



RIGHT TO PROTEST IN CATALONIA

(2017-2019)

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Irídia is an association that works in Catalonia to defend human rights, primarily civil and political. We are committed to combining direct intervention in situations of violation of rights with the development of processes of political and social incidence whose objective is to promote changes in public policies; all this through a stable, sustainable and independent structure.

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Design and layout: Melissa Fernández Saad

Autorship: Anaïs Franquesa i Laura Medina

Contributors: Andrés García Berrio and members of SAIDAVI

Cover photo: Carles Palacio

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1. PRESENTATION

The raison d'être of this report is **the conducive nature of the right to protest, since it is through protest that other rights can be exercised, claimed and defended.** This nature, which is essential in any democratic and plural society, gives it extra protections despite the fact that its exercise can sometimes be in conflict with other uses of the public space. Public space is not only a place where people live together and move around, it becomes a scene of fundamental political participation, especially in times of political convulsion and severe repression. However, public powers often perceive protest as a threat, and only treat it as a public order issue. It is precisely in these situations when the highest number of instances of abuse or disproportional use of force are encountered. This has been claimed on many occasions by human rights Special Rapporteurs, and the United Nations Human Rights Council itself.

Therefore, acknowledging, protecting and guaranteeing the right to protest is an obligation for all public administrations and it is also an important indicator of a democracy's state of health. Unfortunately, many modern democracies are currently ailing as a consequence of a general tendency towards the repealing of such rights. The right to freedom of speech, freedom of information and freedom of assembly are at stake both in Spain and Catalonia, as well as in European and international contexts. The use of space in civil society is being limited considerably to different extents. This is happening hand-in-hand with a growing criminalization of human rights defenders, turning the right to protest into a judicial matter, as well as putting defenders in prison and using disproportionate force against mass peaceful assemblies. The challenge to counter this trend is global, but is already underway and well developed in Catalonia. For this reason, this report looks into the right to protest and its current state internationally as well as within Spain. It will then focus on the analysis of the right of protest in Catalonia between 2017 and 2019.

In addition to the current social and political context, this report is based on the work of SAIDAVI (Service of Attention and Denunciation in situation of Institutional Violence)¹ as stated in the annual reports of the service in 2006², 2007³ and 2008⁴. Nevertheless, it also includes data and opinions of other organizations and public institutions in order to broaden the point of view on this topic.

A participative society that fights to guarantee its rights is a fundamental mainstay in any democracy. It is called social guarantee of rights. However, we can't forget that the obligation of acknowledging, protecting, respecting and guaranteeing human rights is the duty of public institutions. The current socio-political climate is characterized by a severe regression of these vital rights and freedoms. Now more than ever, institutions have to have the will and decisiveness needed in order to revert this tendency; they need rigorous public policies based on guaranteeing rights. The aim of this report is to contribute to developing those public policies, using work done by an organization that specialises

1. The Service of Attention and Denunciation in situation of Institutional Violence (SAIDAVI) offers legal and psychosocial assistance to people who suffer situation of mistreatment within the framework of the Catalan penal system.

2. Irdia, Centre for the Defence of Human Rights. "Informe SAIDAVI 2016", 2017. <https://iridia.cat/wp-content/uploads/Informe-2016-SAIDAVI.pdf>

3. Irdia, Centre for the Defence of Human Rights. "Informe SAIDAVI 2017", 2018. <https://iridia.cat/wp-content/uploads/Informe-SAIDAVI-2017.pdf>

4. Irdia, Centre for the Defence of Human Rights. "Informe SAIDAVI 2018", 2019. https://iridia.cat/wp-content/uploads/2019/07/Irdia_Informe-Saidavi-2018-digital_FINAL_organized.pdf

in civil and political rights, and more specifically, in the impacts and consequences that institutional violence generates, and how to face it from the point of view of rights and penal guarantees.

2. INTRODUCTION

The right to protest does not exist as such in international texts on human rights. However, it is a concept that includes several rights that are indeed specifically acknowledged: freedom of assembly, freedom of speech, freedom of information and freedom of association. These rights are related to one another and it is not often easy to analyse them separately. They share their condition of fundamental mainstays of political and democratic participation because they allow the expression of disagreement and social discontent.

This report revolves around the exercise and limitation of the right to freedom of assembly in Catalonia and it also refers to freedom of speech and freedom of information. However, a previous contextualization, both on the international and national frameworks, is relevant since many of the matters discussed here originate in the law, jurisprudence or state public policies.

2.1. International context and legislation

2.1.1. Social and political context

Recently, in autumn 2019, many examples of protests all over the globe have been seen: the so-called “Umbrella Revolution”, a student led protest in Hong Kong that began after a bill was passed that would allow the extradition of the Chinese state’s “political enemies” to mainland China; the protests in Ecuador against the austerity measures such as the cancellation of fuel subsidies; the protests in Chile, initially motivated by the rise of the price of the public transport; or the so-called “New Arab Spring” in Lebanon and Iraq against corruption and the impoverishment of the population.

Quite often these protests are responded to with repression by state institutions. So turning the right to protest into a crime can be observed in different areas, each with clear peculiarities but also with shared elements. In this sense, the current United Nations Special Rapporteur on the right to freedom of peaceful assembly, Clément Nyaletsossi Voulé, in his first thematic report in 2018⁵, analyses in a global perspective **the current tendencies regarding the narrowing of freedom of assembly, which are as follows:** a) using legislation to suppress the legitimate exercise of the right to freedom of assembly and association; b) penalising peaceful protests and using indiscriminate and excessive force to punish or suppress them; c) suppress social movements; d) stigmatizing actors in the civil society and attacking them; e) narrowing rights of specific groups; f) limitation of rights during voting processes; g) negative effects of the rise of populism and extremism; h) obstacles imposed in the digital space.

In Latin American countries, repression by the national law enforcement and security forces is especially severe, and has even led to the death of protestors. In recent protests in Chile, which started in October 2019, the *Instituto Nacional de Derechos Humanos* (INDH, National Institute on Human Rights in Chile) has reported the death of five people, over two thousand injured – 217 of them with eye trauma – and fifty-eight cases of sexual violence, all of them perpetrated by the national law enforcement and security forces⁶. As

5. Clément Nyaletsossi. “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association” A/HRC/38/34, 26th July 2018. <https://undocs.org/en/A/HRC/38/34>

stated in the report *Los Estados latinoamericanos frente a la protesta social* (2016)⁷, which was coordinated by the *Centro de Estudios Legales y Sociales* (CELS), apart from the recent excessive use of force by the police service, there has also been penal prosecution of protesters as well as a tendency to pass new legislation that narrows the right to freedom of assembly and also to reform the existing criminal law to include actions of protest.

In the European context, during recent years, there have been tendencies that prioritize security, which also include an excessive and inappropriate use of force by police services, and legal restrictions after criminal and/or administrative regulation have been passed, which clearly affect the right to protest. This trend has led to measures such as the unjustified prohibition of holding a demonstration or the empowerment of courts and police services to control protests in public spaces, especially in countries where the fight against terrorism has served as an excuse to narrow the right to freedom of assembly on behalf of security⁸.

In this regard, the report "Civic Space in Europe 2017"⁹, written by Civil Society Europe (CSE) –which gathers 29 European networks of civil society organizations–, is relevant. This report uses a survey on the perception of civil society organizations in order to identify the main tendencies in civic space in Europe and it concludes, by using a qualitative analysis of the answers, a recurrent concern regarding the predominance of security over rights. It is exemplified with the case of Spain, due to the police abuses and specific measures included in the new *Ley de seguridad ciudadana* (Citizens Safety Law). Despite this, only 8% of the people surveyed disagreed or strongly disagreed on the fact that the right to freedom of assembly is not respected. This positive perception was higher in occidental countries and lower in meridional and oriental countries.

The recent cases of Hungary and Poland must also be highlighted. In these countries the power between the ruling party and the public institutions has been strengthened. Therefore, in Hungary, legislation that limits access to foreign funding of social organizations that defend human rights has been passed, as well as other legislation that restricts media independence, and other crucial rights. In Poland in 2016 a new legislation was introduced that considerably increased police service presence and the capacity to investigate, which is probably being used to control social leaders¹⁰.

Finally, our neighbouring country, France, should also be analysed. Endorsed by the fight against terrorism, the French government declared a state of emergency for months. Moreover, since the protests of the *Mouvement des Gilets Jaunes* (yellow vests movement) began in November 2018, according to data gathered by the journalist David Dufresne, 315 people have suffered head injuries, 24 people have lost an eye and 5 people have lost a hand¹¹. In December 2018, Amnesty International proved instances of excessive use of

force by police officers that caused injuries to protesters, due, among other causes, to the impact of rubber balls¹². More recently, in April 2019, the Law 2019-209 on Public Order Reinforcement during Protests, also known as the *Loi anti-casseurs* (anti-vandals law) which includes significantly severe measures on the right to freedom of assembly and association¹³.

2.1.2. Legal Configuration

The right to freedom of assembly and association is included in the main international treaties on human rights:

- Regarding the United Nations, in article 20¹⁴ of the Universal Declaration of Human Rights (UDHR) and article 21¹⁵ of the International Covenant on Civil and Political Rights (ICCPR).
- Regarding the Council of Europe, article 11¹⁶ of the European Convention on Human Rights (ECHR).

Maina Kiai was the Special Rapporteur for the United Nations on the right to freedom of assembly and association from May 2011 to April 2017. In his first thematic report at the Human Rights Council on 21st May 2012¹⁷, he included a broad and rights-guaranteeing definition of the right to peaceful assembly and association, understanding it as **"an intentional and temporary gathering in a private or public space for a specific purpose. It therefore includes demonstrations, meetings inside buildings, strikes, processions, rallies or even sits-in"**. The report underlines the positive obligation of states to actively protect peaceful assemblies, as well as the obligation not to unduly interfere with the right to peaceful assembly. Moreover, the report highlights that due to the "interdependence and interrelatedness with other rights", freedom of peaceful assembly and association is a valuable indicator of a State's respect for the enjoyment of many other human rights.

Regarding restrictions, it states that "any restrictions imposed must be necessary and proportionate to the aim pursued. [...] In addition, such restrictions must be facilitated within sight and sound of its object and target audience, and organizers of peaceful assemblies should not be coerced to follow the authorities' suggestions if these would undermine the essence of their right to freedom of peaceful assembly".

6. Instituto Nacional de Derechos Humanos (INDH). "A un mes del inicio de movilizaciones, INDH suma 345 querellas interpuestas contra agentes del Estado". INDH, 15th November 2019. <https://www.indh.cl/a-un-mes-del-inicio-de-movilizaciones-indh-suma-345-querellas-interpuestas-contra-agentes-del-estado/>

7. Centro de Estudios Legales y Sociales (CELS). "Los Estados Latinoamericanos frente a la Protesta Social", 2016. https://www.cels.org.ar/protestasocial_AL/pdf/protesta_social.pdf

8. CIVICUS. "Guide to reporting on Civic Space", 2015. <http://www.civicus.org/documents/reports-and-publications/reporting-civic-space/Guide-to-Reporting-Civic-Space-Media-Toolkit.pdf>

9. Civil Society Europe (CSE). "Civic Space in Europe 2017", 2017. https://civilsocietyeurope.eu/wp-content/uploads/2019/06/civic-space-in-europe-report-2017_web.pdf

10. Clàudia Nadal. "Derecho a la protesta en Europa. Estudio comparativo". Irdia; Novact, 2019. http://protesteurope.org/wp-content/uploads/2019/11/Estudio_protesta_Europa_CAST_ok.pdf

11. David Dufresne. "Allo Place Beauvau". Allo Place Beauvau, 2019. <https://alloplacebeauvau.mediapart.fr/>

12. Amnesty International. "France: call for suspending the use of rubber bullets fired with the lbd40 and for banning grenades gli-f4 in the context of policing protests", 2019. <https://www.amnesty.org/download/Documents/EUR2103042019ENGLISH.pdf>

13. Nadal. "Derecho a la protesta en Europa. Estudio comparativo..."

14. Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

15. Article 21.

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

16. Article 11. Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

17. Maina Kiai. "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association", A/HRC/20/27, 21st May 2012. https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

Correspondingly, the European Court of Human Rights (ECHR) has also established that the right to freedom of peaceful assembly and association cannot be restricted since it is a fundamental right in any democratic society. In its sentence on 18th October 2014, in the case of *Yılmaz Yıldız and others v. Turkey*¹⁸, it was set that any demonstration inevitably causes a certain level of disruption to ordinary life and that it is important for public authorities to show a certain degree of tolerance towards peaceful assembly in order to avoid this right “to be deprived of all substance”. Moreover, persecution and sanctioning of protesters can produce a chilling effect on participation in future protests.

