particularly as it relates to the Catalan self-determination movement, has led to widespread arrests of community activists, politicians, journalists, and other public figures who have expressed political opinions divergent to Madrid's.

This report aims to describe and analyse the main trends of Spain's campaign of repression against the rights of Catalans over the past decade in connection with the democratic and peaceful struggle for self-determination, as well as highlight a number of specific cases relating to the targeting of elected representatives, activists, journalists, and even artists.

The presenting of these topics and cases in this report has the purpose of shedding light on the features, the nature, and the typologies of punitive actions that have been deployed by Spanish institutions, especially by a highly politicized judiciary, since the inception of the Catalan pro-independence movement as a truly mass movement in 2010-2012.

In doing so, the report additionally aims to identify typologies of human rights violations, and evaluate how the extensive punitive measures and repressive actions in response to a demand for self-determination that is fundamentally democratic, peaceful, and legitimate, has revealed how the idea of the preservation of the unity of the Spanish State (or the indissoluble unity of the Spanish nation, as it stated in article 2 of the Spanish Constitution) is placed in a hierarchical legal position above any further considerations or values regarding democracy or fundamental rights.

The report places a special focus on the use of anti-terrorism instruments and legislation as a key tool of its repression against the Catalan self-determination movement. This excessive and disproportionate resort of abusing anti-terrorism mechanisms to shut down political dissent and silence human rights defenders aligns Spain with other increasingly authoritarian states such as Turkey, Hungary, or Russia in dealing with political dissent at home. The recent increase in resorting to terrorism prosecutions highlights the systemic nature of the threat to human rights that is posed in Spain, and of the overall deterioration of democracy that is becoming increasingly observable. Importantly, it should be noted that while the right to self-determination does not grant an automatic right to independent statehood of any peoples who seek it, the right to believe in and seek independent statehood through non-violent and lawful means is protected under international human rights law.

This report is organized in three sections: the first and introductory section provides readers with the historical context and background of the current situation, from the roots of the Catalan struggle for the defence of national rights and self-determination, to the social and political events that have occurred during the last decade and a half in connection to Spain's disregard for Catalonia. It includes a summarized chronology with some of the main examples of attacks against the right of Catalans to self-government, that have taken place since 2010.

The second section focuses on analysing how repression has constituted a systemic attack against civil and political rights, including passive and active right to political participation, freedom of assembly and association, and freedom of expression. This section also tackles the use of spyware and police infiltration. It also assesses how the regressive environment against the rights of Catalans goes hand in hand with a rise of hatred and policies against Catalan culture, identity, and language.

The third and last section focuses on the use by Spanish authorities of antiterrorist legislation to target the Catalan pro-independence movement. Starting with an assessment on the rise of the use of terrorism charges to curtail rights around the globe, and on Spain's increasing use of its antiterrorist legal framework to criminalize dissent during recent decades (such as the cases of Basque and Galician independence movements), the section explores some of the most relevant cases of terrorism charges adopted to repress the Catalan peaceful pro-independence movement, such as the activists of the Committees for the Defense of the Republic, the elected representatives, activists and journalists of the Tsunami Democràtic Case, and artists, such as the rap singers Pablo Hasél and Valtonyc.

The report concludes that there is a consistent practice by the Spanish government of addressing the political issue of Catalan self-determination through the criminal code rather than acknowledging the democratic will expressed in Catalonia's electoral processes. This has led to prosecutions, fines, bans from office, and imprisonment of individuals engaged in legitimate political activities, infringing upon their civil and political rights.

Despite the recent Amnesty Law aimed at annulling prosecutions against Catalan pro-independence activists, its implementation is uncertain due to the politicized judiciary. The law has failed to apply to key figures, like Carles Puigdemont, and does not address fundamental rights violations or provide reparatory measures. The legal repressive framework, including the Gag Law and anti-terrorism legislation, remains unchanged, continuing to threaten the fundamental rights of Catalans and undermining democracy in Catalonia.

2. Introduction: Background

Catalonia, one of Spain's wealthiest and most industrialized regions, has a rich history of sovereignty, autonomy and cultural heritage dating back centuries. The origins of the dispute between the Spanish authorities and the Catalan pro-independence movement can be traced back hundreds of years, where the contemporary Catalan national liberation movement found its roots in its long-standing quest for self-determination and recognition of its distinct cultural, linguistic, and national identity.

Since 1714, persecution and forced assimilation policies and efforts to suppress Catalan language and culture by Spanish authorities have been almost constant, and intensified during Francisco Franco's fascist dictatorship that lasted between 1939 and 1975. The transition to democracy in the late 1970s brought promises of greater autonomy for Catalonia, culminating in the establishment of the Statute of Autonomy of Catalonia in 1979, which devolved partial powers of limited self-government.

Despite the transition to a democratic system, tensions between Catalonia and the Spanish central government persisted, exacerbated by economic disparities, perceived injustices in fiscal redistribution, disputes over the recognition of Catalan identity, the undermining of linguistic policies aimed at protecting Catalan language, and recentralizing attempts by Spanish authorities.

In this regard 2010 was a landmark year, when the Spanish Constitutional Court ruled on a legal challenge to the 2006 Catalan Statute of Autonomy, striking down key provisions related to Catalonia's recognition as a nation, language rights and fiscal policy. This decision sparked mass protests in Catalonia and intensified calls for self-determination. Catalan civil society launched a strengthened grassroots movement to defend the region's right to self-determination, and in several waves from September 2009 to April 2011, organized local non-binding consultations on independence in 554 out of 947 municipalities. The Catalan National Assembly (ANC), founded in 2012, also began organizing annual mass peaceful demonstrations in Barcelona on the Catalan National Day, drawing millions of participants each year, and hundreds of other gatherings and civic initiatives.

In November 2014 the Catalan government held a non-binding consultation on independence, in which 2,344,828 Catalans voters took part, 83.95% of which voted in favour of seceding from Spain (estimates of the number of people eligible to vote range between 5.4 million and 6.2 million). The growing demand for autonomy, stemming from decades of repressive policies that sought to quash autonomy, resulted in a self-determination movement firmly taken hold in Catalonia. Supported by a majority of voters in successive regional elections, the Catalan government announced plans to hold a referendum on independence in 2017.

However, the Spanish government, under Prime Minister Mariano Rajoy (2011-2018), vehemently opposed Catalonia's bid for independence, arguing that any referendum on secession would be unconstitutional. The refusal of the Spanish government to engage in dialogue with Catalan leaders, and its use of legal mechanisms to block the referendum fuelled growing resentment and political polarization between Catalonia and the rest of Spain.

On the day of the referendum, the Spanish government sent thousands of riot police officers to Catalonia to disrupt and repress voting. The referendum went on despite the violent response of the Spanish authorities and the injury of more than a thousand voters, and resulted in a favourable vote for independence. 2,2 million people took part (43% turnout), with the "Yes" to independence gaining 90% (2,044,038 votes) of the votes cast. However, the Spanish authorities declared the referendum illegal, and invoked Article 155 of the Constitution to impose direct rule on Catalonia, dismissing the regional government and dissolving the Catalan Parliament. Subsequent attempts by Catalan leaders to declare independence were met with swift repression from the Spanish government, leading to the imprisonment of pro-independence politicians and activists on charges of sedition, misuse of funds and rebellion. Other leaders went into exile in different European countries, including the Catalan president, Carles Puigdemont.

In October 2019, the Spanish Supreme Court sentenced nine Catalan leaders to lengthy prison terms for their role in the 2017 independence referendum.¹ This sparked a new wave of protests in Catalonia, with thousands taking to the

1 Spain's Supreme Court jails Catalan leaders for up to 13 years, Politico <https://www.politico.eu/article/spain-supreme-court-jail-catalan-leaders-up-to-13-years-independence-oriol-junqueras/>

streets to demand their release, which were brutally repressed by Spanish authorities.² The issue of Catalan independence remains a contentious issue in Spanish politics, being the most important unresolved territorial dispute in the European Union, with profound implications for the rights of Catalans. Although it does not grant an automatic right to independent statehood of any peoples who seek it, the right to self-determination guarantees the right to believe in and seek independent statehood through non-violent and lawful means, and as such is protected under international human rights law as a democratic process.

A foundational right to the international system, the right to self-determination is prominently embodied in the first article of the Charter of the United Nations, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and has been systematically violated by Spain. Its systematic violation by Spanish authorities has entailed subsequent human rights violations against thousands of Catalans, that will be set out in this report.

2.1 Chronology of the limitation of Catalan autonomy and the right to self-government since 2010

In 2010 Spanish central institutions began a systemic recentralizing process, aimed at curtailing Catalan's right to self-government. The main instrument used was the suspension and repeal of legislation and resolutions passed by the Catalan Parliament by the Spanish Constitutional Court, many of them related to social and civil rights. The suspensions were, in most cases, urged by the Spanish government, and on some occasions by the Spanish nationalist People's Party when it was the opposition party. The following presents a chronology of some of the most relevant cases from among the more than 100 that have occurred.

- July 2010 – Spain's Constitutional Court repeals 14 articles and reinterprets 26 of the Catalan Statute of autonomy approved in 2006, sparking massive protests in Catalonia.
- March 2012 – Spain's Constitutional Court repeals the Catalan decree-law 5/2012 on banking taxes.³
- March 2014 – Spain's Constitutional Court annuls the declaration of sovereignty of the Catalan Parliament of January 2013.⁴
- September 2014 – Spain's Constitutional Court repeals the Catalan law 10/2015 on non-binding consultations.⁵
- April 2015 – Spain's Constitutional Court repeals the Catalan law 3/2015 on foreign action.⁶
- October 2015 – Spain's parliament approves a reform on the Constitutional Court law, aimed at targeting the Catalan pro-independence movement, allowing the Constitutional Court to fine and even ban from office those public servants, politicians and authorities who don't comply with its rulings.⁷ In March 2017 the Venice Commission of the Council of Europe issued a recommendation opposing this measure as it attempted against the system of checks and balances.⁸
- November 2015 – The Spanish government partially takes control of the finances of the government of Catalonia.
- November 2015 – Suspension by the Spanish Constitutional Court of the Declaration of the Initiation of the Process of Independence of Catalonia approved by the Catalan Parliament the same month.⁹

2 96 heridos, uno grave, y 33 detenidos tras otra noche de protestas en Cataluña, EITB <https://www.eitb.eus/es/noticias/politica/detalle/6743130/manifiestacion-cdr-centro-barcelona-16-octubre-2019/>

3 El Tribunal Constitucional anul·la l'impost català als bancs, El Periódico <https://www.elperiodico.cat/ca/economia/20150601/el-constitucional-anula-el-impuesto-catalan-a-los-bancos-4238046>

4 El Constitucional anula por unanimidad la declaración soberanista de Cataluña, El Confidencial https://www.elconfidencial.com/espana/2014-03-25/el-constitucional-anula-por-unanimidad-la-declaracion-soberanista-de-cataluna_107091/

5 El Constitucional suspende la consulta tras admitir los recursos de Rajoy, El País https://elpais.com/politica/2014/09/29/actualidad/1412005295_056524.html

6 El Tribunal Constitucional suspèn la Llei d'Acció Exterior de la Generalitat, Vilaweb <https://www.vilaweb.cat/noticia/4240233/20150415/tribunal-constitucional-suspen-llei-daccio-exterior-generalitat.html>

7 Ley Orgánica 15/2015, de 16 de octubre, de reforma de la Ley Orgánica 2/1979, de 3 de octubre, del Tribunal Constitucional, para la ejecución de las resoluciones del Tribunal Constitucional como garantía del Estado de Derecho, Garrigues https://www.garrigues.com/es_ES/noticia/ley-organica-152015-de-16-de-octubre-de-reforma-de-la-ley-organica-21979-de-3-de-octubre-del

8 European Commission For Democracy Through Law (Venice Commission) Spain Opinion On The Law Of 16 October 2015 Amending The Organic Law No. 2/1979 On The Constitutional Court, Venice Commission Of The Council Of Europe [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)003-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)003-e)

- April 2016 – Spain’s Constitutional Court annuls part of the Catalan legislation 2/2014 containing measures aimed against fracking.¹⁰
- May 2016 – Spain’s Constitutional Court suspends parts of the Catalan law 24/2015 on fighting energy poverty.¹¹
- July 2016 – Spain’s Constitutional Court suspends parts of the law 3/2015 on creation of the Catalan Agency of Social Protection and the Catalan Tax Agency.¹²
- October 2016 – Spain’s Constitutional Court annuls all the articles of the law 17/2015 on effective equality of women and men aimed at promoting policies in this field.¹³
- October 2016 – Spain’s Constitutional Court suspends the ban on bullfighting in Catalonia introduced by the Catalan Parliament in 2010.¹⁴
- February 2017 – Spain’s Constitutional Court suspends key wording of the law 16/2015 on simplification of the administrative activity of the Administration of the Catalan and local governments.¹⁵
- May 2017 – Spain’s Constitutional Court suspends the law 4/2010 of the Catalan Parliament on consultations of the people.¹⁶
- September 2017 – The Spanish Minister of Finance, Cristóbal Montoro, announces the total intervention of the finances of the government of Catalonia.
- October 2017 – Spain’s Constitutional Court repeals the Catalan law on the organization of the October 1st independence referendum, which was approved in early September 2017.¹⁷
- 29 October 2017 – The Spanish Senate approves the application of Article 155 of Spanish Constitution, dissolving the Catalan Parliament and the Catalan government. The functions of the presidency of the Catalan government were taken by the vice President of the Spanish Government, and the functions of each Catalan Ministers were assumed by the different ministers of the Spanish Government. It also called for new elections to the Catalan Parliament on December 21st, 2017.
- November 2017 – The Spanish Constitutional Court rules the Catalan Declaration of Independence and the Law on Legal Transience null and void.
- January 2018 – Spanish Constitutional Court suspends Catalan legislation on taxes on empty homes and nuclear energy.¹⁸

9 El Constitucional suspèn la declaració independentista i adverteix expressament Mas i Forcadell, Nació Digital <https://www.naciodigital.cat/noticia/97960/constitucional/suspen/declaracio/independentista/adverteix/expressament/mas/forcadell>

10 El Tribunal Constitucional també tomba la llei catalana contra el «fracking», Nació Digital <https://www.naciodigital.cat/noticia/107372/tribunal/constitucional/tamb/tomba/lei/catalana/contra/fracking>

11 El Tribunal Constitucional suspèn la llei 24/2015 admetent el recurs del govern en funcions del Partit Popular, Aliança Contra la Pobresa Energètica <https://pobresaenergetica.es/2016/05/31/el-tribunal-constitucional-suspen-la-ley-242015-admetent-el-recurs-del-govern-en-funcions-del-partit-popular/>

12 El Tribunal Constitucional anul·la la llei de l'Agència Tributària catalana, Noticias de Navarra <https://www.noticiasdenavarra.com/actualidad/2016/07/08/tribunal-constitucional-anula-agencia-tributaria-2747724.html>

13 El Constitucional tomba la llei d'igualtat d'homes i dones aprovada pel Parlament, El Periódico https://cemical.diba.cat/sites/cemical.diba.cat/files/public/migracio/actualitat/a-fitxers/inconstitucionalitat_llei_igualtatEP06_10_16.pdf?noredirect=1

14 Catalan bullfights: Spanish top court overturns ban, BBC <https://www.bbc.com/news/world-europe-37719997>

15 El Tribunal Constitucional la paraula descentralitzada en la llei de governs locals, El Punt Avui <http://www.elpuntavui.cat/politica/ar-ticle/-/1064918-el-tc-declara-inconstitucional-la-paraula-descentralitzada-en-la-ley-de-governos-locales.html>

16 El Constitucional anul·la la llei de consultes del tripartit, El País https://politica.elpais.com/politica/2017/05/10/actualidad/1494432527_180161.html

17 El Constitucional anul·la definitivament la llei del referèndum del 1 d'octubre, Público <https://www.publico.es/politica/constitucional-anula-definitivamente-ley-referendum-1-octubre.html>

18 El TC suspèn els impostos als habitatges buits i a les nuclears, Nació Digital <https://www.naciodigital.cat/noticia/147676/tc-suspen-impuestos-habitatges-buits-nucleares>

- June 2018 – Following the pro-independence parties' victory in the December 2017 Catalonia regional elections, a new Catalan government is chosen, and the direct rule by Spanish authorities ends. Mr Quim Torra is invested as president, being the fourth option, as the first three choices of the pro-independence majority (Mr Carles Puigdemont, Mr Jordi Sánchez, Jordi Turull) were impeded by the Spanish Constitutional Court during the precedent months.
- June 2019 – Spain's Constitutional Court annuls part of the Catalan law 16/2017 on climate change.
- October 2019 – Spain's Constitutional Court prohibits Catalan Parliament from holding debates on the Spanish monarchy, and on self-determination.
- April 2022 – Spain's Constitutional Court annuls articles of the law 11/2020 that partially regulated rental prices.¹⁹
- September 2022 – Spain's Constitutional court suspends several articles of the Catalan law 18/2017 on trade.²⁰
- March 2024 – The Spanish Government submits to the Constitutional Court a People's Legislative Initiative addressed at the Catalan Parliament on the Catalan independence.²¹

3. Cases and types of repressive actions & human rights regressions

3.1 Violation of the Right to Political Participation

Article 21 of the Universal Declaration of Human Rights states the right of every person to participate in the affairs of their country, either directly or by selecting representatives. In a similar vein, Article 25 of the International Covenant on Civil and Political rights establishes that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and to have access, on general terms of equality, to public service in their country.

Since the democratic Catalan pro-independence movement became truly mainstream in 2009-2010, Spanish authorities have continuously perceived it as an existential threat. Authorities have incessantly worked to interfere and undermine Catalonia's democratic process, targeting institutions and elected representatives to suppress the ability of the Catalan government to implement the policies of its successive pro-independence majorities.

