

Law 11/2017, of 4 July, concerning legal redress for the victims of Franco's regime

Preamble

From the very beginning of the fascist military coup against the Second Spanish Republic, which also signalled the outbreak of the long and bloody civil war of 1936-1939, Franco's forces used a variety of means and mechanisms to repress all those who, because of their political affiliations, links to trade unions or other associations, ideas and beliefs, or because their lifestyles, were considered enemies of the authoritarian regime that was taking shape.

The scope and intensity of these repressive policies bear witness to the abhorrent intentions of repressing and eradicating all forms of alternative or dissident thinking, as these could come to challenge Franco's ideology which upheld all of his regime's institutions.

It is important to remember that the 1932 Statute of Catalonia was repealed by the Law of April 5, 1938. This was an illegal act, carried out by the Franco dictatorship, which could only be imposed by force of arms. Franco's occupying army established the Judge Advocates' courts, which were later known as the Judge Advocates' Court of the IV Military Region. Trials were carried out by the war councils as a means of political repression. These actions violated the competencies and laws that were in force at the time, with regards to the crimes specified, the procedures that were carried out and the procedural guarantees that were enforceable.

In the cases of the victims and their relatives, it is important that a regulation with the status of a law is created. This should, once and for all, declare that all these trials, alongside the sanctions and heavy sentences that were imposed, are invalid and that they can be described as farce.

It is important to also, taking into account the requirements formulated by the public authorities, both the United Nations Human Rights Committee, and the Human Rights Council Special Rapporteur on the promotion of truth, justice, reparation and and guarantees of non-recurrence during the last report from the session of July 22, 2014, which required state institutions to "Identify suitable mechanisms to give effect to the annulment of sentences handed down in violation of the fundamental principles of law and due process during the Civil War and the Franco regime. Comparative studies of other experiences undergone by countries which have faced similar challenges, including many within the European context, may prove extremely useful", in applying the Universal Declaration of Human Rights, the International Covenant on Civil and

Political Rights and the Convention for the Safeguarding of Human Rights and Fundamental Freedoms.

The arguments, in the sense of not re-opening old wounds, are inconceivable in a democratic context, since the restoration of the victims' dignity does not entail seeking revenge but rather the truth, justice, legal redress and the guarantee of non-recurrence.

Forty-two years on from the death of Franco, no law has been passed that expressly declares judgements from time of the dictatorship as invalid.

Therefore, this law, in accordance with the legal system, declares the illegality of the courts, trials and military councils established in Catalonia from April 5, 1938 to December 1978, through Franco's Judge Advocates' courts, later called the Judge Advocates' Court of the IV Military Region.

Even though, as the conflict progressed and as the dictatorship went on, the Francoist authorities tried to provide these repressive instruments the airs of legitimacy and legality, it is impossible to think that these bodies had any true legal status.

In order to be able to consider that a group of people may judge and grant that they may decide alongside the consideration and the necessary effect of "res judicata", it is important to be able to argue that the body in question is truly jurisdictional, and that it is an authentic court.

A court can not be considered a jurisdictional body if it does not respect the minimum guarantees of impartiality, the right of defence and the principle of res judicata in its decisions, or if the court is not independent from the rest of the powers of the State, at least in the sense that there is a minimally rational generic attribution of power to judge a sufficiently individualised body.

The pro-Franco war councils, bodies, juries and tribunals referred to here can not be seen as jurisdictional bodies which met the minimum requirements to carry out their functions by claiming to have the same rights as a court. By analysing their nature, composition and performance, we are forced to see them for what they truly were, a farce. Performances masquerading with the mere appearance of a jurisdictional body, and with vary degrees of sophistication, depending on the historical context.

Those political trials that were held by war councils, which were contrary to the law, were kept under a veil of ignorance following the dictator's death for political reasons, in violation of the fundamental rights of many people, who were unjustly subjected to the courts and some who, as a result of the courts' ruling, were executed.

Thus, the invalidity of the origin of these proceedings as well as that of the judgements, sentences, rulings and sanctions that they issued, as acts of fact and not jurisdictional ones, and which legally declared their illegitimacy, must not create any problems insofar as the law states and declares the nullity of those courts. It also seeks to establish a functional administrative mechanism in order to obtain individualised certification regarding the circumstances established and declared by the law.

Given that the trials and resolutions dictated by the military courts were public, to enforce the reparatory value, this law enables the National Archive of Catalonia to prepare and publish a list of trials and sentences.

For all these reasons, the time has come for the Parliament of Catalonia to assume its historical responsibility, in the face of the victims of those trials, in order to redress the abuses committed by the Franco regime against judicial and procedural legality and to carry out the actions of redress as asked for by those who suffered reprisals, the Catalan people and international bodies.

Single article. Legal redress for the victims of Franco's regime

In accordance with the legal system as a whole, which includes both international and national law, Franco's Judge Advocates' courts, subsequently called the Judge Advocates' Court of the IV Military Region, which were active in Catalonia from April, 1938 to December, 1978, are hereby declared illegal for acting contrary to the law and for violating the most basic demand concerning the right to a fair trial. And, consequently, the invalidity of the full right, then or thereafter, is derived from all judgements and resolutions relating to the war causes and war councils, for political causes in Catalonia, as dictated by Franco's regime.

Concluding provisions

First. Authorisations

1. The National Archive of Catalonia is authorised to prepare and publish a list of the trials and judgments adopted in accordance with the Ban of July 28, 1936, the Decree of August 31, 1936, Decree No. 55 of November 1, 1936, the Law of March 2, 1943, the Law of April 18, 1947, the Decree 1794/1960, of September 21, and the Decree-Law 10/1975, of 26 August, in which the procedural number, the natural or legal person involved and the sentence imposed are stated. The list must be published on the same day that this law comes into force.
2. The National Archive of Catalonia is authorised to update the list, if it is aware, for any reason, of the existence of any trials that are not mentioned in section 1, where they have not been recorded in the Catalan military courts file.

Second. Enactment

This law shall come into force on the day following its publication in the *Diari Oficial de la Generalitat de Catalunya* [Official journal of the Generalitat of Catalonia].