

Cecilia Wikström MEP
Chair of the Petitions Committee
European Parliament
B-1047 BRUSSELS

Barcelona, 16 October 2018

Ref.: Petition to the members of the European Parliament regarding the political situation in Catalonia in order to urge the Commission to activate the EU Framework to strengthen the Rule of Law COM (2014) 158 final.

Dear Chair, Dear Ms Wikström,

As legal representatives of the Catalan National Assembly (ANC), we are submitting this Petition to the European Parliament.

The ANC is a legally registered grassroots organisation promoting, in peaceful and democratic ways, the attainment of the independence of Catalonia and is a key actor of the civil society in the current political process. Among a wide variety of activities, we have organised since 2012 the massive, colourful and joyful yearly demonstrations of more than one million people in Barcelona for the Catalan National Day. Also interested in European issues, the ANC is registered in the EU Transparency Register with number 602541324089-94.

We would like to bring to the knowledge of the Petitions Committee the current political situation in Spain and ask the European Parliament to urge the European Commission to initiate the EU Rule of Law Framework for Spain.¹ We ask the Parliament to examine, in Spain, the situation of the common values as enshrined in Article 2 of the Treaty on European Union and in the EU Charter of Fundamental Rights.

Spain, since the beginning of the government of Prime Minister Mariano Rajoy on the 21st of December 2011, has adopted measures that imply a clear regression in human rights and has seen a steady escalation of threats to the rule of law. This last year, fundamental civil and political rights and the rule of law deteriorated to alarming levels, with the **freedom of press, speech, association and demonstration all being challenged.**^{2 3} This deterioration continues under the presidency of Pedro Sánchez and his government.

¹ Communication 'A new EU Framework to Strengthen the Rule of Law'; COM(2014) 158 final.

² Spain must respect fundamental rights in response to Catalan referendum, UN rights experts www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22176&LangID=E

³ UN experts urge political dialogue to defuse Catalonia tensions after referendum <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22197&LangID=E>

Before the Oct 1 referendum, the Spanish authorities sent thousands of troops of the militarised Guardia Civil to Catalonia hunting for posters and flyers promoting the participation in the referendum of self-determination.⁴ Masses of paperwork were reported and confiscated. Material having anything to do with the referendum was confiscated indiscriminately, in clear violation of the rights of free speech and information. The mere act of organising a debate on the right to self-determination was enough reason for judges and police to intervene as they did in Madrid, Vitoria, Valencia or Zaragoza e.g., as denounced by Amnesty International.⁵

On Oct 1, we all could follow live images of police forces brutally charging on pacific and peaceful crowds standing in lines to vote. The Spanish government has since then systematically downplayed or denied any police violence, although independent international organisations such as Amnesty International, Human Rights Watch and the Council of Europe affirmed the police “used excessive force in Catalonia.”⁶ These instances have asked the Spanish government to set up full, immediate and independent investigations into the events occurred on Oct 1.⁷ The Spanish government has not only categorically refused to do so, it even made the Constitutional Court suspend a Catalan commission probing into the police violence in the attempt to smother all possible investigation.⁸ A year after the events, Amnesty International and Human Rights Watch lament that Spain still hasn’t investigated the police violence of Oct 1.^{9 10}

The political and civil rights of European citizens are being violated. The Spanish government, with its unlimited and indiscriminate interpretation of article 155 of the Spanish Constitution, attacked the right of the Catalans to political autonomy.¹¹ As a ‘solution’, illegitimate elections were called by the Spanish government. Political candidates, parties and the Catalan public broadcaster were actively and passively censored by the Spanish Electoral Commission.

⁴ Police in Catalonia hunt for hidden ballot boxes in bid to foil referendum

<https://www.reuters.com/article/spain-politics-catalonia-boxes/police-in-catalonia-hunt-for-hidden-ballot-boxes-in-bid-to-foil-referendum-idUSL5N1LW2AZ>

⁵ Amnesty International Spain considers the prohibition of the act in Madrid on the right to self-determination a disproportionate restriction of the freedom of speech.