Operation Catalonia

A few weeks after the first mass pro-independence protest was held in Barcelona in September 2012 on the Catalan National Day, the secretive "Operation Catalonia" ²² was launched by the Spanish government. The 'operation' aimed at targeting the pro-independence movement, utilizing the police and other bureaucratic institutions and apparatus to manipulate electoral results through public opinion. This involved illegal investigations, the construction of false evidence, and collaboration with journalists from Spanish nationalist media, who colluded to publish false reports of pro-independence leaders as credible information, thereby tarnishing their reputation, and consequently that of the entire movement. This operative structure functioned until 2018, when Mariano Rajoy's government lost power by a motion of censure. Until then, police and media apparatus had targeted dozens of public representatives and several political parties, playing a key role in the national and municipal elections in 2012 and 2015 respectively. False accusations against the pro-independence candidate and mayor Xavier Trias, alleging use of Swiss bank accounts for instance, are largely considered one of the causes of his electoral defeat²³ In addition to negatively affecting the active and passive right to political participation for many Catalans, the actions of Operation Catalonia also infringed upon the rights to privacy and human dignity of the political leaders and elected representatives targeted in the defamatory campaigns.

19 El TC declara inconstitucionals tres articles més de la llei catalana del preu del lloguer, Nació Digital <https://www.naciodigital.cat/noticia/232840/tc-inconstitucionals-ar-ticles-llei-catalana-preu-lloguer>

20 El TC anul·la articles de la llei catalana de comerç pels horaris d'obertura de les botigues, Vilaweb <https://www.vilaweb.cat/noticies/tc-llei-catalana-comerc-botigues/>

21 El govern espanyol recorre al Constitucional la ILP per votar la independència al Parlament, 324 <https://www.ccma.cat/324/el-govern-espanyol-recorre-al-constitucional-la-ilp-per-votar-la-independencia-al-parlament/noticia/3284202/>

22 Què se'n sap, de «l'Operació Catalunya»? Hi està implicat Mariano Rajoy?, Regió 7 <https://www.regio7.cat/arreu/catalunya/2024/01/15/sen-sap-loperacio-catalunya-hi-96929552.html>

23 Trias denuncia que les «mentides» sobre els comptes a Suïssa van influir en la seva derrota electoral, Nació Digital <https://www.naciodigital.cat/noticia/133370/trias-denuncia-mentides-sobre-comptes-suïssa-van-influir-seva-derrota-electo11>

The non-binding independence plebiscite that was held by the Catalan authorities in November 2014 marked the beginning of a renewed systematic recourse to lawfare by Spanish courts against Catalan elected representatives.

In March 2017 the High Court of Justice of Catalonia condemned the former Catalan president Artur Mas, and of his former ministers Joana Ortega and Irene Rigau, for disobedience in relation to the organization of the November 2014 non-binding plebiscite. The court imposed two years disqualification from office and 36,000 euros fine for Artur Mas; a one year and nine months of disqualification from serving in public office and a 30,000 euro fine for Joana Ortega; and a year and a half disqualification and a 24,000 euro fine for Irene Rigau. The Spanish Supreme Court sentenced the Catalan MP (and former Catalan minister) Francesc Homs to 13 months of disqualification from public office and a fine of 30,000 euros for the same event, being stripped of his seat held in the Spanish parliament.

In May 2017, the Spanish organizations Societat Civil Catalana and Abogados Catalanes por la Constitución submitted a complaint to the Spanish Court of Auditors against Artur Mas, Joana Ortega, Irene Rigau and Francesc Homs in relation to the organization of the 9 November 2014 non-binding plebiscite with public funds. In July 2017, the Court of Auditors began an investigation.

In November 2018, the Court of Auditors issued its judgment on the accounting trial concerning the organization of the 9 November consultation. It calculated that the consultation caused 4.946 million euros in damage to Catalan government government funds. This amount was distributed among Irene Rigau, Joana Ortega, Francesc Homs, and five senior officials in the Catalan Government, with former Catalan president Artur Mas being held responsible for the total amount and ultimately accountable for the 9 November consultation.²⁴ The sentence was issued by auditor Margarita Mariscal de Gante Mirón, former minister of justice in the Spanish conservative PP government (1996-2000). It is worth noting that the Court of Auditors is one of the most politicized courts in Spain, greatly influenced by the two large parties, PP and PSOE, which have been agreeing to distribute the positions and place individuals from their orbit in this body. This includes cases such as the presidency of the Court held from 2018 to 2021 by María José de la Fuente, niece of former Francoist minister Licinio de la Fuente, appointed at the proposal of the PP. As such, the Court has played an important role in the repressive campaign against the Catalan pro-independence movement, especially in terms of economic repression against elected representatives and high officials.

The fine was, ultimately, fully covered by the Caixa de Solidaritat (Catalan Solidarity Fund) in 2019²⁵ an entity created in 2017 jointly by the pro-independence civil society Organization Catalan National Assembly, and the Catalan cultural and human rights NGO Òmnium Cultural. The Catalan Solidarity Fund aims at funding legal costs and/or economic responsibilities involving individuals facing legal repressive actions in the framework of the Catalan self-determination process. Finally, it should be noted that even if an Amnesty Law is approved by the Spanish legislature at some point in the near future, it will not cover the 4.9 million fines of this case.

Repressive surge during and after the October 2017 independence referendum

On October 1st, 2017, the Catalan independence referendum was organized, and on October 27th the Catalan parliament voted a declaration of independence that was not implemented. On the same day as the declaration, the Spanish Senate voted to activate Article 155 of the Spanish Constitution, resulting in the central government disbanding the Catalan parliament and taking direct rule over Catalonia. On November 2nd several prominent Catalan members of the Catalan government were imprisoned on pre-trial by order of the Spanish National Court upon being charged with crimes of rebellion, sedition, and embezzlement. A European Arrest Warrant was issued against members of government who went into exile: Carles Puigdemont, Toni Comin, Lluís Puig, Meritxell Serret and Clara Ponsatí, for the same crimes.

During the subsequent years, courts in countries such as Germany, Belgium, and Scotland, deemed that there were no legal grounds to extradite them to Spain, as Spanish prosecutors were requesting. In the case of Lluís Puig, in January 2021 the Brussels Court of Appeal went as far as rejecting his extradition arguing a “risk of human rights violation”, considering the situation of other former members of the Catalan government that were imprisoned and tried by Spanish courts.²⁶

The dissolution of Catalan Parliament on October 27th, 2017 suppressed an elected pro-independence majority that expressed the democratic will of the Catalan people. Despite this, in the elections in Catalonia imposed by Spanish authorities on December 21st, 2017, the pro-independence forces again held their majority. The intrusions of the Spanish courts were maintained, and a few weeks later, on January 30th of 2018, the Spanish Constitutional Court

24 Artur Mas y tres exconsellers, condenados a pagar 4,9 millones por la consulta del 9-N, La Vanguardia <https://www.lavanguardia.com/politica/20181112/452875699000/tribunal-de-cuentas-artur-mas-condenado-consulta-9n-cataluna.html>

25 Caixa de Solidaritat – Catalan Solidarity Fund webpage <https://caixadesolidaritat.cat/en>

26 La traducció al català de la sentència humiliant de Bèlgica denegant l'extradició de Lluís Puig, Vilaweb <https://www.vilaweb.cat/noticies/sentencia-belgica-lluís-puig-euroordre-catala/>

imposed several restrictions in order to prevent Carles Puigdemont from being re-elected president of the Catalan government. These restrictions included prohibiting holding an investiture debate that was not in person, prohibiting the investiture plenary session in Parliament with Puigdemont present without judicial authorization, as well as banning the delegation of votes by MPs with an arrest warrant. An encroachment in the democratic functioning of the Catalan parliament that constituted a clear violation of the right to political participation of all the elected representatives, and the millions of voters that had elected them.

Following the prohibition of Puigdemont's investiture, on March 9th, Spanish Supreme Court judge Pablo Llarena rejected the request by Catalan civil leader, Jordi Sànchez (who was in pre-trial detention for the 2017 events and an elected MP), to obtain an extraordinary permit to leave prison to attend the investiture in Parliament, and be able to be invested as the 131st president of the Government of Catalonia. The judge cited a 'risk of criminal re-offence' as the basis for the rejection. This draconian decision represented a harsher treatment than that received by former ETA member Josu Antoni Urrutikoetxea in 1998, when while being imprisoned he was permitted by Spanish courts to leave his detention centre to gather his accreditation as MP in the Basque Parliament, and to participate in parliamentary debates and works.²⁷ On March 24th the same judge prevented the investiture of another imprisoned MP, and former member of Catalan government, Jordi Turull, by sending him to pre-trial detention.

Finally, on May 14th, 2018, Catalan pro-independence MP Mr. Quim Torra was sworn in as the 131st president of the Government of Catalonia. Despite being the fourth option, and his investiture a reflection of the Spanish judiciary's meddling in Catalan parliament activity and decisions, the intrusions continued. However, in September 2020, Mr. Torra was later banned from office for a year and a half and fined 30,000 euros by the Spanish Supreme Court for refusing to withdraw a banner from the balcony of the main building of the Catalan government calling for the respect of civil and political rights of Catalans.²⁸ For a second time in a row, elections to the Catalan Parliament were called due to non-democratic procedures, therefore harming the right to passive and active suffrage of Catalans.

The impact on rights to political participation arising from the suspension of the four Catalan former Parliament members from public duties while in pre-trial detention was, in August 2022, raised by the United Nations Human Rights Committee. The Committee found that Spain had violated Article 25 of the International Covenant on Civil and Political Rights, establishing that the right to participation in public affairs of the four Parliament members (former Vice-President of Catalonia Oriol Junqueras, and former ministers Raül Romeva, Josep Rull and Jordi Turull).²⁹

Likewise, in March 2023 the Committee stated that the suspension of Carles Puigdemont's candidacy for the presidency of Catalonia by Spanish Constitutional Court, as well as his suspension as deputy in the Parliament of Catalonia, "was not established by law" and that "the State party's true goal was to prevent the election of the author or of anyone who participated in the events of September and October 2017", which according to the Committee represented a violation by Spain of article 25 of the Covenant.³⁰

Repeating what happened via the Court of Auditors following the November 9th, 2014, non-binding plebiscite, the Spanish Court of Auditors also played a significant role in activating repressive measures of economic character against members of the Catalan government and high officials in relation to the October 1st, 2017, referendum. Special efforts by the Court were also made in relation to the activity of the Catalan Foreign Affairs Ministry from 2011 to 2017, and of the Catalan Council for Public Diplomacy, formerly known as Diplocat.

On December 18th 2018, the Court of Auditors began its investigation into the costs of the October 2017 independence referendum, a task that once again fell to former Spanish justice Minister and PP member Margarita Mariscal de Gante Mirón, who was the author of the ruling on the costs of the November 9th, 2014, non-binding plebiscite.

On 29th March 2019, the Court of Auditors began as well to investigate the Government of Catalonia's foreign expenditures. The plenary session of the Court of Auditors approved an audit report finding indications of criminal and accounting misconduct in relation to the Government of Catalonia's foreign affairs expenses between 2011 and 2017. In November 2019 the Court of Auditors joined the proceedings for the referendum and the foreign affairs expenses.

27 Josu Ternera y Etxebarria, a Nanclares para acreditarse https://elpais.com/diario/1998/11/17/espana/911257207_850215.html

28 El Tribunal Supremo confirma la condena de un año y medio de inhabilitación al president de la Generalitat, Joaquim Torra, por delito de desobediencia, Poder Judicial España <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Noticias-Judiciales/El-Tribunal-Supremo-confirma-la-condena-de-un-ano-y-medio-de-inhabilitacion-al-president-de-la-Generalitat-Joaquim-Torra-por-delito-de-desobediencia>

29 Spain violated former Catalan Parliament leaders' political rights, UN Human Rights Committee finds, UN OHCHR <https://www.ohchr.org/en/press-releases/2022/08/spain-violated-former-catalan-parliament-leaders-political-rights-un-human>

30 Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3165/2018, UN Human Rights Committee <https://digitalibrary.un.org/record/4035858>

In June 2021, the Court of Auditors publicly released the report of interim settlement, concluding the pre-trial stage of proceedings. The report claimed bail amounts totalling several million euros against 35 former government members and high officials under of presidents Artur Mas and Carles Puigdemont's administrations. The Court requested the higher amounts to former general Diplocat Secretary Albert Royo (around 3.8 million euros) and former general Catalan government auditor Mireia Vidal (3.3 million euros). Other representatives affected by the bails include the former Ministers of Economy Oriol Junqueras and Andreu Mas-Colell, the former Minister of Foreign Affairs Raül Romeva, the former Foreign Affairs general secretary Aleix Villatoro, the former Presidency Minister Francesc Homs, the former Presidency general secretaries Joaquim Nin and Jordi Vilajoana, as well as the former Delegates of the Catalan government to several countries. The accused had to provide 5.4 million as bail, after carrying out a provisional liquidation, an amount that was guaranteed by the Catalan Institute of Finances (ICF). At the time of writing, the final ruling on this case by the Court of Auditors is expected to take place soon.³¹ The Spanish Prosecutor is, currently, claiming a figure of up to 3.1 million euros. So far, the process has already inflicted significant moral, economic and social harm for the 35 persons prosecuted.

Abuses of the right to political participation in elections to European and Spanish parliaments

The right to political participation in public affairs of Catalan representatives, and therefore, of their voters, was also restricted during the elections to the Spanish Congress in April 2019, and to the European parliament in May 2019.

On April 29th, the Spanish Central Electoral Board announced that it had agreed, following a complaint from Spanish nationalist parties PP and Ciudadanos, to bar Carles Puigdemont, Antoni Comín and Clara Ponsatí from standing in the 26 May European elections as candidates for Junts per Catalunya – Lliures per Europa, as “they were not residents of the municipalities where they are registered, but rather have been outside the national territory for two years to escape justice.”³²

A few days later the Supreme Court noted that since there were no grounds for finding Puigdemont, Comín and Ponsatí ineligible, they could not be disqualified as candidates. Despite this, after being elected, the Central Electoral Board denied their democratic right to take office by prohibiting them from making remote declarations of allegiance. This was also the case of elected Member of the European Parliament (MEP), Oriol Junqueras, who was in pre-trial detention.

After Oriol Junqueras was prevented from taking the oath of allegiance, a preliminary question was raised by the Supreme Court in July 2019 to the Court of Justice of the European Union (CJEU). On December 2019 the Court of Justice of the European Union (CJEU) ruled that Oriol Junqueras was an MEP from the moment of being elected, and as such, enjoyed parliamentary immunity.³³ As such, the conviction of Junqueras to 13 years of imprisonment on October 14th occurred while he was an MEP and therefore without respect of his immunity. The CJEU ruling therefore also allowed Carles Puigdemont and Toni Comín to enter the European Parliament with temporary MEP credentials. Clara Ponsatí followed suit, despite the fact that, for six months, they were unable to carry out their duties as elected representatives due to the Spanish court's blocking, therefore leaving more than a million Catalan voters unrepresented at the European Parliament. In spite of the CJEU ruling, Oriol Junqueras was still denied by the Spanish authorities the democratic right to take office as an elected Member of the European Parliament (MEP).

In January 2020, twenty-two MPs of the Parliamentary Assembly of the Council of Europe issued a public statement³⁴ in relation to the situation of the Catalan MEPs, denouncing the “worrying steps taken by Spanish authorities, which clearly affect the fundamental right to political representation in Catalonia”. They also expressed their concern with regards to the situation of elected members of the Spanish Congress (Jordi Sanchez, Josep Rull and Jordi Turull) and Senate (Raul Romeva), who in May 2019 were stripped of their seats by the respective chamber Bureaus, a few weeks after the elections, on the grounds that they were being prosecuted for a crime of rebellion.

Carles Puigdemont and Toni Comín later filed a case to the General Court of the Court of Justice of the European Union, against the refusal of the former President of the European Parliament to recognise their status as Members of the European Parliament and their associated rights in May and June 2019, due to the actions of Spain's Electoral Commission. On July 6th, 2022,³⁵ the General Court considered the case as inadmissible. Mr Puigdemont and Mr Comín then brought an appeal before the CJEU.

31 La Fiscalía mantiene su petición de 3,1 millones de euros por el 1-0 y la acción exterior del Govern, El Periodico <https://www.elperiodico.com/es/politica/20240416/fiscalia-tribunal-cuentas-mantiene-cifra-3-1-1-o-101140398>

32 La Junta Electoral no permite las candidaturas de Puigdemont, Comín y Ponsatí a las elecciones europeas, El Mundo <https://www.elmundo.es/cataluna/2019/04/29/5cc6e87421efa042388b45b5.html>

33 Judgment of the Court (Grand Chamber) of 19 December 2019. Criminal proceedings against Oriol Junqueras Vies, CJEU <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CJ0502>

34 Protecting the right to political representation in Catalonia, Written declaration No. 207, Parliamentary Assembly of the Council of Europe https://int.assemblea.cat/wp-content/uploads/2020/07/COE_Parliamentary_Assembly_Right_PolRepCat_310120.pdf

On April 11th 2024, Advocate General of the Court of Justice Maciej Szpunar took the view that the allegations of the General Court in respect of the instruction of 29 May 2019 were unfounded, and that in his act of 27 June 2019, the President of the European Parliament, called into question the officially declared election results, and gave effect to the suspension of the prerogatives of Mr Puigdemont and Mr Comín which derived from their status as Members of the European Parliament, in breach of EU law.³⁶The final ruling on the case by the Court of Justice of the European Union is expected to be announced in the Fall of 2024.

