

INFORMATION ABOUT THE

CATALAN INDEPENDENCE BID



España
Global

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TIMELINE OF THE CATALAN INDEPENDENCE BID

1. Chronology of the 'procés'



Massive Day ("Diada") for Independence



"Consultative process"

- Instituted by the Govern of Artur Mas. Suspended by the Constitutional Court.
- According to the Generalitat 2,305,290 citizens voted and 80.76% voted in favour of independence.



Elections to the Parliament of Catalonia

- Organised in accordance with Spanish law.
- 4,130,196 citizens voted. The independent parties with parliamentary representation obtained 1,966,508 votes, 47.8% of the valid votes and 72 of the 135 seats.



"Resolution 1 / XI of the Parliament of Catalonia, concerning the commencement of the political process in Catalonia as consequence of the election results of 27 September 2015".

- The independence parties approved that resolution which, *inter alia*, says:
- "The Parliament of Catalonia solemnly declares the commencement of the process to create an independent Catalan state in the form of a republic."
- "The Parliament of Catalonia, as depositary of sovereignty and as an expression of the constituent power, reiterates that this chamber and the democratic disconnection process from the Spanish State will not be subject to the decisions of the institutions of the Spanish State, in particular the Constitutional Court, which it considers lacks legitimacy and competence as a result of the judgment ruled in June 2010 on the Statute of autonomy of Catalonia, previously voted by the people in referendum, among other sentences."



Investiture of Carles Puigdemont as president of the Generalitat.

- In response to a demand by the CUP, Artur Mas renounced his investiture as president of the Generalitat and chose Carles Puigdemont as his successor.



Carles Puigdemont announced a referendum.

At the Parliament, Carles Puigdemont announced:

- "The resolution of Catalan demands will therefore be made in this way: either referendum, or referendum. I say this again: «Either referendum, or referendum» (Loud and prolonged applause.) Let it be clear, I repeat, that we will pursue the agreement until the last day. We will work with determination to make a referendum agreed with the State at all times, but if we reach the end of the legislature and there has been no positive reply in this respect, we will be prepared and will be ready to climb up the last step before effectively proclaiming the independence of Catalonia and, at the most, call a referendum for the second half of September next year. With this we will fulfil the mandate received on 27 September."



Carles Puigdemont tweets a photo of himself with the 5 notifications he has been sent by the Constitutional Court.

Tweet of Carles Puigdemont, 11 April 2017, 11:57:

- "Today I've received the fifth notification from the Constitutional Court. We will not stop going ahead."



Carles Puigdemont reshuffles the Govern.

- Front page of the newspaper Ara of 15 July:
"Tailor-made Govern for the 1 October. Puigdemont only relieves counsellors of the PDECat to confront the final stretch of the referendum in a decision which the opposition denounces as a purge."
- Front page of the newspaper El Punt Avui of 15 July:
"Strengthened for the 1 October. Firmness: Puigdemont renews part of the Govern to confront the referendum in cohesion."
- Front page of the newspaper El País of 15 July:
"Junqueras desperately takes control of a government. Puigdemont relieves doubtful counsellors in order to invest fully in the referendum. Rajoy sees dialogue impossible after "the purge and triumph of the radicals". Juncker repeats that an independent Catalonia would be left outside the European Union."



Carles Puigdemont explains the difference between the referendum organised for 1 October 2017 and the consultation of 9 November 2014.

Reply by Carles Puigdemont at a citizen's interview via FacebookLive:

- "The difference between the one of 9 November [2014] and the one now is that we will apply the result that comes out. Because we consider it politically binding. And that's why I said that now the ability to change things is in the hands of each one of you. You have the ability to change things. It will not be a
- Govern that will decide this for you, it will not be a parliament or the political parties or the power in general that will decide for you. The vote of 1 October is now a vote that has consequences and consequently all those who may have doubts should not have any about the commitment: the Govern will apply the result that emerges from the polls."

Reply by Carles Puigdemont at a citizen's interview via FacebookLive:

- "Àngels asks me whether I am convinced that the "yes" will win. Well, I'm not convinced that either the "yes" or the "no" will win. What I am convinced about is that there should be a large participation. And that the result that comes out, whether a yes or a no, is, for me, the sovereign result, it is the democratic result. If a 'yes' wins, we will apply the Transience Act and the transition process. If the 'no' wins, then there will be autonomy elections".



The independent parties approve the "Law 19/2017, of the referendum on self-determination".

Article 2: The people of Catalonia are sovereign political citizens and, as such, they exercise the right to freely and democratically decide their political condition.

Article 3.3: All authorities, individuals and legal entities that directly or indirectly take part in preparing, holding and/or implementing the result of the referendum are protected by this Law, which implements the exercise of the right to self-determination that forms part of the valid legal system.

Article 4.3: The result of the referendum is binding.

Article 4.4: If in the counting of votes validly cast there are more positive than negative votes, the result implies the independence of Catalonia. To that effect. the Parliament of Catalonia, within two days after the official results have been proclaimed by the Electoral Board, will hold an ordinary meeting to make the formal declaration of the independence of Catalonia, define its effects and initiate the constitutional process.



The independent parties approve the "legal and foundational transience Act of the Republic".

Previous to the processing of the uncoupling laws there were several Resolutions by the Constitutional Court which impeded the processing of any initiative to hold a referendum. The independent movement parties however decided to pass these laws.

- Article 1. Catalan State. Catalonia is constituted as a democratic and social Republic *de jure*.
- Article 3. Supreme rule. Until the Constitution of the Republic is approved, this Law is the supreme rule of the Catalan legal system.
- Article 88.2. (...) None of the decisions of the constitutional Assembly, in exercise of the constitutional power, shall be controlled, suspended or challenged by any other power, court or tribunal.
- Third and final provision. This Law will come into effect following its approval by the Parliament of Catalonia, when officially published and it complies with the provisions set out in article 4.4 of the Law of the referendum on self-determination of Catalonia.



Interview with Carles Puigdemont at the Món on RAC1, the most listened to radio programme in Catalonia.

- Question by Jordi Basté: Will it be a repetition of the one of 9 November 2014? Carles Puigdemont: The 9N, which, for me, was a great milestone for this country and forms part of the democratic heritage of Catalonia, had characteristics which the referendum [of 1 October] does not have. The referendum [of 1 October] has a simple binary reply question, yes or no, it is organised by the Govern with a binding result and clearly determined for the result to be applied by everyone. Jordi Basté: So, if the yes wins on the 1 October and there are polls and people go and vote... Carles Puigdemont: ...the Judicial Transience Act will come into force and we will start to move as an independent state.
- Question by Rocío Martínez-Sampere: (...) A week ago I saw you at Parliament standing up and applauding after a foundational Law of the republic was passed which puts an end to the Catalan institutions that are legally articulated in the Estatut. In addition, you did so with 47.8% of the votes and a simple majority of seats without the participation of at least half the citizens. Do you think this is democratic? And if you think so, and I understand you do because you were applauding, can you give me some example of any democracy in the world where the basic laws that articulate co-habitation can be eliminated with a simple majority and new ones can be cast with such a narrow majority?



- Carles Puigdemont: Just one clarification. The foundational Law was passed, but it will not come into force if it does not have the backing of citizens at the polls. I think this is a relevant point to be taken into account to be able to determine whether a measure of this importance that is taken by a parliament has or does not have democratic guarantees. Secondly, what I would like is to find precedents in the Spanish State such as we have found in other countries in the EU like the United Kingdom.
- Question by Antón Losada: There is a very important percentage of Catalans who do not accept this legality voted at the Parliament of Catalonia, who do not want the referendum to be held, who are not going to take part in the referendum and who are not going to collaborate in that referendum being held. First, I would like to know whether you have anything to say to them and second, what do you think of doing when these Catalans who do not accept this new legality start to apply the recipe of disobedience on you?
- Carles Puigdemont: First, let's read this the other way round. If the criterion of how there is a majority is applied that considers that this should not be done, what should we say to those who consider that it should be done? Tell them to stay at home and shut up? Do they have fewer rights than the rest? Because we don't know whether these are in fact more than others, the only way of knowing who rallies up the most citizens in their scenario is a referendum.



Order of the Superior Court of Justice.

The Superior Court of Justice of Catalonia ordered the Mossos d'Esquadra, Civil Guard, and National Police to impede the use or opening of premises or buildings designed for holding the referendum, or, if applicable, their closure if they were open. It also ordered all the material relating to the referendum in those premises to be requisitioned. And lastly, to impede the activity of public establishments that are used as logistic infrastructure and/or calculus of the referendum.



Referendum on self-determination without guarantees

- Initiated by the Govern of Carles Puigdemont. Suspended by the Constitutional Court.
- According to the Generalitat 2,286,217 citizens voted and 90.718% voted in favour of independence.



Speech by King Felipe VI on TV.

For some time now, certain authorities of Catalonia, in a repeated, conscious and deliberate way, have been infringing the Constitution and its Statute of Autonomy, which is the Law that recognises, protects and safeguards its historic institutions and its self-governance. With their decisions they have systematically violated the rules that were legally and legitimately approved, showing an inadmissible disloyalty towards the powers of State. A State which those authorities precisely represent in Catalonia (...) To the citizens of Catalonia - to all of them - I would like to reiterate that for decades now we have been living in a democratic State that offers constitutional ways for anybody to be able to defend their ideas within respect of the law. Because, as we all know, without that respect no democratic cohabitation in peace and freedom is possible, either in Catalonia, or in the rest of Spain or anywhere in the world. In the constitutional and democratic Spain, you well know that you have a space of concord and concurrence with all your fellow citizens.



Carles Puigdemont declares and suspends independence.

Carles Puigdemont at the Parliament: "There is a before and an after the 1 October. And we have achieved what we undertook to do at the start of the legislature. Now that this historic moment has arrived, and as president of the Generalitat, I assume, in presenting you the results of the referendum before you all and before our fellow citizens, the mandate of the people for Catalonia to become an independent state in the form of a republic. (Loud and prolonged applause.) This is what we are doing today with all solemnity, by responsibility and by respect. And, with that same solemnity, the Government and I propose that the Parliament suspend the effects of the declaration of independence so that in the next few weeks we can start a dialogue without which it is not possible to reach an agreed solution."



The MPs of JxSí held more than 100 acts throughout the whole of Catalonia to explain what would happen in the next few days.

Germà Bel at L'Hospitalet on 25 October 2017:

- "There will be a Govern and a strategy will be applied. (...) Look, this has three possible results. Three. And I will name them without any order of probability: surrender, defeat or victory. Discard surrender.

(...) Some time ago, not months, but years, when in acts like this I say it is very important to make mobilisations, but the big mobilisation which we need is the one which children cannot go to. Well, the 1 October was already a test, right? (...) The Spanish Government will dismiss the Catalan Govern. And the Catalan Govern will or will not obey. And it will not obey. The Spanish Government will have to decide whether it intends to imprison the Catalan Govern. And then, the Spanish Government will be able to arrest them or not. But if the Spanish Government tries to detain the Catalan Govern which does not accept being dissolved even if the Catalan Government does not have the tools of State which normal States have and the Spanish Government orders them to stop and they cannot be stopped, it is ceasing to be State in Catalonia. (...)

If it happens, and I am not saying I want it to happen, I can say that, if it happens, if Article 155 fails because they cannot apply it and believe me, this is easy, they will have to decide whether to apply Article 166 and the state of exception, which means bringing the armed forces to Catalonia. But it's they who will decide. It's true that if they decide this, anger at international level will be maximum. Maximum. But can you imagine that not 800,000 people, nor 700,000, nor 600,000, nor 500,000, nor 400,000, nor 300,000, nor 200,000, but 100,000 or 150,000 remain in the Gran Vía in the midst of a state of exception without a prior trial? That's a failed state.



Carles Puigdemont calls a press conference to announce he is calling regional elections which he later suspends.

- Carles Puigdemont calls a press conference to announce he is calling autonomy elections.
- Jordi Cuminal, MP for JxSí, tweets: "I don't share the decision to call elections. I herein waive my position as MP and I cancel my membership in @Pdemocratacat".
- Albert Batalla, MP for JxSí, tweets: "I respect the decision, but don't share anything. Right now, I resign as MP and cancel my membership in @Pdemocratacat".
- Gabriel Rufián, MP for ERC at Congress tweets: "155 silver coins"
- Carles Puigdemont announces he will not call elections.
- Raphael Minder, correspondent of The New York Times, tweeted: "Even by the high standards of confusion in Catalan conflict, latest twists and turns set a new benchmark: elections were off, on and now off."



Declaration of independence at the Parliament of Catalonia.

Carme Forcadell, president of the Parliament: "By virtue of all that has just been explained, we, democratic representatives of the peoples of Catalonia, in the free exercise of the right to self-determination, and in accordance with the mandate received from the citizens of Catalonia;

- We constitute the Catalan republic, as an independent and sovereign state, democratic and social, of the rule of law.
- We order that the legal and foundational transience Act of the republic enter into force.
- We initiate the constitutional, democratic process, of citizen base, transversal, participative and binding.
- We affirm the wish to open negotiations with the Spanish State, without prior conditioning factors, aimed at establishing a system of collaboration in benefit of both parties. The negotiations shall necessarily be on equal terms.
- We inform the international community and the authorities of the European Union that the Catalan Republic is constituted and the proposal to negotiate with the Spanish State.
- We urge the international community and the authorities of the European Union to intervene to prevent the violation of civil and political rights in progress, and to monitor the negotiating process with the Spanish State and be witnesses.
- We express our wish to construct a European project which reinforces the social and democratic rights of citizens, and also the commitment to continue applying, without solution of continuity and unilaterally, the rules of the legal code of the European Union and those of the legal code of the Spanish State, and of the Catalan autonomy that transpose these rules.
- We affirm that Catalonia has the unquestionable desire to be included in the international community as soon as possible. The new state undertakes to respect the international obligations that are currently applied in its territory and to continue to be part of the international treaties of which the Kingdom of Spain is party.
- We appeal to the international organisations and states to recognise the Catalan republic as independent and sovereign state.
- We urge the Government of the Generalitat to adopt the necessary measures to make the full effectiveness of this declaration of independence possible and the provisions of the legal and foundational transience Act of the republic.
- We call upon each and every one of the citizens of the Catalan republic to make us worthy of the freedom that we have been given and to construct a state that translates the collective inspirations into action and conduct.
- We likewise assume the mandate of the peoples of Catalonia expressed in the referendum of self-determination of 11 October and declare that Catalonia is now an independent state in the form of a republic.



TV3 broadcast the image of the half-empty Parliament with the text “THE PARLIAMENT DECLARES THE INDEPENDENCE OF CATALONIA” showing the independent MPs standing up chanting the hymn of Catalonia and the seats of the constitutionalist MPs empty because they had already left the chamber before the voting.

The Spanish Senate approves Article 155 and the Government dismisses the Govern and calls elections to the Parliament of Catalonia for the 21 December 2017.