Furthermore, in the sentence of 15th October 2015 in the case of *Kudrevičius and Others v. Lithuania*¹⁹, reiterated that the right to freedom of assembly and association in **article 11 of ECHR protects a demonstration that may annoy or cause offence to persons opposed to its ideas or claims**. Therefore, any measures “interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it”.

Regarding restrictions, there is a triple requirement in order to place them: a) that it is prescribed by law; b) that the aim is legitimate: maintenance of public security, protection of order and protection of rights and freedom of third parties c) it is necessary in a democratic society. Restrictions can only be placed with a strict interpretation that must answer to convincing and imperative reasons that can justify them (among others, ECHR 28th May 2019, in the case *Forcadell i Lluís and Others v. Spain*²⁰).

2.2. Context and legislation in Spain

2.2.1. Social and Political Context

According to the Statistic Yearbook of the Spanish Ministry of Home Affairs²¹, in 2018 there were 32,078 officially communicated demonstrations, which is a 10.27% increase from 2017. In 2017 there were 29,091 demonstrations –without even taking into account protests in Catalonia or the Basque Country. Therefore, the numbers are far from the ones in 2012 and 2013, when 45,000 requests were placed. These were the years following the 2008 economic crisis. Therefore, In Spain, the number of street protests is significantly higher than in other wealthier countries or with more solid social movements²².

Nowadays, we must take into account the protests and civil disobedience that revolve around the groups who continuously protest to support the right to housing in Spain. And, more specifically, 2019 has been the year of the green and purple horizons: the feminist strike on 8th March with mass demonstrations around Spain and the Global Climate

Strike on 27th September, or the protest during October by the ecologist movements in Madrid, that ended with several injured protesters²³ and four arrests²⁴.

In recent years, together with this new trend for protest, there has been a clear recession in civil and political rights in Spain. This recession must be added to the one in social, economic and cultural rights that stems from the crisis in 2008. The bad management of the crisis resulted in numerous protests that received a severe response from the authorities. Therefore, Amnesty International has been condemning the excessive use of force by police services in their annual reports from 2011 to 2014. Last year they prepared a special report titled *Spain: The right to protest under threat (2014)*²⁵ which showed many situations where an excessive use of force was used to break up people who were peacefully protesting. An example of this is the dispersing of demonstrators from Plaça Catalunya [Catalonia Square in Barcelona] after it was occupied by the 15^m movement on 27th May 2011 in Barcelona or the demonstration *Rodea el Congreso* [Surround the Congress] on 25th September 2012 in Madrid.

This severe response in 2015 culminated in the *Organic Law 4/2015*, 30th March, on the protection of citizens' safety. This new Citizen Safety Law, commonly known as a gag law, is a double modification of the criminal code, which has resulted in more severe and abundant criminal charges, including public disturbance, for instance.

The new Citizen Safety Law has been condemned by several social movements and groups, as well as by academics and international organizations defending human rights. This is due to the law's objective to deter people from protest, incorporating new infringements that seem to have been tailor-made for social movements and protests that were started or restored during the years of imposed austerity. The occupation of public squares by the 15M movement born in 2011 or the actions of civil disobedience and peaceful resistance by the PAH (Platform of Affected by Mortgages – a group that take action against evictions) are good examples of it.

If we focus on the impact of the new Citizen Safety Law, there's evidence that several activists and journalists have been affected by its application, and the sanctions imposed on the right to protest have been numerous. According to the Amnesty International report *Spain: targeting social activists and freedom of information. Analysis of the Citizen Safety Law (2017)*²⁶, it is calculated that, in 2016 about 34,000 sanctions were imposed on the right to freedom of assembly, speech and information.

Statistics made by the Ministry of Home Affairs shed light on this topic²⁷: **disrespectful and inconsiderate behaviour towards the authorities (infringement of article 37.4, mi-**

18. European Court of Human Rights Judgement *Yılmaz Yıldız and Others v. Turkey*, 18th October 2014, par. 33, 41 and 45. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-147470%22%7D>

19. European Court of Human Rights Judgement *Kudrevičius and Others v. Lithuania*, 15th October 2015, par. 145. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-158200%22%7D>

20. European Court of Human Rights Judgement *Maria Carme Forcadell i Lluís et autres contre l'Espagne*, 28th May 2019, par. 34. <https://hudoc.echr.coe.int/eng#%7B%22languageisocode%22%3A%22FRE%22%2C%22appno%22%3A%2275147/17%22%2C%22documentcollectionid%22%3A%22ADMISSIBILITY%22%2C%22itemid%22%3A%22001-193593%22%7D>

21. Spanish Ministry of Home Affairs. "Anuario Estadístico del Ministerio del Interior 2018", 2019. <http://www.interior.gob.es/documentos/642317/1204854/Anuario+Estad+C3%ADstico+del+Ministerio+del+Interior+2018/5a35fad7-5386-44fb-83ae-9b14e678cc4a>

22. Kerman Calvo; Hugo Garciamarín. "¿Qué ha pasado con la movilización social? Continuidad y cambios en la protesta social en España". *Zoom Político* 28 (2016). https://www.fundacionalternativas.org/public/storage/laboratorio_documentos_archivos/c76e-471d89b6f6ed6024e4b47305be86.pdf

23. G.M.M. "Lucha climática: detenciones y heridos en la acción de protesta contra el cambio climático". Público, 7th October 2019. <https://www.publico.es/sociedad/lucha-climatica-detenciones-heridos-accion-daba-paso-acampada-frente-ministerio-transicion-ecologica.html>

24. El Salto. "Cuatro detenidas en el acto de protesta de activistas por el medio ambiente en el paseo de la castellana de Madrid", El Salto, 7th October 2019. <https://www.elsaltodiarario.com/medioambiente/activistas-por-el-clima-cortan-la-castellana#>

25. Amnesty International. "Spain: The right to protests under threat", 2014. https://www.amnesty.org.uk/files/spain_the_right_to_protest_under_threat_o.pdf

26. Amnesty International. "España: activistas sociales y el derecho a la información, en el punto de mira. Análisis sobre la Ley de Protección de Seguridad Ciudadana", 2017. https://doc.es.amnesty.org/ms-opac/doc?q=%3A*&start=0&rows=1&sort=fecha%20desc&fq=norm&fv=*&fo=and&fq=mssearch_fid13&fv=EUR41400017&fo=and&fq=mssearch_mlt98&fv=gsego1&fo=and

27. Spanish Ministry of Home Affairs. "Infracciones a la Ley orgánica 4/2015, de protección a la seguridad ciudadana". Estadísticas de criminalidad, 2018. <https://estadisticasdecriminalidad.ses.mir.es/jaxiPx/Datos.htm?path=/Datos10/!o/&file=10001.px>
According to the Ministry of Home Affairs, these data includes the claims filed in the Government offices in Catalonia, Navarra

nor infraction) and disobedience or resistance to authority or refusal to identify oneself (infringement of article 36.6, serious infraction) are the second and fourth most highly used charges, respectively. Regarding the former, in 2017 a total of 21,122 were issued and in 2018, 21,258; regarding the latter, in 2017 13,033 and in 2018 13,413. All these charges have been made possible by the gag law²⁸.

In July 2018, several groups asked for the repeal of the Citizen Safety Law²⁹. Months later, an amendment regarding the more polemical articles of this law was made public — Instruction 13/2018, 17th October, by the State Security Secretary— on the external body searches, the interpretation of specific infringements and procedural matters regarding Organic Law 4/2015, 30th March, on citizen safety. This amendment was criticized by the main Spanish National Police trade unions³⁰. In November 2018 the Commission of Home Affairs of the Spanish Congress started to debate the law's reform after a modification proposal issued by PNV (Basque Nationalist Party). However, this process was interrupted because of the two general elections in 2019.

Freedom of speech has also been suppressed by this move towards criminalisation. Several rap singers have been condemned for their song lyrics. An example of it is Pablo Hásel, La Insurgencia or Valtònyc. Inciting terrorism, or insulting the monarchy, are some of the crimes that they are accused of. Another example is the case of the puppeteers of the company *Títeres Desde Abajo*, who spent five days in preventive detention in 2016 accused of inciting terrorism. They were condemned after their performance in Madrid during Carnival. In this regard, Amnesty International states that censorship is growing and, therefore, the corresponding crackdown on freedom of speech, especially after the reform of the crime of inciting terrorism in article 578 in the Spanish Criminal Code in 2015, which resulted in more severe punishments when it came online³¹.

This extreme response has also been stated in the report published by Freemuse, an independent International organization that fights for artistic freedom of speech, The State of Artistic Freedom 2019. In fact, in 2018 this organization highlighted Spain, together with Turkey and Russia —with 14, 9 and 2 people sentenced with jail penalty respectively—, as the three worst offenders amongst Global North countries when it comes to putting artists in jail³².

2.2.2. Legal Configuration

The right to freedom of assembly and association is present in article 21 of the Spanish Constitution, and according to the jurisprudence of the Spanish Constitutional

Court, this fundamental right can be defined as follows (Legal Foundation 2 in the Constitutional Court Judgement 38/2009, 9th February in reference to Legal Foundation 3 in the Constitutional Court Judgement 170/2008, 15th December):

"As reiterated, the right to freedom of assembly 'is a collective demonstration of freedom of expression exercised through a temporary association, being conceived by the scientific doctrine as an individual right for the individuals and a collective right in its exercise. It operates as an instrumental technique at the service of exchange or exhibition of ideas, defence of interests or display of troubles or claims, and thus it constitutes a channel of the participative democratic principle. The shaping elements are, according to the dominant opinion, the subjective — assembly of people —, the temporary —its provisional nature —, the purpose — lawfulness of its aim — and the real or objective — the place where it is held —' (Constitutional Court Judgement 85/1988, 28th April, Legal Foundation 2; reiterated doctrine in the Constitutional Court Judgement 66/1995, 8th May, Legal Foundation 3; 196/2002, 28th October, Legal Foundation 4; 301/2006, 23rd October, Legal Foundation 2).

*There is also emphasis on the fundamental importance of this right —channel of the participative democratic principle—, both on its subjective and objective dimensions, in a social and democratic State, subject to the law, as stated in the Spanish Constitution (Constitutional Court Judgement 301/2006, 23rd October, Legal Foundation 2; in the same regard Constitutional Court Judgement 236/2007, 7th November, Legal Foundation 6). **Actually, to many social groups, 'this right is one of the only means that are available to them to express their ideas and claims in public'** (for all of them, Constitutional Court Judgement 301/2006, 23rd October, Legal Foundation 2). On this subject, there are statements that reproduce the European Court of Human Rights and that state that 'the protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association' (ECHR case of Stankov, 2nd October 2001, § 85) or that 'the freedom of speech constitutes one of the principal means to ensure the effective enjoyment of the right to freedom of assembly and association' (ECHR case of Rekvényi, 20th May 1999, § 58)' (Constitutional Court Judgement 195/2003, 27th October, Legal Foundation 3)".*

Therefore, as it has been shaped internationally, the right to freedom of assembly and association is a fundamental axis of democratic participation and so it is essential in a social and democratic State, subject to the law.

