

Separation of powers in Spain

On March 1, 2021, the prosecution filed a complaint for disobedience to the Superior Court of Justice of Catalonia (TSJC) against the president of the Catalan Parliament's Bureau of the previous legislature (2018-2021) (Mr. Roger Torrent) the vice-president (Mr. Josep Costa) and Secretaries (Mr. Eusebi Campdepadrós and Ms. Adriana Delgado) for having processed three resolutions claiming the right to self-determination and reproving the political statements of King Philip VI. The Spanish Constitutional Court had asked them to censor the vote on these resolutions, but the Bureau processed it anyway and the plenary debated and approved it.

This complaint is a consequence of the ruling of the Constitutional Court (TC) 295/2015 which warned members of the Bureau of the Catalan Parliament that they could not process any resolution related to the right to self-determination (Article 1 of the International Covenant on Civil Rights and Politicians) or to the Spanish monarchy. This prohibition referred not only to hypothetical bills but also to purely declaratory resolutions (Parliamentary Statements). Since then, the TC and other courts have warned parliament not to debate these issues and have declared several resolutions null and void, including the one of October 11, 2018, which disapproved the monarchy, made a clear defense of Republican values and rejected the televised intervention of King Philip VI on October the 3rd that year.

From the point of view of this Office for Civil and Political Rights, this is a clear violation of the principle of parliamentary inviolability and a breach of the separation of powers, without which the Rule of Law is not possible. The inevitably limited legislative powers of any parliament and the need of institutional and legal counterbalances should not be an excuse to restrict political debate among representatives of the citizenry. A debate that should have no more limit than the unacceptable apology for discrimination or the incitement to hatred and violence.

This is just another example of how judicial unjustified interference in the political debate (especially with regard to the Catalonia-Spain conflict and the question of the form of the state) is deteriorating the quality of the rule of law in the Kingdom of Spain.

More: <https://english.vilaweb.cat/noticies/catalan-parliament-speaker-prosecuted-for-allowing-votes-on-monarchy-and-self-determination/>

<https://elpais.com/espana/catalunya/2021-03-01/la-fiscalia-se-querella-contra-roger-torrent-por-desoir-al-tribunal-constitucional-para-reprobar-la-monarquia.html>

Adam Majó amajog@gencat.cat

Director of the Office for Civil and Political Rights Gov. Catalonia

(Public Authority) <http://economia.gencat.cat/ca/ambits-actuacio/dretscivilsipolitics>

Monarchy, freedom of the press and free speech

The current Spanish Penal Code includes "Crimes against the Crown" and predicts prison sentences for "anyone who slanders or insults the king or queen or any of his ascendants or descendants, the queen consort or the queen's consort, the regent or any member of the regency, or to the prince or the princess of Asturias, in the exercise of its functions or on the occasion of these". This has been the meaning of many convictions that, in extension of Organic Law 10/1995 of the Penal Code, have penalized public statements of rejection to the Crown, included the kidnapping of humorous publications and imprisonment sentences for singers (https://www.theguardian.com/music/2021/mar/01/like-pablo-hasel-spain-wants-me-jailed-for-rap-lyrics-but-artists-must-not-self-censor?CMP=tw_t_a-culture_b-gdnculture).

Spanish legislation states that, as the highest institution, contempt or criticism to the crown can have a detrimental effect on society as a whole. However, is the society that must be able to express ideas and opinions that are contrary and even offensive to this and other institutions or powers. The current crime of insulting the Crown and the harsh penalties it provides act as an inhibitor (chilling effect) of possible criticism to the monarchy expressed through any means and forms. This deterrent effect is a clear effect on the material exercise of the right to free speech and freedom of press.

The European Court of Human Rights has condemned several times states like the Kingdom of Spain that attribute special protection to the head of state in detriment of the right to information, criticism and ideological freedom. Is precisely these people and institutions endowed with functions and public dimensions that must be subject in a special way to social scrutiny and must admit a greater level of criticism. Thus, the general principle of inviolability of privacy, image and the preservation of reputation must be relative as well as more flexible in public figures; that is, they are required to have a higher degree of tolerance for criticism and intrusion into their privacy. This necessary tolerance includes obtaining images or recordings while these people participate in public events, as well as making and publishing satirical cartoons or songs.

The Kingdom of Spain is no exception when it comes to penalizing in a specific way the injury to the Majesty, that is, the attacks on the dignity of the head of state. In most cases, however, this type of crime has a distant in time origin and has undergone a progressive reinterpretation to limit its application to pronouncements with the will and ability to offend very explicit and with no context, and exclude cases of satire and political criticism. In fact, only in countries with little or no democratic political systems such as Thailand or Saudi Arabia is this crime still in full force and severity.

More: <http://economia.gencat.cat/web/ca/ambits-actuacio/dretscivilsipolitics/continguts/qui-som-que-fem/injurias-monarquia-limites-libertad-expresion-cast.pdf>

Adam Majó amajog@gencat.cat

Director of the Office for Civil and Political Rights Gov. Catalonia

(Public Authority) <http://economia.gencat.cat/ca/ambits-actuacio/dretscivilsipolitics>