- eldiario.es: “This Friday the plenary session of the Senate has approved the recognition of the measures of article 155 of the Constitution which the Government approved to intervene the Catalan autonomy. At a long plenary meeting lasting more than six hours there were no surprises, the absolute majority of the PP plus the votes of the PSOE and Ciudadanos were overwhelming against the rest of the political groups: 214 votes in favour, 47 votes against and one abstention. The approval of the measures which should now to be decreed by the Spanish Cabinet produced no applause or happiness on the faces of the senators, but quite the opposite, even the MPs of the Partido Popular.”
- El País: “There has been the dramatic effect of the appearance of Rajoy. The Prime Minister announced a call for regional elections in Catalonia on the 21 December next. Following the proclamation of the Catalan Parliament, Rajoy appeared at Moncloa shortly after eight in the evening to announce the first measures of his Government in response to the challenge by the independence movement. First, he stated the dismissal of Carles Puigdemont and the whole of the Catalan Government, and also the termination of certain public bodies of the Generalitat. Scarcely a few minutes later, he alluded to a surprise call for elections.”



Assessment of the events by Andreu Mas-Colell, counsellor for Economy in the Govern of Artur Mas from 2010 to 2016.

- Diari Ara, Andreu Mas-Colell:
“Someday, we will ask ourselves how we have managed to transform a victory, that of 1-O, into a defeat, and, particularly those who on that fateful Thursday 26 October had the audacity to accuse president Puigdemont of being a traitor should now ask themselves and reflect on this, when he was negotiating an exit which most likely would have been better than the one to come. We should banish the term traitor from our political jargon. It has caused a lot of damage. It is extraordinary how the fear of this term has conditioned our political leaders.”

"In this scenario, the call, within Article 155, for regional elections on the 21 December has been a surprise, at least for me. Indeed, last week he predicted that they would never be called because the central government would never end up finding a sufficiently favourable moment. Tacitly this call is an ingenious move. The central government has, until now, played the end of the game (post 1-O) cleverly."



Carles Puigdemont appears in Brussels. 2 October 2017 / Oriol Junqueras went to prison after going to the National Court at the orders of judge Carmen Lamela.

- Carles Puigdemont has written in the book *The Catalan crisis: an opportunity for Europe* that there was an agreement to leave and go abroad:

"After the 27 October, the majority of the Catalan Government abandoned Catalonia to settle in foreign countries. I stayed, as did the vice president. On the 27th I slept at home, and also on the 28th. But on the same day of the 28 October, in the evening, I met in a certain place in the province of Girona with Marta Rovira i Vergés, secretary general of Esquerra Republicana de Catalunya (ERC), who had just spoken to members of the Government in exile and other people. We met to decide what steps it was advisable to now follow. After analysing the situation, we concluded that the best option was for us to also go into exile. That's what we decided."

- Oriol Junqueras has said during an interview with *Crític* that there was an agreement to go about one's normal business:

Question: Gabriel Rufián said during an interview with *CRÍTIC* that there was an agreement that on the Monday after the DUI all the counsellors would go to their departments. Was this really so? And if so, why didn't it happen?

Oriol Junqueras: Yes. I went. Josep Rull, first, also early in the morning. Other counsellors were also in position first thing in the morning.

Question: Did Puigdemont's decision to go into exile surprise you? Didn't you know anything?

Oriol Junqueras: I respect the decisions of others. It was a very difficult moment. And everything is understandable.



Elections to the Parliament of Catalonia

- Organised in accordance with Spanish law.
- 4,392,891 citizens voted. The independence parties with parliamentary representation obtained 2,079,340 votes, 47.5% of the valid votes and 70 of the 135 seats.



TRIAL OF THE CATALAN INDEPENDENCE BID

2. The events of 2017 and the resulting trial

INTRODUCTION

On February 12 the oral hearing of the special case 20907/2017 started at which the Court of judicial indictment of the Second Hall of the Supreme Court (criminal court), made up of seven magistrates, will judge twelve leaders of the so-called Catalan "sovereignty process" (popularly known as the "procés"). For Spanish justice and for the highest jurisdictional court of the State, this process is one of the most important since the start of constitutional democracy in 1978, for the nature of the facts that are being judged and for the repercussion they have obtained nationally and internationally.

The investigatory phase of the case started with the filing in October 2017, by the then State General Public Prosecutor (José Manuel Maza), of a criminal complaint against 18 leaders of the sovereign movement process, admitting it for examination and appointing magistrate Pablo Llarena Conde as examining judge of the case, who processed it between the month of November 2017 and the month of July 2018. The examining judge prosecuted the accused persons for the crimes of rebellion, embezzlement, and disobedience. The Court of Appeals of the Second Chamber confirmed all the terms of the processing.

Only 12 of the independent movement leaders are being tried since 12 February, because Spanish penal procedural law does not provide for hearing criminal proceedings in absentia. Six of them have evaded Spanish justice and are now in Belgium, Switzerland, and the United Kingdom.

The prosecuted persons who went on trial on 12 February are Oriol Junqueras (remand prisoner), Jordi Turull (remand prisoner), Raül Romeva (remand prisoner), Josep Rull (remand prisoner), Dolors Bassa (remand prisoner), Joaquim Forn (remand prisoner), Jordi Sánchez (remand prisoner), Jordi Cuixart (remand prisoner), Carme Forcadell (remand prisoner), Carles Mundó (out on bail), Santi Vila (out on bail) and Meritxell Borrás (out on bail). The first nine are charged by the public prosecutor with rebellion aggravated by that of embezzlement, and the State Legal Service is charging them with sedition plus misuse of public funds. For its part, the private prosecution, exercised by the political party Vox, is adding a further offence: that of having formed a criminal organisation. The last three, in turn, will be tried for the offences of disobedience and embezzlement.

Carles Puigdemont, Antoni Comín, Clara Ponsatí, Marta Rovira, Lluís Puig, and Meritxell Serret will not be tried since they have absconded from Spanish justice, although they are also prosecuted for the offence of rebellion and embezzlement.

Spanish law does not permit the indicted persons to be judged in their absence which is one of the important guarantees enshrined in Spanish criminal procedural law. The absconders will be arrested and handed over to the judicial authorities if they return to any part of the Spanish territory.

FACTS CONSTITUTIVE OF CRIME

The following facts are considered by the examining judge in his indictment to represent a crime, and also the public prosecutor, the State attorney and the private prosecution in their briefs of provisional conclusions:

- **The approval on the 6 and 7 September 2017, at the Parliament of Catalonia of the following laws:** i) Referendum Act, which established the rules for voting a binding consultation on self-determination of Catalonia creating a central and territorial electoral township, census and other details; and ii). the Legal Transition Act, that de facto repealed the Constitution and Statute of Catalonia, without the statutory numbers required to even amend the Statute (2/3 majority), and established transitory provisions for the institutionalisation of the new republic as form of the Catalan independent State. Both laws were submitted against the agreement that had previously been reached by the Constitutional Court. They were processed under an urgent mechanism in less than 20 hours each one, infringing the rights of the other Parliamentary groups, as was declared by the Constitutional Court. And they were approved by a majority of the pro-independence groups, which enjoy a wafer-thin majority at the Catalan parliament, not even enough to amend the Catalan Statute (2/3 majority), and the abstention of certain members of the group of "Podem" (left-wing group). The two laws were suspended by the Constitutional Court. That of the referendum on the same day, 7 September (and finally declared unconstitutional on the 17 September 2017) and that of the Transition Act on the 12th of that same month (declared finally unconstitutional on the 8 November 2017). In all the resolutions of the Constitutional Court, the indicted individuals were ordered to prevent or paralyse any initiative that meant ignoring or eluding the suspension to holding the referendum.
- **The disorderly siege of the Department of Economy of the Generalitat de Catalunya in Barcelona on September 20, 2017,** when a crowd prevented the mobility of the judicial commission and of the members of the State Security Forces and Corps who were accompanying them, and produced damage to police vehicles with insults and obscene language.
- **In the face of the repeated breaches by the authorities of the Generalitat of Catalonia, criminal proceedings were initiated at the Superior Court of Justice of Catalonia.**

A court decision ruled in those proceedings on 27 September 2017 in which ordered the closure of the buildings at which the referendum was going to be held or which were necessary for its infrastructure (centres for processing, managing, or counting ballots), and also requisitioning all the material relating to this. The State Security Forces and Corps acted on 1 October in compliance with that court decision.

- **The holding of an illegal referendum on 1 October 2017 for self-determination in the whole of the territory of Catalonia** which was partially carried out with universal census, without electoral administration, under the law of 6 September of the Catalan Parliament that was declared unconstitutional by the Constitutional Court on the 17th of that same month and which had previously ordered - and this was done - the dissolution of the central and territorial electoral administrations.
- When the State Security Forces tried to enforce the court order to close the polling stations and hand over the electoral material, there were strong **altercations in some places with individuals who had gathered there to avoid the action of the national police.**
- **The unilateral declaration of independence by the Catalan Parliament** (only 70 out of 135 voted in favour) on 27 October 2017.

WHAT HAPPENED IN SEPTEMBER AND OCTOBER 2017?

- During the sessions held in the Catalan Parliament on 6 and 7 September 2017, the Referendum Act and the Legal Transition Act were processed, against the orders of the three resolutions of the Constitutional Court. The secessionist parliamentary majority imposed the approval of these uncoupling acts in less than 24 hours, thereby violating the democratic rights of the non-secessionist opposition. In approving these Acts, the secessionists similarly flouted Catalonia's own Statute of Autonomy as well as the Spanish Constitution, which were de facto repealed by this vote. Opposition parties abandoned the Parliament in protest.
- Pursuant to the aforementioned Acts, the "referendum" of 1 October would be binding, irrespective of voter turnout and the number of votes in favour, and would lead to secession within 48 hours. Although the opposition parties had repeatedly expressed their disagreement with the referendum, the secessionists went ahead with their plans.
- On the 7 and 12 September, the Constitutional Court suspended both acts and reiterated the duty to prevent or to paralyse any initiative that meant ignoring or eluding the suspension. In spite of this, the Generalitat authorities continued to prepare the referendum.

- Later, the Constitutional Court confirmed the infringement of democratic rights in the processing of the uncoupling acts. And it also declared them unconstitutional, and warned of the consequences for the Catalan authorities if these rulings were not respected. The Catalan authorities were warned repeatedly that they would be in breach of the Constitution if they went ahead with their secessionist plans.
- On 20 September 2017, a judicial committee and a number of law enforcement officers were carrying out a court-ordered search of the Catalan Department of the Economy building in Barcelona. These court officials and the Civil Guard were unable to leave the building for several hours. Outside, there were altercations and police vehicles were destroyed.
- In view of the repeated breaches by the Generalitat authorities of Catalonia a penal process was initiated at the Superior Court of Justice of Catalonia. A court decision was ruled in those proceedings on 27 September 2017 ordering the closure of the departments where the referendum was going to be held or which were necessary for its infrastructure (centres for processing, managing or counting the ballots), and it also requisitioned all the material related with this. The State Security Forces and Corps acted on 1 October in compliance with that court decision.
- The “referendum” of 1 October 2017 did not have the minimal democratic guarantees, as defined by institutions such as the Venice Commission, neither in the manner in which it was called, the voting process itself, or its outcome. There was no register of voters, nor any “no” campaign. There were, however, multiple irregularities, and the process was not observed by any recognized international institution (OSCE, Council of Europe, EU). The votes, therefore, were cast under absolutely irregular circumstances and considerable tension. There were incidents of police violence (some of which are currently under review by the judicial authorities), but it was not systematic. There were also cases of violence against the police. Three people were admitted to hospital with injuries.
- According to the then premier of the Catalan Government, Carles Puigdemont, approximately 42% of the electorate participated, with 90% of this 42% voting in favour (around two million people). There is however no objective element that confirms that data.
- The Government of the former Catalan premier, Puigdemont, rebuffed the Spanish Government’s calls for election and for the restoration of constitutional and statutory order. These calls were made pursuant to Article 155 of the Constitution (relating to emergency powers under the principle of “federal” or “state” “coercion”, based on a similar Article included in the German Constitution).
- On 27 October, despite the appeals made by the Spanish Government and by other political and social stakeholders, and despite all the rulings of the Constitutional Court, the secessionists declared a “Catalan Republic”, with votes in favour from 70 out of 135 Members of the Catalan Parliament, representing little over 40% of the electorate. Here it should be underscored that reform of the Statute of Autonomy requires a majority of 2/3 of Parliament.

- Consequently, the Executive led by the then Prime Minister Mariano Rajoy, asked the Senate to approve application of Article 155 of the Spanish Constitution. Following negotiations with the PSOE [the Socialist party], then in opposition, and with the Ciudadanos party, this application was approved for a limited period and focused on removing the authorities of Puigdemont's government and calling regional elections in Catalonia on 21 December.
- Application of Article 155 served to restore the proper functioning of Catalonia's institutions, which were not suspended as regarded their functioning, and to prevent them from making any further illegal use of the region's resources and institutions.
- The Spanish Government, with the authorisation of an absolute majority of the Senate, dismissed the Government of Catalonia on that same day, 27 October, maintained the institutions of the Generalitat of Catalonia and called for autonomous elections for December 21, 2017. These measures were made pursuant to provisions of article 155 of the Spanish Constitution, which establishes:

If an Autonomous Region does not comply with the obligations that the Constitution or other laws impose on it, or should it act in a way that seriously infringes upon the general interest of Spain, the Government, prior to submitting a requirement to the President of the Autonomous Region and, if this is not heeded, with the approval by absolute majority of the Senate, may adopt the necessary measures to oblige it to enforce compliance of those obligations or for the protection of the mentioned general interest.

o execute the measures foreseen in the foregoing paragraph, the Government may give instructions to all the authorities of the Autonomous Regions.

That article is inspired on article 37 of the Constitution of Germany, which refers the necessary measures being adopted by the federal Government in the event of actions against the general interest of one of its States, and it constitutes the federal coercion clause when the authorities of an autonomous territory - previously warned by the Government - jeopardise the general interests of Spain and do not comply with the laws. The Parliament of Catalonia has filed an appeal of unconstitutionality at the Constitutional Court against these measures and this has also been done by the confederal parliamentary group at Congress of Unidos Podemos. Both appeals are awaiting judgment.

- The Catalan elections of 21 December were the third to be held in five years; that is to say, more or less from the earliest stages of the secessionist process. They produced similar results in terms of the balance of secessionist forces —around 47% of the electorate— and opposing forces.
- The current Government of President Pedro Sánchez (PSOE) is committed to dialogue in Catalonia and to restoring harmony to a divided society, as well as to dialogue between the Central Government and the Catalan Government, channeled through the constitutional and statutory mechanisms.

HOW ARE CRIMINAL PROCEEDINGS CONDUCTED?