The right to freedom of assembly and association is legally recognized in the Organic Law 9/1983, 15th July, which regulated the right to assembly (from now on, OL 9/1983), which can be exercised in gatherings of over 20 people.

According to article 8 in the OL 9/1983, and the article 21.1³³ of the Spanish Constitution, **there is a system of previous communication**. There is the obligation of communicating

28. According to the Ministry of Home Affairs, these data includes the claims filed in the Government offices in Catalonia, Navarra and Euskadi since they have their own competences and so they are not included in these statistics. The Catalan Government does not publish the infractions under the Citizen Safety Law disaggregated and, in fact, it is known that from 1st October until 10th April 2019 Mossos d'Esquadra have initiated 54,858 files - 4,468 for lack of respect under the art. 37.4- under this law due to the answer of the current head of the Catalan Minister of Home Affairs, Miquel Buch, to the parliamentary question of the MP Maria Sirvent (CUP), published on 3th June 2019. Available in the Official Newsletter of the Parliament of Catalonia: <https://www.parlament.cat/document/bopc/3155055.pdf>

29. Marta Nebot. "40 colectivos y 150 colectivos sociales exigen en el Congreso el fin de la ley mordaza". Público, 5th July 2017. <https://www.publico.es/politica/congreso/40-colectivos-150-colectivos-sociales-exigen-congreso-ley-mordaza.html>

30. Europa Press. "El Congreso se prepara para revisar los aspectos más polémicos de la reforma de la 'Ley Mordaza'". Europa Press, 17th January 2019. <https://www.europapress.es/nacional/noticia-congreso-prepara-revisar-aspectos-mas-polemicos-refor-ma-ley-mordaza-20190117181455.html>

31. Amnesty International. "Spain: Tweet... If you dare: How counter-terrorism laws restrict freedom of expression in Spain", 2018. <https://www.amnesty.org/en/documents/eur417924/2018/en/>

32. Srirak Pliapat. "The State of Artistic Freedom 2019". Freemuse, 2019. <https://freemuse.org/wp-content/uploads/2019/03/saf-2019-online.pdf>

33. Article 21.

1. The right to peaceful unarmed assembly is recognised. The exercise of this right shall not require prior authorisation.

2. In the event of meetings in public places and of demonstrations, prior notification shall be given to the authorities, who may ban them only when there are well founded grounds to expect a breach of public order, involving danger to persons or property.

the demonstrations in places of public use to the Administration from 30 to 10 natural days in advance, or 24 hours in advance in case of an emergency. The Spanish Constitutional Court jurisprudence (judgement 110/2006, 3rd April, Legal Foundation 2) **states that the obligation of communication does not constitute an authorization** because the exercise of this fundamental right prevails due to its immediate and direct efficacy, and it cannot be conceptualized as a legal configuration right (Constitutional Court Judgements 59/1990, 29th March, Legal Foundation 5; 66/1995, 8th May, Legal Foundation 2) with the aim of adopting the corresponding measures to allow the exercise of the demonstrators' rights as well as the protection of rights and goods of third parties.

It is important to highlight that **failing to communicate a demonstration does not make it illegal and, according to international statements, its development will be tolerated by the national law enforcement and security forces.** This matches the international viewpoint of the Special Rapporteur on human rights as well as the ECHR, which in the judgement of the case *Bukta and others v. Hungary*, 17th July 2007³⁴ stated that "[...] in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly".

The right to freedom of assembly and association, like any other right, is not an absolute right and admits certain limitations (*Constitutional Court Judgements 2/1982, 29th January, Legal Foundation 5; 36/1982, 16th June; 59/1990, 29th March, Legal Foundations 5 and 7; 66/1995, 8th May, Legal Foundation 3; and Constitutional Court Order 103/1982, 3rd March, Legal Foundation 1, among others*). These limitations will be interpreted proportionally, restrictively and in favour of fundamental rights. In this regard, the Constitutional Court Judgement 38/2009, 9th February, Legal Foundation 2 reads:

Moreover, doubts about the negative effects the right to assembly may cause are not sufficient, any limit to this right shall be conditioned by the principle or judgement of favouring the right to freedom of assembly (favor libertatis: Constitutional Court Judgements 66/1995, 8th April, Legal Foundation 3; 42/2000, 14th February, Legal Foundation 2; 195/2003, 27th October, Legal Foundation 7; 90/2006, 27th March, Legal Foundation 2; 163/2006, 22nd May, Legal Foundation 2; 301/2006, 23rd October, Legal Foundation 2). The European Court of Human Rights made the same considerations and stated that 'the exceptions set out in Article 11 are to be constructed strictly. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation (ECHR in the case of Sidiropoulos, 10th July 1998, § 40)' (Constitutional Court Judgement 236/2007, 7th November, Legal Foundation 6)".

This interpretation of the right to freedom of assembly and association is strengthened by the conception of the democratic Spanish system as non-militant. This concept is defined in the Constitutional Court jurisprudence, for instance in Constitutional Court Judgement 177/2015, 22nd July (Legal Foundation 2) that states: "[...] our system does not allow 'militant democracy', that is to say a model in which the respect and the positive adhesion

to legislation and, first of all, to our Constitution is enforced. [...] The value of pluralism and the need to freely exchange ideas are the base of the representative democratic system and impede any kind of activity of the public powers aimed at severely control, select or determine public circulation of ideas or doctrines".

However, the system based on guaranteeing the right to protest and political dissidence is at stake after judgements such as the recent Spanish Supreme Court judgement. This report will analyse the impact of this judgement that has convicted members of the Catalan Government and Catalan civil society with over a hundred years prison.

34. European Court of Human Rights Judgement *Bukta and others v. Hungary*, 17th July 2007, par. 36. <https://hudoc.echr.coe.int/eng#%7B%22itemid%3A%3A%22001-81728%22%7D>

3. THE RIGHT TO PROTEST IN CATALONIA

3.1. Current Situation

Catalonia has a great tradition of citizen participation in public affairs, and there are examples of such participation throughout the years. There is also a long tradition of civil disobedience. An example of it is the objection to the compulsory military service, when thousands of young people—in Catalonia and in other areas—assumed legal procedures and prison charges until the abolition of the military service was achieved. It was precisely the use of disobedience through protests for conscientious objection, and then insubordination campaigns, that achieved this legal reform.

In the last decade, mass demonstrations against funding cuts in healthcare and education are also remarkable. They took place during 2010 and 2011, with 15M movement in the centre. This movement gathered thousands of people in public squares, who claimed respect and protection of economic and social rights, but also a revision of political institutions in Spain due to the failure of the representative democracy. Protests happened simultaneously all over the country, and reinforced other existing protests such as the fight for the right to housing which was initiated by the Platform of Affected by Mortgages, and several neighbour groups that would be created later. This continuous protest for the right to housing has carried on and lately grown, due to the struggle to access decent housing by a part of the population. The creation of *Sindicat de Llogateres i Llogaters* (trade union for housing) and their negotiations and protests are an example of using peaceful civil disobedience against the impossibility to guarantee that the right to housing is respected. The actions taken by groups such as *Aliança contra la Pobresa Energètica* (APE or Group against Energy Poverty) are also a good example and they have even translated into legislation reforms, despite the Spanish Constitutional Court's suspensions.

Nevertheless, the crisis on Catalonia's fit within Spain is the one that has mobilised a higher number of people continuously protesting in recent times. Despite mass protests every year on 11th September (Catalan National Day), when thousands of people marched in the streets, no agreement about how to solve this political conflict has been reached. After all, the answer has been a legal approach to conflict solving and to politics, and this tendency has had negative reactions both in Spain and internationally. For example, David Kaye, Special Rapporteur on the right to freedom of speech and information stated on 6th April 2008 that Spanish authorities should not pursue criminal charges against political figures and protesters in Catalonia³⁵.

Therefore, over the last five years there have been numerous legal procedures against politicians and public workers, as well as citizens for having taken part in different peaceful protests.

Regarding political representatives and public workers, this report has to refer to the condemnations for organising the public participation process of 9th November 2014. This process resulted in the President of the Catalan Government at that moment, Artur Mas, the Catalan Ministries Joana Ortega and Irene Rigau condemned for disobedience by the

³⁵. United Nations Office of the High Commissioner for Human Rights (UNOHCHR). "UN expert urges Spain not to pursue criminal charges of rebellion against political figures in Catalonia". OHCHR, 6th April 2018. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22928&LangID=E>

Catalan Supreme Court (Superior Court of Catalonia judgement, 13th March 2017) and later confirmed by the Spanish Supreme Court (judgement 722/2018, 23rd January 2019). Moreover, the Government Spokesman and Minister of Presidency, Francesc Homs, regarding the same facts and crime has been condemned by the Spanish Supreme Court (judgement 177/2017, 22nd March 2017). Regarding organisation of the referendum on 1st October 2017, several judicial proceedings have been started in different Catalan courts as well as in Audiencia Nacional (National Court) and the Supreme Court, or by the corresponding office of the public prosecutor. Public Prosecutors started proceedings against over 700 mayors in Catalonia for having allowed to use polling stations, and also against several political representatives and senior officials of the Catalan Government, which is currently divided into two proceedings: one by Court number 13 of Barcelona and the other one by the Catalan Supreme Court. These proceedings led to searches and arrests on 20th September 2017 and also to protests throughout Catalonia but especially in front of Economy Ministry's building in Barcelona. Finally, and this is further developed in this report, there are the proceedings against the leaders of Òmnium Cultural and Assemblea Nacional Catalana (ANC), as well as the members of the Catalan Government and the Board of the Parliament of Catalonia for organising and calling to vote on 1st October 2017 and the protests on 20th September. The Supreme Court judgement condemned the two social leaders, nine members of the government and the President of the Parliament to up to 13 years imprisonment with the crimes of sedition, embezzlement of public funds and disobedience. Simultaneously there are other proceedings against the Major of the police force of Catalonia, Mossos d'Esquadra, and the so-called Electoral Commission of Catalonia.

Additionally, there are hundreds of people in Catalonia that are being the object of legal proceedings for their participation in protests or in organising them. They face crimes such as public disorders, assault or property damage, and several people have been imprisoned. Actually, some have been arrested and charged with crimes of terrorism, while being investigated and deprived of liberty by order of the National Court. **Bureau-repression must be added to this use of the criminal law, which is the use of administrative sanctions by Citizen Safety Law for protests participation or in the exercise of the right to information.**

These legal and administrative proceedings, far from reducing protests, have resulted in an increase of protests and in an increase of the citizens' feeling of lack of impartiality and independence of the Judiciary in relation to the Government. **During many of these protests there has been excessive use of force by police forces, which has resulted in numerous injured citizens.** These mechanisms have already been used to suppress dissidence must be added to the law reforms which were mentioned in the previous section and which help evaluate the health of the right to protest in Catalonia and Spain.

Therefore, a clear recession in the exercise of civil and political rights in Spain has been observed, especially in relation to the right to protest. Simultaneously, the matter of Catalonia's fit within Spain has brought about an even more restrictive approach to fundamental rights that has been claimed by several organisations, both national and International.

3.2. The right to protest in Catalonia (2017-2019)

3.2.1. Assessment of the restriction to the right to protest in Catalonia: from October 2017 to October 2019

3.2.1.1. The events of 1st October 2017

On 1 October 2017, as the referendum in Catalonia took place, Spanish National Police and Civil Guards caused serious situations of violence against people who took part in the vote and gatherings during the day.