<https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/la-suspension-del-acto-por-el-derecho-a-decidir-en-madrid-constituye-una-restriccion-desproporcion/>

⁶ Spain: Police Used Excessive Force in Catalonia <https://www.hrw.org/news/2017/10/12/spain-police-used-excessive-force-catalonia>

⁷ Commissioner calls on Spain to investigate allegations of disproportionate use of police force in Catalonia <https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-spain-to-investigate-allegations-of-disproportionate-use-of-police-force-in-catalonia>

⁸ Spain's Constitutional Court suspends commission investigating referendum violence

https://www.elnacional.cat/en/news/constitutional-court-commission-referendum-violence_229950_102.html

⁹ Amnistía Internacional acusa a Fiscalía de no investigar los "abusos policiales" del 1-O

<http://www.europapress.es/catalunya/noticia-amnistia-internacional-acusa-fiscalia-no-investigar-abusos-policiales-20180928203350.html>

¹⁰ Human Rights Watch lamenta que el Estado ignore su informe sobre el 1-O

https://www.elnacional.cat/es/politica/human-rights-watch-lamenta-estado-ignore-informe-1-o_308931_102.html

¹¹ UN independent expert urges Spanish Government to reverse decision on Catalan autonomy

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22295&LangID=E>

Candidates were unable to campaign in democratically normal circumstances as they are prosecuted and under investigation for their political activities and declarations. Eight elected candidates, one of which until recent our chairman, Jordi Sànchez, have been jailed now for an unreasonable long time without trial or bail, which is a clear abuse of the measure of pre-trial detention. Another civil society leader, Jordi Cuixart, is also detained. Today, Amnesty International reiterated its 'call for their immediate release', as it sees 'no justification for keeping Jordi Sànchez and Jordi Cuixart in pre-trial detention', which has been going on now for a whole year. The civil rights NGO considers that 'their continued detention constitutes a **disproportionate restriction on their rights to free speech and peaceful assembly**'.¹² Moreover, seven more politicians have been forced into exile to avoid being imprisoned and others Catalan MP's are being prosecuted. Events that should be unthinkable in this European Union. In the meantime, German Justice discarded the trumped-up charges of rebellion - meaning violent uprising. Belgian Justice turned the European Arrest Warrants down as they did not comply with formal requirements as judge Pablo Llarena, in an unprecedented move, withdrew the EAW for the second time. **This is a clear abuse of the EAW for political reasons**, as he also made clear in his partisan rulings and declarations.¹³

As elected representatives and civil society leaders, they are accused of sedition and rebellion, implying violent actions, accusations that have been denounced by the UN Special Rapporteur on the right to freedom of opinion and expression.¹⁴ Spanish judges have alleged their – pacific – political activities and ideas are the reason they will not be released, even if they have been elected by the Catalan people.¹⁵ Our right to political representation is as such violated and the constitution of our parliament deformed. Our and their civil and political rights are thus gravely harmed.

More elected politicians have been and are being prosecuted. More than 700 mayors are being criminally investigated for declaring their support for the referendum and have been threatened with arrest by Spain's attorney-general if they failed to turn up.¹⁶

The right to assembly is under active attack as we mentioned before. Before, during and after the election campaign, groups of people were denied the basic and constitutional right to demonstrate and associate, as denounced by the Catalan Ombudsman. The Ombudsman

¹² A year after their detention in Spain, the Jordis should be released

<https://www.amnesty.org/en/latest/news/2018/10/spain-a-year-after-their-detention-the-jordis-should-be-released/>

¹³ Las polémicas palabras de Llarena: charlas pagadas por un concesionario de coches de lujo

https://www.eldiario.es/politica/polemicas-palabras-llarena-concesionario-privado_0_808069651.html