Lengthy prison sentences against elected representatives

In May and June 2019, the UN Working Group on Arbitrary Detention (WGAD) issued two Opinions,³⁷ in which it stated that the purpose of the criminal charge and the resulting trial on the Catalan civil and political leaders imprisoned was “to coerce them on account of the political opinions they have expressed”. The WGAD also called on the Spanish authorities to immediately release them, award them reparations, and make legislative amendments to harmonize Spanish laws and practices with their international obligations. The Working Group considered the deprivation of freedom to be arbitrary when it is targeted at repressing members of political groups to silence them in their pursuit for self-determination. In 2019, the Working Group issued 85 opinions on the arrest of 171 people in 42 countries, with Spain being the only European Union member state included in the report.

However, instead of releasing them, on 14 October 2019, the Spanish Supreme Court imposed severe sentences on the nine Catalan civil and politicians’ leaders responsible for the 2017 referendum on independence for Catalonia. Although the Supreme Court dismissed the charges of fomenting rebellion, it imposed severe prison sentences for the crime of sedition and in some cases misuse of public funds, ranging from 9 to 13 years, based on false accusations of violence.

Moreover, the peaceful nature of the Catalan pro-independence movement was underlined by the Parliamentary Assembly of the Council of Europe (PACE) in the Resolution 2381 approved in June 2021, where referring to the October 2017 Catalan independence referendum and related events, stated that “it is undisputed that none of the [Catalan] politicians [...] called for violence. On the contrary, it is recognized, also by the prosecution, that they called on demonstrators to refrain from any violent acts. Indeed, on several occasions, hundreds of thousands of people demonstrated without any violent incidents”.³⁸The resolution also called on Spanish authorities for the release of the Catalan political prisoners, among other measures.

A few days after the vote of Resolution 2381 by the PACE, the Spanish government formally pardoned the nine Catalan leaders, who had all served at least 3 years and 4 months of their prison sentences. The decision did not however over turn the prisoners’ ban on holding office. The pardons are seen as “conditional” and “reversible” according to the Spanish authorities.³⁹A year later, the follow-up report on the PACE Resolution 2381, elaborated by rapporteur Boriss Cilevics, pointed out that the prosecution of representatives had not ceased, and called on Spain to also drop the remaining prosecutions of the lower-ranking officials involved in the 2017 referendum, and refrain from sanctioning the successors of the imprisoned politicians for symbolic actions that merely express their solidarity with those in deten- tion.⁴⁰

35 Judgment of the General Court in Case T-388/19 | Puigdemont i Casamajó and Comín i Oliveres v Parliament <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-07/cp220116en.pdf>

36 Advocate General’s Opinion in Case C-600/22 P | Puigdemont i Casamajó and Comín i Oliveres v Parliament <https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-04/cp240065en.pdf>

37 Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019 - Opinion No. 6/2019 concerning Jordi Cuixart I Navarro, Jordi Sánchez I Picanyol and Oriol Junqueras I Vies (Spain) https://ap.ohchr.org/Documents/dpage_e.aspx?si=A/HRC/WGAD/2019/6 and Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019 Opinion No. 12/2019 concerning Joaquín Forn I Chiariello, Josep Rull i Andreu, Raúl Romeva I Rueda and Dolores Bassa I Coll (Spain) <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FWGAD%2F2019%2F12&Language=E&DeviceType=Desktop&LangRequested=False>

38 Committee on Legal Affairs and Human Rights Should politicians be prosecuted for statements made in the exercise of their mandate? Report, Parliamentary Assembly of the Council of Europe <http://assembly.coe.int/LifeRay/JUR/Pdf/TextesProvisoires/2021/20210603-ProsecutionPoliticians-EN.pdf>

39 Sánchez condiciona los indultos a que los condenados no reincidan: «No se les pide cambiar sus ideas, pero sí respetar la ley», Heraldo <https://www.heraldo.es/noticias/nacional/2021/06/22/gobierno-indultos-proces-sanchez-independentistas-catalanes-1501341.html>

40 Committee on Legal Affairs and Human Rights Should politicians be prosecuted for statements made in the exercise of their mandate?: follow-up of Resolution 2381 (2021) Follow-up report on the implementation of Resolution 2381 (2021), Parliamentary Assembly of the Council of Europe <https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2022/AS-JUR-2022-15-EN.pdf>

The report made reference to the situation of the hundreds of other elected representatives, public officials, and mayors, that were being persecuted for their pro-independence positions. In total, they make up 2,632 persons.⁴¹ The Catalan Parliament, among other Catalan institutions, has been operating under a constant threat over the past decade. This was clearly expressed in the lawsuit that former vice president of Parliament Mr. Josep Costa filed to the UN Human Rights Committee (which is still pending at the time of writing),⁴² in which he claims he received threats of persecution, and even of imprisonment, by the Spanish government and Constitutional Court, aimed at blocking the investiture of president Carles Puigdemont in early 2018, with the purpose of “changing the will of the majority of the parliament”.

Article 25 of the ICCP lies at the core of democratic government. In Spain, systemic lack of judicial independence, and its politicization, have a serious effect on the right to active and passive participation of Catalans in public affairs, therefore eroding one of the basic principles of democracy. Many Catalans are afraid to engage in institutional politics, and those that do so act permanently coerced by the threat of intervention, and even persecution, by Spanish judiciary, including the Constitutional Court. Thus, democratic majorities in favour of self-determination cannot have political value and effect due to a pervasive fear and a chilling effect that impacts all political activity in Catalonia. This seriously hinders democracy, rendering it a mere formality.

3.2. Violation of the right to freedom of assembly and association, and of expression

The contemporary Catalan independence movement is and has been a peaceful and non-violent one since its inception more than a decade ago. As such, it has defended the right to self-determination of Catalonia exclusively through democratic means and initiatives that are included within the scope of the rights to freedom of assembly and of association, freedom of expression, and of political participation.

Over the past decade, though, and with special intensity since the 2017 referendum, activists and public representatives in Catalonia have witnessed a marked deterioration of their human rights. The criminal cases brought against members of the pro-independence movement have been brought in as a clear deterrent to those who would hold this political opinion or take part in activism or institutional politics. Thus, arrests and detentions have become the norm, including intentionally excessive delays in criminal procedure and denial or pre-trial rights. At the initiative of Spanish nationalist People’s Party, by then in government, in 2015 Spanish parliament enacted the so-called “Gag Law”⁴³ This legislation created new heavy fines to be applied in the context of public protests in front of government buildings, or near transportation hubs, nuclear power plants, or similar facilities, as well as to the unauthorized use of images of law enforcement authorities or police, limiting the possibility to document abuses by law enforcement officers. It also broadened the interpretation of the situations that can be interpreted as “glorification of terrorism”, in order to persecute freedom of expression.⁴⁴

In November 2018, Council of Europe’s Commissioner on Human Rights expressed serious concerns on the Spanish “Gag Law” and requested in its review “to eliminate all possibilities of disproportionate interference” with the rights to freedom of expression and freedom of peaceful assembly.⁴⁵ Such amendments have not yet been enacted. In December 2022, the Spanish Congress approved a reform of the Criminal Code in which Sedition was erased and replaced with a reformulated crime of aggravated public disorder.⁴⁶ Amnesty International issued a statement expressing that while removal of the crime of sedition was a positive step, there remained concerns on the redefinition of the crime of public disorders. Amnesty considered that the new text introduces assumptions that do not involve effective violence, such as the interruption of traffic.

41 No tothom podria ser amnariat: Òmnium xifra els possibles beneficiats en un miler, 324 <https://www.ccma.cat/324/no-tothom-podria-ser-amnariat-omnium-xifra-els-possibles-beneficiats-en-un-miler/noticia/3247084/>

42 Espanya no pot aturar la demanda de Josep Costa al Comitè de Drets Humans de l’ONU, Vilaweb <https://www.vilaweb.cat/noticies/espanya-no-pot-aturar-la-demanda-de-josep-costa-al-comite-de-drets-humans-de-lonu/>

43 Spanish Organic Law 4/2015, on the protection of citizen security, also known as the “Gag Law”, entered into force on July 1st, 2015

44 Ley mordaza y Código Penal: todo lo que ya no puedes hacer en Internet, Gizmodo <https://es.gizmodo.com/ley-mordaza-y-codigo-penal-todo-lo-que-ya-no-puedes-ha-1694965827>

45 Letter of Council of Europe Human Rights Commissioner to Spanish government of 20 November 2018 <https://rm.coe.int/letter-to-a-pastor-julian-president-of-the-congress-of-deputies-of-spa/16808f0e2a>

46 Criminal Code reform: the changes explained [Criminal Code reform: the changes explained \(catalannews.com\)](https://www.catalannews.com)

They also criticize the introduction of an aggravated modality of public disorder that does not sanction situations of alteration of public order, but the simple possibility of endangering it. Specifically, the text refers to acts carried out by a crowd whose number, organization and purpose are suitable for seriously affecting public order. According to Amnesty, this definition “contains elements of ambiguity that must be corrected”.

On the other hand, Amnesty regretted that the reform maintained the crime of invasion and occupation of legal entities’ headquarters introduced in 2005, and expressly sanctions these acts even if they are carried out without violence or intimidation. The penalization of non-violent acts remains as long as there is “a relevant disturbance of the normal activity of the entity”, a concept considered ambiguous.⁴⁷

In November 2022 Amnesty International raised concerns about the ongoing serious risk of the right to protest being suppressed in Spain. In its report entitled ‘*Right to protest in Spain: seven years, seven gags that restrict and weaken the right to peaceful protest in Spain*’,⁴⁸ they called on the Spanish Government, which has committed to reform the “Gag Law”, to do so at once, including, the removal of those articles that limit freedom of assembly, expression and information, and the incorporation of independent investigation mechanisms to prevent excessive use of force or arbitrary actions by the police. In its 2023 report ‘Protecting Civil Society’, the European Union Agency for Fundamental Rights highlighted Spain’s concerns regarding the restrictions on freedom of peaceful assembly outlined in the ‘Gag Law’. Civil society has expressed apprehensions about the law’s excessive limitations, which persist despite promises from the Spanish government to repeal them.⁴⁹

Together with the provisions included in the Gag law, crimes of disobedience, of attack on authority, of public disorder, of sedition, of *lese-majesty*, of rebellion, of terrorism (see section 4 of the report) and of misuse of funds, have been used by Spanish judiciary to persecute and/or condemn thousands of Catalan activists, civil society and political leaders, and public servants.

Curtailement of rights related to the October 2017 referendum

The Spanish government’s response to the events surrounding the 1 October 2017 included the closure of websites related to the organization of the referendum,⁵⁰ police assault and police searches of media outlets,⁵¹ and of government offices and pro-independence political parties.⁵² During the referendum day, 1066 peaceful voters were injured due to extreme violence by the Spanish police.⁵³ This disproportionate use of force sparked international criticism.

For instance, on October 4th, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and other UN experts urged for an investigation into activists’ injuries, and for Spanish authorities to fully respect fundamental human rights, including the right to freedom of peaceful assembly, association, and freedom of expression.⁵⁴ In a similar vein, on October 9th the Human Rights Commissioner of the Council of Europe called on Spain to investigate allegations of disproportionate use of police force in Catalonia.⁵⁵ Human Rights Watch also affirmed that Spain must “ensure that people

47 España: La reforma del Código Penal para eliminar el delito de sedición es una buena noticia, pero debe garantizar que no criminaliza la protesta pacífica (amnesty.org)

48 Derecho a la protesta en España: siete años, siete mordazas que restringen y debilitan el derecho a la protesta pacífica en España, Amnistía Internacional (2022), <https://doc.es.amnesty.org/ms-opac/permalink/1@000035052>

49 2023 Report: Protecting Civil Society, European Union Agency for Fundamental Rights <https://fra.europa.eu/en/publication/2023/civic-space-2023-update?page=3#read-online>

50 Spanish authorities try to shutter Catalan referendum websites, Politico <https://www.politico.eu/article/spanish-authorities-try-to-shutter-catalan-referendum-websites/>

51 La Guardia Civil finaliza el registro del semanario ‘El Vallenc’ cinco horas después, El Confidencial https://www.elconfidencial.com/espana/cataluna/2017-09-09/guardia-civil-registra-seminario-valls-el-vallenc-material-electoral_1441062/

52 Milers de persones surten al carrer contra la intervenció de seus del govern, 324 <https://www.ccma.cat/324/mobilitzacio-ciutadana-contra-la-intervencio-de-seus-del-govern/noticia/2809782/>

53 New report reveals extent of police violence on referendum day, Catalan News <https://www.catalannews.com/society-science/item/new-report-reveals-extent-of-police-violence-on-referendum-day>

54 UN experts urge political dialogue to defuse Catalonia tensions after referendum, UN OHCHR <https://www.ohchr.org/en/press-releases/2017/10/un-experts-urge-political-dialogue-defuse-catalonia-tensions-after>

55 Human Rights Commissioner calls on Spain to investigate allegations of disproportionate use of police force in Catalonia, Council of Europe <https://www.coe.int/en/web/portal/-/human-rights-commissioner-calls-on-spain-to-investigate-allegations-of-disproportionate-use-of-police-force-in-catalonia>

enjoy the right to peaceful assembly and can express their opinions freely”.⁵⁶ In March 2018, the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, noted that the Spanish government’s characterization of the excessive use of force by police at the 2017 referendum as legal, legitimate, and necessary “was questionable”.⁵⁷

Furthermore, he reminded Spanish authorities that pre-trial detention should be considered as a last resort, and instead urged authorities to find a resolution through political dialogue. In his statement, Mr Zeid Ra’ad Al Hussein referred to the pre-trial imprisonment of the leaders of the Catalan civil society organizations Jordi Sánchez (president of the Catalan National Assembly) and Jordi Cuixart (president of Òmnium Cultural) on October 16th.

In a public statement, Amnesty International considered the prosecution of the leaders for sedition (which afterwards was joined by the accusation of rebellion) and their pre-trial detention, a disproportionate restriction of their right to freedom of peaceful assembly.⁵⁸ In his March 2018 report, UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein also referred to the Catalan ministers in pre-trial detention since November 2nd, with false accusations of rebellion, sedition and misuse of funds.

In April 2018 UN Special Rapporteur on the rights to freedom of opinion and expression, David Kaye, expressed concerns that the charges of rebellion for actions not based on violence or incitement to violence could interfere with the right to protest and dissent.⁵⁹

A year later, in May and June 2019 the UN Working Group on Arbitrary Detention (WGAD) called on Spain to immediately release the nine Catalan political prisoners and to acknowledge their right to obtain compensation and other types of redress.⁶⁰ The Working Group stated that their freedom of expression, assembly and association had been violated. On 25 November 2020, the UN Special Rapporteur on torture deemed the refusal by Spanish authorities to comply with these measures as “problematic”.⁶¹

Other cases of repressive actions aimed at coercing the right of freedom of expression, and of assembly and association took place, with frequent detentions and prosecutions against pro-independence activists. On Oct 1st, 2018, a peaceful demonstration was held in the centre of Barcelona against a demonstration organized by the Spanish far right police unions to “commemorate” the police actions that took place a year earlier against the referendum voters. About 6,000 pro-independence demonstrators participated. After a series of violent police charges, 14 demonstrators were injured, and 6 were arrested. One of them, Marcel Vivet, was sentenced to five years of imprisonment for public disorder, (reduced to 1.5 years in May 2022).⁶² Another demonstrator, Abel Mora, was condemned to 3 years and nine months of imprisonment as a co-perpetrator of injuries to a man with a Spanish flag and cap, in relation to an incident in the Barcelona Metro, on November 10th, 2018, when the victim had just left a demonstration held by the Spanish police union Jusapol (in homage to the police officers that repressed the referendum on independence) and was finally imprisoned on May 30th, 2024). Abel Mora didn’t touch the victim, but the aggressor was never identified.⁶³

56 Spain: Police Used Excessive Force in Catalonia, Human Rights Watch <https://www.hrw.org/news/2017/10/12/spain-police-used-excessive-force-catalonia>

57 High Commissioner’s global update of human rights concerns, UN OHCHR <https://www.ohchr.org/en/statements/2018/03/high-commissioners-global-update-human-rights-concerns?LangID=E&NewsID=22772>

58 Spain: Recent developments in Catalonia from 1 October, Amnesty International <https://www.amnesty.org/en/documents/eur41/7473/2017/en/>

59 UN expert urges Spain not to pursue criminal charges of rebellion against political figures in Catalonia, UN OHCHR <https://www.ohchr.org/en/press-releases/2018/04/un-expert-urges-spain-not-pursue-criminal-charges-rebellion-against>

60 Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019 - Opinion No. 6/2019 concerning Jordi Cuixart I Navarro, Jordi Sánchez I Picanyol and Oriol Junqueras I Vies (Spain) https://ap.ohchr.org/Documents/dpage_e.aspx?si=A/HRC/WGAD/2019/6 And Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019 Opinion No. 12/2019 concerning Joaquín Forn I Chiariello, Josep Rull I Andreu, Raúl Romeva I Rueda and Dolores Bassa I Coll (Spain) <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FWGAD%2F2019%2F12&Language=E&DeviceType=Desktop&LangRequested=False>

61 UN rapporteur sees Spain’s failure to release Catalan leaders as “problematic”, El Nacional https://www.elnacional.cat/en/politics/rapporteur-spain-failure-release-catalan-leaders-problematic_559995_102.html

62 Rebaixen la condemna a Marcel Vivet de cinc anys a un i mig i no entrarà a presó, 324 <https://www.ccma.cat/324/rebaixen-la-condemna-a-marcel-vivet-de-cinc-anys-a-un-i-mig-i-no-entrara-a-presos/noticia/3162248/>

63 L’anarquista Abel Mora: «No vaig empènyer el neonazi, però em condemnen per coautoria perquè diuen que tot era premeditat» <https://directa.cat/lanarquista-abel-mora-no-vaig-empenyer-el-neonazi-pero-em-condemnen-per-coautoria-perque-diuen-que-tot-era-premeditat/>

Protests against the 2019 prison sentences and a new repressive wave

A year later, on October 14th, the Spanish Supreme Court handed down sentences from 9 to 13 years of jail for the nine Catalan civil and political leaders detained. According to the International Commission of Jurists, these convictions severely restricted their freedom of expression, association and freedom of assembly,⁶⁴ while the French Ligue des Droits de l'Homme called them a "hindrance to political freedoms"⁶⁵ The Word Organization Against Torture also criticized the "disproportionate conviction of Catalan leaders", and called the imprisonment of social leaders Jordi Sánchez, former president of the Catalan National Assembly and Jordi Cuixart, president of Òmnium Cultural, a "contravention of international standards such as the right to protest".⁶⁶

The massive civic protests that followed were met with unprecedented violence by regular and paramilitary police forces. The activist platform, Tsunami Democràtic, through the mobile app Telegram, called on protesters to move to Barcelona's airport and protest there. This non-violent action was followed by many others in the subsequent days, including a 3-days of peaceful mass marches from several points of Catalonia to the Catalan capital, organized by the Catalan National Assembly. In response, the Spanish government deployed thousands of police officers in Catalonia, including the paramilitary forces, to brutally repress the protests through violent means.

