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**MASTER'S FINAL DISSERTATION**

**MASTER IN  
EUROPEAN UNION**

**SPECIALISATION:**

**MULTILEVEL EUROPEAN INTEGRATION  
AND FUNDAMENTAL RIGHTS**

2016

**LEGAL AND POLITICAL ANALYSIS  
OF AN INDEPENDENT CATALONIA  
WITHIN THE EUROPEAN UNION**

**Author: José Antonio Torres Martínez**

**Director: Cristina Elías Méndez**

**Subject: The Role of the Regions in the European Union  
System of Multi-Level Governance**



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## ABBREVIATIONS

<i>ANC</i>	Catalan National Assembly
<i>C's</i>	Citizens
<i>CDC</i>	Democratic Convergence of Catalonia
<i>CiU</i>	Convergence and Union
<i>CSQP</i>	Catalonia Yes We Can
<i>CUP</i>	Popular Unity Candidacy
<i>EAFRD</i>	European Agricultural Fund for Rural Development
<i>EC</i>	European Communities
<i>ECB</i>	European Central Bank
<i>ECSC</i>	European Coal and Steel Community
<i>EMFF</i>	European Maritime and Fisheries Fund
<i>ERC</i>	Republican Left of Catalonia
<i>ERDF</i>	European Regional Development Fund
<i>ESF</i>	European Social Fund
<i>ETA</i>	<i>Euskadi Ta Askatasuna</i> (Basque terrorist organisation)
<i>EU</i>	European Union
<i>FSR</i>	First Spanish Republic
<i>ICV</i>	Initiative for Catalonia Greens
<i>JxSí</i>	Together for Yes
<i>PP</i>	Popular Party

<i>PSC</i>	Socialists' Party of Catalonia
<i>PSOE</i>	Spanish Socialist Workers' Party
<i>PSUC</i>	Unified Socialist Party of Catalonia
<i>PxC</i>	Platform for Catalonia
SC	Spanish Constitution
TFEU	Treaty on the Functioning of the European Union
<i>UCD</i>	Union of the Democratic Centre
<i>UDC</i>	Democratic Union of Catalonia
<i>UPyD</i>	Union, Progress and Democracy

# I. INTRODUCTION

The sovereignty process in Catalonia is one of the political affairs which is currently on the Spanish and European agenda. Spain is a Member State of the European Union and a member of other international organisations. This raises several questions of how the legal, political and economic framework of Catalonia would be affected if this region started its independence process.

We receive many information and details from the media and different institutions which always try to show us how they understand or see the possible future of an independent Catalonia and the consequences of this situation.

The same situation is seen in a different way depending on the media or institution we are referring to. The main reason is that all the information provided by them is focused on political parties and vote-catching causes.

In this project, I am not trying to find a solution to the current political situation in Catalonia. It is a really difficult issue with many different hypothetical cases to be considered depending on the political situation at a certain moment. In short, a topic that should be extensively discussed and which exceeds the limits set for this project.

For this reason, I will analyse the political situation objectively and I will determine how it fits into the current legal framework.

‘The Role of the Regions in the European Union System of Multi-Level Governance’ is the subject in which this final master’s degree project best fits in. Not only for the comprehensive analysis of Catalonia which I have carried out, but also for the possible situation of an independent Catalonia and how this decision would change its relationship with the EU.

## **I.1. OBJECTIVES AND STRUCTURE**

The main objective of this project is to carry out a comprehensive and synthetic analysis of the Catalan secessionist challenge from two different perspectives. On the one hand, the viability of the proclamation of the Catalan Republic and, on the other hand, how it would be seen internationally. I will focus on the main consequences that this situation would have for both Spain and Catalonia and how this new state would fit in the EU.

Regarding the innovation of this project, I would like to highlight that many monographs on the Catalan independent movement have already been published. However, only a few publications have focused on the consequences of this proclamation for Spain and Catalonia within the EU.

It is a controversial topic which is being discussed by many people with clear political ideologies and who do not take into account the legal implications this important decision would have for the whole society.