- As a result of these events at the end of 2017, various judicial proceedings have been opened in Spain. The one brought against 25 individuals before Spain's Supreme Court are addressed to the main persons responsible for these events. In these proceedings, seven of the indicted individuals have fled the country, and nine are in preventive custody. The accusations include crimes of rebellion, sedition, misuse of public funds and disobedience. These crimes, whether or not they are defined in exactly the same terms, are included in the criminal codes of most Western democracies.
- Some people have categorized those individuals currently in provisional custody as political prisoners. In fact, they stand accused of committing crimes defined in the Spanish Criminal Code and are being tried with all the guarantees inherent to a democratic state under the rule of law. No intergovernmental organization operating in the sphere of human rights, nor any NGO active in this same field (for example, Amnesty International or Human Rights Watch) has recognized these individuals as political prisoners or prisoners of conscience. They have, however, criticized their lengthy provisional detention while awaiting trial.
- Under Spanish law, the decision to adopt the measure of provisional detention lies entirely with the judge. This measure, provided for in Spanish law (as it is in that of all comparable countries, with even longer terms), is in compliance with the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights (Council of Europe). In the case in hand, the Court has considered this measure to be justified by one or more circumstances: flight risk, the risk of recidivism, and/or the risk of destruction of evidence. The Constitutional Court has recently confirmed the proportionality of this measure.
- The trial, which started on the 12 February 2019, is public and is carried out with the utmost transparency. Moreover, the Supreme Court guarantees, both through television broadcasting and online streaming, that it can be followed by the widest possible audience. As is customary in a democratic state, there shall be no recognition or accreditation of "international observers". Any individual who wishes to "observe" the court proceedings in person is free to do so, with the only limitation being the space available. However, the courtroom used is larger than that habitually allocated. Sufficient space has been reserved to ensure that two or three family members of each accused party may be present. Catalan-Spanish/Spanish-Catalan interpreters are also available so any of the accused can choose to express themselves in their first language.
- The Spanish judiciary is independent from the executive and legislative powers. This independence is expressly enshrined in the Spanish Constitution.

The proceedings regarding the acts related to the secessionist process in Catalonia are to be held in the Criminal Chamber of the Supreme Court, which is a body with national authority. Normally, it is an appeal court, but it also has powers to hear criminal proceedings brought against individuals in public office. In this case it responds to the ruling set out in the very Statute of Autonomy of Catalonia (article 57.2)

The Criminal Chamber of the Supreme Court is a completely independent court. Its judges are selected by the General Council of the Judiciary by enhanced majority and they are appointed for indefinite terms, ending upon their retirement. This provides a maximum guarantee of their independence: it is common for judges to be pigeonholed as “conservative” or as “progressive”, but the reality is that their decisions are based not on political, but on strictly legal criteria.

By virtue of the applicable regulations, individuals’ rights are rigorously safeguarded in Spanish criminal proceedings, more so than in most of Europe. These proceedings fully respect the fundamental rights of the accused: presumption of innocence; the right to defend oneself; the right not to incriminate oneself; and the right to a fair trial.

To accredit the circumstances in which the events occurred, in addition to the experts (on financial matters, doctors or sociologists) and the submission of documentary evidence, more than 500 witnesses are expected to appear, 256 at the request of the public prosecutor and the State attorney, 56 at the request of the private prosecution and the rest at the proposal of the defences of the prosecuted parties (all parties coincide in requesting the deposition of some people). 51 officials of the Generalitat will appear, 69 witnesses of the siege of the Department of Economy in Barcelona on the 20 September 2017, 7 former members of the Spanish Government, 13 officials of the Parliament of Catalonia, 115 members of the national police (among these, 5 commands), 22 politicians, 37 members of the Catalan autonomous police force (including 21 commands), 84 agents of the Civil Guard (including 2 commands), and 2 members of the Barcelona city police force.

Among politicians who have been called to testify are former Spanish Prime Minister Mariano Rajoy, former Deputy Prime Minister, Soraya Sáenz de Santamaría, and former Finance Minister, Cristóbal Montoro. The mayoress of Barcelona, Ada Colau, and the former city mayor, Xavier Triás, were also called, as well as the president of the Basque Government, Iñigo Urkullu and several Congress nationalist members of parliament, among others.

In preliminary questioning - at the start of the oral hearing - the Court finally allowed the use of the Catalan language and admitted the presence of two translators to that effect in the courtroom. Places were also foreseen for members of the families of the prosecuted persons and the presence of journalists in the courtroom, by a rotary system, although at the decision of the Court, all sessions of the oral hearing are broadcast live at morning and afternoon sittings, on Mondays, Tuesdays, Wednesdays, and Thursdays, and the lawsuit is estimated to take three months.

The court has allowed parliamentary observers but not international observers considering them completely unnecessary and inappropriate, and because it understands that the live broadcast of the sittings offers total transparency. Spaces have likewise been created for the numerous journalists of more than a hundred accredited news media.

The prosecuted persons on remand or in custody (9 of the 12 who are going to be tried) continue in that situation because first the examining judge and later the Court of Appeals have considered they would meet the requirements that demand their confinement: risk of absconding and risk of reoffending. The risk of absconding has been justified by the fact that there are already 6 of the indicted persons who have fled and who have formed a structure in Belgium and in Switzerland that could be a haven for many others. The risk of reoffending has been observed from the declarations made by the indicted persons saying that they would behave in the same way as they did during the periods when they allegedly committed the offences for which they are being charged.

Once the oral hearing has concluded with the indicted persons turn to exercise their right to a "final word", the court will adjourn to deliberate. The reporting judge, who is the presiding judge Manuel Marchena, will draw up a draft judgment which will be submitted to discussion among all members of the Court. The drafting of this report and subsequent debate may take months. The judgment will be arrived at by majority and magistrates who differ with the decision or with any of the arguments that are outlined in it may cast a private dissenting vote (disagree with the operative part of the judgment) or a concurring vote (agree with the decision, but disagree with some or all of the arguments).

The judgment that is handed down will be firm but an appeal may be submitted against this decision to the Constitutional Court, which will review whether the guarantees and rights of the indicted persons have been observed.

If the Constitutional Court does not allow the appeal or delivers an unfavourable verdict for the indicted persons, they may appeal to the European Court of Human Rights of Strasbourg, which will only come to value the infringement in human rights contemplated in the agreement. According to 2017 data, referrals to the European Court of Human Rights, 635 claims were not allowed and only 7 judgments were ruled with regard to Spain (which means a very low admission rate).

Note: In the framework of the Catalan independent movement process, apart from the lawsuit that is being held at the Supreme Court, three other criminal proceedings are being held at other judicial bodies. On the one hand, the National Court is investigating four people (Josep Lluís Trapero, Cesar Puig, Pere Soler and Teresa Laplana) for offences of rebellion, for the first three, and the latter for sedition. On the other hand, the Superior Court of Justice of Catalonia is also investigating Lluís Corominas, Lluís Guinó, Anna Simó, Ramona Barrufet, Joan Josep Nuet i Pujals and Mireia Boya for an alleged offence of disobedience. Lastly, the Examining Court no. 13 of Barcelona has a case open for the offences of sedition, misuse of public funds, prevarication and disobedience at a summary trial that has not yet concluded.

On the other hand, a resolution by the Constitutional Court of the decisions by the examining magistrate, judge Llarena, is also pending – confirmed in an appeal by the Supreme Court and later appealed at the Constitutional Court – on which the defences of some of the imprisoned individuals and absconded persons allege “restriction of the right to representative political activity”, foreseen in article 23 of the Constitution. The decisions by judge Llarena refer to three specific milestones: i) the refusal of some of the imprisoned individuals and absconded persons to physically attend the voting of the investiture with the respective appointment of a representative in their place; ii) the prohibition to invest Puigdemont and Turull because they have absconded and are in preventive custody respectively, and iii) suspension of the exercise of public office of the majority of the accused persons prosecuted for rebellion by virtue of article 384 bis of the Code of Civil Procedure.

3. The 5 articles of Spain's Criminal Code that have landed those accused in the Catalan independence case in the dock

The trial currently ongoing in the Supreme Court of Spain—in which 12 people are being tried for the criminal offences of rebellion, sedition, misappropriation of public funds, and disobedience—is a criminal proceeding like many others that the Spanish criminal justice system addresses every year. In these proceedings, as in every other trial held in Spain, the only issues at stake are punishable acts, i.e. human actions which have violated the law. And not just any law: only those legal provisions included in the Criminal Code.

The Criminal Code defines the acts that undermine the most important values for any community, and sets forth the corresponding punishments. It does so proportionally to the severity of the conduct involved, and also in proportion to the specific circumstances under which each criminal offence was committed, and of each person accused.

The Second Chamber of the Supreme Court, where the alleged criminal offences are being tried, has not decided, nor is it deciding, what is on trial; rather, the charges are based on punishable acts determined by an Examining Judge, and on the criminal offence categorization put forth by the accusing parties: the State Prosecutor's Office, the State Legal Service, and the popular accusation (*acusación popular*) brought by the extreme right party Vox.

It is incumbent upon the prosecution to convince the court that criminal offences were committed by presenting sufficient evidence to overcome the presumption of innocence of the accused. The defence, in turn, attempts to prove the contrary, or to contradict the prosecution's evidence.

What is at stake, therefore, in the so-called "procés" (Catalan independence process) trial is to establish whether the 12 defendants broke the law. Not all of them are being accused of the same criminal offences. However, there are five specific provisions on which this trial is based:



Art. 472

Rebellion

Article 472 of the Criminal Code, which stipulates: "A conviction for the offence of rebellion shall be handed down to those who violently and publicly rise up for any of the following purposes: [...] 5. To declare the independence of any part of the national territory."

This is the most serious accusation (punishable with a prison sentence of 15-25 years), as this is an offence against the Constitution, and due to its impact on society as a whole.

Violation of this provision is attributed to members of the previous Catalan Regional Executive (Government), the Speaker of the Catalan Regional Parliament, and the principal leaders of two civil society organizations (Jordi Cuixart and Jordi Sánchez), all of whom allegedly collaborated through a joint strategy in this rebellion by inciting and directing the mobilization of their supporters and of protesters on the streets to support the illegal measures adopted.



Art. 544

Sedition

Article 544 of the Criminal Code, by virtue of which: "Conviction for sedition shall befall those who, without committing the criminal offence of rebellion, publicly and tumultuously rise up to prevent, by force or by unlawful means: application of the law; any authority, official corporation, or public officer from lawfully exercising their duties; implementation of the resolutions of the latter; or implementation of administrative or court decisions."

The corresponding prison sentence for this crime is also very high (10-15 years, if the accused are the main perpetrators and are also persons "in positions of authority"). The provision for this type of criminal offence is essentially intended to defend public order, and ensure application of the law and compliance with court decisions.



Art. 432

Misappropriation

Article 432, which punishes misappropriation of public funds, i.e. by an official or civil servant who, having the authority—whether under law, granted by an authority, or undertaken through a legal transaction—to administer public assets, violates that authority in the exercise of their duties, to the detriment of the public assets being administered.

This criminal offence (which can have a prison sentence of 4-8 years when the most aggravating circumstances concur) has been attributed to members of the *Govern* who allegedly devoted public resources to the "*procés*" by, for example, ordering the use of public buildings for holding the referendum, or allegedly paying "international observers".



Art. 410

Disobedience

Article 410, which seeks to punish acts of disobedience committed by "Authorities or civil servants who blatantly refuse to duly fulfil court rulings, decisions, or orders from a higher authority, handed down within the scope of their respective powers and in compliance with legal formalities". This offence is punishable by 3 months to 1 year of prison.

Those accused of this criminal offence allegedly received direct orders from the Constitutional Court, demanding that they abstain from continuing with those of their actions that violated the Constitutional Court's decision to cancel the referendum.



Art. 570

Criminal organization

In the case of the popular accusation by the political party Vox, some of the defendants are also accused of the offence of participating in a criminal organization. Article 570 *bis* considers a criminal organization a group, formed in a concerted and coordinated manner for a stable or indefinite period, by more than two people, to share various tasks or functions in order to commit criminal offences. This offence is punishable by 3-8 years of prison.

4. Safeguards for the indicted persons during the trial



Right to the presumption of innocence

This is, without doubt, the most significant right, and it is completely protected.

It is not just a question that during the process the indicted person must be treated as innocent, but that to be able to issue a guilty verdict there must be a number of minimum conditions: a conviction can only be handed down based on evidence, that has been legally obtained, that has been submitted to the sentencing court, that there is evidence for the prosecution and that this is valued rationally.

Finally, it is the responsibility of the prosecutor at the trial to prove the specific facts that form the Penal Code typification of the crimes charged. Without sufficient and convincing evidence, it cannot be said there is a crime and no conviction can be delivered. That is why, in the event of doubt, the court discount a legal fact which prejudices the accused person (in dubio pro reo). As guarantee of the above, the court will be obliged to reason in its judgment why it considers certain evidence is credible and others are not, so that the account of proven facts can never be arbitrary, but must be specifically linked by the court to the evidence submitted.

If it is considered that the judgment infringes the presumption of innocence, it could be overruled for that reason, which would lead to its reversal and replacement for an acquittal, in this case ruled by the Constitutional Court.



Right to defence

This is the basic safeguard that enshrines a large part of the powers and rights recognised during the functioning of the trial.

The right to defence is exercised primordially through the legal aid, namely through the lawyers.

- **Principle audi alteram partem.** The clearest demonstration of the right to defence is the principle audi alteram partem (right that both parties must be heard), which is translated as being the possibility that the lawyers may take part in the taking of all evidence: each time a witness makes a statement, all the lawyers - not just the one that adduced it - may pose whatever questions they consider pertinent, even those which serve to question their credibility.

The same will happen with the experts or with the review of recordings. If the court (through its president) rejects any question, it must offer a justification (in other words, if it considers the question to be leading, suggestive or not relevant for the case), and the lawyer may put on the record his disagreement. The lawyer of a party may also request that any question put by another lawyer or by the prosecutor be not admitted.

- **Protected witnesses.** Another example of the above occurs with regard to protected witnesses: there are several in the case, whose identity has until now remained hidden. If requested by defence lawyers, these will be given their identity (although this will not be made public), so that the accused have a fully effective right to defend themselves (which requires knowing who is the person who declares against them, in order to, if applicable, be able to discredit the credibility of their testimony).
- **Right to evidence.** Another demonstration of the right to defence is the right to evidence: the indicted persons have been able to ask the court to take all the evidence they have considered pertinent. The Court has replied to these petitions in its writ of 1 February 2019: refusal to submit the requested evidence must be reasoned and disagreement may, again, be expressed against this (for the purpose of later being able to challenge the sentence for this reason).



Right to an impartial court

The accused have the right to no members of the court having any relationship with them, their lawyers or the case itself, that could bring into question their impartiality. The formula for denouncing infringement of this right is the recusal of a judge involved in any legal case that gives rise to doubt as to his impartiality. The recusal should be formulated immediately on becoming aware of this situation (otherwise, it is understood that the impartiality of the judge concerned is accepted).



Principle of equality of arms

Closely connected to the above: all parties to the process must receive the same treatment by the court. More opportunities cannot be given to make petitions to the court and submit evidence to one party than to another.