¹⁴ UN expert urges Spain not to pursue criminal charges of rebellion against political figures in Catalonia

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22928&LangID=E>

¹⁵ The Catalan Ombudsman reiterates that preventing the inauguration of Jordi Sànchez violates his political rights and the independence of the Parliament of Catalonia

<http://www.sindic.cat/en/page.asp?id=53&ui=5214>

¹⁶ Spanish Officials Crank Up Pressure on Catalan Breakaway Bid

<https://www.nytimes.com/aponline/2017/09/13/world/europe/ap-eu-spain-catalonia.html>

received more than 200 complaints of people who were denied the right to peacefully assemble and demonstrate. Only a month after the elections have these prohibitions been overruled.¹⁷

The free press is under threat. Editorial offices of various newspapers received an intimidating visit from the Guardia Civil last year, communicating to them that they could not publish anything related to the organisation of the referendum. The same happened with radio and TV companies. The director of a local newspaper was formally accused of being an accessory to alleged crimes related to preparations for the Oct 1 referendum. Stepping up pressure against the media, the Director General of Catalonia's public TV network received the order to cancel the Catalan government's purchase of programming to inform citizens about the Oct 1 referendum, including advertising. He was even told the network was to abstain from reporting on anything concerning the October 1 referendum.¹⁸

In addition, a high number of public and private web pages and domains have received a seizure warrant, which is contrary to the European legislation on open internet and electronic communication networks and services. Private communications - postal and electronic - have been violated as well.

As happened in Valencia and the Balearic Isles, the Spanish governments always try to boycott Catalan language media. TV3 has been under constant attack in the media, by Spanish government and its agencies or instances such as the Electoral Commission. The motive is not only to censor, but to control media that are giving another view to the official narrative. The Catalan Media Corporation was under attack through a law that retroactively imposes taxes worth millions of euros and threatening its functioning.¹⁹ A tax that has been saved from TVE, the official state broadcaster tightly controlled by the central government. Added to this, as a state minority, our language has been under continuous attack by the Spanish government, that tries to reduce it to a folkloric relic by its actions against Catalan language media.

Freedom of speech is actively repressed. The aforementioned cases are not only a clear deterrent to those who'd want to express divergent political opinions –as should be normal in any mature democracy-, divergent opinions are also actively prosecuted under the guise of 'hate speech' or 'glorification of terrorism'. This is the case for Catalan political dissidents and even for rappers, such as Pablo Hasel and the exiled Josep Miquel Arenas Beltrán (also known as 'Valtònyc') and other people making jokes or voicing their political views on Twitter or Facebook. They have been convicted to confirmed imprisonment up to more than 8 years. Belgian Justice refused to extradite him to Spain for 'terrorism', referring to the freedom of speech. The situation is so dramatic that Amnesty International began a campaign to defend free speech in

¹⁷ Els Avis per la Llibertat tenien dret a manifestar-se, admet ara la Junta Electoral (Catalan) <http://www.ccma.cat/324/els-avis-per-la-llibertat-tenien-dret-a-manifestar-se-admet-ara-la-junta-electoral/noticia/2832097/>

¹⁸ TSJC warns TV3 director of criminal charges if he collaborates with the referendum http://www.elnacional.cat/en/politics/tsjc-tv3-criminal-charges-referendum_190740_102.html

¹⁹ Vicent Sanchis: "There is a move afoot to bankrupt TV3" <http://catalanmonitor.com/2018/01/04/vicent-sanchis-there-is-a-move-afoot-to-bankrupt-tv3/>

Spain.²⁰ Peaceful actions of Catalan dissidents have even been catalogued as terrorism.²¹ This is the case of Adrià Carrasco, a young protester who is sought for ‘terrorism’ by Spain, for having blocked a road in a non-violent manner. Exiled in Belgium, Justice there again refused to extradite him, referring to the right to demonstration.

