

España
Catalunya
Más de diez años de conflicto político
Más de un año de violaciones de derechos y represión
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ABSTRACT

The present report “Spain Catalonia: more than ten years of political conflict, more than one year of violation of human rights and repression” (2019) meets an exceptional moment: the commencement of the oral proceedings in the Kingdom of Spain's Supreme Court for the following: Vice-president of the Government of Catalonia; 9 members of the Cabinet (Consellers); and the president (speaker) of the Parliament. The president of the Government of Catalonia, four other members of the Cabinet and two MPs find themselves living abroad, in what they consider an exile. With the authorisation from the Senate, the government of Spain ceased all of them. The constitutional and statutory legitimacy to decide and implement such extreme measure is doubtful. The presidents of two civil society organisations, who have been in jail for more than a year, have been included in the trial.

This trial represents the tip of the iceberg of a huge block of political and juridical actions that have taken place in Spain and Catalonia in the last years. Actions that have and still arouse, without a doubt, great interest at all levels both nationally and internationally. This historical trial – as is to be seen, will not be the first or the last one – however, will count on the presence of international and national observers.

It is not the aim of this report to analyse – or even less take a position on – the possible or impossible independence of Catalonia. This report focuses on a reasoned analysis about the violation of human rights perpetrated especially in the last two years on individuals and collectives of Catalonia – and the rest of Spain-, according to international treaties from universal and European nature. The Kingdom of Spain is an integral part of these treaties and they apply, under the Spanish Constitution, as part of its internal legal system.

The UN High Commissioner for Human Rights, on his statement on the 7th of May 2018 addressed to the high representatives and the diplomatic representatives of the States present on the Human Rights Council of the UN (Geneva), focused his attention towards Spain – among other states-. He referred to the unusual violence carried out during the referendum of the 1st of October 2017 in Catalonia, questioning the proportionality of the use of force by the Spanish National law enforcements. He also remembered that the pre-trial detention should be a measure of last resort and urged to resolve this matter through political dialogue. These words from the UN High Commissioner for Human Rights set the framework for all this report.

Precisely to provide an understanding of the scope of such human rights violations, this paper starts with a brief approach to the political conflict – endured for more than ten years – that serves as base of this situation. It is envisioned especially thinking about the international readers of this report.

The Kingdom of Spain has repeatedly ignored the recommendations and calls from international organisations, the UN High Commissioner for Human Rights, the UN Human Rights Committee, various Special Rapporteurs, the Commissioner for Human Rights of the Council of Europe, the European Court of Human Rights, as well as from numerous international human rights organisations and national and international experts. Instead, it has dealt with this conflict with legislative, executive and judicial measures that infringe on civil and political rights, recognised nationally and internationally. As it will be seen, this suspension or restriction that infringes on rights has been executed outside the national and international conventional suspension of rights mechanisms.

According to national and international experts this has led to a de facto situation of generalised repression, in which methods characteristics of the “Lawfare” and of the “Criminal Law of the Enemy” have been used. Such methodologies break the “carácter fragmentario e intervención mínima” principles of criminal law as well as “ultima ratio”, which implies the de facto limitation of rights against an undetermined number of people considered opponents ideologically. All of this violates the rule of law and the separation of powers inherent in developed democracies.

This report analyses the serious agreement to this aim among the different bodies of the Spanish State. These are: the Spanish Government – together with senior officials appointed politically and the Delegation of the Spanish Government to Catalonia-; members of the Spanish parliament and members of the Spanish Senate; the Constitutional Court (Tribunal Constitucional); the Council of State of the Spanish Government (Consejo de Estado); the General Council of the Judiciary (Consejo General del Poder Judicial); the Court of Auditors (Tribunal de Cuentas); the Supreme Court of Spain (Tribunal Supremo), the National High Court (Audiencia Nacional), the High Court of Justice of Catalonia (Tribunal Superior de Justicia de Cataluña), several Magistrate’s Courts or examining magistrates for criminal proceedings (juzgados de instrucción penal), the Spanish Attorney General (Fiscalía General del Estado); the hierarchically dependent public prosecutions (Fiscalías); and the Spanish National law enforcements (Fuerzas y Cuerpos de Seguridad del Estado). Along with them, the least visible part of the iceberg: the economic and political de facto powers that support the state from behind.

Resolutions and decisions from all these bodies are analysed, as well as judicial decisions from the European Court of Human Rights and other national and international courts, resolutions, recommendations and reports of the UN apparatus, the Council of Europe and other organisations. Furthermore, the report also examines international treaties and covenants enforceable in the Kingdom of Spain, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols, and the Spanish Constitution.

The various documentation and information sources are detailed including expert lawyers, lawyers of the defence and of the accusation of the different judicial cases, victims of police violence, representatives of victim’s associations, politicians, political scientists, human rights NGOs, diplomats, senior officials of numerous public bodies, journalists, Special Rapporteurs and UN experts, among others. The public written and oral statements made by the Associació Catalana pels Drets Civils on the 38th and 39th UN Human Rights Council (Geneva) sessions in 2018 are also taken into consideration.

From all these sources and thanks to the combined analysis of all these elements, this report offers a snapshot of the most relevant violations of civil and political rights. It also offers the analysis of concepts and terminology as “violence”, “tumultuous uprising”, “active non-violence”, “passive resistance”, “peaceful protest”, “inhumane or degrading treatment”, “repression”, among many others. In sum, the report examines the most significant infringements on civil and political rights – in many occasions in a generic and systematic way -, and in particular the violations of the right to liberty (part 2.2); the right to personal security and absence of torture, and inhumane or degrading treatment (part 2.3); the equality before the law (part 2.4); the right to a fair trial, to defence according to international standards and effective legal protection (part 2.5); the right to freedom of expression, opinion and communication of information and ideas (part 2.6); the right of assembly (part 2.7); and the right to political participation (part 2.8), especially from 2017 and until January 2019.