According to the Catalan Ministry of Health, over 750 protesters were injured, including 70 journalists, two of which were taken under arrest⁶⁷ More than thirty protesters were seriously injured, with four even losing an eye. In total 271 protesters were detained, dozens of them were brought to pre-trial detention for weeks, and in some cases, even months. The University of Barcelona's Observatory of the Criminal System and Human Rights alerted the serious mistreatments suffered by arrested protesters, with groping, beating, naked searches and the presence of police during medical examinations.

On October 18th, Amnesty International denounced the use of "excessive force and inappropriate deployment of anti-riot equipment and munitions" against peaceful protesters, and called on the authorities to "reduce tensions."⁶⁸ On October 21st Human Rights Commissioner of the Council of Europe Ms. Dunja Mijatovic expressed her concern for the police abuses,⁶⁹ and called on Spain to protect the rights to freedom of expression and peaceful assembly, as well as to carry out an impartial investigation. Despite these calls, the Spanish government refused to internally investigate these actions, and even a number of police officers that took part in the violent actions were awarded service medals.

On October 30th, the Spanish State's Guardia Civil ordered the take down of Tsunami Democràtic's app on Github, becoming the third country to file such a request, after China and Russia. Shortly after, on November 5th, the government also approved a law that allows the government to shut down any digital platform at their leisure, without the need of a court order.⁷⁰

Up to six thousand people peacefully protested in Madrid in October 19th 2019 in solidarity with the Catalan political prisoners, with several peaceful protesters again detained. One of them, Dani Gallardo, spent thirteen months in pre-trial detention, and in June 2023 was sentenced to 4.5 years of imprisonment for public disorder and the offense of attack on authority. Three other activists are still, at the time of writing, pending trial, and face penalties of up to 4 years of imprisonment. A total of 600 activists suffered repression and were investigated during the October and November

64 Spain: Conviction of Catalanian leaders violates human rights, International Commission of Jurists <https://www.icj.org/spain-conviction-of-catalonian-leaders-violates-human-rights>

65 Catalogne: les libertés politiques mises à mal, La Ligue des droits de l'Homme (LDH) <https://www.ldh-france.org/wp-content/uploads/2019/10/CP-LDH-Catalogne.pdf>

66 OMCT condemns the disproportionate conviction of Catalan, OMCT oficial Twitter account leaders <https://twitter.com/omct-org/status/1183722555791826944?s=20>

67 70 periodistes ferits: recull definitiu un mes després de la nit més dura de protestes, Mèdia.cat <https://www.media.cat/2019/10/16/recompte-agressions-periodistes-protestes-sentencia/>

68 Spain: authorities 'must reduce tensions' in Catalonia protests, Amnesty International <https://www.amnesty.org.uk/press-releases/spain-authorities-must-reduce-tensions-catalonia-protests>

69 Protection of the rights to freedom of expression and peaceful assembly during last week's demonstrations in Catalonia, Council of Europe Commissioner for Human Rights <https://www.coe.int/en/web/commissioner/-/protection-of-the-rights-to-freedom-of-expression-and-peaceful-assembly-during-last-week-s-demonstrations-in-catalonia>

70 Github removes Tsunami Democràtic's APK after a takedown order from Spain, TechCrunch https://techcrunch.com/2019/10/30/github-removes-tsunami-democratics-apk-after-a-takedown-order-from-spain/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAMqOEMcaFfW1wF3_xzU4Hv_UxdAualjH3lyn_f854x_pK-wRISNmbEAPCFIO-07DciYmR3yBCIRIE0wAkqORgQ7q9zfFDH2qtvesuyfQqRu6jA5-vP7dWobFlhrPoYYPw5DS9f1C9lgelgyOxGq-faeTiFvuMXVC04Swu6EibjxAV

2019 events, according to the lawyer's association Alerta Solidària.⁷¹ Many of them are still pending trial. These events and the scope of the subsequent repression marked a critical moment, in the form of a widespread chilling effect in society that harms the rights to freedom of assembly and of association. Many Catalan activists, especially young ones, have refrained from engaging in nonviolent protests ever since, and even from participation in any form of grassroots civic activity, due to fear of persecution.

Repression of civil society organizations

Catalan civil society organizations have also been the target of repressive actions. This is the case of the Catalan National Assembly (ANC), the most prominent pro-independence organization, which has been subject to frequent harassment by the authorities. Its two former chairs were imprisoned for their legal personality of being (former) presidents of the ANC. Jordi Sànchez was the president of the ANC at the time of the referendum and was condemned to 9 years of imprisonment for sedition for his role in the peaceful meetings to support the referendum. Amnesty International issued a statement on November 19th, 2019 requesting his immediate release.⁷² In the case of the former speaker of the Catalan Parliament, Ms Carme Forcadell, her role as a former president of the ANC was used as a reason for accusing her of sedition. The threat of imprisonment has had a serious effect on subsequent directions of the ANC as well as on its members. Similarly, on the day of the 2017 referendum, the civil society organisation's campaign materials on independence – e.g t-shirts with a SI (YES) on it – were confiscated, and campaign stands disassembled, all without a specific court order.

After the referendum the offices of ANC were searched twice by Spanish police officers. In March 2019, in what is believed to be a retributive move, the Catalan National Assembly (ANC) received fines of 40,000 and 200,000 euros because, according to the Spanish National Court, the organization did not protect the data of its own members.⁷³ In addition, the Spanish Data Protection Agency also imposed a fine of 200,000 euros on Òmnium Cultural, another major Catalan organization that defend the right to self-determination, for events which occurred prior to the 2017 referendum.

Moreover, on October 17th, 2022, the Mercantile Court 11 of Barcelona ordered the closure of the ANC's website created for the "Strategic Consumption" campaign aimed at favoring pro-Catalonia firms, a ruling aligning with the lawsuit made by the major pro-Spain business association in Catalonia, Foment del Treball.⁷⁴ ANC filed an appeal to the Provincial Court of Barcelona against this decision, which was dismissed on March 5th, 2024. On April 10th, the decision was appealed by the ANC to the Spanish Supreme Court.

On June 17th, 2022, the National Authority for Markets and Competition (Comisión Nacional de los Mercados y la Competencia - CNMC) closed the file in the disciplinary case that it had opened in 2019 against the ANC for the strategic consumer campaign, also in response to a complaint by Foment del Treball.⁷⁵

These legal and administrative actions brought against the "Strategic Consumption" campaign undermine the right to freedom of assembly and the right of association, as well as the right to ideological freedom. Moreover, they infringe the pre-eminence of freedom of expression when confronted with freedom of business, in opposition to judgement n° 15271/16 of the ECHR of June 11, 2020, Baldassi v. France.⁷⁶

71 Més de 600 persones represaliades en els darrers 6 mesos en la lluita per la llibertat del nostre país, Alerta Solidària https://twitter.com/AlertaSolidaria/status/1230152125113675777?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1230152125113675777%7Ctwgr%5E93b69d33d923d597b949169559a9f918a9f4b909%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.elnacional.cat%2Fes%2Fpolitica%2Falerta-solidaria-represaliados-manifestaciones-independentistas_471834_102.html

72 Spain's conviction for sedition of Jordi Sànchez and Jordi Cuixart threatens rights to freedom of expression and peaceful assembly <https://www.amnesty.org/en/latest/press-release/2019/11/spain-conviction-for-sedition-of-jordi-sanchez-and-jordi-cuixart-threatens-rights-to-freedom-of-expression-and-peaceful-assembly/>

73 L'Audiència Nacional confirma les multes de 240.000 euros a l'ANC per la 'gigaenquesta' del 9-N i l'atac d'Anonymous, La República <https://www.larepublica.cat/noticies/politica/nacional/audiencia-nacional-confirma-les-multes-de-240-000-euros-a-lanc-per-la-gigaenquesta-del-9-n-i-latac-danonymus/>

74 Judge orders closure of ANC website for consumer campaign favouring pro-Catalonia firms, El Nacional https://www.elnacional.cat/en/politics/judge-orders-closure-catalan-pro-independence-website-consumer-campaign_902304_102.html

75 Competència arxiva l'expedient sancionador contra l'Assemblea per la campanya de Consum Estratègic, Assemblea Nacional Catalana <https://repressio.assemblea.cat/2022/06/17/competencia-arxiva-lexpedient-sancionador-contra-lassemblea-per-la-campanya-de-consum-estrategic/>

76 ECtHR Rules Right to Boycott is Protected by Right to Freedom of Expression, European Legal Support Center <https://elsc.support/cases/baldassi-vs-france-2020>

Impunity for perpetrators and a growing chilling effect in Catalan society

To date, only 45 police officers are being investigated for the mass violence that occurred in October 2017, and 37 for the police violence that occurred in October and November 2019.⁷⁷ None of them has been officially condemned yet. Not even one Spanish official or public authority has been investigated, and even less prosecuted and sentenced, for crimes related to the human rights abuses against Catalans.

The actions by Spanish authorities since 2017 have had a negative impact on an array of fundamental rights, including freedom of press, the rights to liberty and security of persons, and the right to a fair trial. The rights most widely harmed are of freedom of expression, of association, and of assembly.

In its resolution 2381 calling on Spanish authorities to release the nine Catalan political prisoners, the Parliamentary Assembly of the Council of Europe stated that freedom of expression and freedom of assembly and association “must be enforced without discrimination on any grounds”. The Parliamentary Assembly also notes that in the case of Catalonia, the expression of pro-independence views was being prosecuted. Two years earlier, a few weeks after the announcement of the October 2019 prison sentences to the Catalan political leaders, Amnesty International stated that the use of crime of sedition to imprison Catalan civil leaders could have a chilling effect that could prevent people from participating in peaceful protests without fear.⁷⁸

All individuals targeted were not committing any form of serious crime when targeted. On the contrary, they were carrying out legitimate activities within the scope of their rights to freedom of expression, participation in public life, and freedoms of association and assembly. Despite being protected under international human rights law, the disproportionate reaction of the Spanish state, and the criminalization of self-determination, as the right to have a say and participate in decision-making that concerns a people through non-violent and lawful means, has in fact created a chilling effect in Catalan civil society and leadership, negatively affecting their willingness to exercise fundamental rights due to fear of repression.

3.3 Espionage using Pegasus spyware, and police infiltration: violation of the right to privacy

On April 18th, 2022, the Canadian University of Toronto research laboratory, Citizen Lab, responsible for many detections, analyses and reports of cases of the use of spyware Pegasus and Candiru occurring worldwide, publicly revealed that during seven consecutive years (2015-2021), a significant number of attacks, infections and hacking were carried out against at least 65 Catalan elected representatives, civil society leaders, activists, lawyers, journalists, high-tech specialists, and their relatives.⁷⁹ This information was confirmed by Amnesty International and also reported by The New Yorker story.⁸⁰ Following the revelations, Amnesty International called on EU authorities to put an end on Spain’s spyware abuse. In a case that became known as the ‘CatalanGate’, it can be interfered with high certainty that illegal espionage was carried out by Spanish authorities in order to ascertain the steps of the pro-independence movement during and after the 2017 Catalan independence referendum, with the intention of repressing them.

Six of the targets were members of the Catalan National Assembly, including two of its former presidents, Jordi Sanchez (2015-2017) and Elisenda Paluzie (2018-2022), whose spyware surveillance was granted by court order, as was that of the expert in digital voting and decentralization, Jordi Baylina, two members of its National Board (Arià Bayè and Sònia Urpí) and one member of a local branch (Jordi Domingo). The Spanish government allegedly purchased the Pegasus spyware in the first half of the 2010s for an estimated amount of €6 million.⁸¹

77 45 policías en el banquillo por las cargas del 1-O: «La cogió del brazo y la lanzó al aire», El Confidencial https://www.elconfidencial.com/espana/cataluna/2023-01-27/policias-banquillo-1o-torturas_3564220/

78 Spain’s conviction for sedition of Jordi Sánchez and Jordi Cuixart threatens rights to freedom of expression and peaceful assembly, Amnesty International <https://www.amnesty.org/en/latest/press-release/2019/11/spain-conviction-for-sedition-of-jordi-sanchez-and-jordi-cuixart-threatens-rights-to-freedom-of-expression-and-peaceful-assembly/>

79 CatalanGate: Extensive Mercenary Spyware Operation against Catalans Using Pegasus and Candiru, CitizenLab <https://citizenlab.ca/2022/04/catalangate-extensive-mercenary-spyware-operation-against-catalans-using-pegasus-candiru/>

80 How Democracies Spy on Their Citizens, The New Yorker <https://www.newyorker.com/magazine/2022/04/25/how-democracies-spy-on-their-citizens>

81 Catalonia calls for EU ‘protection’ from Pegasus cyber snooping, Politico <https://www.politico.eu/article/catalan-president-stronger-eu-rules-against-digital-espionage/> And El CNI compró el sistema Pegasus para espiar en el extranjero, El País <https://elpais.com/espana/2022-04-20/el-cni-pidio-comprar-el-sistema-pegasus-para-espiar-en-el-extranjero.html>

Pegasus is a highly intrusive surveillance spyware created and owned by the Israeli company NSO, which grants the user complete and unrestricted access to all sensors and information on the targeted mobile phone. It turns the smartphone into a 24-hour surveillance device, accessing the camera and microphone, geolocation data, e-mails, messages, photos, videos, passwords, and applications. While some spyware requires some action on the part of the victim, such as clicking on a link, or opening an attachment, Pegasus is installed through a so-called “zero-click attack”. Given its unprecedented level of intrusiveness into the private life of the targeted individual and all their contacts, the Council of Europe Commissioner for Human Rights⁸² and the European Data Protection Supervisor⁸³ have expressed serious doubts as to whether its use could ever meet the proportionality requirement and therefore be human-rights compliant.

In May 2022, the Spanish authorities admitted to targeting 18 individuals with court authorisation⁸⁴ out of the 65 persons related to the Catalan pro-independence movement targeted with Pegasus and/or Candiru. The National Intelligence Center (CNI) questioned the rigor of Citizen Lab’s investigation and stated that the monitoring was individualized and always under judicial control. Shortly afterwards, and after the refusal of the Congress of Deputies to establish a specific investigation commission⁸⁵ to find out in detail the involvement of State institutions in the alleged espionage, the Official Secrets Committee of the Congress was called. However, this committee, characterized by secrecy and obscurantism, did not seem to be the appropriate place to investigate alleged human rights violations.

The European Parliament established an inquiry committee on April 19th, 2022, in order to investigate the use of Pegasus and other spyware in EU countries. In the draft report of investigation, the MEP and rapporteur Sophie in’t Veld denounced that the cases filed in Barcelona by Catalan victims of spyware were moving at a slow pace, in contrast with the fast-paced nature of the case of espionage against Spanish Prime Minister Pedro Sanchez and other members of his government.⁸⁶ In the final report of May 2023, the PEGA committee stated that the Spanish government has so far provided limited information on their role in this targeting, invoking the need for confidentiality for national security and legal reasons. This is especially alarming in the case of the 47 out of 65 victims of the attacks with the Pegasus spyware for whom it remains unclear whether or not they were targeted by the CNI with a Court order or whether or not another authority had received Court orders to legally target them. In the 18 cases for whom, according to Spanish government, a court order was issued, including the case of former president of the civil society organization Catalan National Assembly, Elisenda Paluzie, the European Parliament called the Spanish government to provide adequate access to the judicial authorisation issued by the Supreme Court to the Spanish National Intelligence Agency.⁸⁷

As denounced in the report, their adequacy, exceptional nature, proportionality and necessity can only be verified by a court. Despite this, the Spanish Ministry of the Interior has so far denied access to information both to victims and their lawyers, as well as to judges investigating these cases, despite of the fact that it has been requested in several occasions, and that they represent a key element of the legal defences and the proceedings, in order to assess whether human rights such as the right to privacy, and freedom of assembly and of association were violated.