Criticism against the Spanish monarchy is also prosecuted under the laws on lese-majesty and although the European Court of Human Rights already ruled that existing prison convictions and fines amount to disproportionate interference into the defendants' freedom of expression,^{22 23} Spanish legislators refuse to change existent legislation.²⁴

Concerning our organisation (ANC): Our former chairman Jordi Sànchez, in the quality of our chairman, is being held in prison, together with Jordi Cuixart, the chairman of our sister civil society organisation Òmnium Cultural, for defending the right to demonstrate.

On the 20th of September 2017, spontaneous protests broke out in Barcelona. The militarised police Guardia Civil was raiding Catalan government offices early in the morning of that day. As people became aware of these acts, they went out to protest. As Spanish law, introduced by Mariano Rajoy’s government and still maintained, is excessively repressive against demonstrations,²⁵ ANC communicated to the Interior Ministry – at 10.23 A.M. – its intention to demonstrate at the Catalan Economy Ministry, where the biggest part of protests were going on. As such, ANC protected the demonstrators against prosecution and immoderate fines and made itself at the same time responsible for this demonstration. Although there was no violence and although the peaceful crowd was urged to go home by both Jordi Sànchez and Jordi Cuixart, after mediation with the judicial committee and Guardia Civil, they are now being held on charges of sedition and rebellion, implying again violence was involved. These arrests are excessive and clearly politically motivated.²⁶

Before the Oct 1 referendum, our local branches saw police confiscating campaign material on independence – even t-shirts with just a SI (YES) on it -, disassembling campaign stands, all without a specific court order. On 20/09 a member of the ANC's national board was detained,

²⁰ Spain: Counter-terror law used to crush satire and creative expression online

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

²¹ The Catalan Ombudsman informs the European Commissioner for Human Rights and rapporteurs of the United Nations about the lack of proportion of legal actions against political dissidents

<http://www.sindic.cat/en/page.asp?id=53&ui=5213&prevNode=462&month=3>

²² ECHR finds Spain guilty of violating Convention on Human Rights

<http://www.jurist.org/paperchase/2018/03/echr-finds-spain-guilty-of-violating-convention-on-human-rights.php>

²³ Affaire Stern Taulats et Roura Capellera c. Espagne

<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-181719%22%7D>

²⁴ PP, PSOE y Ciudadanos rechazan la propuesta de ERC de despenalizar las injurias a la Corona

http://cadenaser.com/ser/2018/03/13/politica/1520965139_734144.html

²⁵ Spain: Two-pronged assault targets rights and freedoms of Spanish citizens, migrants and refugees

<https://www.amnesty.org/en/latest/news/2015/03/spain-two-pronged-assault-targets-rights-and-freedoms-of-spanish-citizens-migrants-and-refugees/>

²⁶ Spain: Charges for sedition and pre-trial detention against Jordi Cuixart and Jordi Sànchez are excessive

<https://www.amnesty.org/en/documents/eur41/7308/2017/en/>

her car searched and volunteer vests, banners and flyers were confiscated, as has happened in hundreds of situations all over the country where members of our organisation were being identified and intimidated by police forces just because they were manifesting their will to vote. On Sept 25, our website was blocked on orders of the Guardia Civil in a clear attempt to censor civil society. We never received a court order or a notification, as the Guardia Civil acted under a general and discretionary court order, giving it excessive censorship powers. This happened with more than 140 other websites.²⁷ On Jan 1, our website was available again, without any notification. The Guardia Civil acts as such as a political police force that has absolute *carte blanche* to censor civil society at its discretion.

Not only fundamental rights are under pressure. The separation of powers is problematic.