With regard to the structure of this project, I have divided it into different chapters covering the main topics of this analysis. The contents discussed in each chapter have been classified depending on their relevance and the aspect they are focusing on.

After describing the main objectives, I have divided this project into the following points:

- 1) A brief analysis of the history of the relationship between Catalonia and the rest of Spain from the approval of the Nueva Planta Decree for Catalonia of 1716 to the approval of the Spanish Constitution of 1978.
- 2) A brief analysis of how Catalonia fits into the current constitutional framework. I will study how the different powers are distributed between Spain and the regions and which mechanisms and laws should be considered if a region decides to become a sovereign state.
- 3) A brief analysis of the current political situation and how a hypothetical



unilateral declaration of independence will emerge if no understating is reached by both Spain and Catalonia.

- 4) Finally, I will analyse the consequences of a hypothetical independent Catalonia for both Spain and the region within the EU. I will consider the status of Catalonia with regard to the EU and the economic and institutional consequences of its decision.

My conclusions will be shown in the final chapter of this project.

## I.2. METHODOLOGY

This project is based on different legal methods since they are the most suitable for the contents and objectives described herein.

According to Cruz Parceró,<sup>1</sup> we can find the following methods:

- Identification of the objectives
- Description of the different regulations
- Systematisation of law
- Definition, creation and use of concepts
- Preparation and use of distinctions, classifications and theories
- The inference of underlying principles or objectives in law
- Legal interpretation and argumentation
- Actions and facts in law
- Thinking about legal values, and law criticism and legitimisation

We will follow Atienza's model of argumentation who considered "legal argumentation as an act of complex language that can only be used in certain situations, particularly in negotiations, when an issue is questioned and the parties agree that the problem should be solved by reaching an agreement."<sup>2</sup> For this reason, we consider law is the best way to resolve any conflicts.

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<sup>1</sup> CRUZ PARCERO, J.A. *Los métodos para los juristas* in COURTIS, C. (Coordinator), *Observar la ley, ensayos sobre metodología de la investigación jurídica*. Ed. Trotta, Madrid, 2006, pages 17-40.

<sup>2</sup> LARA CHAGOYÁN, R. *Argumentación jurídica e investigación en derecho*, in COURTIS, C. (Coordinator), *Observar la ley, ensayos sobre metodología de la investigación jurídica*. Ed. Trotta, Madrid, 2006, pages 69-82.

Bearing in mind the legal argumentation theory, Lara Chagoyán<sup>3</sup> proposed different steps that should be considered when designing a research project:

- *Step 1.* To identify and define the problem.
- *Step 2.* To distinguish between the context of discovery and the context of justification.
- *Step 3.* To establish a procedure justifying the reasons adopted.
- *Step 4.* To identify the best approach to be followed when dealing with the problem: a formal, material or dialectical approach.
- *Step 5.* To propose different hypotheses and to establish different lines of argumentation.
- *Step 6.* To set the bases of the hypothesis chosen.
- *Step 7.* To define the main argument by using an internal justification process.

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<sup>3</sup> *Ibidem.*

## I.3 THEORETICAL FOUNDATION

### I.3.1 CATALAN NATIONALISM

The Royal Spanish Academy defines *nationalism* as the ‘fervent feeling of being part of a nation and being identified with its reality and history.’ It also defines this feeling as ‘the ideology of certain people, who asserting their nature as a sole nation, aspire to become a State.’”

When we talk about Catalan nationalism, we are referring to a type of nationalism with an important historical background. It started in the 19<sup>th</sup> century (with the proclamation of the Catalan State in March 1873) and has been supported continuously from the Spanish transition to democracy to the present day.

According to Luis Moreno Fernández,<sup>4</sup> it is a kind of stateless nationalism that promotes independence through political mobilisations to develop the idea of a specific State. This nationalism does not feel fully connected to the state project carried out by the whole country and aims to have its own political structures of self-government. These political structures involve certain institutional objectives such as forming regional democratic governments and parliaments and even creating new state structures.