A Network of observers of human rights violations in the context of protests, organised by the initiative #SomDefensores (launched by organisations such as Novact, Federació d'Organitzacions per a la Justícia Global (Lafede.cat), Institut de Drets Humans de Catalunya (IDHC), Associació Catalana per a la Defensa dels Drets Humans (ACDDH) and Irídia, among others) **distributed in different polling stations in the city of Barcelona, assisted a total of 104 people.** Of those 104 people, 77 were direct victims of assault by Spanish National Police and 27 were direct witnesses of other police assaults. Moreover, Barcelona City Council's Support Service for Victims of Police Assaults of 1st October, which is part of their Office against Discrimination (OAD), offered comprehensive psychosocial and legal support to all those people who contacted the service, in coordination with SAIDAVI of Irídia. The Service run from 2nd to 20th October and assisted a total of 294 people, 65 of which were seen in person, after making a first appointment. It is worth mentioning that 9 people were seen at the OAD or they had already received support from observers or at SAIDAVI's telephone on 1st October.

Cases confirmed as part of the initiative #SomDefensores and the aforementioned service, must be seen in relation to official data released by the Catalan government's Health Department. According to these, between 1st and 4th October 2017, a total of 1,066 people were seen by health services as a consequence of police charges during the referendum of 1st October all over Catalonia³⁶.

The report *Violations of civil and political rights. Catalonia. September and October 2017*³⁷, prepared within the framework of #SomDefensores describes the main methods used by officers of Spanish National Police and Civil Guard on 1st October 2017:

- a) **Numerous police forces provided with diverse riot gear and "crowd control gear"** appearing in front of polling stations where people were gathering without any incidents.
- b) **Assaults to different parts of the body with hands and safety boots**, including of vital areas and kicking of sexual organs.
- c) **Assaults with steerable telescopic defences (batons).** Used on a massive scale by officers during their charges. In most cases officers did not warn

³⁶. Servei Català de Salut. "Informe sobre els incidents dels dies 1 al 4 d'octubre de 2017", 2017. <https://govern.cat/govern/docs/2017/10/20/11/15/232799c8-755f-4810-ba56-0a5bbb78609c.pdf>

³⁷. Jordi Palou. "Violations of civil and political rights. Catalonia. September and October 2017". Som Defensores, 2017. http://www.lafede.cat/wp-content/uploads/2018/03/informe_drets_humans_1oct.pdf

people who were civically and peacefully sitting down or standing at polling stations entrances.

d) Assaults with rubber balls: on various occasions Spanish National Police officers used rubber balls, in some cases aiming at vital parts of the body. For example, the case of Roger Español who lost sight in one eye due to the impact of a rubber ball shot by a Spanish National Police officer around the school Escola Ramon Llull in Barcelona.

e) Assaults with tear gas: in the small town of Aiguaviva a large provision of riot police used tear gas to disperse citizens and seize ballot boxes. There had not been any previous incident.

f) Physical assaults. On top of the aforementioned physical assaults, there were numerous anxiety and panic attacks caused by the hostility of police conduct.

Due to the seriousness of police conduct, several international and human rights organisations condemned the excessive use of force by national law enforcement and security forces and expressed their concerns. Amnesty International confirms, *"the dangerous and inappropriate use of riot gear, strikes to the head of defenceless people who were offering no resistance, and demands an exhaustive, swift and impartial investigation of the facts"*³⁸. Similarly, Human Rights Watch condemned the excessive use of force by officers and started an independent investigation³⁹.

Statements were also made at United Nations and Council of Europe level. On one hand, United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, demanded an impartial investigation on the police violence on 1-O (which stands for 1st October)⁴⁰. On the other hand, Council of Europe's Commissioner for Human Rights at the time, Nils Muiznieks, sent a letter to the Spanish Home Affairs Minister, Juan Ignacio Zoido, to express his concerns for the reports of disproportionate use of force by police forces on 1st October 2017. He asked authorities to carry out *"swift, independent and effective investigations into all allegations of police misconduct and disproportionate use of force"*⁴¹.

Two years after 1-O, at least 120 officers of Spanish National Police and Civil Guard are being investigated in different Courts in Catalonia for their actions during the referendum. In the province of Barcelona, 72 officers are being investigated (50 in Barcelona city), 35 officers in the province of Girona, and the rest in the provinces of Tarragona and Lleida⁴².

38. Amnesty International. "Spain: Excessive use of force by National Police and Civil Guard in Catalonia" Amnesty, 3rd October 2017. <https://www.amnesty.org/en/latest/news/2017/10/spain-excessive-use-of-force-by-national-police-and-civil-guard-in-catalonia/>

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

40. eldiario.es Catalonia. "El Alto Comisionado de la ONU para los DDHH pide una investigación imparcial sobre la violencia policial en el 1-O". eldiario.es, 2nd October 2017. https://www.eldiario.es/catalunya/politica/Alto-Comisionado-ONU-investigacion-imparcial_0_692931141.html

41. Council of Europe. "Commissioner calls on Spain to investigate allegations of disproportionate use of police force in Catalonia". COE, 9th October 2017 <https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-spain-to-investigate-allegations-of-disproportionate-use-of-police-force-in-catalonia>

42. Judit Perpinyà. "120 policies i guardies civils imputats per les càrregues de l'1-O". CCMA, 15th October 2019. <https://www.ccma.cat/324/120-policies-i-guardies-civils-imputats-per-les-carregues-de-l-1-o/noticia/2951744/>

The legal proceedings in the city of Barcelona are currently in the investigation phase before the Instruction Court number 7 of Barcelona. In these proceedings, the legal team of SAIDAVI is acting as private prosecution, offering free legal assistance to victims and in one of the cases acting as popular prosecution. At the same time, the service also provides psychosocial support in all cases that require it. Precisely, the service provides legal advice and support in 13 cases that are representative of police violence of 1-O, in relation to seven schools in the city of Barcelona: Escola Mediterrània, IES Pau Claris, CEIP Els Horts, Escola de la Prosperitat, Escola Ramon Llull, Escola Àgora and Escola Infant Jesús. In these proceedings the Catalan Government and Barcelona's City Council are acting as popular prosecutions, together with other organisations and individuals affected by the charges.

A particularly remarkable element in the investigation of the facts is **the difficulty to identify police officers operating on the ground**. The main reason is that identification is only visible in the back of the uniform and not in the front. For this reason, legal proceedings in relation to some schools have been closed despite having images recorded from the front, which clearly show a disproportionate use of force by some officers. However, a decision from the Provincial Court on 9th April 2019 established that it is not possible to close cases only of some schools, since police actions were joint and some aspects affect all schools and officers as a whole. Particularly in relation to who designed the operative and gave orders to charge against citizens, as well as the use of force in different schools.

3.2.1.2. Right to protest between 1st October 2017 and 14th October 2019

After October 2017 and before the Supreme Court's judgement, several mobilisations have taken place all over Catalonia and, of course, also in the city of Barcelona. In this context of protests and during 2018, SAIDAVI have assisted 80 people who have relayed situations in which there has been a disproportionate and excessive use of force by national law enforcement and security forces. They represent the 69.6 % of cases seen by the service⁴³.

It is worth mentioning that 27 of the cases seen during 2018 by SAIDAVI were due to serious injuries caused by the use of police batons by Mossos d'Esquadra. Specifically, in 14 of the cases registered, injuries to the head were caused by police batons, which were moved vertically, against the regulation of their use. In all cases, injuries were serious and required stitches. The other 13 cases, injuries consisted on arm or wrist fractures, and in most cases as a consequence of a baton strike aimed at the head and stopped by the individual with their arm or wrist.

One of these cases involved a journalist who at that moment was carrying out his professional duties and was dully identified with a press armband. Irídia took this case but it is not the only one assisted by the service. In fact, according to the censorship map prepared by Grup Barnils, several journalists have suffered injuries or have been prevented to carry out their professional duties during this period, as stated later on. **Disproportionate use of force against journalists** doing their job on the ground directly violates the right to freedom of information.

43. Out of the 115 cases seen by SAIDAVI, 80 happened in a context of protests, 13 in detention (prison and immigration detention centres), 1 in a context of re-victimisation during reporting of male violence against women and 3 cases in different areas, mainly in contexts of evictions and police detention.

Moreover, situations of foam projectiles being shot by the Mobile Brigade have been reported. All cases proved how harmful these projectiles are, since two of the four cases involve injuries that required surgery and in one of them the effects were irreversible.

One of the main aspects identified since the start of the service is also the difficulty to identify riot police operating on the ground due to their identification number only being visible on their backs. It must also be noted that in the case of the Mobile Brigade or the Regional Area of Operative Resources of Mossos d'Esquadra, identification numbers are very long and have a combination of numbers and letters using an unclear font that cannot be read from a distance. Many cases have been closed due to the lack of identification of officers responsible of disproportionate actions. Accordingly, it is good news and a big step towards the prevention of impunity that the Catalan Parliament has approved a decision requesting the Catalan Government to change the type of numbers, as well as their location to the front and back of the uniform and helmet.

Another key aspect is firstly the lack of interim measures and secondly the lack of sanctions and internal clean-up of those officers who have acted incorrectly. Likewise, at the moment, there is still no collaboration mechanism between the Division of Internal Affairs of the force and human rights organisations, nor direct mechanism by which citizens can report disproportionate uses of force directly to this Division.

3.2.1.3. Supreme Court's judgement in the case of Catalan politicians and social leaders: a matter of fundamental rights

On 14th October 2019 the Spanish Supreme Court issued and notified its judgement number 459/2019, condemning members of the Catalan government, the President of the Catalan Parliament and two social leaders with the following crimes and penalties:

- Crime of sedition together with the crime of embezzlement of public funds to the following members of the Catalan government:
 - Oriol Junqueras, Vice-president and Regional Minister of Economy and Treasury of the Catalan government, to 13 years imprisonment and 13 years general disqualification.
 - Raül Romeva, Regional Minister of Foreign Affairs, Institutional Relations and Transparency of the Catalan government, to 12 years imprisonment and 12 years general disqualification.
 - Jordi Turull, as Member of the Parliament first and then Regional Minister of the Presidency, to 12 years imprisonment and 12 years general disqualification.
 - Dolors Bassa, Regional Minister of Work, Social Affairs and Family, to 12 years imprisonment and 12 years general disqualification.
- Crime of sedition:
 - Carme Forcadell, President of the Catalan Parliament (and President of the civil society's association Assemblea Nacional Catalana), to 11 years and 6 months imprisonment and 11 years and 6 months general disqualification.
 - Joaquim Forn, Regional Home Affairs Minister of the Catalan government, to 10 years and 6 months imprisonment and 10 years and 6 months general disqualification.
 - Josep Rull, Regional Minister of Land and Sustainability of the Cat-

alan government, to 10 years and 6 months imprisonment and 10 years and 6 months general disqualification.

- Jordi Sànchez, President of the association Assemblea Nacional Catalana, to 9 years imprisonment and 9 years general disqualification.
- Jordi Cuixart, President of the association Òmnium Cultural, to 9 years imprisonment and 9 years general disqualification.

- Crime of disobedience: Members of the Government Santiago Vila, Meritxell Borràs and Carles Mundó to a fine of 10 months with a daily fee of 200 euros (60.000 euros each) and special disqualification from holding elective public office during 1 year and 8 months.