If there is an infringement, disapproval must be put on the record, so as to later be able to challenge the sentence for this reason.



Right to remain silent and avoid self-incrimination

This guarantee is exercised during the examination of the indicted person, which will be taken as first evidence. The indicted persons may refuse to testify and their silence can in no way prejudice them. They may also decide to only answer their lawyer's questions and not those of the prosecution and/or those of the private prosecution; again, this option cannot prejudice them. They may also decide to answer certain questions and to refuse to answer others, without this having prejudicial consequences.



Right to a public proceeding

Guaranteed by the live broadcast of the sittings (streaming) and on-line publicity of the decisions that are being ruled during the processing of the case.



Right to "final say"

At the end of the sittings, the indicted persons will have the right to take the stand to make a general assessment of the process and of their position, so that this is the final word to be heard by the court.



Non-existence of the figure of trial in absentia

Spanish law does not permit indicted persons to be judged in their absence which is one of the measures that provides guarantees in the Spanish criminal procedural law. The indicted persons cannot be tried if they have absconded from Spanish justice.

5. Independence and guarantees of the Spanish legal system

1. The Spanish Judiciary is completely independent from the Executive and Legislative Branches. This is specifically set out in the Constitution.

From an institutional outlook, the guarantee of independence lies in the fact that the Ministry of Justice does not direct the Judiciary, does not determine who is judge, who is promoted, or changes position within the judicial organisation or which judges should be penalised for an incorrect development of their duties. These duties correspond to an internal governance body of the Judiciary, the General Council of the Judiciary (CGPJ), which has its equivalents in France and Italy.

The CGPJ is a constitutionally established body (article 122 of the Constitution) in charge of assuring judicial independence. It comprises 20 members and a president (who at the same time is President of the Supreme Court). These 20 members are appointed by Parliament: 10 by Congress, 10 by the Senate, in both cases by reinforced majority (3/5), which obliges that there be consensus between the predominant political forces. Of these 20 members, 12 must be judges and 8 jurists of recognised competence. Their mandate is for 5 years and it cannot be renewed.

From a functional outlook, the guarantee of independence consists in recognising that when the judges take their decisions, they are only bound by Law: there is no hierarchy in the Judiciary; the higher courts, in the event of an appeal, may recall the decision of the lower courts, but cannot oblige them to take a specific decision.

2. The process for the majority of events relating to the independence movement in Catalonia is being heard in the Criminal Chamber of the Supreme Court, which is a body with national competence.

Normally it is a court that is concerned with resolving appeals, but it is also competent to hear criminal cases against certain persons, by reason of the public office they hold.

If the case is being heard at the Supreme Court this is because this is so determined in the Statute of Autonomy of Catalonia, by reason of the office which several of the indicted persons held at the time when they committed the offence they are being tried for: it is not an imposition, but is the result of applying a rule of competence decided by the Catalan Parliament and later endorsed by the Spanish Parliament.

3. The Second Chamber of the Supreme Court is a completely independent court.

Its magistrates are chosen by the General Council of the Judiciary by reinforced majority and their mandate is permanent, until retirement. This guarantees their independence to

the full: it is common to put labels of "conservative" or "progressive" on them, but reality shows that their decisions are not taken according to political considerations, but strictly by technical-legal criteria. The clearest proof of the Supreme Court's independence is that it confirmed judgments that were ruled ordering the imprisonment of numerous political figures imposed by a lower court (among these, former ministers and high-ranking officials, of all political hues).

4. The Spanish penal process, as it is currently regulated, is among those that offer most guarantees in Europe.

It fully respects the fundamental rights of the accused to the presumption of innocence, to defence, to non-self-incrimination and to judicial impartiality. It also excludes a trial in absentia, unlike what happens in other democracies.

Specifically, the special case against the leaders of the *procés* is being handled in all its phases with the maximum respect for constitutional guarantees. During the initial phase of the investigation, the lawyers of the investigated persons have had full access to the records, have been able to intervene actively throughout the investigatory process (depositions of the investigated persons and witnesses, rebuttal of expert reports). During the trial, the rights of the accused persons will continue to be guaranteed, as in any other judgment in Spain.

In particular, the Court is going to be very careful with a fundamental guarantee, publicity and transparency. To that end, it has enabled a channel permitting live broadcast by television of all the sittings of the trial. Access by the accredited media does not face restrictions or limitations other than those imposed by a good implementation of the sittings and the political groups related with the accused persons may be represent in the chamber, at all times. In addition, all milestones and all resolutions that are being ruled are accessible to the public on the electronic portal of the General Council of the Judiciary.

6. Private prosecution: what is it?

- The private prosecution is a procedural figure whereby any citizen, whether or not offended or prejudiced by a crime, may accuse others in defence of the law. This is included in the Spanish constitution (art. 125) and in the Criminal Prosecution Act.
- This is an institution with few similarities regarding other procedural legal systems in continental law and among those of common law.
- The private prosecution institution is based on the will of the legislator to allow the involvement of citizens in the criminal prosecution. Through the private prosecution, any citizen who may be interested in the prosecution of a public crime can guarantee that the necessary means are settled in order to do so.
- The private prosecutor can only participate in criminal cases. Indeed, the figure does not apply to all the criminal jurisdiction, but only for crimes that can be prosecuted ex officio, excluding other types of offences (semi-private and private).
- Although at first the right to private action was not accorded to legal entities, a judgment ruled by the Constitutional Court TC 241/1992 of 21 December for the first time allowed the legitimisation of legal entities to intervene in processes as private prosecutors, thus creating case law.
- In recent years the timeliness of carrying out a legal reform that defines the scope of private prosecutions with more precision has been raised on several occasions. One of these possibilities could go in line with endowing judges and magistrates wider powers of discretion when it comes to assessing the suitability and true interest pursued by those individuals or legal entities who intend to join in the proceedings as private prosecution.
- The private prosecution exercised in the special Case 20907/2017 ("judgment of the procès") by the political party Vox does not in itself constitute a special anomaly, because there are various precedents of political parties that have fulfilled this same role in a recent past. Among these examples we can quote the following, for example: that of Iniciativa per Catalunya-Els Verds in the so-called "Botín Case" (2007); that of the Partido Popular in the "Gürtel Case"; or that of the PSOE, in the framework of the legal actions against the police superintendent Villarejo (specifically, the separate record "Reserved Funds"). The most striking case perhaps is that of the CUP, an extreme left-wing independence party, that has exercised private prosecution in at least two cases: that of the so-called "3%" (which implicated the now extinct CiU for the payment of illegal commissions), and that which concerned the increase in salaries of Catalunya Caixa.



**THE TRUTH ABOUT
SPAIN AND ITS
CATALAN REGION**

7. Mottos of the secessionists

This is yet another of the battles being waged in the world against disinformation and fake news. Below, we list some falsehoods spread about the independence movement process and the Catalonia situation, contrasted with the objective facts that refute them.

Fake	Fact
<p><i>"Spain robs us"</i></p>	<p>Catalonia is the richest region in Spain. Its GDP is 223,987 million euros, equivalent to 19.2% of the GDP of Spain. Madrid is below this. (2017 figures, National Statistics Institute (INE), 2017). The contribution system of the Autonomous Regions (CCAA) in Spain is proportional: each autonomous region contributes in terms of its wealth and receives in terms of its population.</p> <p>This sense of unfairness is normal and occurs in many other regions in Europe with a decentralised territorial organisation.</p>
<p><i>"The State plunders Catalonia fiscally and economically"</i></p>	<p>Taxes collected from Catalonia are a consequence of the proportional tax contribution system of the autonomous regions to the Spanish State and the distribution between the richest and poorest individuals.</p> <p>Also, the State also has a fund to compensate autonomous regions with financial needs. Since 2012, Catalonia has been the autonomous region to have received the most financing from the State: almost 80 billion euros. (Ministry of Finance).</p>
<p><i>"Spain doesn't let Catalonia vote"</i></p>	<p>It is not true that the Catalans cannot exercise their right to vote under the same conditions as the rest of the Spanish people. Indeed, since 1977 the Catalans have voted at:</p> <ul style="list-style-type: none"> • 10 municipal elections • 12 regional elections • 13 general elections to the Spanish Parliament • 7 European elections • 2 referendums on their autonomy • 4 national referendums <p>The right to vote is exercised by universal suffrage and is guaranteed for the whole of the nation's citizens. In the referendum to approve the Statute of Catalonia, the participation was 48.85%. In the referendum to ratify the European Constitution in 2005, only 26% of the Catalans voted "no". There are legal channels at Congress to reform the Constitution.</p>

Fake	Fact
<p><i>“Spain does not permit voting self-determination”</i></p>	<p>The Spanish Constitution does not permit the right to self-determination, just like all other Constitutions in Western nations. In addition, not all Catalans are asking for this, only 47.7%, which means a Parliamentary majority, but not a majority of voters. As a matter of fact, Spain allows for significant levels of what scholars refer to as internal self-determination in language rights, culture, education, etc.</p>
<p><i>“The Spanish Constitution is hostile to Catalonia”</i></p>	<p>The Spanish Constitution defends equality and is fully democratic. It was approved by a referendum in which 68% of the Catalans took part and which obtained the backing of almost all of them (90.5%). In addition, two of the seven "fathers of the Constitution" in charge of drafting it, were Catalans: the socialist Jordi Solé Tura and the nationalist Miquel Roca Junyent.</p> <p>The referendum on the Constitution registered a notably higher participation to that of the 1979 and 2006 statutes on autonomy, in which less than 60% and 48.8% respectively took part.</p> <p>Indeed, Catalonia is one of the three autonomous regions, together with the Basque Region and Galicia, to which the Constitution grants a higher level of autonomy and competencies.</p>
<p><i>“After the independence we would continue in the EU”</i></p>	<p>The Lisbon Treaty is as clear as its interpretation by the present leaders of the EU. An independent Catalonia would be "third country", it would automatically be outside the European Union and, if it wished to form part of it, it would have to apply for its admission in the Union, an admission which has to be accepted unanimously by all the Member States.</p> <p>In addition, various European leaders have already spoken out on the matter, such as the president of the European Parliament, Antonio Tajani, who made it clear that "No one will ever recognize Catalonia as an independent country. The referendum was illegal ... The state of law should be restored".</p>
<p><i>“The UN recognises the right of peoples to self-determination”</i></p>	<p>The UN and International Law recognises the right to self-determination of people when these have been oppressed peoples or colonies, which is not this case. Catalonia forms part of Spain, it is recognised as one of its regions, it has its own institutions, it is a bilingual society and it forms part of a Rule of Law as is the Spanish one, which ranks among the 20 full democracies in the world.</p> <p>The United Nations Secretary General declared, in an interview with the newspaper El Mundo (30/10/2015) that Catalonia was not included in the type of territories to which the UN could guarantee the right of self-determination. Besides, the UN does not admit the right of self-determination in democratic states such as the Spanish one, notwithstanding the so-called internal self-determination in language rights, culture, education, etc.</p>

Fake	Fact
<p><i>“We Catalans do not have sufficient autonomy”</i></p>	<p>Catalonia is the autonomous region that has received the among the most competencies from the State since 1979. In all: a total of 189. It is one of the regions with most autonomy in Europe (Ministry of Territorial Policy and Public Function). Its parliament has legislative power on all matters that are its competence, among which are public sector-owned media, health, education, penal institutions and overseas trade delegations.</p>
<p><i>“If we were independent, we would have economic surplus”</i></p>	<p>Catalonia is the most indebted autonomous region in Spain. It owes more than 78 billion euros, mainly to the State. To finance itself, the Catalan Government has issued bonds which the rating agencies place at the level of "junk bonds". (Fitch, Moody's, S&P). The Spanish State is at present helping to overcome this situation through public funds, but without that aid, the situation could become far worse.</p>
<p><i>“We are a nation”</i></p>	<p>The Constitution recognises that it is a "nationality", the same as the Basque Region and Galicia, as it counts on cultural, linguistic, historic and political peculiarities. But in its ruling of 16 July 2010 the Constitutional Court established that the references to Catalonia as "nation" had no legal effect.</p>
<p><i>“Spain has been oppressing us since the war of 1714”</i></p>	<p>A large part of historians in Spain and in other countries agree that it was not a civil war but an international war or of dynasties. “This was a dynastic war, with international intervention” (José Álvarez Junco, El País, 16 /10/2017)</p>
<p><i>“The Catalan language is a differential fact”</i></p>	<p>Apart from Catalan, other official languages are spoken in Spain: Galician, Basque, Valencian, and Spanish (the latter being the most widespread and official language of the whole of the State). The Spanish Constitution recognises that "the richness of Spain's different linguistic modalities is a cultural heritage which will be object of special respect and protection" (article 3.3).</p>
<p><i>“We independents represent the majority”</i></p>	<p>The surveys vary from month to month: one of the most recent was conducted by the Autonomous University of Barcelona (at the end of 2018) and gave a 46.1 to the supporters of independence, a 46.2 to those who would prefer to continue being a part of Spain. Election results have shown that 45%-47% of voters are in favor of Independence (39% in recent general election)</p>

Fake	Fact
<p>“There is no freedom of expression in Spain”</p>	<p>Freedom of expression is a fundamental right included in Title I of the Constitution.</p> <p>This basically means that, as has occurred, in Spain one can, inter alia:</p> <ul style="list-style-type: none"> Defend independence of an autonomous region in any media, autonomous parliaments and political platforms. Organise pro-independence demonstrations. Discuss the model of State in Parliament. <p>Our country is, according to the recent "2018 Democracy Index" published by The Economist, one of the 20 "full democracies" on the planet. According to the recent report by Freedom House 2019, Spain ranks as 19th and obtains a very high scoring: 94 out of 100, the same as the United Kingdom and Germany and above the United States.</p> <p>Also, Spain belongs to international organisations and is subject to rules of international law on freedom of expression. It has a democratic Constitution and a system of fundamental rights and guarantees. The politicians who are in prison continue to make use of their freedom of expression from jail, where they hold interviews with the media.</p>
<p>“There is no real democracy in Spain”</p>	<p>Spain forms part of the same international institutions as any other European nation. The "2018 Democracy Index" of <i>The Economist</i>, places it as one of the 20 "full democracies" on the planet, whilst <i>Freedom House</i> 2019, equates it with Germany and the United Kingdom, and even above the United States.</p> <p>It cannot then be thought that Spain is not a democracy, because it is obvious that the people are sovereign, that there is independence among the powers of State, that elections are free and are fair, and the Constitution guarantees the fundamental rights and freedoms of citizens.</p>
<p>“Spain does not respect civil rights”</p>	<p>In its last report, the NGO <i>Human Rights Watch</i> does not consider that the events of 1 October in Catalonia have infringed the rights of citizens.</p> <p>Civil rights are guaranteed by the actual Constitution, which states in its first article that: “Spain is constituted in a social and democratic rule of law, which, as superior values of its legal code, supports freedom, justice, equality, and political pluralism”.</p>

