

Motion 138/XI of the Parliament of Catalonia, regarding freedom of speech for elected officials and the separation of powers from the Kingdom of Spain

Proc. 302-00158/11

Plenary

The Catalan Parliament's plenary, during the session held on the 15th of June 2017, in accordance with article 158 of the Rules of Procedure, debated the motion following an Government's appeal regarding freedom of speech for elected officials and the separation of powers from the Kingdom of Spain (302-00158/11), as brought forward by the Member of Parliament Antoni Balasch i Parisi, from the Junts pel Sí Parliamentary Group (Together for Yes), and the amendments put forward by the Catalunya Sí que es Pot Parliamentary Group (Catalonia Yes We Can) (reg. 62372) and Candidatura d'Unitat Popular - Crida Constituent Parliamentary Group (Popular Unity Candidacy - Constituent Call) (reg. 62447).

Lastly, in accordance with the provisions of Article 158 of the Rules of Procedure, the following motion has been passed.

MOTION

The Parliament of Catalonia reminds citizens and informs the Government that:

- a) The Parliament fully rejects the escalating threats and actions carried out by the Government of Popular Party and other political and institutional representatives of the State, which reveal a clear, democratic regression aimed at directly intimidating elected officials and citizens, in order to prevent a full referendum.
- b) The Parliament endorses the active commitment made by members to defend the Parliament in the face of attacks and actions carried out by the State, which aim to alter its nature and functions. This is a commitment to ensure that members, through their own opinions and votes, may freely exercise, without coercion or coercion, their right to represent and defend their commitments alongside citizens. The Parliament also urges the Government to support the political representatives of the people of Catalonia, who are persecuted for exercising their right to freedom of speech.
- c) The Parliament demands that freedom of speech for elected officials and citizens be seen as a fundamental, democratic right, as recognised in article 19 of the Universal Declaration of Human Rights, as signed by the Spanish State.
- d) The Parliament confirms, in accordance with the democratic principle of freedom of speech, recognised by all citizens, that elected officials have the right to debate, to defend their ideological positions, to vote on all issues and to promote all kinds

of initiatives that reflect their electoral programme or their own ideological thinking, without facing legal action that may be taken against them for that same reason.

e) The Parliament believes that, in order to guarantee the principle for freedom of speech, it is imperative that the judiciary in the Kingdom of Spain accept the principle of parliamentary inviolability, which protects and enshrines the opinions, actions and vote of elected officials who represent the people, and who take action in that regard.

f) The Parliament declares that, in the face of any political or legal action that violates or intends to violate freedom of speech and the principle of inviolability for elected officials, it will act in defence of this fundamental principle by supporting the politicians and other parties who are accused of such. Furthermore, in cases where judiciary of the Kingdom of Spain acts against the principles mentioned above, the Parliament will issue a formal complaint to the Council of Europe, the UN Human Rights Council, the Human Rights Committee, the United Nations High Commissioner for Human Rights, the European Commissioner for Justice and the European Court of Human Rights.

g) The Parliament condemns the open investigation involving the president of the Parliament, the vice president and three secretaries for fostering an open debate for all opinions and for having carried out their duties as members of the Board. The simple fact of having admitted to the dispute proceedings implies that the executive power and the judiciary are interfering in the role of the representatives and citizens. This goes against freedom of speech and the right to political participation. In this regard, the Parliament urges the Government to lend its support and transfer this motion to denounce all acts of interference and, in particular, to communicate this to the European and international institutions that safeguard fundamental rights, as well as individual and community freedoms.

h) The Parliament declares that the violation of the democratic rights within the Kingdom of Spain is evident. This is documented and reflected in the report from the *Síndic de Greuges* (Catalan Ombudsman) "Backward steps in the world of human rights: freedom of speech and the separation of powers in the Kingdom of Spain". This report shows that:

1. The Kingdom of Spain is party to numerous international treaties on human rights, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950), and the majority of its optional protocols, as well as international agreements on civil and political rights alongside economic, social and cultural rights (New York, 1966).

2. Whilst the Kingdom of Spain falls under the jurisdiction of the European Court of Human Rights and the Council of Europe, and has accepted the expert opinions provided by several UN human rights committees, democratic regressions which affect rights and fundamental freedoms have been highlighted.

3. The democratic regressions revealed in the *Síndic de Greuges*'s report derive from laws passed by the Spanish Parliament, such as the latest reform of the Organic Law on the Protection of Public Safety or changes in the Spanish Criminal Code, in the courts' interpretation of the law, in the law's vagueness and the lack of precision regarding some criminal offences, as well as the use of the Criminal Code as a deterrent.

4. In recent years, there have been clear examples where we see that the separation of powers in Spain has been weakened. One of the key examples is that of the changes made to the Organic Law on the Constitutional Court. These changes allow the Constitutional Court to use enforcement measures to force the other powers into adhering to their rulings.

5. Within the Kingdom of Spain, there are cases that clearly demonstrate a disproportionate use of the Criminal Code in order to restrict the free pursuit of the right to freedom of speech and to try to punish any dissenting voices that go against the official discourse of government authorities.

6. Spain is eroding the principle behind the separation of powers, as none of the eleven measures proposed by the Group of States against Corruption (GRECO) to better combat corruption among parliamentarians, judges and public prosecutors have been given a satisfactory answer, and six have not even begun. These measures aim to bolster the independence of the judiciary and prosecutors and provide further transparency to parliamentary activity.

i) The Parliament requests for support from the international community to ensure that the demand expressed by the Catalan people, through frequent demonstrations involving hundreds of thousands of people, and in the participatory process on the 9th of November, is clearly understood by the Government of Spain: now is the time to call for and allow a referendum.

j) The Parliament claims of unconstitutionality regarding some of the articles in the Organic Law 4/2015, dated 30th of March, for the protection of public safety. The claim was accepted on 21st of July 2015. This appeal, supported by a verdict from the Council for Statutory Guarantees, argued that the contested provisions of this Law go against the fundamental rights protected by international instruments such as the Universal Declaration of Human Rights and the European Convention of Human Rights, as well as the jurisprudence of the European Court of Human Rights. Consistent with this appeal, the Government of Catalonia shall, through its actions, ensure public safety in full force and effect and shall respect the aforementioned fundamental rights.

k) The Parliament reaffirms the will to consolidate and defend the right to freedom of speech, the right to political participation and voting rights for citizens against the Spanish state's crackdown, in order to secure everyone's rights as an exercise of sovereignty.



PARLAMENT DE CATALUNYA

l) The Parliament expresses support for all those who have been denied the right of assembly, freedom of speech and political participation, especially those who have been beaten, arrested or prosecuted for exercising their civil liberties as well as their social, labour and democratic rights.

m) The Parliament adopts a political commitment in that, by constructing a Catalan Republic, it will establish democratic indemnity, which is understood to be a guarantee that no one will ever be hunted down, detained, prosecuted or condemned for their ideas or for exercising their political right to protest.

Palace of Parliament, 15 June 2017

The fourth secretary

The president

Ramona Barrufet i Santacana

Carme Forcadell i Lluís