Several organisations - Catalan, Spanish and international - have been monitoring the trial and have carried out a detailed assessment of the aforementioned judgement, as part of the platform *International Trial Watch*. Irídia is one of the promoters of the platform, so we share the assessment issued on 14th November 2019⁴⁴. Indeed, **it is considered that the proceedings and the judgement violate the following principles and rights: principle of legality in criminal law, right to liberty, freedom of expression, freedom of ideology, right to peaceful assembly and the free exercise of representative public office, as well as the right to due process and with all guarantees.**

The main basis the Court uses to justify convictions for sedition is the protection, promotion, call, organisation or encouragement of citizens to take part in gatherings to prevent the enforcement of laws or the exercise of public duties. This is the main element that turns the disobedience of Constitutional Court's decisions by Government and Parliament into a crime of sedition. And this is the element that, according to the Supreme Court, justifies condemning for sedition two leaders of the civil society like Jordi Cuixart and Jordi Sànchez. However, **the Court does not take into account the fact that protests and gatherings, which took place on 20th September and 1st October, were a legitimate exercise of the right to peaceful assembly** (which must in any case be broadly interpreted to include the organisation of, and participation in marches, or processions - ECHR's judgement *Christians against Racism and Fascism v the United Kingdom* of 16 July 1980⁴⁵), **freedom of expression and ideology**. Specially taking into account that the Court considered proven that none of the convicted had carried out any violent actions and that all the calls for participation done through the media and social networks emphasised the fact that gatherings had to be peaceful.

It must be noted that the Working Group on Arbitrary Detention of the UN Commission on Human Rights, in its *Opinion number 6/2019, concerning Jordi Cuixart i Navarro, Jordi Sánchez i Picanyol and Oriol Junqueras i Vies (Spain)*, issued on 25th April 2019, called for the release of Jordi Sànchez, Jordi Cuixart and Oriol Junqueras and stated that "(...) criminal accusations are aimed at coercing Sánchez, Cuixart and Junqueras for their political opinions in relation to Catalan independence and restrain them from pursuing that goal at political level" (par. 119)⁴⁶.

44. International Trial Watch. "Factual and legal assessment by international and national observers of the judgement condemning Catalan authorities and social leaders (SCJ 459/2019)", 2019. https://internationaltrialwatch.org/wp-content/uploads/2019/11/POSICIONAMIENTO_SENTENCIA_12112019-ingles-carta.pdf

45. European Court of Human Rights Judgement *Christians against Racism and Fascism v the United Kingdom*, 16th July 1980. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-74286%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-74286%22]})

46. Working Group on Arbitrary Detention. "Opinion number 6/2019, concerning Jordi Cuixart i Navarro, Jordi Sánchez i Picanyol and Oriol Junqueras i Vies (Spain)", A/HRC/WGAD/2019/6, 13th June 2019. https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_6.pdf

In short, all these actions are part of the essential core of the right to peaceful assembly and freedom of expression, from the individual viewpoint. As stated in the report, everyone has the right to protest, organise protests, promote them, talk and tweet about them, even if the demands or the aim of the people who attend can be considered unconstitutional, as long as the right is peacefully exercised, as happened on 20th September and 1st October 2017. Criminally convicting these acts to the crime of sedition and to such high penalties is not foreseeable from the point of view of the principle of legality in criminal law and criminalises the right to protest. As a consequence this causes a clear chilling effect for the rest of the population, which may be amplified when they target a well-known public figure and attract wide media coverage (ECHR's judgement *Nemtsov v Russia*, 31st July 2014⁴⁷), as it is the case here. Amnesty International has expressed a similar opinion in its assessment of the Supreme Court judgement against Catalan leaders⁴⁸, highlighting that "the organisation considers that the conviction of Jordi Sànchez and Jordi Cuixart, presidents, respectively, of Catalan organisations *Assemblea Nacional Catalana (ANC)* and *Òmnium Cultural*, constitutes an excessive and disproportionate restriction of the peaceful exercise of their human rights. Moreover, the organisation is worried about the impact the use of the crime of sedition may have on the exercise of rights to freedom of expression and peaceful assembly and the possible chilling effect it may have on the exercise of those rights in the future".

3.2.1.4. Protests against the Judgement in October 2019

After the Supreme Court's Judgement regarding Catalan leaders was made public in the morning of Monday 14th October 2019, different spontaneous protest took place all over Catalonia, showing rejection to the judicial decision condemning pro-independence political and social leaders: marches, traffic cuts, concentrations in front of Courts and Departments of the Catalan Government, cancellation of classes at universities, etc. Protests reached Barcelona's Airport (Aeroport del Prat), when thousands of protesters occupied Terminal 1 of that airport. Protests also took place in different parts of Spain against the judgement, such as Madrid, Euskadi, Aragón, Valencian Community, Galicia, Murcia, Asturias, Balearic Islands or Extremadura.

Protests continued that week and peaked on 18th October with a general strike and a large demonstration formed by six popular marches that had started in different parts of Catalonia and finished in the city of Barcelona. After that, gatherings and demonstrations continued and even tens of students began an indefinite camping in Plaça Universitat of Barcelona on 30th October.

The result of these protests has been hundreds of injured people. During the week of 14th until 20th October 2019, Medical Emergency Services carried out 593 medical assistances around Catalonia, including to officers of Mossos d'Esquadra and Spanish National Police⁴⁹. **Serious police violence situations have been reported against demonstrators, as well as performances contrary to protocols on police conduct.** This has been report-

ed by the initiative *Som Defensores*⁵⁰, that launched the network of observers of human rights violations in the context of protests during 14th, 18th and 26th October. They also had a support team for cases of police assaults and detentions. From the period between 14th October and 22nd October, this initiative has made the following evaluation: a total of 122 cases in Barcelona and surrounding areas, 21 of which have received legal and psychosocial support. Of all the cases assisted, Mossos d'Esquadra were responsible of around 60 % and Spanish National Police of 40 % of the cases. In detail:

- 15 people assisted due to injuries in the head caused by baton strikes (7 of Mossos d'Esquadra, 4 of Spanish National Police, 4 unidentified).
- 20 people assisted due to impacts from foam projectiles, two in the head.
- 8 people assisted due to impacts from rubber balls, 4 of which have lost an eye.
- Others involved multiple contusions. At least 5 of which were assaults for ideological motives and aimed at punishing.

Amnesty International also stated "(...) they have observed several cases of excessive use of force. These included an inappropriate and unjustified use of batons and other defence gear against people who did not pose a risk, including journalists and people who had been immobilised by officers and still would be hit in the head and upper parts of their bodies"⁵¹.

As a result of the *#SomDefensores* initiative, SAIDAVI has assisted a total of 149 cases of police assaults produced during the protests of October 2019, from those, 18 cases would consist of baton strikes to the head, 32 cases would be caused by the impact of foam projectiles, 22 cases would be result from the impact of rubber bullets, 3 persons would have been injured by police vehicles and in 8 cases there would be an affectation to the person's moral integrity. Riot police from the Spanish National Police caused 36% of these assaults and riot police from Mossos d'Esquadra caused the other 64%.

In the context of these demonstrations and gatherings, journalists have seen their professional duties threatened. Since protests against the Supreme Court's judgement began on 14th October 2019 and until 28th October 2019, the **Critical Observatory of Media Mèdia.cat**, promoted by the Journalist Group Ramon Barnils, estimates that at least 71 journalists have been assaulted during the exercise of their professional duties⁵².

Protests of the months of October and November around Catalonia have also resulted in at least 241 people arrested (168 by the Mossos d'Esquadra, 47 by the Spanish National Police, 18 by the French Police and 8 by the Guàrdia Urbana, the municipal police of Barcelona), according to the sources of the Spanish Ministry and Regional Ministry of Home Affairs. 31 of those arrested have been on pre-trial detention⁵³, and at least three

45. Sentència del Tribunal Europeu de Drets Humans *Christians against Racism and Fascism c. Regne Unit*, de 16 de juliol de 1980. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-74286%22%5D%7D>

47. European Court of Human Rights Judgement *Nemtsov v Russia*, 31st July 2014. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-145784%22%5D%7D>

48. Amnesty International. "Spain: Analysis of the Supreme Court's ruling in the case of Catalan leaders". Amnesty, 19th November 2019. <https://www.amnesty.org/en/documents/eur411393/2019/en/>

49. Sistema d'Emergències Mèdiques (SEM). "El Sistema d'Emergències Mèdiques (SEM) ha atès 593 persones la darrera setmana, durant les manifestacions, marxes i aldarulls que s'han produït". Sem. Gencat, 22nd October 2019. http://sem.gencat.cat/ca/detalls/Noticia/191022_Balanc-ferits-protesta-per-la-sentencia-del-proces

50. Som Defensores. "La xarxa d'entitats de la societat civil Som Defensores recull 122 casos de violència policial i vulneracions de drets humans". Lafede, 23rd October 2019. <http://www.lafede.cat/wp-content/uploads/2019/10/RodaSomDefensores23.pdf>

51. Amnesty International. "Spain: Authorities must de-escalate tensions and guarantee the right to public assembly". Amnesty, 18th October 2019. <https://www.amnesty.org/en/latest/news/2019/10/spain-authorities-must-deescalate-tensions-and-guarantee-the-right-to-public-assembly/>

52. Mèdia.cat. "Recompte d'agressions a periodistes en les protestes contra la sentència". Mèdia.cat, 16th October 2019. <https://www.media.cat/2019/10/16/recompte-agressions-periodistes-protestes-sentencia/>

53. CCMA. "31 persones han entrat a la presó pels aldarulls a Catalunya des de la sentència del Suprem". CCMA, 23 d'octubre de 2019. <https://www.ccma.cat/324/31-persones-han-entrat-a-la-presó-pels-aldarulls-a-catalunya-des-de-la-sentencia-del-suprem/noticia/2957931/>

have been sent to the Immigration Detention Centre (IDC) of Zona Franca in Barcelona, and one of them has already been deported.⁵⁴

Regarding the police action in these protests, the Catalan Ombudsman (*Síndic de Greuges*) has stated that⁵⁵:

"(...) it is unacceptable the use of gravely damaging antiriot weapons as well as its indiscriminate employment, such as rubber balls, and some police charges and persecutions against people in a non-violent attitude (carrousel). At this point, despite the Ministry of Home Affairs' responsibility, it is regrettable that the Catalan Government did not take advantage of its role as director and coordinator of the police devices to prohibit the usage of rubber balls for the antiriot police of all police forces."

Likewise, it has been found that many arrests occurred with excessive use of unjustified force and that the moral integrity and rights under article 520 LeCrim of some detainees were seriously violated (...) "

This season of mobilisations in Catalonia seems to have found its answer by the Spanish Government in the shape of a "legal norm". On 6th November 2019 the Royal Decree-Law of 32 October by which urgent measures are adopted due to public safety reasons on digital administration, contracting of public sector and telecommunications entered into force. The explanatory statement shows its aim:

"Recent and serious events taken place in a part of the Spanish territory have highlighted the need to amend the current legislative framework in order to face the situation. Those events require an immediate answer to avoid such events to reproduce by establishing a preventive framework, the ultimate aim of which will be to protect constitutional rights and liberties and to ensure the public security of all citizens".

So far, under General Law on Telecommunications of 2014, the Government was able to close or intervene sites that could affect national security or create serious economic damages. The novelty is that now the Government can also do that when "public order can be affected"⁵⁶. According to the law's amendment, this is an "exceptional and temporary faculty" of the Government that does not require judicial permission and can only be appealed before an Administrative Court. It is necessary to wait and see what use is made of this self-imposed measure by the executive branch, which expands its functions protected by the "security" rhetoric.

3.2.2. Human Rights Violations

This section analyses the main violations of rights that have been identified from the situations of institutional violence in the context of protest detected during this period mainly by SAIDAVI.