Three years ago, the Spanish government introduced an urgent reform of the Constitutional Court which has adversely affected its functioning and further undermined its legitimacy and independence, at a moment when its independence is already under scrutiny due to the political appointments to the tribunal. One of the problematic measures is that the Constitutional Court can dismiss *ex officio* and without being heard an elected regional president, minister or civil servant when it considers he or she is not complying with its rulings. This has been denounced by the Venice Commission and indeed, three members of the Constitutional Court itself have formulated a dissenting vote in which they admitted that the sole purpose of the reform was to sanction autonomous community leaders. In the parliamentary debate on this reform, the spokesman of the Partido Popular's parliamentary group admitted the reform was solely designed as a political move against the elected Catalan pro-independence politicians.²⁸ A similar statement was made by the chairman of the Partido Popular in Catalonia.²⁹

Another worrisome problem is the lack of independence of the judiciary in Spain.

In its Compliance Report Spain (10/10/2016), the Group of States Against Corruption (GRECO) concludes that none of its eleven recommendations contained in the 4th Round Evaluation Report has been implemented satisfactorily or dealt with in a satisfactory manner by Spain.³⁰ Again, on 3 January 2018, the Council of Europe published its report on 'Corruption prevention

²⁷ Spanish authorities try to shutter Catalan referendum websites

<http://www.politico.eu/article/spanish-authorities-try-to-shutter-catalan-referendum-websites/>

²⁸ The PP recognises that its urgent reform of the Constitutional Court goes against the Catalan independence movement. (in Spanish) <http://www.publico.es/politica/pp-reconoce-urgente-reforma-del.html>

²⁹ The PP promotes a reform so the Constitutional Court can sanction [Artur] Mas. (in Spanish) <http://www.elperiodico.com/es/noticias/politica/partido-popular-anuncia-reforma-constitucional-sancion-vulneracion-ley-4471581>

³⁰ GRECO, CoE. Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors, Compliance report Spain.

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca04a>

in respect of members of parliament, judges and prosecutors'.³¹ According to the Council of Europe's anti-corruption experts, Spain's compliance with international standards 'remains globally unsatisfactory'. Authorities made 'limited progress in measures to tackle corruption in respect of members of parliament, judges and prosecutors'. An alarming situation that is now reflected in the shameless use of justice to pursue political prosecution.

The lack of independence in the Spanish judiciary has also been denounced from within, by former High Court magistrate José Antonio Martín Pallín, constitutional law scholars such as Joaquín Urias and more precisely by a judge responsible for investigating corruption, Mercedes Alaya.³² Meanwhile, the Spanish government has continued to enact legislation in complete disregard of both the GRECO and the Venice Commission's recommendations, in a way that further entrenches rather than corrects the problems identified. The lack of judicial independence is also highlighted in the Commission's own 2017 Justice Scoreboard (COM(2017) 167 final)³³ and the Global Competitiveness Report of the World Economic Forum.

We want to stress that the changes impacting the Constitutional Court and the increased lack of independence of the judiciary are part of a wider sequence of reforms which undermine checks and balances and restrict human rights in Spain. There is an increasing criminalisation of dissident opinions in Spain. It has passed administrative and criminal legislation³⁴ which restrict fundamental rights and freedoms as enshrined in the European Convention on Human Rights, the EU Charter of Fundamental Rights, art. 2 of the TEU and the International Covenant on Civil and Political Rights.

Legal reforms to tackle political opposition have clearly not been enough for the Spanish authorities. Last year, it was discovered that a covert 'Operation Catalonia' is working within the Ministry of Home Affairs, implicating a secret police branch responsible for political prosecution of Catalan politicians, with the involvement of a magistrate and the then Minister of Home Affairs himself.³⁵ No judicial or political actions whatsoever were undertaken to

³¹ GRECO, CoE. Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors, Interim compliance report Spain. <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680779c4d>

³² Judge Mercedes Alaya: "We're every time more those who doubt that judicial independence exists" (in Spanish) <http://www.elmundo.es/andalucia/2017/01/19/5881236b268e3e3c568b4798.html>