Fake	Fact
<p>“Many politicians have had to go into exile”</p>	<p>Some of the persons involved in the so-called “procés” absconded and others stayed. But those who absconded did so because they knew they were going to be accused of serious crimes. In Spain, unlike other democracies, it is not possible to try in absentia a person who has absconded. The Constitution guarantees the right to defence, opens lines of appeal for any judicial decision and configures an independent Judiciary. In addition, for decades, Spain has adhered to the jurisdiction of the European Human Rights Court in Strasbourg, to which the prosecuted persons may appeal if the Supreme Court delivers a guilty verdict.</p>
<p>“There are no legal safeguards in Spain”</p>	<p>No international authority questions the separation of powers or lack of legal safeguards in Spain.</p> <p>In the so-called "procès" there has been no infringement or lack of legal safeguards. The indicted persons were transferred to Catalan prisons, so they could be near their families (they are now in Madrid because of the trial). They have been able to speak freely with whatever media they have wanted, even offering interviews from prison to national and international media. In addition, the trial of the "procès" is public and transparent and Spanish television (TVE) has the television signal that can be accessed by other news media. There are more than 600 accredited journalists.</p>
<p>“Spain is a medieval regime with institutions similar to the Inquisition”</p>	<p>Spain is one of the countries best rated in the Human Freedom Index prepared by the Cato Institute, the Fraser Institute and the Foundation for Freedom Friedrich Naumann. It has the maximum scoring in freedom of movement, freedom of association and freedom of press. The "2018 Democracy Index" of <i>The Economist</i>, places it as one of the 20 "full democracies" on the planet, whilst <i>Freedom House</i> 2019, equates it with Germany and the United Kingdom, and even above the United States. Its Constitution was approved by referendum in 1978 after a constituent process and consequently there is no direct inheritance from the pre-democratic era.</p>
<p>“The private prosecution in the trial is in the hands of an extreme right-wing party called Vox”</p>	<p>In Spain, both the institution of the jury and the possibility of individuals and legal entities appearing in court as private prosecution are ways in which citizens contribute to the administration of justice. Just like Vox, any other political party or group could have been parties to the suit. At the moment there is now an important debate in Spain about whether or not to limit private prosecutors.</p>

Fake	Fact
<p><i>"The independence movement is a peaceful movement"</i></p>	<p>As with all movements, there are sections and politicians favouring secession who stick to peaceful means. There have been sectors that have taken on a radical form and have been involved in violent actions. An example of this was the disorderly siege of the Department of Economy of the Generalitat de Catalunya in Barcelona on 20th September 2017, when a crowd obstructed the movement of the judicial commission and of the members of the State Security Forces and Corps, damaging police vehicles and resorting to insults and obscene language. These facts are pending assessment and consequently it will be the judges who will be in charge of assessing whether or not there was sedition or rebellion.</p> <p>The difference between sedition and rebellion lies in there being a public and violent uprising. The Public Prosecution and the examining judge believe there was violence because there were acts of intimidation to obtain the independence of Catalonia; the State Legal Service however understands there were public disorders and uprisings to prevent the law from being applied, but not violence. They each explain their criteria in a lengthy account of the facts submitted to the Court and it is this Court that has to assess it and decide accordingly.</p>
<p><i>"Catalans had the right to vote in the referendum on independence called by the Catalan Regional Government [or Generalitat], and the Spanish State acted in an anti-democratic manner by attempting to prevent it"</i></p>	<p>There is no right to participate in a voting process which has been declared illegal by the Constitutional Court—Spain's maximum interpreter and guarantor of fundamental rights.</p>
<p><i>"On 1 October 2017, the police used force in confronting peaceful citizens who only wanted to vote"</i></p>	<p>People occupying the buildings did not only practice passive resistance to the police. During 1 October, several police officers were attacked and injured by those participating in the occupations organized by some of the persons who are now prosecuted (among them, by the way, one of the three only people who needed hospitalization).</p>

Fake	Fact
<p data-bbox="111 975 344 1166">“In Spain there is no separation of powers and judges are not impartial”</p>	<p data-bbox="382 203 1360 348">No international body questions the separation of powers or the impartiality of judges in Spain. Spain is, moreover, according to the recent <i>Democracy Index 2018</i> compiled by <i>The Economist Intelligence Unit</i>, one of the world’s 20 “full democracies”.</p> <p data-bbox="382 360 1360 986">It is true that current laws on the election of the members of the highest internal governing body of the judiciary (the General Council of the Judiciary) gives a relevant role to political parties, which has received some criticism within the Council of Europe. This point refers, precisely, to one of the recommendations as yet not complied with by Spain in the GRECO framework. However, the Spanish Government has expressed its readiness to comply with all the recommendations given, which requires prior legal reform. A considerable number of the outstanding recommendations were complied with just over one month ago (Organic Law 4/2018, of 28 December). It must be noted, in any case, that the ranking awarded by GRECO to our country is similar to that of several of our EU partners. Its latest report on our country (December 2017) expressly states: <i>“GRECO wishes to underline, as it already did in the Fourth Evaluation Round Report, that there is no doubt as to the high quality of the judiciary and the prosecutorial service in Spain, as well as to the strong spirit of public service and dedication of individual judges and prosecutors.”</i></p> <p data-bbox="382 1038 1360 1228">Another example of the independence of the judiciary in Spain is the fact that the preceding Spanish government fell in June 2018 as a result of a no-confidence vote caused by the media uproar over the severe corruption sentences issued by the courts against former leaders of the then-governing party.</p> <p data-bbox="382 1280 1360 1425">More recently, in May 2019, the Supreme Court and the Constitutional Court -Spain’s two highest tribunals- upheld Mr. Mr. Carles Puigdemont’s right to stand as a candidate in the elections to the European Parliament (EP).</p> <p data-bbox="382 1477 1360 1622">The Spanish Courts considered that a citizen’s fundamental right to participate as a candidate in elections does not warrant restrictions, insofar as that person –even if indicted- has not yet been found guilty of alleged crimes by a Tribunal.</p> <p data-bbox="382 1674 1360 1943">The Courts’ rulings in that regard have not been welcomed among a sizeable number of Spanish citizens. Some of them actually find it difficult to understand why a person who -from his public office- tried to subvert Spain’s constitutional and legal order can be allowed to run for one of Spain’s allotted seats at the European Parliament. However, Spain’s two highest Courts have ensured that the rule of law prevails, even if in a paradoxical fashion.</p>

Fake	Fact
<p><i>“During the day on which the (illegal) referendum on self-determination took place, police action resulted in injuries to more than a thousand people”</i></p>	<p>Without going into the subject of how many people suffered contusions of some kind during that day, it must be highlighted that only three people were hospitalized with injuries directly resulting from police charges. 48 hours later, only one of these people was still in hospital.</p>
<p><i>“The Spanish police, sent by the central Government to repress Catalans who were voting on 1 October, acted with total impunity”</i></p>	<p>The police officers were not sent by the Government, but by the courts, in compliance with a court order. Today, different proceedings are still ongoing involving the use of force during that day. The courts will be in charge of determining the corresponding responsibilities. To date, nearly 40 police officers have been charged with alleged excessive use of force on 1 October 2017.</p>
<p><i>“The 1 October ‘referendum’ resulted in a democratic mandate in favour of Catalonia’s independence”</i></p>	<p>Turnout in the “referendum”, which was annulled by Spain’s Constitutional Court, was of 38%, according to data provided by its organizers (the Generalitat, or Catalan regional government). This was subsequently corrected upwards by five points, placing it at 43% (by the Generalitat, which provided no explanations), and the percentage of “Yes” votes was 90.18%.</p> <p>However, there is no reason to grant any credibility to these data, which are totally unverifiable, especially when the Catalan regional government—in the absence of an electoral board—made available, on the very day of the referendum, the possibility of an “open census”, so that anyone was able to vote repeatedly and at different locations. (Which was indeed the case, and can be verified from different sources, including audiovisual material).</p>
<p><i>“It is inadmissible in a democracy for a democratically elected official to be sent to prison”</i></p>	<p>The law is the same for everyone. In a democracy, no one is exempt from abiding by the law. Those who have public duties and powers are subject to the law and to the Constitution, just like any other citizen. The prosecuted politicians have not been accused (and this can be easily verified) for demonstrating or for making statements during their mandate, but for their deeds.</p>

Fake	Fact
<p><i>“The people who are in prison for the ‘referendum’ are there only because they put out ballot boxes for people to vote”</i></p>	<p>The people awaiting trial participated in the implementation of a plan that was aimed at achieving, <i>de facto</i> and with no regard for Spain’s laws, the creation of a State in the territory of what is now the Autonomous Community of Catalonia. This process entailed the public authorities’ disobedience of Spain’s Constitutional Court (and this was called for publicly by several of the accused), in addition to mobilization in the streets that went beyond the organization of demonstrations, to include resistance to the public authorities. Spain’s Criminal Code—and that of many other countries—defines preventing the action of public officials or agents of the authorities as offences.</p> <p>As regards the day of the 1 October “referendum”, the charges against those facing trial do not refer to the action of “putting out ballot boxes”, but of organizing the illegal occupation of the schools designated as voting centres in order to, once again, prevent police action. And, additionally, protecting evidence that was necessary for conducting an ongoing criminal investigation.</p>
<p><i>“The secessionist prisoners are political prisoners”</i></p>	<p>This is false. Obviously, there are no political prisoners in Spain. No Catalan politicians have been prosecuted for their ideas. Every day, pro-independence leaders—including the President of the Government of Catalonia—express themselves freely in the media, some even from jail.</p> <p>The accused are being prosecuted for crimes that are defined in Spain’s Criminal Code and they are being tried with all of the guarantees offered by a democratic State under the rule of law. No intergovernmental organization in the sphere of human rights, and no NGO active in this same sphere (such as Amnesty International or Human Rights Watch) have recognized these persons as political prisoners or prisoners of conscience, despite having criticized their lengthy provisional detention pending their trial.</p> <p>Moreover, provisional detention is a figure existing in practically all countries similar to ours, and in some cases, the maximum periods of provisional detention are longer than those set forth in Spain’s legislation. The adoption of such a measure is the exclusive responsibility of a judge, in the light of different elements, including flight risk. Regarding flight risk, it must also be underlined that, in general terms, Spain’s judicial system—which is highly protective and guarantee-based with regard to the rights of the prosecuted—does not set forth the possibility of prosecuting persons <i>in absentia</i>.</p>

Fake	Fact
<p><i>“It is inadmissible in a democracy for a democratically elected official to be sent to prison”</i></p>	<p>The law is the same for everyone. In a democracy, no one is exempt from abiding by the law. Those who have public duties and powers are subject to the law and to the Constitution, just like any other citizen. The prosecuted politicians have not been accused (and this can be easily verified) for demonstrating or for making statements during their mandate, but for their deeds.</p>
<p><i>“The unilateral declaration of independence (UDI) of Catalonia was symbolic and had no legal effects; therefore, it should not serve as grounds for criminal charges”</i></p>	<p>Even accepting that the UDI was not legal in nature (although it was political), the truth is that on 6 and 7 September 2017, the secessionist majority in the Catalan regional parliament approved—in violation of that parliament’s own internal rules—an “Act on Legal Transition” which—on paper—repealed, in Catalan territory, Spain’s Constitution and Catalonia’s Statute of Autonomy. This was no “symbolic act”, because it was published in Catalonia’s Official Journal.</p> <p>Moreover, in April, former Catalan President Puigdemont made several declarations to the media, reaffirming that the UDI was not symbolic, and that it was still—according to him—in force, awaiting implementation.</p>
<p><i>“It is unacceptable that the prosecuted politicians are being accused of a crime of rebellion, which is applicable to the military, not to civilians”</i></p>	<p>Each country has its own criminal law. Therefore, it is natural for there to be differences between each country’s legislations. In Spain’s Criminal Code, rebellion does not necessarily have to be committed by the military. If it is demonstrated that an attempt to repeal the Constitution or to declare the independence of part of the national territory by means of a public uprising constitutes an offence, should it be admissible for that action or that declaration to be carried out with no criminal penalty whatsoever?</p> <p>In any case, it is not true that in any other country the offence of rebellion is defined as being limited to the military or to paramilitary forces. In fact, the offences that in a country like Germany could be equivalent to rebellion as set forth in Spanish law—high treason against the Federation or against a Federated state—may be committed by civilians.</p>
<p><i>“The Supreme Court has not accepted international observers, which is proof that the trial has no guarantees”</i></p>	<p>No accreditations have been granted to international observers, because the trial is public, unlike most of the countries where this type of accreditations are granted. Any person wishing to “observe” the trial, in any capacity, will be able to freely access the courtroom, with the only limitation being the room’s capacity. Moreover, anyone wishing to follow the trial may do so via a streaming service. The degree of transparency is total.</p>

Fake	Fact
<p><i>“The former Speaker of the Catalan regional Parliament, Carme Forcadell, has been prosecuted only for having organized a debate in Parliament”</i></p>	<p>The parliamentary debate in question is only part of the story. Ms Forcadell is in prison not for having allowed “a debate”, but because, in a connected and inextricable manner, she actively participated in enacting laws which, on paper, repealed the Constitution in Catalonia, deprived Catalans of rights, and violated mandates of the Constitutional Court.</p> <p>During this entire process, Ms Forcadell—as well as several of the accused—repeatedly ignored each and every one of the opinions of the legal services of the Catalan Parliament itself, which insistently warned of the blatant illegality of the actions that were going to be taken.</p> <p>The prosecution, moreover, considers Carme Forcadell—as well as several of the people who will stand trial with her—a member of a plan that aimed to achieve, <i>de facto</i>, Catalonia’s independence, by declaring its independence in the Catalan Parliament and using the <i>Generalitat</i>, its resources and its civil servants—including the 17,000 armed regional police officers—as guarantors of the new State.</p>
<p><i>“The law is being violated by the holding in Madrid of a trial that should be conducted in the High Court of Justice of Catalonia, given that the deeds and actions to which the trial refers took place in this latter territory”</i></p>	<p>The High Court of Justice of Catalonia would be competent in the event that the deeds to be tried had taken place only in Catalonia. This is not the case, because it is obvious that the secession process that was taking place in that territory also had implications beyond Catalan territory, and even outside Spanish territory.</p>
<p><i>“The fact that a far-right political party (Vox) takes part in some of the trial’s proceedings exercising a private prosecution proves that Francoism is still present in Spanish institutions”</i></p>	<p>Under Spanish law, the private prosecution is a procedural figure whereby any citizen, whether or not offended or prejudiced by a crime, may accuse others in defence of the law. This figure is included in the Spanish constitution (art. 125)</p> <p>The private prosecution exercised at the trial by the political party Vox does not in itself constitute a special anomaly, since there are various precedents of political parties that have fulfilled this same role in a recent past. Among these are Spain’s two main parties: PSOE and PP. But also, for example, the CUP (a far-left pro-independence party from Catalonia).</p>