3.2.2.1. Excessive and unlawful use of force and riot gear by police forces

Use of force by national law enforcement and security forces is intended as an exceptional resource and, therefore, shall only be used when it is strictly necessary and to the extent that is required to fulfil their tasks. This is stated by article 3 of UN's Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17th December 1979. Moreover, in accordance with principle 7 of UN's Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, arbitrary or abusive use of force by law enforcement officials shall be punished as a criminal offence.

In Spain, Organic Law 2/1986 of 13th March, on Law enforcement and security forces, states in article 5.2.c) that police performance shall be governed by principles of consistency, opportunity and proportionality when using available means. The same is contained in article 11.3.c) of Law 10/1994 of 11th July on police of the Catalan Government – Mossos d'Esquadra.

A. Use of police batons

According to *Instruction 16/2013 of 5th September on the use of weapons and police use tools*, police baton is a tool, the purpose of which is personal defence (keeping a safe distance, stop attacks, self-protection). It can also facilitate, due to its rigidity, the enforcement of physical restraining techniques, carrying out restraint, pressing or luxation - very concrete technical actions. However, in 2008 "actions relating to recovering public order" were added without including any other clarification⁵⁷.

The aforementioned instruction states that the use of police defences "shall be limited to one or two short and swift strikes" and "with the defence in parallel to the floor and to parts protected by muscle in the lower body" and "under no circumstances top down nor on vital parts of the body, such as the head".

Of all cases assisted by SAIDAVI during 2018, a constant illegal and disproportionate use of batons by officers of Mobile Brigade or the Regional Area of Operative Resources of Mossos d'Esquadra has been reported. This use has caused serious injuries to many of the people involved.

Similarly, **In the assistances carried out after 14th October 2019, SAIDAVI has recorded 18 cases of injuries in the head by the use of baton by officers of the Spanish National Police and Mossos d'Esquadra**, which is a clear indicator that neither police force is making proper use of the police baton.

It should be noted that in July 2017 the Provincial Court condemned an officer of Mossos d'Esquadra to two years imprisonment and two years disqualification. The Supreme Court confirmed the judgement for striking the baton directly to the head of a protestor in May 2014⁵⁸.

54. P.E. "Deportat al Marroc un dels detinguts durant les protestes per la sentència". Ara, 18th November 2019 https://www.ara.cat/politica/Deportat-Marroc-detinguts-protestes-sentencia-Suprem-Ayoub-Lleida-expulsat_o_2346365489.html

55. Catalan Ombudsman. "Dret de manifestació i paper dels cossos policials en les mobilitzacions posteriors a la Sentència 459/2019. Novembre 2019", 2019. http://www.sindic.cat/site/unitFiles/6726/Informe%20dret%20manifestacio%20i%20paper%20cossos%20policials_cat.pdf

56. Daniel Amelang. "El Gobierno podrá cerrar webs en casos de desórdenes públicos". El Salto, 7th November 2019. https://www.elsaltodiario.com/libertad-expresion/el-gobierno-podra-cerrar-webs-en-casos-de-desordenes-publicos?fbclid=IwAR24AXMH-wVBqo_sKqHh_wEp3x_QmMSj6GC8SogA7loteoq78f9zwyLbTiY

57. For more information on the evolution and changes in police norms "Aquí no es pot protestar. Desprotecció del dret de reunió i de manifestació" (2017). Available at: <http://defenderaquiendefiende.org/wp-content/uploads/2017/08/DretProtesta.pdf>

58. Oriol Solé. "Condenado a dos años de cárcel el antidisturbios de los Mossos que aporreó la cabeza a un joven". el.diario.es, 15th July 2017. https://www.eldiario.es/catalunya/barcelona/Condenado-carcel-antidisturbios-Mossos-aporreo_o_665283692.html

B. Foam projectiles

On 18th December 2013 the Catalan Parliament, in a plenary session, adopted the prohibition of the use of rubber balls by Mossos d'Esquadra force, which came into force from 30th April 2014⁵⁹. However, in the report of the Study Group on Security and Public Order Models and the Use of Riot Gear in Mass Events, the use of foam or viscoelastic rubber projectiles is maintained in order to "try to restrain a person who is altering public order" establishing the difference between the purposes of rubber balls that would be to "disperse a large number of people"⁶⁰.

Instruction 16/2013 only refers to being shot of foam projectiles from a 40 mm launcher (submachine gun GL-06) and that these projectiles are intended for "crowd control: public order, prison riots, etc. It can also be used for actions with a high risk level posed by special groups".

The knowledge regarding the use of these weapons comes from the French police, who uses the so-called "lanceurs of dance of défense or LBD" (throwers of bullets of defence) since the nineties. At present, two types of LBD are used in France: Flashball Superpro launcher and LBD 40x46 launcher introduced afterwards. The generalisation of LBD since 2004 has caused grave injuries—which include injured children—, several irreversible ocular injuries, and it has even resulted in death⁶¹. For this reason, in December 2017, the French Ombudsman requested LBD 40's prohibition in the context of protest; in February 2019, the Human Rights Commissioner of the Council of Europe urged the French Ministry of Home Affairs to suspend its use; and in May 2019 Amnesty International also requested the Ministry "to suspend the use of LBD 40 until authorities have carried out an exhaustive and independent evaluation (with regard to the manufacturer and to the security forces using it) about its accuracy and precision...".⁶²

Amnesty International's report *The human rights impact of less lethal weapons and other law enforcement equipment* (2015), establishes that kinetic impact projectiles "even when used according to the manufacturer's instructions they can cause serious and life threatening injuries. In particular, small projectiles increase the risk of eye injuries and penetration of the eye or skin", and that their use should be "strictly limited to situations of violent disorder posing a risk of harm to persons, where the projectiles are used in order to contain and stop the violence and only when less extreme means are insufficient to achieve this objective (...)"⁶³. Moreover, the report on *The use of rubber balls by the Mobile Brigade of Mossos d'Esquadra* (BRIMO) prepared by the association Stop Bales de Goma, already warned about the danger posed by these weapons.⁶⁴

31 cases of foam ball impact have been assisted by SAIDAVI in October 2019. It is worth noting that at least one of these cases caused serious injuries to a person's head. Foam launchers are precision weapons and misuses have been reported, in which officers of Mossos d'Esquadra shot projectiles at head's height and within a short distance.

C. Rubber balls

It is estimated that since the Transition, rubber balls used by police forces in Spain have caused up to 23 deaths and at least 39 serious injuries⁶⁵. The last case in Catalonia, before the gatherings after the judgement, was Roger Español. He lost sight in one eye due to the impact of a rubber ball by Spanish National Police during the referendum on 1st October 2017.

In this regard, it is worth mentioning that the protocols of conduct and use of riot gear for officers of the Spanish National Police are neither precise nor public. In June 2014, the Spanish Ombudsman (*Defensor del Pueblo*) confirmed that the so-called protocol of "progressive use of means" referred to in the Circular on the use of riot gear of 3rd September 2013 does not exist. She also confirmed that only the Circular of 3rd September 2013 and the *Update manual for police intervention units* exist, and that the manual has a section about the progressive order of police actions in gatherings and demonstrations, the contents of which considers to be "insufficient to guarantee a proportionate, appropriate and consistent use of riot gear, and to minimise the serious risk of its use". Thus, she recommended the Directorate General of the Police, dependant on the Ministry of Home Affairs, to regulate the use of weapons intended for the propulsion and projection of rubber balls with a minimum proposed content⁶⁶.

Nevertheless, the Directorate General of the Police did not accept the aforementioned recommendation because they "consider the current regulation and control mechanisms are sufficient", as stated in the annual report of 2014 of the Ombudsman⁶⁷.

Several human rights organisations, among them Irídia, requested and still work towards the prohibition of this type of weapons due to the risk they pose.

Despite all these recommendations, in October 2019, the Service of assistance and complaints assisted 22 cases due to rubber ball impacts. And at least four people lost the sight on one eye permanently due to the impact of a rubber ball, although it cannot be ruled out that a foam bullet caused the injury in one of the cases.

59. Resolution 476/X of the Catalan Parliament, that accepts the conclusions of the Study Group on Security and Public Order Models and the Use of Riot Gear in Mass Events of 18th December 2013.

60. Catalan Parliament Study Group. Report on Security and Public Order Models and the Use of Riot Gear in Mass Events of 8th November 2013.

61. ACAT-France. "FRANCE. Préoccupations et recommandations de l'ACAT-France concernant la torture et les mauvais traitements", 2014. https://desarmons.net/wp-content/uploads/2019/02/ACAT_rapport_13112014.pdf

62. Amnesty International. "France: call for suspending the use of rubber bullets..."

63. Amnesty International. "The human rights impact of less lethal weapons and other law enforcement equipment", 2015.

https://www.amnestyusa.org/files/human_rights_impact_less_lethal_weapons_doha_paper.pdf

64. STOP Bales de Goma. "L'ús de bales de goma per part de la Brigada Mòbil dels Mossos d'Esquadra (BRIMO)", 2013. <https://www.autistici.org/archive/20180726222903/http://stopbalesdegoma.org/es/informe>

65. Ter García. "Cronología de las balas de goma: al menos 39 heridos graves y 23 fallecidos". El Salto, 16th October 2018. <https://www.elsaltodiario.com/balas-de-goma/cronologia-balas-de-goma-al-menos-35-heridos-graves-y-23-fallecidos>

66. Spanish Ombudsman. "Recomendación. Normativa de utilización de material antidisturbios". Defensor del Pueblo, 9th June 2014. <https://www.defensordelpueblo.es/resoluciones/normativa-de-utilizacion-de-material-antidisturbios-2/>

67. Spanish Ombudsman. "Informe anual 2014 y debates en las Cortes Generales", 2015. <https://www.defensordelpueblo.es/wp-content/uploads/2015/06/Informe2014.pdf>

3.2.2.2. Violation of the right to freedom of information

The right to freedom of information is a fundamental right, included in the right to freedom of expression in the UN's Universal Declaration of Human Rights (article 19), International Covenant on Civil and Political Rights (article 19) and European Convention on Human Rights of the Council of Europe (article 10). On the other hand, the Spanish Constitution mentions it specifically (article 20.1.d) as the freedom to freely communicate or receive truthful information by any means of dissemination whatsoever.

General comment no. 34 of the UN's Human Rights Committee of 12th September 2011 relating to article 19 of the International Covenant on Civil and Political Rights, states in its section 13⁶⁸:

"A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output."

In the same vein, the European Court of Human Rights has reminded the special protection press must have in democratic societies, particularly, journalists who become "watchdogs" of democracy (ECHR Judgement of 27 March 1996, case *Goodwin v United Kingdom*). This is highlighted in the ECHR Judgement of 4 February 2015, in the case *Pentikäinen v Finland* (section 89)⁷⁰:

"In this connection, and with reference to the facts of the instant case, the crucial role of the media in providing information on the authorities' handling of public demonstrations and the containment of disorder must be emphasised. The "watchdog" role of the media assumes particular importance in such contexts since their presence is a guarantee that the authorities can be held to account for their conduct vis-à-vis the demonstrators and the public at large when it comes to the policing of large gatherings, including the methods used to control or disperse protesters or to preserve public order. Any attempt to remove journalists from the scene of demonstrations must therefore be subject to strict scrutiny."

However, **violations of the right to freedom of information currently exist and are particularly concerning**. One of the ways in which it has been violated in Spain has been through the enforcement of the new Law on Citizen Safety, which came into force in 2015. Amnesty International, in its report "*Spain: social activists and the right to information, in the*

spotlight. Assessment on the Law on the Protection of Citizen Safety" (2017) warned about the limitations to information professionals caused by article 36.23, which penalises "*unauthorised use of personal or professional images of members of the law enforcement and security forces that could risk the personal or family security of officers, or the success of an operation (...)*". In the same vein, in 2017 the *Plataforma en defensa de la libertad de información* talked about "camouflaged censorship" against freedom of expression under generic infractions such as "disrespect and disregard" or "disobedience or resistance" to members of law enforcement and security forces⁷¹.