According to Montserrat Clua i Fainé,<sup>5</sup> unlike nation-state nationalism, in this

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<sup>4</sup> MORENO FERNÁNDEZ, L. *Identificación dual y autonomía política: Los casos de Escocia y Cataluña*. International Association of Sociology, Madrid, 1988.

<sup>5</sup> CLUA I FAINÉ, M. *Catalan, immigrants and charnegos: “race”, “cultura” and “mixture” in Catalan Nationalist Rhetoric*. Autonomous University of Barcelona, 2011.

case we are talking about a political nationalism with no state structures or internationally recognised borders. Therefore, this nationalism can employ some symbolic arguments to defend the Catalan nation but has no legal capacity to determine a series of specific legal criteria that would define this nation and that could be used to clearly specify who can get this Catalan nationality. In short, Catalan nationalism is a kind of inclusive nationalism based primarily on cultural criteria and in which the Catalan language plays an important role.

### **I.3.2 INDEPENDENCE MOVEMENTS AND THE SPANISH CONSTITUTION OF 1978**

Since the approval of the Spanish Constitution in 1978, several nationalist parties, especially from the Basque Country and Catalonia, have defended the independence of their regions.

According to Alberto Pérez Calvo,<sup>6</sup> the Spanish Constitution does not provide a situation for this ‘right to decide’ and reaffirms the “indissoluble unity of the Spanish nation”. The constituent power (sovereignty) would be the only relevant political actor that could change this situation. But, how would it be possible? By following the constitutional reform processes established by the Spanish Constitution.

### **I.3.3 INDEPENDENCE MOVEMENTS AND EUROPEAN INTEGRATION**

Recent events related to independence have taken place within the EU. The first one was the referendum held in Scotland in 2014 and, the second one, the

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<sup>6</sup> PÉREZ CALVO, A. La vía jurídica hacia la independencia de un territorio español. *Revista Jurídica de Navarra*, January-December 2013. No. 55-56. Page 149.

decisions adopted by the main political party of Catalonia. These two events have aroused a great deal of interest in Brussels. Why? Because the situation is unclear: what would happen if a region decides to leave a Member State? Would it still be part of the EU?

According to Ignacio Molina,<sup>7</sup> law is the only route to be followed to determine whether Scotland or Catalonia would still be part of the EU upon completion of their independence processes. This issue has been discussed by British lawyers for a long time. More recently, some pro-independence groups in Catalonia have also started to focus on this issue since the Treaty on European Union does not regulate the independence of a region within a Member State and no precedents have been set so far.

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<sup>7</sup> MOLINA, I. *Independentismo e integración europea (I): la imposible adhesión automática a la UE de un territorio sesionado*. Elcano Royal Institute, Madrid, 2012.

## II. HISTORY OF THE RELATIONSHIP BETWEEN CATALONIA AND THE REST OF SPAIN

In 1932, José Ortega y Gasset asserted that “the Catalan problem is a problem that cannot be resolved. It can only be put up with. It is a perpetual problem that started long time ago –even before Spain was unified as a country– and that will last as long as Spain exists.”<sup>8</sup>

The recent decision approved by the Parliament of Catalonia on 9<sup>th</sup> November 2015 supporting the beginning of the independence process of this region is just another example of the tight relationships between Catalonia and the rest of Spain in the last 300 years. This tension started on 11<sup>th</sup> September 1714 during the War of the Spanish Succession. On this date and after fourteen months of siege, Barcelona was taken by the Bourbon troops commanded by the Duke of Berwick. This victory entailed the disappearance of the Catalan institutions once the **Nueva Planta Decrees** were approved.