Fake	Fact
<p><i>“The Catalan language, an essential element of Catalonia’s identity, is at serious risk, and only secessionism can ensure its survival”</i></p>	<p>Catalonia has full powers regarding education. Since 1984, regional authorities have applied language immersion policies, making Catalan the vehicular language in schools and universities. Catalan is, moreover, co-official with Castilian in Catalonia.</p> <p>On 25 April 2019, the Constitutional Court handed down a ruling on the appeal against Catalonia’s Education Act, preserving the language immersion model in its entirety.</p>
<p><i>“The situation in Catalonia has nothing to do with the recent rise of the far-right (the party Vox) in Spain”</i></p>	<p>Actually, the facts point to the contrary, given that the events surrounding the (illegal) referendum on independence in autumn 2017 paved the way for Vox’s surge. The “Catalan question” -in connection with the defense of national unity- was the topic Vox exploited the most during the campaign prior to the elections of 28 April 2019, well ahead of issues such as immigration. In the said election, Vox obtained 10.26% of the popular vote, against just 0.20% in the preceding one (June 2016).</p>
<p><i>“Catalans had the right to vote in the referendum on independence called by the Catalan Regional Government [or “Generalitat”] and the Spanish State acted in an anti-democratic manner by attempting to prevent it.”</i></p>	<p>Fact: The so-called “referendum” of 1 October 2017 lacked the minimal democratic guarantees, as defined by institutions such as the Venice Commission. It was not democratic, either in its origin or in its voting process. There was no register of voters, nor a campaign for “no”, nor neutrality in the Catalan public sector-owned media. On the contrary, there were a great many irregularities and it was not observed by any recognised international institution (OSCE, Council of Europe, or the EU).</p> <p>Catalans have voted approximately 30 times since the restoration of democracy, including three referendums that were crucial to Catalonia’s political status in Spain: the referendum on the Spanish Constitution in 1978; the referendum on Catalonia’s Statute of Autonomy in 1979; and the referendum on a new Catalan Statute of Autonomy in 2006. This Statute is the one that is now in force in Catalonia, after being</p> <p>reviewed by the Constitutional Court in 2010 which only declared some of its articles unconstitutional. Without following the procedure foreseen for its reform, this Statute was also the one which the secessionist majority in Parliament ignored and repealed, as with the Spanish Constitution, through the approval of the Referendum Act and the Act on Legal Transition, on the 6th and 7th September of 2017.</p>

Fake	Fact
<p><i>“On 1 October 2017, police action resulted in injuries to more than a thousand people.”</i></p>	<p>This number was given by the Generalitat and by members of the secessionist movement. The truth is that only three people were taken to hospital with injuries directly resulting from police intervention. A great many fake photographs were disseminated purporting to be of violence that had occurred that day; in fact, they had been taken during other events and on other dates, as reported in international media such as <i>The Guardian</i> and <i>Le Monde</i>.</p> <p>As in every democratic country, police excesses are against the law. The courts will be in charge of determining the corresponding responsibilities. To date, 33 police officers have been accused of alleged excessive use of force on 1 October 2017.</p>
<p><i>“The 1 October ‘referendum’ resulted in a democratic mandate in favour of Catalonia’s independence.”</i></p>	<p>The referendum was not democratic. It did not have the minimal democratic guarantees, as defined by institutions such as the Venice Commission, in its origin nor in the voting process itself. There was no register of voters, nor a campaign for “no”, nor neutrality in the Catalan public media. There were a great many irregularities and it was not observed by any recognised international institution (OSCE, Council of Europe, or the EU). It was annulled by Spain’s Constitutional Court.</p> <p>According to a recent survey by GESOP (Study and Opinion Bureau of Catalonia), only 28.8% of Catalans consider that there is a democratic mandate to proclaim secession, compared with 68.4% who think the opposite.</p>
<p><i>“The people who are in prison for the ‘referendum’ are there only because they put out ballot boxes for people to vote.”</i></p>	<p>They have not been accused of putting out ballot boxes, but of having committed alleged offences defined in Spain’s Criminal Code. Thousands of people are still defending their political ideas, some of them even from prison. They have been accused of acts which entail criminal liability. The secessionist authorities disobeyed Spain’s Constitutional Court (in fact, several of the accused made a public call to do so).</p> <p>As regards the day of the 1 October “referendum”, the accusations against those facing trial do not refer to the action of “putting out ballot boxes”, but of organizing the illegal occupation of the schools designated as voting centres in order to, once again, prevent police action, and other related deeds.</p>

Fake	Fact
<p><i>“The secessionist prisoners are political prisoners.”</i></p>	<p>What is being tried are not their ideas, but acts carried out under their institutional responsibility which are object of the trial. The persons prosecuted have been accused of allegedly committing offences defined in Spain’s Criminal Code, and they are being tried with all of the guarantees that are inherent to a democratic State under the Rule of Law.</p> <p>No intergovernmental institution in the sphere of human rights, and no NGO active in this same sphere (for example Amnesty International, or Human Rights Watch), has recognised these persons as political prisoners or prisoners of conscience, although they have criticized their lengthy provisional detention pending the imminent trial.</p>
<p><i>“It is inadmissible in a democracy for a democratically elected official to be sent to prison.”</i></p>	<p>Equality of all people before the law is a tenet of the Rule of Law. Politicians cannot expect the law not to apply to them. In a democracy, no one is exempt from abiding by the law. Those who have public duties and powers are subject to the law and to the Constitution, just like any other citizen. Other political authorities have also been imprisoned in Spain.</p>
<p><i>“The unilateral declaration of independence of Catalonia was symbolic and had no legal effect; therefore, it should not serve as grounds for criminal charges.”</i></p>	<p>On 6 and 7 September 2017, the secessionist majority in the Catalan Parliament approved—in violation of the Parliament’s own internal rules and of the opposition’s democratic rights—a Referendum Act and an Act on Legal Transition, which repealed, in Catalan territory, Spain’s Constitution and Catalonia’s Statute of Autonomy. In spite of this, the unilateral declaration of independence was approved on the 27 October 2017. That declaration was appealed and cancelled by the Constitutional Court, which considered it radically void. It was not only a “symbolic act”.</p>
<p><i>“It is unacceptable that the prosecuted politicians are being accused of a crime of rebellion, which is applicable to the military, not to civilians.”</i></p>	<p>This question must be settled by judges. In Spain’s Criminal Code, rebellion does not necessarily have to be committed by the military. The crimes that in Germany could be regarded as equivalent to rebellion as set forth in Spanish law—high treason against the Federation or against a Federal state—may be committed by civilians.</p>

Fake	Fact
<p><i>“The former Speaker of the Catalan regional Parliament, Carme Forcadell, has been prosecuted only for having organised a debate in Parliament.”</i></p>	<p>Ms. Forcadell is in prison, accused of participating in actions against the Rule of Law, such as enacting laws repealing the Spanish Constitution and Statute of Autonomy in Catalonia, without respecting any of the guarantees or rights of Catalans who dissented with her position, and of disobeying successive rulings from the Constitutional Court.</p> <p>During the entire process, Ms. Forcadell—as well as several of the accused—repeatedly ignored each and every one of the opinions of the legal services of the Catalan Parliament, which insistently warned of the illegality of the actions that were going to be taken, allowing different proposals in all this process which the Constitutional Court prohibited.</p>
<p><i>“The law is being violated by the holding in Madrid of a trial that should be conducted in the High Court of Justice of Catalonia, given that the deeds and actions to which the trial refers took place in this latter territory.”</i></p>	<p>The High Court of Justice of Catalonia would be competent in the event that the deeds that are being tried had taken place only in Catalonia. This is not the case, because it is obvious that the secession process that was taking place in that territory also had implications outside Catalan territory, and even outside Spanish territory.</p>
<p><i>“The Supreme Court is not going to accept international observers, which is proof of the absence of guarantees.”</i></p>	<p>The trial is being public and transparent, and TVE [Spain’s public broadcasting station] receives the television feed, which is also available to other media. Any person wanting to “observe” the trial, in any capacity, will be able to freely access the courtroom, with the only limitation being the room’s capacity. In any case, the General Council of the Judiciary has made a large additional room available for the sessions to be followed via streaming service.</p>

8. State of Autonomies: core ideas and key messages

Spain is a Rule of Law with a full democracy.

- We have a social and democratic State based on the Spanish Constitution, which was approved by referendum in 1978.
- Since 1977, Spain has belonged to the Council of Europe and since then has adhered the 1950 European Convention on Human Rights, and as such is subject to the European Human Rights Court in Strasbourg.
- The Spanish Constitution guarantees a division of powers, as occurs in the soundest and most consolidated democracies throughout Europe. According to the Magna Carta, Justice comes from the people and is administered in the name of the King by judges and magistrates forming the judiciary who are independent, immovable, responsible and, especially, are subject only to the Rule of Law.
- The Spanish Constitution, one of the most progressive in the world, foresees mechanisms for its integral reform, as compared with the German or French constitutions.

Catalonia played a decisive role in establishing in the democratic Constitution of Spain. More than 90% of Catalan voters said "yes" to the 1978 Constitution.

- The territory where the Constitution obtained the most popular backing was in Catalonia, more than any other Spanish region.
- In the referendum, the four Catalan provinces surpassed the national average for yes votes (91% against 88%).
- Two of the seven "fathers of the Constitution" in charge of drafting the text, were Catalans: the socialist Jordi Solé Tura and the nationalist Miquel Roca Junyent.

Catalonia is one of the European regions with the highest levels of devolved self-government

- The autonomous model of the State which is foreseen in the Constitution and regulated in Catalonia's charter for autonomy, permits wide powers to be transferred to the territories for their self-government and management of their interests. Their organisation is different compared with the federal model in Germany, the regional one in Italy or the unitary one in France.
- Catalonia has an Autonomous Government, which manages all the powers and competencies of the autonomous region. Among the more than 60 devolved powers are education, police (comprehensive), health and social services and the management of prison institutions.
- The Catalan parliament enjoys legislative powers in all matters which are of its competence, as well as legislative initiatives at a national level. In other words, it has the ability to propose laws, even the reform of the Constitution at the Congress of Deputies, something which however it has not done during the recent independence process.

9. The price Catalonia is paying for the 'procés'

The independence process has had tangible economic costs for Catalonia, according to the [data published](#) on 2 November 2018 by [the Independent Authority for Fiscal Responsibility \(AIReF\)](#), which showed that the Catalan economy was growing at a lower rate than the average for Spain. In addition, the independence debate has caused profound divisions in society, as highlighted by historian Santos Juliá in his article [Un sol poble; una sociedad dividida](#) (A single people; a divided society) published in the journal *Revista de Libros* in June 2018. Every day, attacks on anti-independence politicians are reported in the [media and social networks](#). Lastly, freedom of expression and the freedom of the press have also been harmed, according to dossiers compiled by Reporters Without Borders (2017 [#RespectPressCAT](#), 2018 [World Press Freedom Index](#), 2018 [Annual Report](#)). The last few years have been especially negative for the press in Catalonia, because "there are continual attacks on freedom of information, especially against reporters working in the street" or against "those who are active in social networks".



A fearful economy

In 2012, the [Campalans Foundation](#), linked to the Socialist Party of Catalonia (PSC), began a series of analytical studies on Catalonia, cataloguing social differences within the region, and has compiled a large body of information on the Catalan independence process (known as the "*procés*" in Catalan). The most recent such publication, the *2018 Social Report*, devotes a whole chapter to this issue, entitled "The economic balance of the process". The author of this chapter, David Fuentes, an economist and former chief of staff of the Head of the Department of Economy and Finance in the Catalan Government (the Generalitat) between 2007 and 2010, concludes that the *procés* has reduced economic growth, increased poverty and provoked the economic emigration of young people from Catalonia, remarking, "Without the political uncertainty brought about by the process during the autumn of 2017, the growth of Catalonia and of the rest of Spain would have been stronger throughout the year".

The report takes into account the impact of the *procés* at all levels of the Catalan economy, including the consequences of the departure of companies and banks from the region. "It is quite clear that their links with Catalonia will no longer be the same. The loss of talent and the absence of a robust financial and insurance structure with decision-making capacity in Catalonia will affect the solidity of the Catalan economic base in the coming years".

According to the Spanish Association of Commercial Registrars, more than 5,350 companies and banks left Catalonia during the twelve months from October 2017, the most conflictive period to date of the *procés*. Small, medium-sized and large companies (including Caixabank, Pastas Gallo and Bruixa d'Or) have taken this decision due to the "risk arising from the political tension", as Fuentes says, but also "due to related reputational issues, such as commercial boycotts, which have affected both sides".

The impact of the *procés* on Catalonia's reputation has also affected its credit rating. [The leading agencies \(Moody's, Fitch, and S&P\) equate Catalan debt with "junk bonds"](#) in their respective 2018 reports, a classification that directly affects the financing of one of the most prosperous regions in Spain.

As shown by the [data published](#) on 2 November 2018 by the [Independent Authority for Fiscal Responsibility \(AIReF\)](#), the Catalan economy presented slower growth than the average for Spain as a whole, according to the GDP calculated for each region for the third quarter of 2018, amounting to a year-on-year average of 2.5%. This forecast was confirmed by BBVA Research, which published a report in October 2018 predicting that the Catalan economy would grow by 2.5% in 2018 and by 2.3% in 2019. However, the Spanish economy, overall, was expected to grow by 2.6% and 2.4% during the same years. Similarly, the November 2018 report by the Funcas study centre predicted that the Catalan economy would grow more slowly than that of Spain as a whole in 2019.



A society in conflict

But the consequences of the independence process have not only been economic; Catalan society is also profoundly divided. As observed in Santos Juliá's article [Un sol poble, una sociedad dividida](#) (*Revista de Libros*, 13 June 2018), "All that the process has achieved is to split into two factions, not just the Catalan people—a concept—but also the society of Catalonia".

Before the illegal referendum of 1 October 2017, singer-songwriter Joan Manuel Serrat described this act as "a situation causing major social division which, in my opinion, will take a very long time to repair". After 1 October, Íñigo Urkullu, the Regional President of the Basque Country, expressed his concern in these terms, during a visit to Argentina: "What is happening today in Catalonia is not surprising, but deeply regrettable, particularly the incidents that are aggravating the risk of a social divide".

For the independence-favouring media, there is no such social divide but rather “social tension” (in the Catalan newspaper *Ara*, for example, see “Social Divide?” 20 June 2018). Other, more moderate, media outlets have tried to reflect the debate by presenting the two positions held, as in the article “Is there a social divide or not?”, published by *La Vanguardia* on 11 December 2017.

Many others have attested to the presence of social division in Catalonia. “These days, I’ve been having problems with my sports mates, and with my family...”, someone told the online journal [El Confidencial](#). “In my job—I’m in sales—we’ve got clients from outside Catalonia who say they no longer want to do business with us here.”