However, there are other forms that pose a risk to freedom of information. According to data collected by Journalist Group Ramon Barnils **between 2017 and 2018, 55 journalists, photojournalists or media outlets were assaulted, threatened or intimidated while carrying out their professional duties** in Catalonia, Valencian Community and the Balearic Islands. We have to add to this figure the 62 cases of censorship to artistic, academic or other expressions; the 30 cases of persecution of bloggers, social network accounts or citizen journalism, and 17 judicial decisions, police actions or complaints that may obstruct the work of information professionals, among many other attacks. In total, they estimate there have been more than 431 violations of the right to freedom of expression and the right to information between 2017 and 2018, gathered by Censorship Map of the Media Observatory, Mèdia.cat. This led Grup Barnils and Iridia to denounce the situation at a press conference on 11th March 2019 and the creation of a specific hashtag to denounce this type of situations on the ground: #atacinfo⁷².

In particular, SAIDAVI are currently assisting two cases of assaults to journalists. As part of the actions carried out after 14th October 2019, Grup Barnils condemned the assault on 71 journalists by police forces, as previously explained. As part of the assistance provided by SAIDAVI during October 2019, five journalists have been assisted for injuries in the context of demonstrations.

3.2.2.3. Lack of identification of police officers

In accordance with *Decree 217/2008 of 4th November on the use of the professional identity number in certain parts of uniforms of the police of the Catalan Government-Mossos d'Esquadra*, in force since May 2009, all uniformed officers of Mossos d'Esquadra force, except in gala uniforms, must have at the top right of the uniform their personal identification number or Professional Identity Card (PIC), which is the personal number that is assigned to officers when they enter the force and they keep during all their career.

In 2013, the Directorate General of the Police, dependant on the Home Affairs Ministry of the Catalan Government, approved *the Instruction 6/2013 of 14th March on the establishment of the police operative number at the Mobile Brigade Area*. The Police Operative Number (PON), which is different to the PIC, must be carried by all civil servants part of the Mobile Brigade Area (BRIMO), the riot unit of Mossos d'Esquadra specialised in public order. It was expected for the general director of police to order the incorporation to

68. Human Rights Committee. "General comment no. 34. Article 19 Freedom of opinion and expression", CCPR/C/GC/34, of 12th September 2011. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRICAqhKb7yhsrdBoH15979OVGG-B%2BWPAXiks7ivEzdmLQdosDnCG8FaQoW3y%2FwBqQ1hhVz222lpRr6MpU%2B%2FxEikwgfDbYE4QPfDIW1VIMIVkoM%2B31-217R>

69. European Court of Human Rights Judgement *Goodwin v United Kingdom*, 27th March 1996, section 39. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-57974%22%7D>

70. European Court of Human Rights Judgement *Pentikäinen v Finland*, 4th February 2015, section 89. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-158279%22%7D>

71. Plataforma en Defensa de la Libertad de Información (PDLI). "Dos años de 'Ley Mordaza': La PDLI reclama a los partidos medidas para impedir actuaciones policiales contra periodistas". Libertad Información, 27th June 2017. <http://libertadinformacion.cc/dos-anos-de-ley-mordaza-la-pdli-reclama-a-los-partidos-medidas-para-impedir-actuaciones-policiales-contra-periodistas/>

72. Journalist Group Ramon Barnils. "El Grup Ramon Barnils juntament amb IRIDIA presenten el manifest 'Per la democràcia i contra la censura, prou atacs als i les professionals de la informació!'". Grup Barnils, 12th March 2019. <https://www.grupbarnils.cat/el-grup-ramon-barnils-juntament-amb-iridia-presenten-el-manifest-per-la-democracia-i-contra-la-censura-prou-atacs-als-i-les-professionals-de-la-informacio/>

other units with public order functions, the Regional Area of Operative Resources (ARRO), which supports public order and citizen security tasks.

At Spanish level, in March 2008 the *Instruction 13/2007 on the use of the personal identification number on uniforms of national law enforcement and security forces* came into force, which establishes the mandatory use of PIC number in a visible place on the uniforms of officers of Spanish National Police and Civil Guard. And in 2013, the creation of the PON for riot police officers of Spanish National Police called Police Intervention Units (PIU) was approved through *Resolution of 19th April 2013 on the creation of the identification number on uniform accessories of police intervention units*.

Therefore, with the approval of the PON number, it could be considered that riot forces are excluded of the obligation of having the PIC visible. The purpose of the PON number is, in the words of Ramon Espadaler, Regional Minister of Home Affairs at that time, to avoid criminalizing and prosecuting riot officers. Police unions, on the other hand, criticized this measure because they considered that this was exposing them to receive false criminal complaints⁷³.

Before the approval of the PON number, several organisations, as well as different ombudsmen, condemned the lack of identification of riot officers during demonstrations, because when they put their protective vests on their personal identification numbers are covered. After 2013, use of PON number is generalised but some cases have been reported of officers not being fully identified. So, for example, the Network of observers of human rights violations in the context of protests, organised by the initiative Som Defensores, was able to detect the lack of identification of some officers of BRIMO carrying weapons to shoot foam bullets during the protests of 21st December 2018 against the visit of the Council of Ministers of the Spanish Government in Barcelona.⁷⁴ More recently, during the protests of 18 October 2019 this initiative also detected BRIMO officers without the PON number, particularly those officers who were also carrying weapons to shoot foam bullets.⁷⁵

Moreover, it is worth noting that PON is a long code, very difficult to remember (it is formed of 9 alphanumeric digits in the case of Mossos d'Esquadra) with a typography that is unclear and is only carried at the back of the vest. This makes identifying officers more difficult in case of assault. As per the PIC, the size of its typography makes it difficult to read (Mossos d'Esquadra have the number on a 2 x 5 cm band and Spanish National Police on a 30 x 10 mm band), which according to *Instruction 13/2007* should be visible without any issues at a distance of 1 metre and 20 centimetres approximately. These difficulties were mentioned in SAIDAVI's annual report of 2017, for example in relation to the case of Roger Español.

Therefore, it is necessary to be able to easily identify police officers with a visible and clear numbering both in the front and the back of their upper bodies and helmets.

73. Rebeca Carranco. "Los antidisturbios cumplirán la ley". *El País*, 15th March 2013. https://elpais.com/ccaa/2013/03/14/catalunya/1363278980_043865.html

74. Som Defensores. "Hem detectat agents de @mossos que portaven escopetes de bales de foam que no anaven identificats ni per davant ni per darrere. Aquesta foto es davant de l'edifici de correus", 21st December 2018, 7:59 p.m. <https://twitter.com/SomDefensores/status/1076145028907573248>

75. Som Defensores. "Les observadores ens fan arribar aquesta foto de la policia sense el Número Operatiu Policial visible (NOP) i amb pistoles de foam a Mallorca amb Pau Claris. #SomDefensores #VagaGeneral180", 18th October 2019, 9:23 p.m. <https://twitter.com/SomDefensores/status/1185229907216998400>

For this reason it is considered positive that on 12th November 2019 the Catalan Parliament approved a resolution requesting the Catalan Government to change the typography of the PON number. It also requested that the number was included at the front and back of the uniform and the helmet. With this measure it will be easier to individualise the authors of illegal actions and then hold them accountable. This also has a preventive effect, as it sends a message of zero tolerance towards conducts such as the ones described in this report. However, it is essential that the Catalan Government enforces the resolution from the Parliament and a round-table meeting is created urgently with human rights organisations, the Regional Ministry of Home Affairs and parliamentary groups who want to ensure that the resolution approved by the Parliament is correctly enforced by Mossos d'Esquadra.

The resolution approved by the Parliament is the result of the work of human rights organisations in Catalonia and other social and political actors. In fact, Irídia and Amnesty International with the support of 21 human rights organisations submitted a resolution proposal before the Catalan Parliament with the following statements⁷⁶:

- *To review the regulations regarding the identification of police officers with public order functions within a period of 6 months, so that it is mandatory for all police officers who carry out these functions; and to establish a new type of identification that is visible in the front and back, including the helmet, from a safe distance and with a code that is short and easy to remember.*
- *Until a new regulation is approved, the General Police Directorate must ensure that all units of the Police of the Catalan Government-Mossos d'Esquadra who carry out public order functions comply with *Instruction 6/2013 of 14th March*, on the establishment of the police operative number in the Area of the Mobile Brigade, and their police operation number (PON) is always visible in the upper part of the back of the uniform, regardless of the pieces of protection.*

In the end, after some months, on 12th November 2019 the Catalan Parliament approved the aforementioned motion requesting a new type of identification that is visible from a safe distance in the front and back, including the helmet, with a code that is short and easy to remember. The motion was approved with votes in favour of Catalunya en Comú (Cat-Comú), Esquerra Republicana de Catalunya (ERC), Candidatura d'Unitat Popular (CUP), Partit dels Socialistes de Catalunya (PSC) and Junts per Catalunya (JuntsXCat), despite the abstention of Ciutadans (Cs) and Partit Popular (PP).

3.2.2.4. Limits on access to public information and transparency

Currently protocols of police conduct and the use of riot gear by Spanish National Police are neither public nor accessible. In the case of Mossos d'Esquadra, protocols are not public but scanned copies of some of them can be found in some police unions' websites. However, some of them cannot even be accessed that way, such as the ones on the use of foam projectiles. Publication and access to police protocols is key to audit and hold conduct of officers of national law enforcement and security forces accountable, as well as to demand that their interventions comply with international human rights standards.

76. Irídia, Centre for the Defence of Human Rights. "COMUNICAT: Per la reforma de la normativa d'identificacions policials dels agents en funcions d'ordre públic". Irídia, 12th November 2019. <https://iridia.cat/comunicat-per-la-reforma-de-la-normativa-didentificacions-policials-dels-agents-en-funcions-dordre-public/>

Both police forces have not made public any data regarding internal investigations, number of complaints, reports, convictions or sanctions in relation to situations of institutional violence.

Moreover, the Regional Ministry of Home Affairs does not issue disaggregated data every year in relation to sanctions applied under *Organic law 4/2015 of 30th March on the Protection of Citizen Safety*. In the annual report of the Ministry of Home Affairs, data are only disaggregated between "Consumption of toxic drugs, narcotic or psychotropic substances", "Possession of firearms" and "Others". This fact makes it difficult for an assessment of the impact the Law on Citizen Safety has on the exercise of the right to assembly, demonstration, freedom of expression and information in Catalonia.

3.2.3. Conduct of the criminal system's operators

3.2.3.1. Lack of effective internal and judicial investigations

In relation to internal investigations, Amnesty International has denounced for years the lack of effective investigations in Spain into allegations of torture and other abuses by police officers⁷⁷. In their specific report on protest in Spain of 2014, this organisation warned, as they had done in previous reports, about the "lack of exhaustive, impartial and effective investigations into allegations of unnecessary or excessive use of force and other serious human rights violations committed by law enforcement officials".⁷⁹ The lack of investigations, together with the lack of sanctions and absence of independent monitoring mechanisms, have generated a strong sense of impunity among police forces, which has allowed serious abuse situations to take place.⁸⁰

In recent years, SAIDAVI have detected that the Internal Affairs Office (IAO) of Mossos d'Esquadra does not act with the necessary and due diligence in investigations involving officers of the force. It is unknown whether that is due to a lack of information with the required speed, lack of resources or will. In any event, it is clear that in almost all cases assisted by SAIDAVI there has been no intervention by IAO during judicial proceedings or there is no evidence of any internal investigations having started towards possible administrative responsibility. Moreover, the Directorate General of Mossos d'Esquadra does not have any direct channel of collaboration with human rights organisations that work in cases of institutional violence and could be key in order for institutions to improve their internal control and respect towards human rights.