In a similar vein, the May 2023 report of the PEGA committee of the European Parliament denounced that judicial proceedings by the individuals targeted are progressing slowly, which does not provide transparency and access to meaningful legal remedy. This was noted as well by Amnesty International’s yearly report *‘The state of the world’s human rights (2024)’*, issued in April 2024. In the section devoted to the right to privacy in Spain, the international human rights NGO denounced that, concerning the Pegasus scandal against the Catalan pro-independence movement, there was no progress in the investigation of at least 13 lawsuits into the use of spyware filed in several Spanish courts.⁸⁸

82 Highly intrusive spyware threatens the essence of human rights, Council of Europe Human Rights Commissioner <https://www.coe.int/es/web/commissioner/-/highly-intrusive-spyware-threatens-the-essence-of-human-rights>

83 Preliminary Remarks on Modern Spyware, European Data Protection Supervisor https://www.edps.europa.eu/system/files/2022-02/22-02-15_edps_preliminary_remarks_on_modern_spyware_en_0.pdf

84 Spain’s CNI admits spying on Aragonès and on Puigdemont’s circle, with court approval, El Nacional https://www.elnacional.cat/en/politics/spain-cni-admits-spying-catalan-independence-judge_752448_102.html

85 PSOE, PP, Vox y Cs tumban la comisión de investigación, pero Sánchez tendrá que comparecer en el Congreso, Huffington Post https://www.huffingtonpost.es/entry/tumban-comision-investigacion-pegasus-pero-sanchez-comparecera-congreso_es_62710b97e4b029505df65703.html

86 DRAFT REPORT of the Investigation of alleged contraventions and maladministration in the application of Union law in relation to the use of Pegasus and equivalent surveillance spyware (2022/2077(INI)), European Parliament Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware, Rapporteur: Sophie in’t Veld https://www.europarl.europa.eu/doceo/document/PEGA-PR-738492_EN.pdf

87 REPORT of the investigation of alleged contraventions and maladministration in the application of Union law in relation to the use of Pegasus and equivalent surveillance spyware, European Parliament Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware https://www.europarl.europa.eu/doceo/document/A-9-2023-0189_EN.html

88 The state of the world’s human rights (2024), Amnesty International <https://www.amnesty.org/en/documents/pol10/7200/2024/en/>

In April and May 2022 several organisations had filed complaints to several UN human rights special rapporteurs, among them Catalan National Assembly, jointly with the Unrepresented People's Organization (UNPO).⁸⁹ In June 2022, the United Nations special rapporteur on Freedom of Association and Peaceful Assembly, Clément Voule, urged states to stop using Pegasus, calling for a "moratorium on the sale of this type of spyware."⁹⁰ A few months later, in October 2022, three UN special rapporteurs addressed a communication to the Spanish government,⁹¹ expressing "very serious concerns" about what is reported to be "an extensive and well-coordinated spy program on activists and prominent public figures of the Catalan minority that appears to be an interference in their right to freely hold and express their views, exchange and disseminate information and ideas, to peacefully assemble and participate in associations, to have a private life and privacy in correspondence, and to be equal before the law and entitled to equal protection of the law without any discrimination".

In their address, the UN special rapporteurs also expressed concern on the risk that widespread use of this type of spyware software could lead to an "increase in self-censorship, which has a chilling effect on the enjoyment of the right to freedom of opinion and expression in Catalonia generally". They also requested Spain to provide all available information on possible official investigations by the Spanish authorities into the allegations of espionage activities on the aforementioned victims, and on their plans to remedy any inconsistencies with international human rights standards.

A year after, in April 2023, Amnesty International denounced that the CatalanGate revelations had had "very few consequences" and, above all, "had left an atmosphere covered in clouds and the victims waiting for justice."⁹² In October 2023 the Parliamentary Assembly of the Council of Europe passed the resolution 2513 on the use of Pegasus by five European countries, one of them being Spain.⁹³ In it, the Parliamentary Assembly called on Spanish authorities to inform the Assembly and the Venice Commission about the use of Pegasus, Candiru and similar spyware, within three months; conduct effective, independent and prompt investigations on all confirmed and alleged cases of abuse of spyware and provide sufficient redress to targeted victims in cases of unlawful surveillance; refrain from using blanket secrecy rules to deny oversight mechanisms' and targeted persons' access to information on the use of spyware; and apply adequate sanctions, either criminal or administrative, in cases of abuse.

More recently, on April 22nd, 2024, the U.S. State Department released its 2023 Country Reports on Human Rights Practices. In the report devoted to Spain, in the section *Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence*, the use of Pegasus illegal spyware by Spanish authorities is raised, as well as the fact that in January 2023 three UN human rights Special rapporteurs demanded the Spanish government thoroughly investigate the alleged spying operation against Catalan leaders and activists. The report also mentions the fact that the Spanish constitution prohibits such actions, and the reports showing that in some cases the Spanish government may have failed to respect these prohibitions.⁹⁴

The 65 cases of confirmed victims of the Catalan Gate scandal are, at the time of publication, being investigated. Many questions remain unanswered. Meanwhile, new revelations have shown that the real extent of the espionage scandal was even greater than anticipated, targeting many more activists, journalists and representatives.

It was revealed that in 2020, the Spanish Central Court of Instruction authorized the infiltration of the mobile phones of former MPs and activists David Fernández, Quim Arrufat, and former MP and journalist Albano Dante Fachin, among others. The spyware used has not been disclosed, however it is understood that it allows access to the following information: contact book, record of video calls or IP calls, email account associated with the terminal, communications through the aforementioned accounts, web browsing history, communications on social networks, messaging and chats applications, file tree [...], and the possibility of activating the microphone installed on the device in order to capture and record oral communications.

89 The Spanish Government's Use of NSO Group's Pegasus Spyware to Surveil Catalonia's Self-Determination Movement, UNPO and ANC submission to UN special rapporteurs <https://int.assemblea.cat/wp-content/uploads/2023/01/ANC-UNPO-Catalan-gate-complaint.pdf>

90 UN Special Rapporteur highlights 'relevance' of Catalangate and calls for Pegasus spyware ban, Catalan News <https://www.catalannews.com/politics/item/un-special-rapporteur-highlights-relevance-of-catalangate-and-calls-for-pegasus-spyware-ban?fbclid=IwAR15igdmT8QtKZc20w1681iJa9hjrTT3F-yCz3GC2jNAldUkhbaTLjZzpqQ>

91 Ref.: AL ESP 8/2022, Mandatos del Relator Especial sobre cuestiones de las minorías; de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión; y del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación <https://int.assemblea.cat/wp-content/uploads/2023/01/UN-Catalangate-resolution.pdf>

92 Un año después, ni rastro de Pegasus..., Amnesty International <https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/un-ano-despues-ni-rastro-de-pegasus/>

93 Pegasus and similar spyware and secret State surveillance Resolution 2513 (2023), Parliamentary Assembly of the Council of Europe <https://pace.coe.int/en/files/33116/html>

94 2023 Country Reports on Human Rights Practices: Spain, U.S Department of State <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/spain/>

The illegal use of Pegasus spyware adds to the five cases of Spanish police officers' infiltration in pro-independence and other social movements between 2020 and 2022, that have been revealed thanks to investigations by the independent media La Directa. The investigations exposed four cases of police infiltration by agents of the Spanish National Police in organizations linked to pro-independence and social movement, one in Girona,⁹⁶ two in Barcelona,⁹⁷ and a fourth one in Valencia⁹⁸. The cases were acknowledged and justified by Spanish Interior Minister in March 2023.⁹⁹ Besides the breaching of the right to freedom of assembly and association that it entails, these practices constitute a serious abuse of the right to privacy, as in all cases the police officers engaged in sexual relations with activists to gain their confidence and obtain more information. In some of the cases they even engaged in long-term relationships with activists, getting to know their relatives and coexist with them, thus provoking a deep psychological trauma once the truth was revealed. A forensic analysis based on the Istanbul protocol on victims of police infiltrations in Catalonia published in January has revealed that 90% of those affected suffer from insomnia and 70% from nightmares and suicidal thoughts.¹⁰⁰

Concerningly, Amnesty International's annual report for 2024, *"The State of the World's Human Rights"*, released in April, highlighted the absence of investigations into instances where police officers had infiltrated social movements, such as the Catalan pro-independence movement, under the guise of sexual and intimate relationships.¹⁰¹

3.4 Regression of culture and language rights of the Catalans

Discrimination against the Catalan language, culture and identity, as well as hatred of Catalans, has been a historical trend in Spain ever since the rise of Castilian hegemony in the Iberian Peninsula in the 15th century, with cases recorded throughout modern history. At present, the legacy of Spanish fascist dictator Francisco Franco's authoritarian policies and political culture in Spanish institutions still profoundly affect Catalan society, with stigmatization of the teaching and use of the Catalan language and considering Catalans a disloyal people who have betrayed the "common Spanish national project".

The Spanish Constitution makes Spanish the only official language of the state and establishes the duty of all to know it. This legitimizes a multitude of rules reinforcing the pre-eminence of Spanish, leading to systemic violation of the linguistic rights of Catalans. In 2022 alone, 146 new regulations approved directly by the State were linguistically discriminatory against the rights of Catalans, consolidating an incremental rise (discriminatory regulations were 57 in 2019, 60 in 2020, and 98 in 2021).¹⁰² Of these 146 discriminatory rules, 85.6% (125 out of 146), regulated the public sector, while the remaining 21, 14.4%, intervened in the private sector.

State legal rules that privilege Spanish and relegate Catalan are approved under the protection of a constitutional framework that establishes a hierarchy between languages and, implicitly, between linguistic groups. Both this general constitutional framework and the specific discriminatory rules that the institutions regularly approve respond to dominant Spanish nationalism. Linguistically discriminatory rules deal with very diverse aspects of social life and, therefore, promote Spanish in all kinds of areas, including areas such as business, consumption, merchant shipping, education, or the functioning of public administration, always at the expense of sub-state national languages such as Catalan.

95 La Audiencia Nacional ordenó espiar el móvil del exdiputado de la CUP David Fernández por el 'caso Tsunami', Público <https://www.publico.es/politica/audiencia-nacional-ordeno-espiar-movil-exdiputado-cup-david-fernandez-caso-tsunami.html>

96 Destapen que una policia va estar infiltrada tres anys en moviments socials de Girona, 324 <https://www.ccma.cat/324/destapen-que-una-policia-va-estar-infiltrada-tres-anys-en-moviments-socials-de-girona/noticia/3240828/>

97 Un segon policia nacional s'hauria infiltrat durant 2 anys als moviments socials de Barcelona, 324 <https://www.ccma.cat/324/un-segon-policia-nacional-shauria-infiltrat-durant-anys-als-moviments-socials-de-barcelona/noticia/3209577/> And Policies infiltrats en entitats? Quan es pot fer i amb quins límits segons la llei, 324 <https://www.ccma.cat/324/policies-infiltrats-en-entitatsaquan-es-pot-fer-i-amb-quins-limites-segons-la-llei/noticia/3169018/>

98 Destapen un tercer policia nacional infiltrat en moviments socials, ara a València, 324 <https://www.ccma.cat/324/destapen-un-tercer-policia-nacionalinfiltrat-en-moviments-socials-ara-a-valencia/noticia/3212147/>

99 Marlaska justifica les infiltracions policials en moviments socials a Catalunya, Nació Digital <https://www.naciodigital.cat/noticia/253609/marlaska-justifica-infiltracions-policials-moviments-socials-catalunya>

100 El 90% de les víctimes d'infiltracions policials a Catalunya presenten insomni i el 70% malsons o pensaments suïcides! La Mañana <https://www.lamanyana.cat/el-90-de-les-victimes-dinfiltracions-policials-a-catalunya-presenten-insomni-i-el-70-malsons-o-pensaments-suicides/>

101 The state of the world's human rights (2024), Amnesty International <https://www.amnesty.org/en/documents/pol10/7200/2024/en/>

102 Report de legislació lingüísticament discriminatòria aprovada el 2022, Plataforma per la Llengua https://www.plataforma-llengua.cat/media/upload/pdf/novetats-legislatives-en-materia-linguistica-aprovades-el-2022-que-afecten-els-terris-d_1694692448.pdf

In educational matters, some relevant cases include Royal Decree 157/2022, which establishes the organization and the minimum lessons of Primary Education; the Royal Decree 217/2022, which establishes the arrangement and the minimum courses of Compulsory Secondary Education, and Royal Decree 243/2022, which establishes the organization and minimum education of the Baccalaureate. In terms of goals of education, the three pieces of legislation establish a factual hierarchy between Spanish language and the “co-official” ones, such as Catalan or Basque, in the territories where they do exist.

Historical roots of repression of Catalan language

Repression of Catalan language, as the main source of Catalan identity, has been a constant for centuries. After the 1701-1714 War of the Spanish Succession, the 1715 *Nueva Planta* decrees were issued by Philip V, which abolished the political institutions of Catalonia and imposed Castilian as the official language, marginalizing Catalan and banning its public use. These practices lasted until the late 19th century, when prohibitions were eased. Miguel Primo de Rivera’s dictatorship (1923-1930) reintroduced strict measures against regional languages, including Catalan, in an attempt to homogenize the Spanish state. During the Francoist Regime (1939-1975), Catalan language and culture again faced severe repression. Speaking Catalan in public spaces was prohibited, Catalan symbols were banned, and Catalan self-government institutions, which had been reestablished in 1931 were once again dissolved.

The Spanish transition to democracy (1975-1980) brought partial recognition of the rights of Catalans. In recent years, however, a new wave of legislative attacks against the Catalan language by the Spanish judiciary has been taking place, aimed at targeting a core backbone: the use of Catalan language in primary and secondary education.

Restriction of Catalan language in schools

In May 2015, the Spanish Supreme Court confirmed the decision adopted by the Superior Court of Justice of Catalonia (ruling 312/2015) which established that, in addition to subjects in Spanish, at least 25% of all subjects taught in primary and secondary schools in Catalonia must be taught in Spanish. Therefore, several basic subjects would be taught in Spanish. The decision represented a major institutional obstacle to the implementation of the immersion model system in Catalan schools, which for decades had guaranteed that students obtained a high level of both Catalan and Spanish languages.

This forced limitation comes at a time when the use of Catalan in schools and among youth is experiencing a growing setback. According to one sociodemographic study focused on 15 and 16-year old students, while in 2006 67% of students used Catalan language always or most of the time in their group activities, in 2021 this figure had dropped to 21,4%.

In a similar study on trends among those aged 15 and 34 years old in Catalonia, while in 2007 Catalan language was used as the common one by 43,1% of youngsters, in 2022 it was only 25,1%, whereas the use of Spanish grew in the same period from 39,4% to 44,5%.

This Spanish judicial interference in the Catalan education system not only violates linguistic rights but also democratic principles, as the language immersion system is supported by a broad majority of the population in Catalonia. Furthermore, it promotes systemic discrimination against Catalan speakers, contradicts principles of inclusion, and even jeopardizes the quality of education in schools, and in turn the future survival of the Catalan language.

In the March 2020 report on the state of the rights of minorities in Spain, UN special rapporteur on minority issues, Mr Fernand de Varennes, called on Spanish authorities to allocate the appropriate resources, teachers, support personnel and infrastructure to ensure that children in autonomous communities with significant populations belonging to linguistic minorities have the possibility of studying in their own languages. Mr Varennes also stated that Spanish authorities “should review any measure or practice that might reduce the proportion of teaching that is carried out in minority languages in public schools.”

On May 9, 2022, the Superior Court of Justice of Catalonia ordered the Minister of Education of the Catalan government to adopt within 15 days all the necessary measures to ensure students receive at least 25% of lesson hours in Spanish. In an October 2023 address to Spanish authorities, the UN special rapporteur on minority issues Mr. Fernand de Varennes again repeated his concerns, expressing “that the decisions of the Superior Court of Justice of Catalonia against the Catalan immersion model, which has been considered very successful by UNESCO and other international commentators, imply less exposure to the Catalan language”. He also stated that these decisions “may represent a serious trend for the Catalan minority linguistic group by limiting education in the Catalan language”.

Mr Varennes argued that, furthermore, given that Spanish is the majority language in the country, “its daily use and exposure are already guaranteed and privileged”. He added that, in recent years, “judicial interpretation and other developments have generally led to an increase in obstacles to the use of minority languages in a range of public services”, and once again called on Spanish authorities to take measures “to ensure that children and students of the Catalan linguistic minority in Catalonia at different educational levels would continue to receive education in Catalan and would be exposed to the language on a daily basis to use their own language in public life”.

Language discriminations against Catalan speakers

Situations in which Catalans suffer some sort of discrimination for speaking Catalan language have also grown during the last few years. According to the 2022 report of the Barcelona Observatory of Discriminations, in 2022 speaking in Catalan was the fourth largest reason for discrimination in the city of Barcelona, with a growth of 63.6% of cases compared to the previous year, only behind racist, LGBTI-phobic and health-related discriminations.¹⁰³ In a similar vein, the 2022 report on linguistic discrimination published by the NGO Plataforma per la Llengua showed how, that year, 118 cases of discrimination against Catalan speakers by public administrations were denounced, 19.2% more than in 2021.¹⁰⁴ Most of them refer to cases of public services not providing assistance to users in Catalan language. The real figure is however much higher, as most of the users affected do not report the discrimination, and/or end up switching to Spanish.¹⁰⁵ The same NGO denounced that the Spanish government’s delegation in Catalonia has refused to investigate various reported instances of discriminations perpetrated by police officers.¹⁰⁶

In other territories where Catalan is widely spoken, such as the Balearic Islands and the Valencian Country, discrimination and repression against Catalan speakers have also intensified since the investiture of the regional governments formed by coalitions led by the Spanish nationalist party PP and the Spanish far right party Vox, in mid-2023. In the case of Valencian Country, the new administration has eliminated the minimum requirement for 25% of classes to be taught in Catalan (there also officially known as Valencian) in schools in Spanish-speaking counties of that territory. The government is also promoting legislation that establishes linguistic segregation in favour of Spanish language, and the division of students in classrooms based on the language chosen of education by the parents, a measure that further diminishes the presence of Catalan/Valencian in primary and secondary education. In the Balearic Islands, the government has also begun to suppress the immersion system of education in Catalan language. Furthermore, in both territories the authorities have begun a process to switch the official names of municipalities from Catalan to Spanish, and public grants to entities promoting Catalan/Valencian culture have been cut to zero.