Television channels and newspapers began to publish these kinds of stories, about relations breaking down, due entirely to the *procés*. For example, the Spanish national TV channel Antena3 broadcast a [report](#) in September 2017 about estranged or separated families and friends, while Euronews put out a [report](#) entitled “Families divided over Catalan independence” (6 October 2017). A [BBC programme](#), in June 2018, also announced that its correspondent, Niall O’Gallagher, was returning to Catalonia to talk about “the Catalan people divided over their future”.



Harassment of politicians

This polarisation has also impacted strongly on the political class; some have suffered harassment, insults, persecution and threats. Prominent leaders such as Albert Rivera (Citizens Party, or Cs), Inés Arrimadas (Cs) and Xavier García Albiol (People’s Party, or PP) have presented criminal complaints after receiving death threats. An article in the newspaper [El Mundo](#), in April 2018, highlighted some of these threats: “They should kill him and his family, ETA come back,” was a message posted on Twitter about the leader of the PP in Catalonia. The same article reported that a few days after the illegal referendum on 1 October 2017, graffiti appeared in the Fontajau area of Gerona, threatening to kill Arrimadas and Rivera.

It also reported an attack on the headquarters of the constitutionalist, or pro-unity, parties, as well as threats and harassment against dozens of party members. The new headquarters of the Catalan Socialist Party was sprayed with messages such as “Get out of Catalonia”, “Fuck Spain” and “Spanish faggots”, while individual representatives were called “fascists”, “torturers” or “the scum of this country.”

On several occasions, the Catalan Parliament has been surrounded by violent crowds, with protesters almost forcing the doors open, as [reported by El Mundo](#) and other publications. The last such occasion was 1 October 2018, on the first anniversary of the illegal referendum.



Hard times for freedom of the press

Journalists, too, have become a target for the radicals, as was the case on 22 February this year when two female TV reporters were harassed and prevented from doing their job ([reported by the online journal *elindependiente.com*, on 22 February 2019, under the headline “The radicals for Catalan independence take it out on journalists”](#)).

[Reporters Without Borders \(RSF\)](#), the non-profit organisation of journalists from all over the world, publishes an annual report on the state of freedom of expression, entitled the World Press Freedom Index. The [2018 report](#) states that Catalonia “continues to be hostile terrain for radio and TV reporters”, especially those working in the street.

In the 2017 report, RSF observed that journalists were collateral victims of the conflict between Spain’s central government and the Catalan government, created by the illegal referendum of 1 October. The report also stated that many journalists who did not sympathise with the independence movement had become victims of a social media lynching, sometimes with press officers of the Catalan government as enablers.

Since then, the situation has not changed greatly. According to the 2018 Report “extreme political polarisation has contaminated the media and their audiences to the point that journalists have become public hate figures.”

RSF also published a specific report, [#RespectPressCAT](#) calling for greater respect for press freedom in Catalonia, noting that “local journalists and foreign correspondents denounce cyberbullying campaigns in social networks and propaganda pressure from the Catalan government”.

“Public broadcasters and subsidised private outlets are waging an intense campaign not only in favour of secession but also against those who oppose it and who defend the rule of law” warns the former MP (for the *Convergència*, nationalist, party) and jurist Alfons López Tena, in a forthcoming book entitled *La democracia constitucional en el siglo XXI* [Constitutional Democracy in the 21st Century](Editorial Almuzara).

“Slanders against public officials, and biased and distorted – when not actually demonised – presentations of constitutionalist arguments are broadcast by publicly-funded media, under the Generalitat seal of approval” says López Tena, famous for coining the pro-independentist slogan “Spain is robbing us”. He adds, “We cannot fathom any greater disloyalty towards the citizens of Catalonia, nor any greater disrespect for the framework of freedoms in a democratic society.”

During many years of government, says López Tena, radical nationalism in Catalonia has been allowed to “centralise power, monopolise the media, and create a patronage network...”.

As an example of this, to date no one proposed by the most voted party in Catalonia, which is Cs, or by PSC, or by PP (which together constitute almost half of the Catalan Parliament) has been elected as a member of the [Catalan Audiovisual Corporation \(CCMA\)](#), a public organisation which manages public radio and television in Catalonia.

The October 2018 edition of the [Political Opinion Barometer published by the Centre for Opinion Studies \(CEO\)](#), an organisation under the aegis of the Generalitat, highlighted the extent to which the media consumption of those favouring independence has been polarised. A vast majority (80% on average) of voters for CUP, ERC and JxCat (the independentist parties) only watch TV3 (the public TV channel that broadcasts exclusively in Catalan), while the voters of the constitutionalist parties obtain information from a variety of TV channels, including those leaning most strongly towards Catalan nationalism. Thus, 10% of PP voters in Catalonia watch TV3, as do 27% of the voters of En Comú Podem (a left-wing coalition), while other Spanish-language channels, such as La Sexta, TVE, T5 and Antena 3, attract audiences ranging from 8% to 30%.

10. Spain in international rankings

A series of international indices are set out below in which Spain obtains high marks either for the quality of its democracy, its transparency or for the legal and institutional guarantees it offers for foreign investors. These rankings are of recognised international prestige, such as that of The Economist Intelligence Unit or Doing Business 2018 of the World Bank or that of AT Kearney Foreign Direct Investment Confidence. In some of these, Spain appears in these scenarios better placed than countries like the United States, the United Kingdom, France or Germany.

DEMOCRATIC QUALITY INDEX



The Economist Intelligence Unit's Democracy Index 2018

The report includes Spain among the first 20 countries at world level and among the 14 countries in Western Europe that enjoy a full democracy, particularly obtaining good marks for its civil liberties, electoral process and pluralism. Among the 21 countries in Western Europe, France, Italy and Belgium were considered defective democracies. The index offers an independent vision of the state of democracies of 165 countries and two territories, based on five categories: electoral process and pluralism, civil liberties, the functioning of the government, political participation and political culture.

http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=Democracy_Index_2018.pdf&mode=wp&campaignid=Democracy2018



Freedom House "Freedom in the World" ranking 2019

In its recent index on freedom in the world, Spain obtains a very high scoring with 94 out of 100, equal to the United Kingdom and Germany and above the 86 of the United States. Among the 195 countries assessed by Freedom House, based on the level of political rights and civil liberties, Spain ranks in position 19. Founded in 1941, Freedom House is an independent NGO dedicated to the proliferation of freedom and democracy in the world.

<https://freedomhouse.org/report/freedom-world-2018-table-country-scores>



Justice Scoreboards of the European Commission

The report prepared shows advances in Spain based on efficiency, quality and independence in the period 2016-2018. Among the breakdown of data, in terms of efficiency, Spain is close to the average as regards the time needed to resolve cases, in addition to the independences of judges, according to the perceptions of the European Network of Councils of the Judiciary. The report has been prepared by the Commission of Justice, Consumers and Equality and is a tool of the EU and its member states to improve the effectiveness of their judicial systems.

https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf



Rule of Law Index

The Rule of Law Index of the World Justice Project is the most complete assessment of the Rule of Law in the world which takes eight factors into account for its assessment: limits on government power, absence of corruption, open governance, fundamental rights, order and security, regulatory compliance, civil justice and penal justice. Spain ranks 21st from a total of 126 countries in the 2018 Rule of Law Index, published at the beginning of 2019. It has a score of 0.71 out of 1 with regard to adherence to the Rule of Law, having climbed six places with regard to the previous index. The scoring on the category of penal justice is also noteworthy: in a score from 0 to 1, Spain obtains 0.66 points in penal justice, which ranks it as number 20 on global scale and number 13 among the most developed countries.

https://worldjusticeproject.org/sites/default/files/documents/WJP_RuleofLawIndex_2019_Website_reduced.pdf

TRANSPARENCY INDICES



Transparency International

The leading index in questions of transparency shows that Spain occupied position 42 in its most recent ranking of corruption perceptions of 168 countries. The index assesses the perceptions regarding corruption in accordance with the valuation of experts and representatives of the business sector.

https://www.transparency.org/news/feature/corruption_perceptions_index_2016?gclid=EAlaIQobChMI2OCAn8qO4AIVghbTCh0hwwLLEAAYA_SABEgKqZfD_BwE



The Global Forum of the OECD on Transparency and Exchange of Information for Tax Purposes

The last study, dated October 2018, placed Spain among the 11 countries that fully complied with the exchange of information standard out of more than 100 countries. <http://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/>



Reporters Without Borders (RSF)

RSF has included Spain in position number 31 in its World Index of Freedom of Press 2018 among 180 countries, above France, the United Kingdom and the United States. The criteria assessed in the questionnaire are pluralism, independence of the news media, media environment and self-censorship, legislative framework, transparency and quality of the infrastructure which supports the production of news and information. RSF is an independent NGO with consultative status with the UNO.

<https://rsf.org/en/ranking>

FINANCIAL AND ECONOMIC SECURITY INDICES



The World Bank's Doing Business 2018 Report

The index ranks Spain as number 28 among 190 countries, above France (31), Switzerland (33) and Japan (34). The breakdown of the report ranks Spain in first place in efficiency in international trade formalities and in position 24 in the protection of interests of minority shareholders. This is the 15th report in a series of annual reports that assess the regulatory rules and government policies that affect corporate activity.

<http://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2018-Full-Report.pdf>



The 2018 Competitiveness Report of the World Economic Forum (WEF)

The 2018 Competitiveness Report of the World Economic Forum (WEF) highlights the strength of Spain's institutions, where it ranks as 26 among 135 countries. The business perception index of judicial independence of that report shows that Spain has made progressive progress in the period 2010-2017 and occupies a place among the average of European countries. The report includes 140 countries and assesses the government policies and institutions that affect competitiveness.

<http://www3.weforum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018.pdf>

ATKearney

2019 A.T. Kearney Foreign Direct Investment (FDI) Confidence Index

Spain ranks as number 11 above countries like Netherlands, Switzerland or Denmark. The report remarks that "Spain's national competitiveness has improved in recent years, and the financial system is showing growing signs of recovery. More broadly, an improving economic climate is likely contributing to greater investor confidence"

<https://www.atkearney.com/foreign-direct-investment-confidence-index>

Forbes

Forbes Best Countries for Business 2018

Spain ranks as number 18 above countries like Japan, Belgium or France, of a total of 161 countries assessed based on the strength of their economies and the effectiveness of their government policies.

<https://www.forbes.com/best-countries-for-business/list/>



Global Entrepreneurship Monitor

Spain heads entrepreneurship parity in Europe with 9 female entrepreneurs for every 10 male entrepreneurs. It is one of the most favourable countries for the entrepreneur, above states such as Germany and the United Kingdom. Also, entrepreneurship activity continues to expand, rising from 5.2% of activity in 2016 to the present 6.4%.

<http://www.gem-spain.com/wp-content/uploads/2018/04/Informe-GEM-2017-18.pdf>



QUESTIONS & ANSWERS



11. Q&A

ABOUT THE CATALAN INDEPENDENCE PROCESS

1. If the Catalans want to vote for their independence, why not let them?

The Spanish Constitution guarantees the unity of Spain and it's the Spanish people from whom emanate all the powers of State, where national sovereignty resides. When only a part of the nation's population decides on something that belongs to everyone, this be equivalent to depriving all the other Spaniards their rights. Surveys have been developed over the years but today, the majority of Catalans (53.7%) consider the best option is a reform of the autonomous region, or not hold a referendum, compared with a 42.4% who are in favour of the referendum, according to a survey carried out in November 2018 by the company Gesop. Less than half the population (47.5%) voted for independence options at the last elections. A referendum would deepen the divisions within society. Today, the majority, both in Spain (52.3%) and specifically in Catalonia (78.5%), want a solution through dialogue, according to a survey by La Vanguardia in February 2019.

The Spanish Constitution, like all others in Western democracies, does not contemplate the right to self-determination. In addition, not all Catalans are asking for this, only 47.5%, which means a majority in the regional Parliament, but not a majority of the population. At all events, the legitimate expectation of an eventual majority of the Catalan people, regarding this matter or any other, can only be processed, in constitutional terms, from the most scrupulous respect of the Law, which is what enshrines all rights and obligations enjoyed by Spaniards.

The Spanish Constitution admits the possibility of reforming basic principles of the State, but through reform procedures foreseen in its Constitution. Thus, Spanish democracy is not a "militant democracy" which prohibits certain demonstrations as occurs, for example, in the German Constitution.

2. Why doesn't the Spanish Government recognise the right to self-determination, as the Catalan independence movement is asking for?

The independence political parties base their demand on the fact that Catalonia has the right to self-determination recognised by the UN and that this gives them the right to a referendum. For this, the Referendum Act which they approved on the 6th September 2017 at the Parliament of Catalonia starts by saying:

"The covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 19 December 1966, ratified and in force in the Kingdom of Spain since 1977, recognise the right of peoples to self-determination as the first of human rights".

However, the Consell Assessor per a la Transició Nacional, created in 2013 by the same pro-independence Government, in a report titled "Internationalisation of the consultation and process of self-determination of Catalonia", says that those covenants are only applicable to colonies:

"Article 1 of the two International Covenants, that of economic, social and cultural rights and that of civil and political rights, of 1966, affirmed the right of all peoples to "their free determination", so that "by virtue of that right, they freely determine their political status". A new Declaration by the United Nations on Principles of International Law Concerning Friendly Relations and Co-operation Among States of 1970 (Resolution 2625) specified that the right to self-determination recognised by the United Nations referred to colonial situations, namely, to those "States which are [not] ruled by a government representing all peoples belonging to the territory without distinctions of race, religion or colour". Consequently, the United Nations does not admit the right to self-determination in democratic States like Spain.

So therefore, the experts of the actual Consell Assessor per a la Transició Nacional deny the alleged right to self-determination for the case of Catalonia contained in the Referendum Act.

3. Didn't the United Kingdom recognise the right to self-determination when organising the Scottish referendum?

In contrast to the Referendum Act approved by the Parliament of Catalonia, neither the agreement signed by David Cameron and Alex Salmond, nor the Referendum Act approved by the Scottish Parliament contains any reference to the right to self-determination. In an interview in Barcelona with the broadcasting station RAC1, Alex Salmond explained that Cameron granted the referendum because he was told that a yes to independence would not reach a 30%. This was in fact what the surveys indicated in 2012.

In a similar way, as the Financial Times has reported, at the G20 summit in Brisbane, Prime Minister Cameron defended before Barack Obama, Angela Merkel and other leaders that the vote in favour of Brexit would not reach a 30%. So therefore, Cameron did not grant the Scottish referendum in recognition of the right to self-determination, but after making a prediction of the most probable result.

4. And Canada? Has it recognised the self-determination of Quebec?

Coinciding with two absolute majorities at the Quebec Parliament, the Parti Québécois organised two referendums to change its relation with Canada. Since these were unilateral, neither of the two were considered binding for the Quebec Government. Six days before the first referendum was held in 1980, Pierre Trudeau, who was Prime Minister at the time, declared in a public act that neither a 100% of yes votes would give Quebec the right to start a negotiation on independence.

On the second referendum, in 1995, Jean Chrétien, who was Prime Minister at the time, relates in his memoirs that "I never explained - and I will never explain - what I would have done if yes had won."