There is also a lack of diligence amongst Spanish National Police force. Police conduct on 1st October 2017 is a clear example of that. According to Amnesty International, apart from judicial investigations, the Ministry of Home Affairs has not opened any internal investigations to carry out a full assessment of the conduct of Spanish National Police and

Civil Guard officers. No officer subject to disciplinary or criminal investigations for ill-treatment has been suspended from active service while the proceedings are on-going.⁸¹

Judicial investigations have also not been sufficient. It is worth noting that the European Court of Human Rights has condemned Spain in 11 occasions for article 3 of ECHR's violations⁸²: 10 times due to insufficient investigations into allegations of torture and/or ill-treatment made by detainees (9 since 2009), and one in the context of protest - ECHR Judgement of 8 January 2009, in the case *Iribarren Pinillos v Spain*. ECHR condemned Spain to compensate with 170,000 euros a young person who had suffered injuries on the face after receiving an impact of a smoke tin thrown by Spanish National Police in a demonstration in Pamplona of 15 December 1991.

Amnesty International has reported cases where Instruction Courts have not started investigations, even when there were signs of possible abuses, except when the victim has filed the criminal complaint. This goes against international law, which requires States to investigate when there are signs of abuse even when there is no explicit complaint. Moreover, the organisation has reported a frequent pattern: declaring an immediate temporary stay of the proceedings against the police or after a minimal investigation. In many cases that is due to the fact that judges and prosecutors grant a higher credibility to police evidence, due to their position as civil servants, than to the evidence of victims and witnesses⁸³.

Similarly, SAIDAVI have detected in recent years that most judges do not act swiftly enough when there are allegations of institutional violence in terms of the conservation of evidence pointed out in the complaint. Moreover, there has not been a particularly proactive activity toward the investigation of such crimes. Speed in the investigations is key in this type of situations, since in many cases the only evidence may exclusively be images recorded by security cameras, which may be erased after fifteen days or one month, even before.

A lack of training among judges in relation to mechanisms to effectively investigate this type of crimes has been detected, particularly, related to the *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol). Istanbul Protocol is the first joint document of rules to document torture and its consequences, adopted by the Office of the United Nations High Commissioner for Human Rights in 2000. Similarly, in some Courts there is a lack of assessment of the psychological impacts resulting from violence within judicial procedures, as subjectivity is alleged.

3.2.3.2. Public Prosecutor's Conduct

In relation to Public Prosecutor's conduct, SAIDAVI have reported a lack of will to proactively investigate allegations relating to institutional violence. In other words, cases involving crimes of institutional violence do not receive the procedural drive or the neces-

77. Catalan Ministry of Home Affairs. "Memòria del Departament d'Interior 2016", 2017. http://interior.gencat.cat/web/contenut/home/010_el_departament/publicacions/memories_del_departament/docs/memoria_interior_2016.pdf; Catalan Ministry of Home Affairs. "Memòria del Departament d'Interior 2017", 2018. http://interior.gencat.cat/web/contenut/home/010_el_departament/publicacions/memories_del_departament/docs/memoria_interior_2017.pdf

78. Amnesty International. "Spain: Adding insult to injury. The effective impunity of police officers in cases of torture and other ill-treatment", 2007. <https://www.amnesty.org/download/Documents/48000/eur410102009en.pdf>

79. Amnesty International. "Spain: The right to protests under threat..."

80. Anais Franquesa; Andrés García. "Aquí no es pot protestar. Desprotecció del dret de reunió i de manifestació". Defender a quien Defiende, 2017. <https://novact.org/wp-content/uploads/2017/11/DretProtesta.pdf>

81. Amnesty International. "1 - O en Cataluña: obstáculos para la investigación del uso excesivo de la fuerza", 2018. <https://www.ara.cat/2018/05/10/amnistia.pdf?hash=2694b17a3d4b9e4cc5f596c9c01ae13d96cd7e8f>

82. Cases (1) *Portu Juanenea y Sarasola Yarzabal v. Spain*, 13th February 2018; (2) *Beortegui Martínez v. Spain*, 31st May 2016; (3) *Arratibel Garciandia v. Spain*, 5th May 2015; (4) *Etxebarria Caballero v. Spain*, 7th October 2014; (5) *Ataun Rojo v. Spain*, 7th October 2014; (6) *Otamendi Eguiguren v. Spain*, 12th December 2012; (7) *B. S. v. Spain*, 24th July 2012; (8) *Beristain Ukar v. Spain*, 8th March 2011; (9) *San Argimiro Isasa v. Spain*, 28th September 2010; (10) *Iribarren Pinillos v. Spain*, 8th January 2009; (11) *Martínez Sala and others v. Spain*, 4th November 2004.

83. Amnesty International. "Spain: The right to protests under threat..."

sary steps are carried out to ensure evidence as quickly as possible. Similarly, Amnesty International recalls that for years they have shown their concerns for the lack of procedural drive by Public Prosecutors when investigating excessive use of force by police officers, requesting the proceedings to be closed without carrying out any investigations.⁸⁴

An example of this lack of action is the case of 1-O, in which Public Prosecutors are not acting proactively to clarify the facts, rather acting as the defence of police officers involved even requesting, in some cases, that the proceedings are closed. In fact, Public Prosecutor opposed the investigation of police charges from the first moment, submitting a letter dated 3rd October 2017, informing against the investigation of the complaint brought by the Catalan Government against the conduct of the Civil Guard and the Spanish National Police. The Prosecutor's arguments were that based on the information provided by the Catalan Government, the percentage of people affected by "the alleged minor police violence" would raise to 0.037%, whereas people affected by "alleged severe police violence" would be a 0.000042%.⁸⁵

84. Amnesty International. "1 - O en Cataluña: obstáculos para la investigación del uso excesivo de la fuerza..."

85. Amnesty International. "1 - O en Cataluña: obstáculos para la investigación del uso excesivo de la fuerza..."

4. RECOMMENDATIONS AND GOOD PRACTICES

All public institutions are obliged to recognise, respect, protect and guarantee human rights. This entails positive and negative obligations, which come from both international and national norms. Some of the issues analysed in this report affect particularly state institutions, such as Spanish Parliament, Spanish Government or the Judiciary, of which there is only one in the whole territory of Spain. On the other hand, international human rights law also obliges the Catalan Government to uphold the same norms, as it is already internal regulation. Therefore, public institutions are responsible for enforcing norms from a point of view of respect and protection of human rights as part of their functions, but also to promote changes in those issues, which are not directly under their competence. This is why we provide several recommendations aimed at different powers and public organisations that depend on different administrations. Our aim is to contribute to raise the standards of defence and protection of human rights everywhere, and particularly in Catalonia.

4.1. To Spanish parliamentary groups

- a) To urgently repeal the amendment of the Criminal Code carried out in 2015 and to repeal the Organic Law 4/2015 of 30th March on the Protection of Citizen Safety. At the same time, a process to amend the aforementioned Criminal Code and Law on Citizen Safety should open, based on penal guarantees and discussions with human rights organisations.
- b) To approve the creation of an investigation commission for institutional violence, which can analyse in depth what the current situation is in relation to prevention, research and the reporting of institutional violence. The aim is to generate public policies that help prevent institutional violence.
- c) The Parliament to prohibit the use of rubber balls due to its dangerous potential.
- d) To force the government to identify police officers with functions of managing public order (riot police) in a way that is easy to remember (due to typography, numbering and size) and visible in three different parts: upper body, both front and back, and helmet.
- e) To create a Parliamentary Commission to analyse deficiencies of the current crowd control police model and to design the basis for a modern model that respects human rights from a comparative policy framework.

4.2. To Catalan parliamentary groups

- a) To approve the creation of an investigation commission for institutional violence, which can analyse in depth what the current situation is in relation to prevention, research and the reporting of institutional violence. The aim is to generate public policies that help prevent institutional violence.

4.3. To the Spanish Government

- a) To review the mechanisms and functioning of internal affairs units of the Spanish National Police, in order for them to work cases, containing allegations or complaints against officers of the force, in an impartial manner. Moreover, it is essential that these units are formed by staff who are appropriately trained on human rights and who are provided with mechanisms that give them a greater level of autonomy in relation to the force.
- b) To prohibit the use of rubber balls due to its dangerous potential.
- c) To identify riot police officers in a way that is easy to remember (due to typography, numbering and size) and visible in three different parts: upper body, both front and back, and helmet.
- d) To create specific mechanisms in cases of complaints against police officers, in order to ensure appropriate assistance is given to the victim, and for internal affairs units to be aware of the situation.
- e) To annually publish disaggregated data relating to institutional violence situations where internal investigations have been opened, as well as the number of complaints, reports, convictions, sanctions and types of sanctions.

4.4. To the Catalan Government

4.4.1. Regional Ministry of Home Affairs

- a) To establish a mechanism for denouncing institutional violence, specifically for citizens and for human rights organisations, which allows them to act properly and swiftly enough to ensure that evidence is preserved. The mechanism for denouncing situations of institutional violence should not be the same general channel that exists to denounce other situations, given the specificities that surround these types of situations.
- b) To review the protocols of sanctions and interim measures in cases of institutional violence situations to ensure that, in cases where there is clear evidence of police malpractice or of a commission of a crime, the officer will not continue performing the same tasks nor continue to operate in the same place of work.
- c) To annually publish disaggregated data relating to institutional violence situations where internal investigations have been opened, as well as the number of complaints, reports, convictions, sanctions and types of sanctions.
- d) To publish data regarding the sanctions imposed under Organic law 4/2015 of 30th March on Citizen Safety. Data must be published annually and disaggregated by the entire typology of sanctions.

e) To correctly and urgently enforce the Resolution approved by the Parliament on 12th November 2019 regarding the identification of riot police officers on different parts of the uniform while carrying out public order functions.

f) To urgently create a round-table meeting between the organisations that promoted the resolution of the Parliament modifying the identification system of Mossos d'Esquadra, the management of Mossos and the Regional Ministry of Home Affairs, where parliamentary groups can take part, if they wish to do so, in order to ensure the correct enforcement of the resolution approved by the Parliament on 12th November 2019.

g) To publish the instruction on the use of foam launchers, to carry out an audit to analyse their functioning since the incorporation as a weapon used by the Mossos force. And to present conclusions before the Catalan Parliament to evaluate this weapon. It is necessary that human rights organisations in this field take part in the process.

4.5. To the Public Prosecutor's Office

- a) To create a Public Prosecutor's Office specialised in institutional violence that supervises all proceedings relating to institutional violence and proactively intervenes in these proceedings, defending the rights of those who have been victims of a situation of institutional violence.
- b) To adopt the role entrusted as a guarantor of legality and to adopt a proactive position during judicial proceedings relating to situations of institutional violence.
- c) To offer training on human rights to public prosecutors and specifically on the Istanbul Protocol, Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which are the first joint document of rules to document torture and its consequences.

4.6. To the General Council of the Judiciary

- a) To offer training on human rights to judges and specifically on the Istanbul Protocol, Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which are the first joint document of rules to document torture and its consequences.
- b) To establish effective mechanisms of conduct and recommendations to all Courts in Spain so that, when they receive allegations of a potential situation of institutional violence, their aim is to offer suitable support to the potential victim and to swiftly investigate the fact, particularly in terms of evidence preservation.

4.7. To the Illustrious Council of Bar Associations in Catalonia

- a) To create a specific list of specialist public defenders to assist with cases of institutional violence formed by lawyers specialised in human rights. This is a necessary channel to help with the specific needs created by these types of crimes.
- b) To provide specific training to public defenders and lawyers, who assist detainees of all bar associations in Catalonia, in regards to how to deal with institutional violence.

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