3.5 The growth of hate speech against Catalans

UN Strategy and Plan of Action on Hate Speech defines hate speech as “any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.”¹⁰⁷ As stated by international NGO Rights for Peace, hate speech becomes a human rights violation if it incites discrimination, hostility or violence towards a person or a group defined by their race, religion, ethnicity or other factors.¹⁰⁸ In the case of Spain’s actions against Catalans, and against the Catalan pro-independence movement, during the last decade the growth of the cases of hate speech that have occurred, and the intensification of a Catalano-phobic environment, has made disproportionate police violence and prosecutions against elected representatives and activists more acceptable for the Spanish general public. Since the 2017 Catalan independence referendum political repression has been accompanied by a surge in attempts to stigmatize the Catalan nation, with mass media serving as one of its primary vehicles. False accusations against Catalan leaders and activists are not only made in courts but through smear campaigns in the press, occasionally

103 Les discriminacions per parlar en català a Barcelona creixen més d’un 60 %, i el català és el quart motiu més habitual de discriminació, Informe de l’Observatori de les Discriminacions a Barcelona 2022 <https://www.plataforma-llengua.cat/que-fem/noticies/5881/les-discriminacions-per-parlar-en-catala-a-barcelona-creixen-mes-dun-60-i-el-catala-es-el-quart-motiu-mes-habitual-de-discriminacio>

104 ¿Quiere hablar en catalán o quiere que su hijo se cure? Informe de casos de discriminació lingüística 2022, Plataforma per la Llengua https://www.plataforma-llengua.cat/media/upload/pdf/informe-discriminacions-2022-vf_316_11_2482.pdf

105 Les dinàmiques del català entre els joves: reptes, principis i arguments per a l’acció (2023), estudi de la Secretaria de Política Lingüística <https://www.vilaweb.cat/noticies/informe-aspectes-catala-joves-millorar-situacio/>

106 Maria Eugènia Gay va evitar investigar policies per discriminacions lingüístiques quan era delegada del govern espanyol a Catalunya, Plataforma per la Llengua <https://www.plataforma-llengua.cat/que-fem/noticies/5837/maria-eugenia-gay-va-evitar-investigat-policies-per-discriminacions-linguistiques-quan-era-delegada-del-govern-espanyol-a-catalunya>

107 UN Strategy and Plan of Action on Hate Speech https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf

108 What is hate speech?, Rights for Peace <https://www.rightsforpeace.org/hate-speech>

arising from leaks intentionally distributed by the police.¹⁰⁹ Many Spanish political parties also often use Catalanophobia as a political tool. The normalization of Catalanophobia in the media and rhetoric of political parties has resulted in a growing trend of hate speech and intolerance directed against Catalans and the Catalan language. This reinforces the political hostility, repression and criminalization that Catalans have faced for centuries.

As mentioned in section two, in order to prevent the holding of the referendum on October 1, 2017, the government mobilized thousands of Civil Guards from all over Spain to Catalonia. This mass mobilisation served to manifest the animosity that in certain sectors of Spain is professed towards the Catalan people. The disproportionate violence used can be viewed as a manifestation of the increased hostility. In several cities, during the departure of various agents of the Guardia Civil, citizens acclaimed them with cheers and proclamations such as “Go get them”, “Catalonia is Spain”, “Puigdemont, go to jail”, “Up Spain”.¹¹⁰ Far from being mere proclamations by some citizens, these harangues were also sung by members of the Guardia Civil themselves.¹¹¹

After the October 2017 events, it began to become popular among Spanish nationalist sectors to label Catalan pro-independence activists as “laci”. This new wording is a combination of the word nazi, and “lazo”, the Spanish word for “ribbon”, as yellow ribbons had become a symbol among Catalans of solidarity against Spanish repressive actions targeted at pro-independence leaders. The word “laci” rapidly became a widespread offensive tool used in media, public discourses, and social media, to systematically equate Catalan pro-independence ideas with Nazism, dehumanizing the defense of self-determination (an entirely democratic and legitimate project), and the millions of Catalans, most of the Catalan society, that defended it.¹¹²

Public discourses and speeches by Spanish politicians and journalists, in which they resort to hate speech against Catalans, have become more common. On December 16, 2017, Josep Borrell, a veteran Spanish socialist politician, now High Representative of the Union for Foreign Affairs and Security Policy, said that the pro-independence leaders must be held accountable and assured that “the wounds must be disinfected before sewing them” and considered that a divided country such as Catalonia is a “sick” country.¹¹³ In May 2018, the famous radio broadcaster Federico Jimenez Losantos proposed the bombing of Catalonia. Among insults to Quim Torra, current president of the Catalan parliament, the radio commentator stated that “We can bomb Barcelona, your house and your office” with the “70,000 police officers, 90,000 civil guards and 50,000 perfectly armed soldiers” that the central executive has!¹¹⁴ Recently, in January 2024, Spanish right party PP, and far-right party Vox, announced that they are considering banning all Catalan pro-independence political and civic organizations, including the Catalan National Assembly, once they are able to form a government in the future.¹¹⁵

Such inflammatory, dehumanizing and even violent statements contribute to the Catalanophobic narrative, which serves to deepen animosities and prejudices against Catalans. This is evident in the alarming increase in ultra-nationalist violence against Catalan citizens in favour of self-determination that have taken place since the Catalan independence referendum, which often go unreported and unpunished. Of those reported, between 8 September and 11 December 2017, 139 violent incidents, including 86 assaults against Catalans¹¹⁶ were officially recorded. These attacks continued regularly throughout 2018. The generation of mis-information and ‘fake news’ by Spanish media and political parties has been another tool used to discredit and delegitimize Catalans and the pro-independence movement, especially at an international level. The most relevant cases are the fake stories created to build the narrative of a so-called “Russian interference” to promote the Catalan independence movement, which, as an investigative committee of the British Parliament found out in 2018, was in fact false.¹¹⁷

109 El juez cree que Interior filtró datos de los CDR, El Mundo <https://www.elmundo.es/espana/2019/10/04/5d964a90fdddf-f5348b45f1.html>

110 Vítimas a policías que van a Catalunya con gritos de «a por ellos», El Periódico <https://www.elperiodico.com/es/politica/20170925/despiden-policia-nacional-catalunya-gritos-6310462>

111 Vídeo: Guardias civiles también cantaban «a por ellos» cuando iban hacia Catalunya, El Nacional https://www.elnacional.cat/es/politica/video-guardia-civil-a-por-ellos_199542_102.html

112 Alba Sidera Gallart: “La indiferencia permite que el fascismo gane terreno”, ELA Euskal Sindikatua <https://www.ela.eus/alda/alba-sidera-gallart-201cla-indiferencia-permite-que-el-fascismo-gane-terreno201d>

113 Borrell: «Antes de coser las heridas hay que desinfectarlas», El Periódico <https://www.elperiodico.com/es/politica/20171216/borrell-desinfectar-heridas-independentistas-indulto-iceta-6499385>

114 “Federico Jiménez Losantos plantea bombardear Cataluña”, YouTube https://www.youtube.com/watch?v=yoGNmfyf_90

115 PP y Vox plantean ilegalizar partidos que promuevan referéndums de independencia en sus enmiendas a la ley de amnistía, Deia <https://www.deia.eus/politica/2024/01/03/pp-plantea-disolver-partidos-promuevan-7703482.html>

116 Els silencis mediàtics de 2016-2017, Anuari Mèdia.cat https://www.media.cat/wp-content/uploads/2018/02/Anuari2016-2017_webok.pdf

117 Un informe para el Parlamento británico sobre ‘fake news’ desmonta la injerencia rusa en el procés catalán, Público.es <https://www.publico.es/sociedad/noticias-falsas-informe-parlamento-britanico-fake-news-desmonta-injerencia-rusa-proces-catalan.html>

Despite this, they were used as bases for prosecution of some Catalan activists and high officials, such as the case of the head of office of president Carles Puigdemont, Josep Lluís Alay. A case ultimately was dismissed in July 2022 due to the lack of evidence.¹¹⁸

Online, there is also a clear Catalanophobic character in content published across all social media in Spain, especially on Twitter. According to a 2020 analytical report published by Aix Global Justice,¹¹⁹ from May 24th-31st, 2020, out of a total of 130,000 conversations about Catalonia, 33% had negative connotations. Additionally, seven out of ten of the most relevant Spanish influencers on this platform at that time published negative comments on Catalonia.

In his 2020 report, SR on minority issues Fernand de Varennes¹²⁰ noted that Spain, along with San Marino, were the only two members of the Council of Europe not to have an independent equality body. While there is the Spanish Council for the Elimination of Racial or Ethnic Discrimination, it cannot yet be considered an independent entity, and engages in very few activities with little resources at its disposal.

In relation to the events that took place in Catalonia in 2017, the Special Rapporteur stated that he received reports that showed an “increase in hate speech, vilification, vandalism, physical threats and even assaults against members of the Catalan minority”, and called on Spanish authorities to “address these cases more forcefully, both in terms of practice and in terms of what is permitted under current legislative and regulatory schemes”.

He also highlighted that hate speech against Catalans had increasingly been appearing in social and other media as a result of the 2017 events, and of “politicians and others outside the region painting Catalans as a threat and traitors who had to be dealt with severely, at times using violent language”. For this reason, he called on Spanish authorities to consider “adopting a comprehensive law against racism, racial discrimination, xenophobia and related intolerance, including hate speech published on the Internet and in other media”. In particular, the Special Rapporteur recommended more action to counter the rise of hate speech, xenophobic nationalism targeting minorities, including historical communities such as the Catalans. However, these calls have been systematically ignored, and a narrative that amounts to hate speech against the Catalan people continues to prevail in the Spanish State.

The reaction of the Spanish prosecutor to defend the dignity and honour of Catalan pro-independence activists against these attacks has been non-existent. In a harsh contrast, in May 2019 the State Prosecutor announced that according to its criteria Nazi militants could be considered victims of hate crimes, which in Spain also hold Spanish nationalist and anti-Catalan views.¹²¹ In a similar vein, few days after the October 2017 Catalan independence referendum, Spanish Interior Minister Juan Ignacio Zoido qualified as “hate crimes” all sort of criticism received by Spanish riot police officers that took part in the violent repressive actions against peaceful voters during the 2017 independence referendum, and he threatened to undertake legal measures to defend them.¹²²

Prosecution for hate crimes has actually become an additional tool to repress Catalan pro-independence activism. Such is the case of Catalan police officer and pro-independence activist Albert Donaire, who is facing an extravagant indictment for a crime of incitement to hatred against “the politics of constitutionalist ideology” applying article 510 of the Penal Code in a sui generis manner. The penalty requested by the prosecutor is three years in prison and disqualification for passive suffrage, and a fine of 3,600 euros, plus six years of special disqualification. His crime: to express positions in social media in favour of Catalan independence and against language discrimination by Spanish police officers.¹²³

118 Archivada la causa al asesor de Puigdemont investigado por negocios con rusos, El País

<https://elpais.com/espana/catalunya/2022-07-29/archivan-la-causa-al-asesor-de-puigdemont-investigado-por-negocios-con-rusos.html>

119 Hate speech against the Catalan minority, Legal Reports, Aix Global Justice https://www.aixglobaljustice.org/en/rappportsju_ridiques

120 Visit to Spain - Report of the Special Rapporteur on minority issues, UN HRC https://imatges.vilaweb.cat/nacional/wp-content/uploads/2020/03/A_HRC_43_47_Add.1_AdvanceEditedVersion.pdf

121 La Fiscalía considera delito la incitación al odio hacia los nazis, La Vanguardia

<https://www.lavanguardia.com/politica/20190522/462408935254/fiscalia-considera-delito-incitacion-odio-nazis.html>

122 Zoido: «El Gobierno va a defenderos a todos y no consentirá que se produzcan delitos de odio como los que hemos visto estos días atrás», La Moncloa <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/mir/Paginas/2017/081017patrona.aspx>

123 A juicio un mosso independentista por «odio» a la «ideología constitucionalista», El Món

<https://elmon.cat/es/politica-es/tribunales/juicio-mosso-independentista-odiar-ideologia-constitucionalista-821044/>

4. The use of terrorism charges by Spanish authorities to repress the Catalan peaceful self-determination movement

4.1 The rising use of anti-terrorism legislation to curtail civil and political rights around the globe, and its chilling effect.

The abuse of counter terrorism legislation and practices to repress activists is on the rise. Cases such as the persecuting of Crimean Tatars by Russian authorities since 2014,¹²⁴ by China against Uyghurs, and even also by democratic regimes such as France to repress the rights of environmental activists,¹²⁵ are becoming every time more the norm, and less the exception. In his March 2019 report *Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders*, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism assessed that empirical findings measured from 2005 to 2018 confirm that the targeting of civil society is not a random or incidental aspect of counter-terrorism law and practice, but “has become a hard-wiring of misuse into counter-terrorism measures taken by States around the globe”.¹²⁶

The SR called on states to make sure that their measures to address threats of terrorism, violent extremism and protection of national security do not negatively affect civil society. The report also highlighted the impact that sustained and cumulative antiterrorist measures have on civil society, notably in creating a chilling effect, particularly in terms of “stigmatization, marginalization, co-optation and exclusion of civil society, as well as securitization”.

Similarly, in June 2020 the UN Human Rights Council approved Resolution A/HRC/RES/43/16, expressing grave concern on the increasing use of national security and counter-terrorism legislation and other measures by states all over the world, such as laws regulating civil society organizations, “to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law”. The UN HRC recognized the urgent need to take concrete steps to prevent and stop the use of legislation to hinder or limit unduly the ability of human rights defenders to exercise their work, “including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law.”¹²⁷

Europe is no exception when it comes to this menacing trend. In December 2018 the Council of Europe Human Rights Commissioner Dunja Mijatovic denounced how broad and vague laws criminalizing offences such as “encouragement of terrorism” and “extremist activities” as well as offences of “praising”, “glorifying”, or “justifying” terrorism have proliferated in the continent. The Commissioner denounced the misuse of counter-terrorism legislation as a “dangerous tool” for freedom of expression “when it is used to limit or silence legitimate reporting or criticism”.¹²⁸ In its 2023 report ‘Protecting Civil Society’, the European Union Agency for Fundamental Rights also included anti-terrorism legislation as one of the main current challenges for civil society organizations, and for the exercise of freedom of assembly, and of association.¹²⁹

124 Crimean Tatars’ struggle for human rights, Report by the Council of Europe Commissioner for Human Rights <https://rm.coe.int/report-on-crimean-tatars-by-dunja-mijatovic-commissioner-for-human-rig/1680aaeb4b>

125 French court annuls ban of climate movement over ‘eco-terrorism’ claims, Politico <https://www.politico.eu/article/french-court-annuls-ban-of-climate-movement-over-eco-terrorism-claims/>

126 Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders : report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, UN HRC <https://digitallibrary.un.org/record/3802009?ln=en&v=pdf> 127 Resolution adopted

by the Human Rights Council on 22 June 2020 43/16. Mandate of the Special Rapporteur on the situation of human rights defenders, UN HRC <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F43%2F16&Language=E&DeviceType=Desktop&LangRequested=False> 128 Misuse of anti-terror legislation threatens freedom of expression,

Council of Europe Commissioner for Human Rights <https://www.coe.int/fi/web/commissioner/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression>

129 2023 Report: Protecting Civil Society, European Union Agency for Fundamental Rights <https://fra.europa.eu/en/publication/2023/civic-space-2023-update?page=3#read-online>

4.2 Spain's use of antiterrorism legislation to criminalise activism and curtail civil liberties

In 2015 provisions of Article 578 (which criminalises “glorifying terrorism” and “humiliating victims of terrorism”) were broadened. This included increasing the penalties to three years of imprisonment and introducing aggravating subtypes. As a result, the Supreme Court has produced quite confusing and unclear jurisprudence regarding these offences. Five UN human rights Special Rapporteurs raised concerns about these amendments to the Criminal Code as they “could criminalise behaviours that would not otherwise constitute terrorism and could result in disproportionate restrictions on the exercise of freedom of expression, amongst other limitations”.¹³⁰ In her December 2018 comments the Council of Europe Human Rights Commissioner labelled Spain as a “case in point” for a country misusing its anti-terrorism framework.¹³¹ She made specific reference to Article 578 of the Spanish Criminal Code, which during the last few years has been used by Spanish authorities in a manner that represses freedom of opinion and expression.

According to Amnesty International, 84 persons were convicted under Article 578 between 2015 and 2017, while previously from 2011 and 2013 only 23 persons had been convicted based on this provision.¹³² One of the most absurd cases is the one of Cassandra Vera, a young Spanish student and social media user that in March 2017 was convicted by the High National Court to one year imprisonment for glorification of terrorism. This came about due to her social media posts, including several posts joking about the fascist Prime Minister under dictator Francisco Franco, Luis Carrero Blanco, who in 1973 was assassinated by the Basque armed group ETA.¹³³ A year later, in March 2018 the conviction was overturned by Spanish Supreme Court.¹³⁴ In 2018, Amnesty International also denounced how ordinary social media users as well as musicians, journalists and even puppeteers have been prosecuted on grounds of national security, creating “a profoundly chilling effect, an environment in which people are increasingly afraid to express alternative views, or make controversial jokes”.¹³⁵

However, Article 578 is not the only tool used by the Spanish authorities to use antiterrorist legislation to repress opinions and political dissent. The concept of “collaboration” with terrorist activity according to Article 577 of the Spanish Criminal Code (which criminalizes “committing, soliciting or facilitating any act of collaboration with the activities or aims of an armed group or terrorist group or organization”) is excessively wide-ranging and has been interpreted in manners resulting in the prosecution of individuals for the legitimate, non-violent exercise of rights enshrined in international law. This is the case for activists and professionals in the Basque Country, where for decades conducts such as trade unionism, the practice of the profession of lawyer, or independent journalism, that cannot reasonably constitute “terrorism” have been criminalized as such, therefore criminalizing individuals who, by non-violent means, advocate for self-determination of the Basque Country in a democratic manner. For decades hundreds of Basque pro-independence activists and political leaders belonging to several unions, political and youth organizations have been prosecuted, accused of collaboration with terrorist activity. These actions included the ban of political parties such as Herri Batasuna (HB), Euskal Herritarrok, Batasuna o Acción Nacionalista Vasca (ANV), thereby by violating the right to active and passive political participation of hundreds of thousands Basque,¹³⁶ and closure of media in Basque language such as Egunkaria,¹³⁷ severely harming freedom of free press.