³³ Commission publishes 2017 EU Justice Scoreboard https://ec.europa.eu/commission/news/commission-publishes-2017-eu-justice-scoreboard-2017-apr-10_en

³⁴ 1. Organic Law 1/2015 of the 30th of March 2015 (Criminal Code, in Spanish) https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-3439

2. Organic Law 4/2015 of the 30th of March 2015 (in Spanish) <https://www.boe.es/buscar/act.php?id=BOE-A-2015-3442&p=20150331&tn=2>

³⁵ Spanish government accused of interfering in judicial proceedings to discredit Catalan politicians <http://www.telegraph.co.uk/news/2017/09/24/spanish-government-accused-interfering-judicial-proceedings/>

investigate these illegal state operations, as political prosecution goes on.³⁶ What's more, there is no evidence that these illegal political police operations have been stopped.

To illustrate the general regression in human rights, in the separation of powers and in the Rule of law, we also would like to bring to your attention the reports of the Catalan Ombudsman^{37 38}, who has denounced a democratic regression in Spain. He concludes that *'well-established fundamental rights and liberties, as recognised in national as well as international treaties, are affected, and that these transgressions have especially found place in Catalonia, due to the ongoing political tensions.'*

It is for these reasons that we appeal to the Committee of Petitions and the European Parliament to examine the situation in Spain and halt Spain's backsliding from the EU's founding values by urging the European Commission to move ahead following the steps as laid out in the EU Framework to strengthen the Rule of Law (COM (2014) 158 final).

We also would like to point out to the Members of the European Parliament that the European Commission is not doing enough to safeguard the foundational values of the EU nor is it acting in line with its obligations and previous declarations. On 17 January 2018, Mr Avramopoulos answered on the parliamentary question E-006177/2017 as made by Mr Jasenko Selimovic MEP, where he asked for an independent investigation into Spanish police violence as it occurred on Oct 1 2017.

The answer given on behalf of the European Commission, was to state that: "Pursuant to the law of the European Union, it is exclusively up to the Member States to ensure that they comply with their obligations regarding fundamental rights which result from international agreements and from their national Constitution" and that "The Charter of Fundamental Rights of the European Union only applies in the context of the implementation of EC law."

These declarations go against the letter and spirit of the Treaties of European Union. And as the European Commission stated in 2003 (COM(2003)606):

'The scope of Article 7 is not confined to areas covered by Union law. This means that the Union could act not only in the event of a breach of common values in this limited field but also in the event of a breach in an area where the Member States act autonomously.'

'Article 7 thus gives the Union a power of action that is very different from its power to ensure that Member States respect fundamental rights when implementing Union law'.

³⁶ Catalonia's time has come — and Spain needs to get out of the way.

https://www.washingtonpost.com/news/democracy-post/wp/2017/06/13/catalonias-time-has-come-and-spain-needs-to-get-out-of-the-way/?utm_term=.51b7062548a8

³⁷ Report. Human rights regression: Elected officials' freedom of expression and the separation of powers in the kingdom of Spain. Ombudsman of Catalonia.

[http://www.sindic.cat/site/unitFiles/4402/Report%20Human rights regression.pdf](http://www.sindic.cat/site/unitFiles/4402/Report%20Human%20rights%20regression.pdf).

³⁸ Statement of the Ombudsman of Catalonia. <http://www.sindic.cat/en/page.asp?id=53&ui=4711>

To conclude: the foundational values of our European Union are under threat. It is up to all European citizens, to their political representatives in their respective country and especially those in the European institutions, to safeguard our freedom, to stand up for democracy, to uphold the Rule of law, to protect human dignity and to shield our human rights, including these of state minorities as we Catalans are. We cannot, will not and should not accept less from those who lead this European Union, a Union that aims to be a beacon of light and freedom to the whole world.

We look forward to your response and we are willing to provide any further information you may require.

Yours sincerely,

Elisenda Paluzie

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