

## Legal arguments

- 1) Rule of law and democracy are constantly presented as synonyms by the Spanish Government and main Spanish political actors whilst are clearly different and complementary concepts.
  - a. Even worse, the Spanish Government is steadily entailing the compliance with the law to stop the Catalan Government implementation of the legitimate democratic mandate emerged from Catalan people in 27/9/2015, whilst they have an unbeatable breach of law track record at Spanish and European level with no consequences
  - b. The principle of Rule of law and the democratic principle are the basis of contemporary constitutionalism. Both principles must be interpreted together in such a way that neither imposes on the other. In this sense, laws have to respond to the legitimate aspirations of citizenship.
  - c. Some Spanish university scholars considers that the convocation of a referendum of independence in Catalonia may have constitutional accommodation
  - d. It can't be ignored that in a survey published in "El Diario.es", based in Madrid, a few days before the referendum, 82.6% of Catalans were in favor of holding a referendum on the independence of Catalonia
  
- 2) In recent weeks, the State prosecutor, the Spanish police, the Spanish government, some courts and the Constitutional Court have adopted a set of measures to avoid holding a referendum on 1 October. Some of these measures could be violating fundamental rights and public freedoms recognized by international law, without the prevention and control mechanisms provided for in the Spanish legal system having worked properly.
  - a. All of these rights are stated in the Spanish Constitution (SC) and in the European and International instruments which guarantee Human Rights (the International Covenant on Civil and Political Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms; and the Charter of Fundamental Rights of the European Union):
    - Right not to be treated in a cruel, inhuman or degrading way (Arts. 5 UDHR, 3 ECHR, 7 ICCPR, 4 CFREU & 15 SC),
    - Right to liberty and not to be subjected to arbitrary arrest (Arts. 9 UDHR, 5.1 ECHR, 9.1 ICCPR, 6 CFREU & 17 SC),
    - Right to inviolability of correspondence (Arts. 12 UDHR, 8.1 ECHR, 17.1 ICCPR, 7 CFREU & 18.3 SC),
    - Right to inviolability of the home (Arts. 12 UDHR, 8.1 ECHR, 17.1 ICCPR, 7 CFREU & 18.2 SC),
    - Right to freedom of ideology and expression (Arts. 18 & 19 UDHR, 9.1 & 10.1 ECHR, 18.1 & 19 ICCPR, 10.1 & 11 CFREU, & 16.1 & 20.1 SC),
    - Freedom of assembly (Arts. 20.1 UDHR, 11.1 ECHR, 21 ICCPR, 12.1 CFREU & 21.1 SC),
    - Right to fair trial (Arts. 6.1 ECHR, 14.1 ICCPR, 47 CDFE & 24.1 SC)

- Criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law (Arts. 7.1 ECHR, 15.1 ICCPR, 49.1 CFREU & 25.1 SC)
- b. Some of these violations have already been denounced by international institutions:
- UN High Commissioner for Human Rights  
(<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22176&LangID=E> and <http://www.ohchr.org/EN/NewsEvents/Pages/media.aspx?IsMediaPage=true>),
  - Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) (<http://www.osce.org/odihr/347171>),
  - Several UN Special Human Rights Rapporteurs and Independent Experts (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22197&LangID=E>),
  - Commissioner for Human Rights of the Council of Europe (<http://www.coe.int/en/web/commissioner/-/commissioner-calls-on-spain-to-investigate-allegations-of-disproportionate-use-of-police-force-in-catalonia>),
  - Amnesty International (<https://www.amnesty.org/en/latest/news/2017/10/spain-excessive-use-of-force-by-national-police-and-civil-guard-in-catalonia/>) or
  - Human Rights Watch (<https://www.hrw.org/news/2017/10/12/spain-police-used-excessive-force-catalonia>).

3) The Spanish Constitutional Framework can't be the solution to the political problem in Catalonia, it's rather the source of the problem due to:

- a. The Spanish Constitutional system does not constitute an adequate framework for the protection and respect of national minorities
- b. The Government and the Parliament of Catalonia have already attempted in many different occasions an accommodation within the current Spanish Constitution of the right to decide of the Catalan people
- c. The response of the Spanish State institutions to the many constitutional accommodation offers for the Catalan demands have always faced not only a rejection but even a negative to discuss about it.
- d. Moreover the Spanish State has already launched repression mechanism -legal according their framework- to squash the legitimate democratic challenge posed by Catalonia, that have even merited the condemnation of many international organizations.
- e. The Constitutional Court ceased long time ago to be a impartial actor on this political controversy damaging the prevalence of separation of powers within the Spanish State.
- f. The last offer of a Constitutional Reform as a solution to overcome the current crisis lacks credibility since prominent PP and PSOE leaders have already stated that this reform will never introduce the right to decide for the Catalan people.

- g. After the referendum, the Spanish Constitutional Court declared illegal the Law on the Catalan Self-Determination Referendum only in 17 October 2017, whilst the Spanish Government has been acting from the very beginning as if it were illegal instead of suspended.
  
- 4) As a conclusion, Spanish Government doesn't want to dialogue to solve the Catalan political problem because they understand they will need to do concessions. Instead they are promoting a biased respect to the rule of law they can control. This approach is based upon a restrictive lecture of the Spanish Constitution and only drives to politics judicialisation and police actions that restraint civil and political rights in Catalonia.