130 “Two legal reform projects undermine the rights of assembly and expression in Spain” - UN experts, UN OHCHR <https://www.ohchr.org/en/press-releases/2015/02/two-legal-reform-projects-undermine-rights-assembly-and-expression-spain-un?LangID=E&NewsID=15597>

131 Misuse of anti-terror legislation threatens freedom of expression, Council of Europe Commissioner for Human Rights <https://www.coe.int/fi/web/commissioner/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression>

132 Sal a la calle...si te atreves - Tres años de la aplicación de la Ley Orgánica de Seguridad Ciudadana, Amnesty International <https://doc.es.amnesty.org/ms-opac/recordmedia/1@000030148/object/38826/raw>

133 These are the tweets about Carrero Blanco for which the National High Court sentenced Cassandra Vera to prison, Diaro Publico https://www.eldiario.es/politica/carrero-blanco-condenado-carcel-cassandra_1_2248138.html

134 Spanish student has conviction for Twitter joke overturned, The Guardian <https://www.theguardian.com/world/2018/mar/01/spanish-student-cassandra-vera-conviction-twitter-joke-overturned>

135 Spain: Counter-terror law used to crush satire and creative expression online, Amnesty International <https://www.amnesty.org/en/latest/news/2018/03/spain-counter-terror-law-used-to-crush-satire-and-creative-expression-online/>

136 Las prohibiciones que dibujaron la Cámara actual, Noticias de Gipuzkoa <https://www.noticiasdegipuzkoa.eus/politica/2012/06/19/prohibiciones-dibujaron-camara-actual-4387479.html>

This punishment of peaceful expression of views has persisted despite the Basque Organization ETA's declaration of a permanent ceasefire in 2017, followed by its total disarmament in 2017. One of the most significant cases is known as Beteragune, in which the historical leader of Basque pro-independence movement Arnaldo Otegi and four other political leaders of the Basque leftist pro-independence movement were sentenced by the Spanish Supreme Court to 6- 6.5 years, accused of membership to terrorist organizations.¹³⁸ They went on to serve their sentence in full, however in 2018, the European Court of Human Rights ruled that the trial was not impartial and that Article 6.1 of the European Convention on Human Rights, which establishes the right to a fair trial, had been violated.¹³⁹ On July 27, 2020, the Supreme Court of Spain annulled the ruling in the Beteragune case, after assuming the ruling of the European Court of Human Rights.

Terrorism charges have also been misused to repress the peaceful and democratic movement for independence in Galicia. During the past two decades, dozens of activists have been prosecuted¹⁴⁰, and in some cases even imprisoned, such as the case of Roberto Rodrigues Fialhega,¹⁴¹ a Galician pro-independence activist who spent 12 years in prison, accused of belonging to the so-called armed organization "Resistencia Galega", of which there was no factual evidence. As the researcher at the University of Santiago de Compostela, Helena Domínguez, demonstrated in her doctoral thesis, the treatment of "Resistencia Galega" in the press, and the attribution of this name to an alleged terrorist structure, was a media and judicial construction aimed at repressing peaceful activism.¹⁴²

4.3 Cases of terrorism charges to repress Catalan peaceful pro-independence movement

In accordance with Spain's repression playbook when dealing with territorial self-determination demands by civic organized movements, the Catalan pro-independence movement has been repeatedly labelled as violent by Spanish authorities over the past decade, and several activists and political leaders have been and are being persecuted for alleged crimes of terrorism. Spanish authorities have criminalized the Catalan democratic pro-independence movement by characterizing it as terrorist in its judicial doctrine. In the Annual report of the Spanish Attorney General 2022¹⁴³ and 2023¹⁴⁴ the so-called "violent Catalan pro-independence movement" was included in the section referred to terrorist threats. In a similar vein, in 2023 the Spanish Ministry of Internal Affairs requested Europol to include the Catalan pro-independence movement in the yearly edition of the report "The European Union (EU) Terrorism Situation and Trend Report (TE-SAT)". Specifically, it was included in the section "Ethno-nationalist and separatist terrorism" stating that "in Spain, the Catalan and Basque independence movements are currently the most active and violent within the Spanish separatist scene."¹⁴⁵ A few pages before, in the section "Left-wing and anarchist terrorism", the document stated that "Overlap between left-wing extremists and separatists was noted in the EU". One example is the often-unclear delineation between left-wing extremists and separatists in the Basque region and Catalonia in Spain, particularly in terms of motivations of attacks."¹⁴⁶ Labelling activists as terrorists and falsely accusing them of using violence has served and still serves the purpose of criminalizing the right to protest and stifling political dissent, therefore undermining rule of law, and creating a chilling effect that threatens the right to freedom of assembly and of association, as well as of freedom of expression, of many Catalans. The next few subsections will introduce some of the most relevant examples.

137 20 años del cierre de Euskaldunon Egunkaria: cuando la libertad de prensa vasca fue amordazada, EITB <https://www.eitb.eus/es/noticias/sociedad/detalle/9113395/euskaldunon-egunkaria-20-anos-del-cierre-del-periodico-en-euskera-cronologia-del-juicio/>

138 SENTENCIA Nº 22/11, Audiencia Nacional, Sala de lo penal sección nº 4 <https://e00-elmundo.uecdn.es/documentos/2011/09/16/otegi.pdf>

139 Estrasburgo sentencia que no hubo un juicio justo para Otegi y sus compañeros de Beteragune, Naiz <https://www.naiz.eus/eu/info/noticia/20181106/strasburgo-sentencia-que-no-hubo-un-juicio-justo-para-otegi-y-sus-companeros>

140 La Audiencia Nacional absuelve a los doce acusados de enaltecer a la organización terrorista Resistencia Galega desde las asociaciones Causa Galiza y Ceivar, Poder Judicial España <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Noticias-Judiciales/La-Audiencia-Nacional-absuelve-a-los-doce-acusados-de-enaltecer-a-la-organizacion-terrorista-Resistencia-Galega-desde-las-asociaciones-Causa-Galiza-y-Ceivar>

141 El presó independentista galego Roberto Rodriguez Fialhega ya esá en Teiceiro, Derecho Penitenciario <https://derechopenitenciario.com/noticia/el-presos-independentista-galego-roberto-rodrigues-fialhega-teto-ya-esta-en-teixeiro/>

142 Teto Fialhega sale de permiso tras 12 años preso por militar en una "banda terrorista" sin estructura conocida, El Salto Diario <https://www.elsaltodiario.com/represion/teto-fialhega-sale-permiso-12-anos-presos-militar-una-banda-terrorista-estructura-conocida>

143 2022 Annual report of the Spanish Attorney General (page 429) https://www.fiscal.es/memorias/memoria2022/FISCAL-IA_SITE/recursos/pdf/MEMFIS22.pdf

144 2023 Annual report of the Spanish Attorney General (page 479) https://www.fiscal.es/memorias/memoria2023/FISCAL-IA_SITE/recursos/pdf/MEMFIS23.pdf

145 The European Union (EU) Terrorism Situation and Trend Report (TE-SAT) 2023 (page 68) https://www.europol.europa.eu/cms/sites/default/files/documents/Europol_TE-SAT_2023.pdf

4.3.1 Committees for the Defense of the Republic

Since their inception as non-violent grassroots organizations to support the organization of the October 2017 independence referendum, the Committees for the Defense of the Republic (originally the Committees for the Defense of the Referendum), commonly known as CDR, have been the main target of the use of antiterrorist legislation by Spanish authorities to suppress activism and political dissent in Catalonia.

On April 2nd, 2018, the Spanish National High Court's Prosecutor's Office announced that it was carrying out investigations in connection with the CDRs actions. A few days later, on April 10th 2018, the Spanish National High Court ordered the detention of two Catalan activists and members of the CDR, Tamara Carrasco and Adrià Carrasco, for the crimes of terrorism, rebellion and sedition in relation to non-violent events.¹⁴⁷ Agents of the Civil Guard arrested Tamara Carrasco, who was transferred to Madrid. There, she was placed at the disposal of the National High Court, a special court that acts as heir of the Francoist "Public Order Court" and which is used to oversee cases of terrorism, real or alleged. Forty-eight hours after her arrest, Judge Diego de Egea – a judge from the Military Juridical Corps dictated a ban on her leaving her municipality.

After more than two years of legal proceedings, in October 2020 the Criminal Court no. 25 of Barcelona acquitted Tamara Carrasco.¹⁴⁸ In its ruling, the court criticised the lack of solidity of the Civil Guard's investigations. In May 2022 the decision was confirmed by the Spanish Supreme Court.¹⁴⁹ Up until now, Tamara Carrasco has not received any compensation for the 411 days that she spent in municipal confinement in her town of Viladecans (Barcelona), by order of the judge.

Regarding Adrià Carrasco, on the same day the Spanish High Court initially ordered their detention, agents of the Spanish Civil Guard went to Adrià Carrasco's home in Esplugues de Llobregat at 7am, however he had escaped jumping from the window of his room. He then went into exile in Belgium. In January 2021 the Granollers Investigating Court number 3 finally dropped the case against him, after failing to find evidence of any sort of crime. He spent 2 years and 8 months in exile, parallel to the time that the investigation against him by the National High Court took.

The entire operation and prosecution against Adrià and Tamara Carrasco appear to be orchestrated by the Spanish judicial system in order to contribute to the demobilization of the Catalan civic pro-independence movement, which during those years was very active and with a consistent capacity of grassroots mobilization.

After their arrests, the targeted cases against Catalan activists still continued to persist, and on September 23rd, 2019, 'Operation Judas' began. That day at 5am, 500 Spanish Civil Guard officers, acting on orders from the National High Court, arrested nine people linked to the CDRs in several Catalan towns. The Prosecutor's Office charged them with possession of explosives, conspiracy to commit vandalism and belonging to a terrorist organization.¹⁵⁰

Despite a gag order and the lawyers' lack of information about the investigation, the press received leaked information on the Civil Guard's reports and the judge's arguments for ordering pre-trial detention. Using the leaked information, the Spanish press publicly accused the detainees of terrorist crimes, describing them as 'violent' and claiming that they were 'preparing bombs in anticipation of the verdict in the trial against the independence process'.¹⁵¹ Two members of the CDRs were released the same day, while seven others were taken to pre-trial detention at Soto del Real prison in Madrid on the orders of the investigating judge, Manuel García Castellón. Four more activists would be detained the following days.

Lawyers' association Alerta Solidària denounced that the accused were subjected to coercion, threats, harassment and physical assaults during their arrest and custody, and that they were transferred to police stations while hooded, deprived of sleep, and forced to undergo long interrogations with no procedural safeguards.¹⁵² They also denounced searches that took place without the presence of lawyers, as well as the irregular assigning of court-appointed lawyers, and difficulties for lawyers to communicate with detainees.

146 The European Union (EU) Terrorism Situation and Trend Report (TE-SAT) 2023 (page 65) https://www.europol.europa.eu/cms/sites/default/files/documents/Europol_TE-SAT_2023.pdf

147 La Audiencia Nacional ordena la detención de dos cabecillas de los CDR por los cortes de la AP-7 y sabotajes, El País https://elpais.com/politica/2018/04/10/actualidad/1523342864_563615.html

148 Una juez absuelve a Tamara Carrasco, la 'cdr' que estuvo un año sin poder salir de su municipio, El País <https://elpais.com/espana/catalunya/2020-10-06/el-tsjc-absuelve-tamara-carrasco-la-cdr-que-estuvo-un-ano-sin-poder-salir-de-su-municipio.html>

149 El Tribunal Supremo confirma la absolución de la activista independentista Tamara Carrasco, ElDiario.es https://www.eldiario.es/catalunya/tribunal-supremo-confirma-absolucion-activista-tamara-carrasco_1_8893859.html

150 La Fiscalía de la Audiencia Nacional pide hasta 27 años de cárcel para los CDR acusados por terrorismo, Ara.cat https://es.ara.cat/politica/fiscalia-audiencia-nacional-pide-27-anos-carcel-cdr-acusados-terrorismo_1_4867223.html

151 La Guardia Civil detiene a nueve independentistas acusados de planear ataques con explosivos, El Mundo <https://www.elmundo.es/cataluna/2019/09/23/5d885d1bfc6c839f5e8b45e7.html>

After spending several months in pre-trial detention, between December 2019 and January 2020 the activists were released on bail. During their imprisonment, the detainees had been classified under the strict FIES regime, which involves, among other elements, the surveillance of all their communications. Two of the activists, Xavier Duch and Jordi Ros, moreover, were held in solitary confinement for several weeks.

In September 2021, the investigating judge of Operation Judas, Manuel García-Castellón, prosecuted the 13 members of the CDR on charges of belonging to a terrorist organization, and nine of them on additional charges of possession, storage and manufacture of explosive and flammable devices and substances or their components of a terrorist nature. The National High Court claimed that the accused were members of the so-called “Tactical Response Teams”, a “terrorist organization operating in parallel to the CDRs”.¹⁵³ However, there is no factual evidence of the existence or manufacturing of explosives or flammable devices, neither of the existence of any “Tactical Response Teams”, which proves that the prosecutions and allegations of terrorism are unjust and arbitrary. Moreover, despite the fact that key information prompting the operation was withheld from the defendants, the judge refused to accept the defence’s request to declare the proceedings null and void.

On November 3rd, 2023, the National High Court upheld the conclusion of investigating proceedings and confirmed the commencement of pre-trial proceedings for the indicted (12 accused of belonging to a terrorist organization and eight additionally charged with the possession, storage, and manufacture of explosives of a terrorist nature)¹⁵⁴ Alerta Solidària lawyer’s association has denounced that access to parts of the investigation by the defences was only partly granted. In addition, they assure that requests that they made after they were given access to parts of the investigation were rejected, since they were deemed as irrelevant and can be dealt with during the trial. The organization has also denounced irregularities that involve a violation of the right to defence.¹⁵⁵ At the time of writing the 12 activists accused are pending trial by the National High Court. The Prosecutor has sought sentences of 8 to 27 years of imprisonment.

4.3.2 Tsunami Democràtic Case

A few weeks after the detention of the CDR activists on September 23rd, 2019, 9 to 13 years prison sentences against Catalan imprisoned leaders were announced by the Spanish Supreme Court. The decision sparked mass protests all over Catalonia, starting from the day they were made public, October 14th 2019. Thousands of demonstrators flocked to Barcelona’s El Prat airport following the call by the online initiative Tsunami Democràtic and blocked access to Terminal 1,¹⁵⁶ causing the cancellation of more than a hundred flights. Tsunami Democràtic functioned as a platform for coordinating peaceful actions of civil disobedience, using an app and a Telegram channel as tools, with the organizers behind it unknown. Other non-violent actions were called by this platform the following weeks, such as the peaceful blockade of the main motorway that connects Spain and France at the town of La Jonquera, on November 11th.¹⁵⁷

Despite its non-violent and democratic character, soon after the beginning of the protests, Central Investigating Court No. 6 of the Spanish Supreme Court began to investigate the events related to the Tsunami Democràtic, seen as yet another move to broaden repression and prosecute Catalan pro-independence activists and elected representatives. After four years of secret investigations, in November 2023 Judge Manuel García-Castellón, charged with the crime of terrorism twelve Catalan political leaders and activists for their alleged involvement with this civil disobedience initiative. Among them, former Catalan president and MEP Carles Puigdemont, MP Ruben Wagensberg, Secretary General in exile of the main pro-independence party (Esquerra) Marta Rovira, as well as independent investigative journalist Jesús Rodríguez, from the media La Directa, which had revealed the cases of the Spanish police infiltrations in the Catalan pro-independence movement.¹⁵⁸ Furthermore, on January 31st 2024, Catalan MP Ruben Wagensberg announced that he had gone to exile in Switzerland.

152 Alerta Solidària quiere impugnar las declaraciones que implican a Torra en un complot terrorista, El Nacional https://www.elnacional.cat/es/politica/alerta-solidaria-sumario-cdr_438885_102.html

153 La Fiscalía pide hasta 27 años de prisión por terrorismo para los 12 CDR que serán beneficiados por la amnistía, Onda Cero https://www.ondacero.es/noticias/espana/fiscalia-pide-prision-terrorismo-cdr-beneficiados-amnistia_202311246560940a1b48c3000123420e.html

154 La Fiscalía pide hasta 27 años de prisión por terrorismo para los 12 CDR que serán beneficiados por la amnistía, Onda Cero <https://cadenaser.com/nacional/2023/11/03/la-audiencia-nacional-envia-a-juicio-por-terrorismo-a-los-12-cdr-en-plena-negociacion-de-la-amnistia-cadena-ser/>

155 L’Audiència Nacional estudia les irregularitats de la instrucció del cas Judes, El Món <https://elmon.cat/politica/tribunals/audiencia-nacional-estudia-irregularitats-instruccio-cas-judes-787206/>

156 New generation, new tactics: the changing face of Catalan protests, The Guardian <https://www.theguardian.com/world/2019/oct/18/new-generation-new-tactics-the-changing-face-of-catalan-protests>

157 Catalan independence protesters block highway to France, El País https://english.elpais.com/elpais/2019/11/11/inenglish/1573470440_462977.html

On April 11th, 2024, three of the persons charged with terrorism for their alleged involvement with the Tsunami announced that they had fled as well to exile in Switzerland: investigative journalist Jesús Rodríguez, Oleguer Serra (member of the general board of the Catalan cultural and pro human rights organization Òmnium Cultural), and the businessman and activist Josep Campmajó.