Eddie Goldenberg, who was his adviser and chief of staff, has written in a book that "long before the referendum", Chrétien "had decided he would never recognise the legitimacy of a yes victory".

5. But weren't the referendums in Quebec held with a Clarity Act?

Jean Chrétien decided to draw up the Clarity Act after the second referendum to end with the inherent ambiguity of the unilateral referendums. That Act was however rejected by the Parti Québécois. On TV3, Jean-François Lisée, historic leader of the independence party, said that "Canada has failed in its work to find a solution to the Quebec question" because it considers that the Clarity Act is a line that makes independence "impossible" and that his model is the Cameron way. On the occasion of the Scottish referendum, Lisée wrote an article in *The Guardian* that he titled summarising its contents: "Well done, Britain, for a fair referendum. It's a shame Canada didn't manage it" (*The Guardian*, 9 September 2014). In addition, the Clarity Act, taking up the opinion of the Supreme Court of Canada, affirms that nothing in Canadian or international law legitimises a unilateral secession of Quebec.

6. Why do the Catalan and Quebec independence movements put David Cameron as their model?

Oriol Junqueras very often set Cameron up as an example: "We have a very moderate and conservative position, so much so that it coincides with that of the most conservative leader of Europe, who is David Cameron, who said one could vote. Do you consider David Cameron conservative? Well, then our posture is conservative". (At the *Círculo de Economía de Sitges*, covered by *El País*, 30 May 2015).

Andrew Rawnsley, chief political commentator in *The Observer*, has explained the United Kingdom's exceptional nature which gave it the flexibility to be able to covenant the Scottish referendum:

"You can argue that an ad-hoc constitution has not served Britain entirely badly. (...) This seemed useful enough - until this collided with something as colossal as Brexit.

We are partly paying the price for making such a massive decision by simple plebiscite, without having properly settled rules about referendums and how they can be reconciled with representative democracy. It is very hard work to amend the constitution of the United States and a change can only be made if there is wide and deep consensus. Britain is heading out of the EU, the most consequential act in decades, on the basis of one ballot held nearly three years ago in which just one vote could have decided the outcome. (...)

"People I respect think that Britain will need to rethink its casual attitude to the rules of its democracy and embrace a properly codified constitution." ("Out of the Brexit nightmare must emerge a more robust democracy ", The Guardian-The Observer, 13 January 2019).

Cameron could make use of the flexibility of a non-written constitution. In almost all other countries there is a written constitution which stipulates the indivisibility of its territory.

7. Are there other precedents beyond the always cited Scotland and Quebec?

The Constitutional courts of Italy, Germany and the United States have in recent years prohibited referendums on the independence of part of their territories. At Veneto, having obtained a 60% of votes at the elections, the Northern League passed a law in 2014 at the regional parliament to organise a referendum on independence.

The Government of Matteo Renzi declared that "the unity of the nation is inalienable" and he appealed it. In 2015, the Italian Constitutional Court prohibited the referendum for being unconstitutional: "The unity of the Republic is one of the very core elements of the constitutional order that even the power of constitutional review should be excluded" (La Vanguardia, 6 January 2017).

Indeed, in Italy a referendum on independence is not possible, not even with a constitutional reform.

In 2016, the German Constitutional Court declared the petition for a referendum made by a small separatist political party of Bavaria to be unconstitutional, arguing: "There is no place in the Fundamental Law (the Constitution) for the Länders' aspirations of independence."

In 2006, a citizen asked to organise a consultation on the independence of Alaska. Finally, the Supreme Court of Alaska established: "The secession is clearly unconstitutional and consequently an object improper of a consultation initiative".

In 2012, 100,000 people signed an on-line petition to President Obama requesting the independence of Texas. On the 11 January 2013, the White House stated in its reply: "The United States Constitution does not provide mechanisms to leave the Union".

8. Even though perhaps without recognising the right to a self-determination, why doesn't the Government of Spain organise a referendum on the independence of Catalonia like the one covenanted by David Cameron in Scotland?

For the following 5 reasons:

- The Government understands that the independence of Catalonia would have negative consequences for all Spanish citizens whose interests it works to defend, and it would imply a severe limitation on opportunities for them all.
- The Government wants to avoid the economic loss that the inevitable exit of Catalonia from the European Union would imply. The Catalan independence leaders argue, as the supporters of Brexit did, that the European Union would be pragmatic due to the importance of the Catalan economy and that, in particular, the economic interest of the German entrepreneurship would ensure maintenance of the status quo. But just as the European Union has shown its determination to maintain the indivisibility of the four freedoms (persons, goods, services and capital) its interest lies in not permitting the secession of rich regions which, like the Brexit supporters, have prominently used the fiscal benefits of secession in their line of arguments.
- The Government understands that a referendum on independence would leave Catalonia divided into two for many years. At the 2015 elections to the Parliament of Catalonia, the independence parties obtained 47.8% of the votes, and at the 2017 elections, 47.5%. The independence process has already caused a big social division as shown by the schisms in CiU and PSC, the two political parties that have been running the Catalan Government since 1980.
- The Government believes that the secession of Catalonia is a step in the opposite direction to the spirit of European integration and to the plan for a greater integration of the European Union which it advocates.
- And just as in the vast majority of countries in the world, the Government does not have the power to organise it without a constitutional reform.

9. Could the same situation as in Catalonia arise in other countries?

It is possible that the same situation as in Catalonia could be raised in other countries. In fact, the Northern League in Italy raised this issue, and even organised a non-binding consultative referendum on the autonomy of the region of Veneto on the 22 October 2017, without this having any effect on this region's political status.

A similar case happened in Germany when a small separatist party from Bavaria requested independence, but this was rejected by the German Constitutional Court.

The case of the independence of Alaska was similar, rejected by the Supreme Court of that state because it was "clearly unconstitutional".

10. Is it an offence to raise the question of independence of a community or region or nation without status as a State?

It is no offence to raise the question of the independence of a community or region without full State status in Spain, where the independence movement, within the democratic legal framework, is a legitimate political option.

But it is an offence to disobey the Constitutional Court, to pass laws to repeal the Constitution and the Statute of Autonomy, to hold an illegal referendum and afterwards to unilaterally proclaim independence.

So aware of this were certain secessionist leaders that they absconded from Spain after those events of 27 October 2017.

11. Isn't it true that acts of police violence were registered on the 1 October 2017, when the referendum was held?

The referendum held on the 1 October 2017 in Catalonia was illegal and was suspended by the Constitutional Court. The police acted at the requirement of the judges to proceed to close the premises and confiscate electoral material. Complying with that court order, the Police found themselves at some centres with groups of individuals that opposed their action. Only in such cases did the police have to intervene and, in some cases, there were even assaults on the police. In all events, there is only a record of one casualty of a certain gravity of the three persons hospitalised and there is no list of hospital admissions with casualties that required special medical care. Although the police intervention was proportionate, there are some episodes that are under court enquiries, but precisely thanks to the guarantees of the State of Rule in Spain it is possible to report police, administrative, judicial excesses or of any other nature if these occur.

12. Has the independence movement managed to convert its aspiration into an international cause?

The radical independence movement has tried to internationalise its aspiration through its representatives. Over and beyond the lack of truth in its messages and widespread disinformation, this is evident proof of freedom of expression, of information and of ideological freedom and of movements of all citizens in Spain.

However they have not obtained any support from other States or from international organisations. On the contrary, the European Union has warned that all the objectives they are claiming should be protected in the constitutions of the Member States. And on these same lines other international organisations have spoken out.

13. Is it true, as the independence movement members say, that Catalonia's segregation would not imply leaving the EU?

In its interpretation by the present leaders of the EU, the Lisbon Treaty is quite clear. An independent Catalonia would be "third country", it would automatically be outside the European Union and, if it wished to form part of it, it would have to apply for its admission in the Union, an admission which has to be accepted unanimously by all the Member States.

14. Why did the intervention that took place in the Catalan regional government for several months not resolve any problem?

The Government at that time (PP), with the backing of the absolute majority of the Senate and with the agreement of the Socialist Party and Ciudadanos, two of the three most important parties of the opposition, applied article 155 of the Constitution, which is the federal coercion clause when the authorities of an autonomous territory seriously jeopardise the general interest and do not comply with the obligations attributed by law.

This article was literally inspired by article 37 of the German Federal Constitution. The correctness of its application, and also the scope and nature of the measures that were adopted will however be reviewed by the Constitutional Court when it judges two appeals of unconstitutionality against that measure filed by the Catalonia Parliament and by the confederal group of Unidos Podemos at the Congress of Deputies .

Also, articles such as article 155 of the Spanish Constitution, apart from it being echoed in the German Constitution, also appear in those of Austria (art. 100), Italy (art. 126), Portugal (art. 234) or Argentina (art. 75).

The application of article 155 of the Constitution had the effect of recovering the constitutional and statutory legality that had been upset by the actions of autonomous authorities which had ignored them and were acting openly against the court decisions and the law.

ABOUT THE PENAL PROCESS AT THE SUPREME COURT

15. How is it possible that up to nine of the prosecuted persons have now been more than a year in preventive custody?

The preventive custody of the prosecuted persons has first been decided by the examining judge, and later by the Court of Appeals of the Supreme Court, considering that if conditionally released this would involve two risks: risk of absconding and risk of reoffending.

The judges have considered that there have been abscondments to Belgium, Switzerland and Scotland and that the prosecuted persons insist on saying that they would go back and do the same as they did in September and October 2017, in other words, if they had the chance, they would repeat their behaviour. Also, the Constitutional Court has recently confirmed the proportionality of this measure.

On the other hand, it should also be emphasised that the Government has transferred the prisoners remanded in custody to prisons near their domiciles and families. 16% of the prison population in Spain represents persons remanded in custody. The European average is 25.4%. Indeed, in 2017, the president of the Committee for Prevention of Torture (CPT) of the Council of Europe, Mykola Gnatovskyy, classed the low index of persons remanded in custody at Spanish prisons as "positive.

16. Why is there a sector of the Catalan population who considers the remand in custody is abusive?

One of the aspects where the Catalan people has suffered from lack of information in recent years has consisted in making them believe that unilateral independence was possible and painless. The reality was never such and the Constitutional Court warned about the seriousness of the acts of the persons who are now indicted since 2016.

It should be remembered that, in general, in a Rule of Law, judges are commended a work in which nobody may interfere. And within their duties is that of calibrating the need and scope of any measure that guarantees the judicial process and effective administration of justice for all.

17. How is it possible for the State Legal Service to accuse of a crime of sedition and the Public Prosecutor of another more serious one, which is the crime of rebellion?

It's true that there has been a different qualification between the State Legal Service and the Public Prosecutor. Both the alleged crimes are very serious.

The State Legal Service is a legal body that depends on the Government and the Public Prosecutor is an autonomous and impartial constitutional body that exercises criminal action. These discrepancies in criteria will oblige the Court to hold an in-depth discussion before passing judgment. In all events, this fact is nothing more than yet another guarantee of the independence in criteria and action of each of the prosecuting parties in the case.

18. Why is a party like Vox present in the case against the accused?

In Spain, both the institution of the jury and the possibility of individuals and legal entities appearing in court as private prosecutors are ways in which citizens contribute in the administration of justice. Just like Vox, any other political party or group could have been party to the suit. At the moment there is now an important debate in Spain about whether or not to limit private prosecutors.

19. The difference between sedition and rebellion lie in there being a public and violent uprising. Where did the violence happen?

Indeed: the difference between sedition and rebellion lies in there being a public and violent uprising. That is one of the questions which is going to be clarified at the oral hearing. The Public Prosecution and the examining judge believe there was violence because there were acts of intimidation to achieve the independence of Catalonia; the State Attorney however understands there were public disorders and uprisings to prevent the law from being applied. One and the other explain their criteria in a long recital of the facts submitted to the Court and it is this court that has to assess it and decide accordingly.

20. Is it possible then that they can be convicted for just one of these crimes?

There are various scenarios: they can be convicted for one crime or another or also be acquitted, in line with what the counsels of the defence are asking, who have been freely chosen by the indicted persons and they have put forward all the evidence they have considered necessary and which could be accepted by the Court.

The conclusions of the State Attorney and of the Public Prosecutor are provisional. At the end of the oral hearing those conclusions may be maintained or may be changed. We have to wait until the end of the hearing to know what final penalties are requested.

It should be remembered that, apart from the alleged rebellion, they are also being accused of embezzlement of public funds and of disobedience.

21. Can the judgment of the Supreme Court be appealed, when this is the ultimate judicial instance?

They are judged by the Second Chamber (or Criminal Chamber) of the Supreme Court because several of the indicted persons are MPs with parliamentary immunity as set out in the Statute of Catalonia before that Court because the facts exceeded the territorial scope of Catalonia. Although the judgment that is ruled will be firm, it may be appealed at the Constitutional Court to contrast that the rights and guarantees have been fulfilled and the European Court of Human Rights will then also examine whether the procedural guarantees and rights of the indicted persons have been respected.

It should be stressed that the Court has accepted the petition that representatives of the nationalist groups of Congress and of the Senate may attend the hearings of the oral trial, which constitutes a reinforced guarantee and a clear example of desire for transparency in this field.

22. Is it true that neither Belgian justice nor German justice accepted the Euro-order against those who had absconded?

The Euro-Order was accepted in Germany for an alleged offence of embezzlement by Puigdemont and in Belgium the petition was recalled by the Spanish judge, after the judge in Brussels had observed procedural defects.

Apart from the 30 offences contemplated in the Euro-Order in 2002, all the others are subject to the principle of double criminality, in other words, there also have to be criminal acts in the place where the person accused of having committed them has sought asylum. The German judges, without knowing all the details of the Spanish process, considered that the facts which were reported in a summarised version, could not give rise to a conviction for the crimes of rebellion or sedition according to the German penal code. Apart from being premature and alien to the sense of the Euro-Order, this interpretation does not mean that those allegedly criminal behaviours have not existed under the Spanish Penal Code. Nor is it binding on the Spanish Courts.

23. Did they perhaps abscond because they thought they would not have guarantees of a fair trial in Spain?

Some of the persons involved in the so-called “procés” absconded and others stayed. But those who absconded did so because they knew they were going to be accused of serious crimes.

However, Spain is a country with such guarantees that it is not possible to judge people who have absconded in their absence, although this is possible in other democracies. The Constitution guarantees the right to defence and configures an independent Judiciary, and also a Constitutional Court as ultimate guarantor in Spain of fundamental rights. In addition, for decades, Spain has adhered to the jurisdiction of the European Human Rights Court in Strasbourg, to which the prosecuted persons may appeal if the Supreme Court delivers a guilty verdict.

With regard to this high jurisdictional forum, it should be recalled that Spain is one of the countries with the best track records in the European area and the EU, in terms of judgments at the European Human Rights Court. Convictions of Spain by the European Human Rights Court are very few in number in relation to Spain's population.

This goes to prove the merits of Spanish justice and the system of guarantees it contemplates.