On February 24th 2024, the Spanish Supreme Court had taken over the Tsunami Democràtic case and announced its decision to prosecute Carles Puigdemont, among other leaders, for terrorism. The court accepted the request of Judge Manuel García-Castellón and opened a criminal case against the former president of the Catalan government and against Ruben Wagensberg. Notably, this decision contradicted the criteria of the Spanish Prosecutor's Office, which called into question the transfer of the case from the National High Court to the Supreme Court.¹⁵⁹

A few weeks later, on March 18th 2024, Spain's Supreme Court rejected an appeal by the public prosecutor challenging the charges of terrorism against those under investigation in the Tsunami Democràtic case. With this decision, the court upheld the terrorism charges against individuals linked to the actions of the Catalan pro-independence non-violent activist group which organized large-scale protests in October 2019.¹⁶⁰

The judge is pursuing terrorism charges against the alleged organizers, due to its stance that Tsunami Democràtic is a "structured and hierarchical organization" with the aim of "subverting Spain's constitutional order and destabilizing the state economically and politically through massive social protests."¹⁶¹

Later, on February 27th 2024, twenty human rights organizations from across Europe, including Amnesty International, European Democratic Lawyers, Ligue des droits de l'Homme (LDH), and the World Organization Against Torture (OMCT),¹⁶² made a public statement in which they expressed their concern on the repression of the right to freedom of assembly of the persons accused using terrorist charges for their alleged implication in the Tsunami Democràtic movement, and called on Spanish authorities to protect fundamental freedoms. The public statement denounced the decision of the Court "as they undermine Spain's commitments to international human rights standards and European Union Law" and highlighted the "chilling effect on civic engagement, silencing the vibrant diversity of voices that form the foundation of a rights-based society". They also called for the immediate dropping of the terrorism charges.

Furthermore, on April 30th 2024, the European mechanism Media Freedom Rapid Response (MFRR) issued a statement on the case of Catalan journalist Jesús Rodríguez. The human rights network expressed concern that the investigation "may be politically motivated and may also be an effort to restrict his journalism". This is because of his record of exposing police crimes that have caused embarrassment for the state, and in view of the political context in which the investigation was launched, as well as the extreme and disproportionate nature of the charges in question, criminalizing dissent under the guise of anti-terrorist legislation. MFRR also called on the Spanish authorities to "immediately pause the investigation and to conduct a thorough and credible review to ensure compliance with fundamental human rights, including freedom of expression, and proportionality".¹⁶³

4.3.3 Persecution of artists

Spain's 2015 reform of the Criminal Code (see section 4.2) had a special impact on social media users (particularly on Twitter), artists, and musicians. One of the most alarming cases concerned the Catalan rap singer Josep Miquel Arenas, Valtònyc, whose lyrics and activist activity have a clear anti-capitalist, anti-fascist, and Catalan pro-independence character.

158 El periodista de la 'Directa' Jesús Rodríguez, imputat en la causa del Tsunami Democràtic, La Directa <https://directa.cat/el-periodista-de-la-directa-jesus-rodriguez-imputat-en-la-causa-del-tsunami-democratic/>

159 El Suprem investigará per terrorisme Carles Puigdemont pel cas Tsunami, Rac1 <https://www.rac1.cat/politica/20240229/119228/suprem-investigara-carles-puigdemont-terrorisme-cas-tsunami.htm>

160 Spain's National Court upholds terrorism charges in Tsunami Democràtic probe, Catalan News <https://www.catalannews.com/politics/item/spains-national-court-upholds-terrorism-charges-in-tsunami-democratic-probe>

161 Los fiscales del Supremo ven a Puigdemont "líder absoluto" del grupo "terrorista" Tsunami Democràtic, RTVE <https://www.rtve.es/noticias/20240221/fiscales-supremo-ven-puigdemont-lider-absoluto-grupo-terrorista-tsunami/15979444.shtml>

162 Spain: Terrorism charges against protesters undermine "international human rights and democratic standards", letter signed by 20 organisations from across Europe <https://www.statewatch.org/news/2024/february/spain-terrorism-charges-against-protesters-undermine-international-human-rights-and-democratic-standards/>

163 Terrorism investigation into Catalan journalist raises concerns ahead of elections, Media Freedom Rapid Response <https://www.mfrr.eu/terrorism-investigation-into-catalan-journalist-raises-concerns-ahead-of-elections/>

Valtònc was first arrested in Spain in 2012. The then 18-year-old rap-musician from Mallorca was put on trial due to the lyrics of some of his songs. In 2017, the Spanish National High Court sentenced him to 3,5 years imprisonment for “glorification of terrorism”, as well as for making threats (article 169.2 of the Spanish Criminal Code) and for “slander and serious insults to the Crown” (article 490.3 of the Spanish Criminal Code).

The Spanish Supreme Court confirmed the conviction in 2018. The Court deemed that the rapper’s songs were not protected by the right to freedom of expression or artistic creation. The court also made him pay compensation of 3,000 euros. On 28 April, Josep Valtònc appealed the ruling to the Supreme Court. On 25 February 2018, the Supreme Court dismissed the appeal. Subsequently, Valtònc filed an appeal for protection to the Constitutional Court.

In May 2018 Amnesty International had warned that the “exponential increase” in prosecutions under the controversial Spanish anti-terrorism legislation was having “a chilling effect on satire and dissent and is pushing social media users, musicians and journalists towards self-censorship.”¹⁶⁴ In a similar vein, a Human Rights Watch representative alerted that the Spanish government needed “urgently to reform the overly broad definition of the glorification of terrorism”, and that “the raft of ill-conceived prosecutions of people on charges of glorifying terrorism or insulting the King, in some instances merely for having made jokes on social media, beggar belief”.¹⁶⁵ A few weeks earlier, a Freedom House researcher had alerted on the “danger” that represented the fact that “broadly written and aggressively enforced terrorism laws could turn Spain into a place where questioning the status quo was not tolerated, and discussing politics online could become a risky activity.”¹⁶⁶ In May 14th 2018 the Spanish Constitutional Court rejected the appeal for protection submitted by Valtònc, and the Spanish National High Court ordered him to enter prison within ten days, to serve the three and a half year sentence for the content of his songs. Ten days later, the rapper did not show up at any prison to start serving his sentence. Instead, he clandestinely fled to Belgium. Subsequently, the National High Court issued a European Arrest Warrant and requested extradition from Belgium.

On 17 September 2018, the trial chamber of the (Belgian) Ghent court of first instance rejected the Spanish extradition request. The court considered that the crimes for which Valtònc was convicted were not crimes in Belgium and therefore, the criterion of double incrimination was not met in order to extradite him. The Prosecutor’s Office of Ghent submitted an appeal against the decision of the judge of first instance. In March 2021, Amnesty International once again called on Spain “to bring its criminal laws in line with international human rights standards and drop provisions that disproportionately restrict freedom of expression by conferring special protection from criticism to the Spanish Crown”, as well as to withdraw the European Arrest Warrant against Valtònc, and to repeal the crimes of “glorifying of terrorism” and “insults to the Crown” from the Criminal Code. In addition, Amnesty also called on Spanish authorities to refrain from criminalizing forms of speech “other than those encouraging others to commit a recognizable criminal act with the intent to incite them to commit such an act and with a reasonable likelihood that they would carry it out, and where there is a clear link between the statement and the criminal act”.¹⁶⁷ As the result of a question posed by the Court of Appeal of Ghent, in October 2021 the Belgian Constitutional Court ruled that the crime of slandering the Crown in public violated the right to freedom of expression.¹⁶⁸ The Court considered that the crime and prison sentence it entails provides for a more extensive protection of the King than that of other citizens, a protection that does not respond to any pressing social need or demand, and is disproportionate with regards to the goal itself of protecting the King. On May 17th 2022, the Ghent Court of Appeal considered that as the crime of slandering the Crown had no equivalent in Belgium, the request to extradite Valtònc would ultimately be refused. The Prosecutor’s Office did not appeal the sentence and it became the final decision. On leaving the Court, Josep Valtònc said in a statement: ‘I want to start living.’¹⁶⁹

Finally, in October 2023, after more than five years in Belgium Valtònc, decided to return from exile, after the crimes he was sentenced for prescribed. The National High Court certified the prescription of the crimes of glorification of terrorism, slander against the Spanish Crown and intimidation on March 22, 2023. Nonetheless, they did not notify this to his defence team, thus for six months his lawyers were unable to get a confirmation from the Court as to whether the judgment had reached the statute of limitations. Valtònc arrived to Catalonia by car alongside Carles Puigdemont, Lluís Puig and others, until reaching the border with Northern Catalonia (France), from where he flew to his hometown in Mallorca.

164 Spanish anti-terror law has ‘chilling effect’ on satire, says Amnesty International, The Guardian <https://www.theguardian.com/world/2018/mar/13/spanish-anti-terror-law-has-chilling-effect-on-satire-says-amnesty-international>

165 Spanish anti-terror law has ‘chilling effect’ on satire, says Amnesty International, The Guardian <https://www.theguardian.com/world/2018/mar/13/spanish-anti-terror-law-has-chilling-effect-on-satire-says-amnesty-international>

166 Terrorism Laws Are Threatening Freedom of Expression in Spain, Freedom House <https://freedomhouse.org/article/terrorism-laws-are-threatening-freedom-expression-spain>

167 Belgium/Spain: Protect Valtònc’s freedom of expression, Amnesty International <https://www.amnesty.org/en/documents/eur14/3835/2021/en/>

168 El TC belga tumba la ley de injurias a la corona a raíz del caso Valtònc, La Vanguardia <https://www.lavanguardia.com/politica/20211028/7823671/tc-belga-tumba-ley-injurias-corona-raiz-caso-valtonyc.html>

Another grave case concerns Pablo Hasél, a Catalan rap singer as well as an anti-fascist and pro-independence activist. In August 2016 the Prosecutor's Office of the National High Court submitted a complaint against the singer due to his social media posts and lyrical content. They denounced Hasél for alleged crimes of glorification of terrorism and slander against the Crown and State security forces and corps in about fifteen messages on Twitter.

In March 2018 the singer was condemned to 2 years of imprisonment and a 24,300 euro fine for the crime of glorification of terrorism and slander against the monarchy and State Security Forces and Corps in connection with 64 messages published on Twitter and a song on YouTube about GRAPO.¹⁷⁰ The decision was not taken unanimously, with some magistrates in favour of acquitting him in light of upholding his right to freedom of expression. In June 2020 the Spanish Supreme Court dismissed the appeal presented by Pablo Hasél and confirmed his conviction. A month later, the rapper presented an appeal for protection before the Constitutional Court against the sentence passed by the Supreme Court. However in November, the Constitutional Court dismissed the appeal, arguing that there had been no violation of fundamental rights. On 16 February 2021, following an order of the Spanish National High Court, the Mossos d'Esquadra Police arrested Hasél in the Chancellor's office of the University of Lleida, and he was imprisoned. His imprisonment sparked a social reaction of solidarity, and thousands of demonstrators went to the streets across towns in Catalonia to protest for one consecutive week. Riot police officers fired rubber balls to dissuade the demonstrators, despite the fact that this method was banned by the Catalan Parliament. The week of protests culminated with 148 arrests throughout the country.¹⁷¹ Eleven people were taken into custody as a result of the protests, 7 of whom were released over the following weeks and months. International NGO Freemuse condemned Hasél's imprisonment and urged Spanish authorities to "make sure that laws do not restrict freedom of expression.". Freemuse also denounced that "artists with minority backgrounds have been targeted disproportionately on the grounds of counter-terrorism measures."¹⁷² In a similar vein, Amnesty International condemned Hasél's entry into prison as "an excessive and disproportionate restriction on his freedom of expression", as it is the case of "many other artists, journalists or activists have received large fines or long periods of exclusion from the sector."¹⁷³

A few weeks later, in March 2021, the Council of Europe Human Rights Commissioner Dunja Mijatovic called on Spanish authorities to amend the Criminal Code to strengthen existing safeguards for the right to freedom of expression, in full line with Article 10 of the European Convention on Human Rights.¹⁷⁴ The Commissioner also expressed concern on the lack of clear definition "of some of the notions enshrined in the provision on glorification of terrorism" and "recalled the potential danger posed by the use, in anti-terrorist legislation, of catch-all labels and of broad and insufficiently defined offences which may lead to unnecessary or disproportionate restrictions to the right to freedom of expression." In November 2022 the Commissioner undertook a country visit to Spain, and in her follow up report she once again noted the lack of clarity of the provision on glorification of terrorism (Article 578) and ensuing diverging interpretations of this provision by Spanish courts.¹⁷⁵ Pablo Hasél has received a total of three prison sentences, totalling six years of imprisonment. Three years after his imprisonment, and at the time of writing, Pablo Hasél is still in jail – the only artist in the EU that happens to be in this situation. As a pro-independentist activist, his case has led to increasing self-censorship and a broader chilling effect on freedom of expression of activists and singers that are part of the Catalan pro-independence movement.

169 Belgian courts again reject Valtònyc's extradition: "I want to start living", Ara.cat https://en.ara.cat/culture/belgian-courts-again-reject-valtonyc-s-extradition-want-to-start-living_1_4373922.html

170 La Audiencia Nacional condena al rapero Hasel a dos años cárcel y 24.300 euros de multa por enaltecimiento del terrorismo e injurias a la Corona e instituciones, Poder Judicial España <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Noticias-Judiciales/La-Audiencia-Nacional-condena-al-rapero-Hasel-a-dos-anos-carcel-y-24-300-euros-de-multa-por-enaltecimiento-del-terrorismo-e-injurias-a-la-Corona-e-instituciones>

171 Petició de 3 anys i mig de presó per al Carles de Sants, Alerta Solidària <https://alerta.cat/peticio-de-3-anys-i-mig-de-presop-al-carles-de-sants/>

172 Freemuse condemns Spanish government for jailing of rapper Pablo Hasél, Catalan News <https://www.catalannews.com/society-science/item/freemuse-condemns-spanish-government-for-jailing-of-rapper-pablo-hasel>

173 Amnistía Internacional: "Es injusto y desproporcionado que Pablo Hasél entre en la cárcel", Amnistía Internacional <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/amnistia-internacional-es-injusto-y-desproporcionado-que-pablo-hasel-entre-en-la-carcel/>

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5. Conclusions

Mass and systemic persecution of Catalan representatives, activists, and even artists, has been a constant trend throughout the last decade in Spain. The social and political events that occurred in 2017 in Catalonia, including the independence referendum, have intensified the Spanish authorities' strategy and tactics of resorting to the criminal code in order to tackle an issue that is above all political, and concerns the exercise of fundamental democratic rights, especially the right to self-determination.

Instead of respecting the democratic will of the Catalan society, expressed during electoral processes in all elections to the Catalan Parliament since 2012, and acknowledging the legitimacy of the Catalan's pursuance of their fundamental rights, successive Spanish governments have delegated the issue to a highly politicised judiciary, who have used tools such as prosecutions, fines, bans from office, and even imprisonment in an attempt to shut down the movement. All individuals targeted were not engaging in any conduct that could reasonably be perceived as a serious crime, and certainly not terrorism, when targeted. To the contrary, they were carrying out perfectly legitimate activities, well within the normal exercise of their rights to political opinion, participation in public life, and freedoms of expression, association and assembly. The reaction of the Spanish state to the expression of the legitimate aspirations of Catalan society has violated many civil and political rights.

These repressive practices, which have ranged from the use of antiterror legislation to legal threats against the democratic functioning of Catalan institutions and their elected representatives, have created a chilling effect among many Catalans. This has adversely affected their exercise of the right to political participation, freedom of assembly and association, and freedom of expression. This regressive environment against the rights of Catalans has coincided hand in hand with a rise of hatred against Catalan language, culture, and identity.

Due to the need of the current Spanish central government to obtain parliamentary support from two major Catalan pro-independence parties, an Amnesty Law¹⁷⁶ was approved by the Spanish Congress on May 30th, 2024 and was published in the official gazette on June 10th, 2024. This law should annul the effects of prosecution and sentences against Catalan pro-independence activists that occurred from November 1st, 2011 to November 13th 2023¹⁷⁷ The implementation of this law will ultimately depend on the will of a highly politized judiciary, which raises doubts and concerns, particularly when the chief of accusation is terrorism or embezzlement of funds.

At the time of writing, the Supreme Court rejected the application of the Amnesty Law to Carles Puigdemont, the former president of Catalonia, in exile in Brussels, and six members of his former cabinet, on the grounds that the law cannot be applied to the alleged crimes of embezzlement for personal benefit or when it affects the financial interests of the European Union, despite the fact that the funds were devoted to the organisation of the referendum, and not to a personal use.¹⁷⁸ However, the Spanish National Court has forced the judge to shelve the Tsunami case of alleged terrorism, although it was due to a procedural error and not to the application of the Amnesty Law.¹⁷⁹

The judiciary has also announced the presentation of prejudicial questions to the ECJ which will suspend the application of the law in many cases. Moreover, the law does not recognize the violations of fundamental rights committed by the Spanish state against the former political prisoners and against activists, nor does it establish any reparatory measure. A potential advantage of this weakness of the Amnesty Law is that the cases submitted to the ECHR and pending sentences probably will not be dismissed.¹⁸⁰

Besides, the legal repressive machinery of the state remains intact, and neither the Gag law, the antiterrorism legislation used against activism, nor the 2015 reform of the Constitutional Court which provides it with coercive powers to execute its rulings, have been reformed. The threat against fundamental rights of Catalans that has been constant during the last decade, has severely harmed the quality of democracy in Catalonia, and eroded the normal functioning of Catalan institutions due to constant interference by Spanish judiciary, is very likely to go on.

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178 Spain's Supreme Court refuses amnesty for Carles Puigdemont. <https://www.politico.eu/article/spain-supreme-court-refus-es-amnesty-for-carles-puigdemont-catalan-independence-leader/#:~:text=Spain's%20Supreme%20Court%20rejected%20a,of%20which%20they%20stand%20accused.>

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180 Aquesta amnistia no salvarà Espanya d'una possible condemna a Estrasburg <https://www.vilaweb.cat/noticies/amnistia-espanya-condemna-tribunal-estrasburg/>



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