In short, the main objective of these decrees was to organise Spain by introducing an absolutist and centralist system which replaced the agreement policies applied by the Spanish Habsburgs. Nowadays, this is considered to be the most important landmark in the history of Catalonia. An event that has been turned into a legend by the most nationalist sector of the Catalan society and that, according to many authors such as Valentí Puig, is clouding their reasoning when dealing with the Catalan conflict and its resolution.<sup>9</sup>

Another historic event that strained the relationships between Catalonia and the rest of Spain took place between 5<sup>th</sup> and 7<sup>th</sup> March 1873: the **proclamation of**

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<sup>8</sup> GUERRA SESMA, D. (Ed.) *El pensamiento territorial de la Segunda República*. Ed. Athenaica, Seville, 2016, page 169.

<sup>9</sup> PUIG, V. “Bienvenido mister 1714” in *AA. VV. Derecho a discutir*. El País Libros, Madrid, 2012.

**the Catalan State.** It was a federalist republican proclamation and not a separatist one. This proclamation was supported by the Catalan provincial councils once the First Spanish Republic (FSR) was proclaimed. This was due to the fact that the FSR was a period of strong political instability in which the attempted *coup d'état* of Cristino Martos in March 1873 was seen as a good opportunity to proceed with this proclamation. However, Francisco Pi i Margall, who was the leader of the federal party at that time, sent some telegrams which stopped the whole process. They abandoned their stance only when Figueras, the president of the Executive Power of the Spanish Republic, appeared in Barcelona.<sup>10</sup>-. This proclamation was promoted by the middle classes who used the independence movement to put the authorities under pressure and, therefore, get a new call for elections for the Catalan Parliament and the dissolution of the Spanish army in Catalonia.

In 1911, Enric Prat de la Riba, who was the president of the Barcelona Provincial Council at that time, proposed a new project focused on the integration of the four Catalan provincial councils under the same self-government entity. On 16<sup>th</sup> October 1911, these four councils approved the Basic Rules of the **Commonwealth of Catalonia**. These rules established the creation of an assembly made up of all the provincial representatives and a permanent board composed of eight members (two for each province). The project including these rules was sent to the Spanish prime minister, José Canalejas, and submitted to the Spanish Parliament on 1<sup>st</sup> may 1912 as a Bill on Commonwealths.<sup>11</sup>

Despite having the approval of the liberal president José Canalejas, a sector of

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<sup>10</sup> VILCHES, J. *Progreso y Libertad. El Partido Progresista en la Revolución Liberal Española*. Alianza Editorial, Madrid, 2001. Page 377.

<sup>11</sup> GRANJA, J. L. de la, BEREMENDI, J. & ANGUERA, P. *La España de los nacionalismos y las autonomías*. Síntesis, Madrid, 2001, pages 74-75.



the Liberal Party led by Segismundo Moret and Niceto Alcalá Zamora opposed this project.<sup>12</sup> The project was finally approved by the Spanish Parliament in June 1912 and came into effect in December 1913. In early 1914 the Commonwealth of Catalonia was constituted. Despite the lack of legislative capacity and resources, the Commonwealth developed an important work of cohesion in Catalonia. One of the most important actions taken by the Commonwealth was the preparation of the Draft Statute of Autonomy of Catalonia of 1919. This draft statute was never completed due to several factors. The most relevant one was the *coup d'état* of General Primo de Rivera who established a six-year dictatorship and dissolved the Commonwealth of Catalonia in 1925. All the self-government projects<sup>13</sup> were then condemned to obscurity.

Primo de Rivera's dictatorship was one of the tensest moments in the history of the relationship between Catalonia and Spain. A severe repression was launched against Catalans. In fact, any actions, statements or signs promoting the specificity of Catalonia from the rest of Spain were heavily punished by the dictatorship. This repression was very active after the publication of the Decree dated 18<sup>th</sup> September 1923 on Separatism. With this decree, Primo de Rivera sought to eradicate separatism through repressive state actions. This decree stipulated that severe penalties would be imposed for "any offences against the security and unity of the country, especially if they tend to break up Spain, diminish its strength or even lower its concept, whether orally, in writing, by printing or by other advertising or broadcasting mechanical/graphic systems, or even by any other actions" (article 1). These offences were tried by military

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<sup>12</sup> SUÁREZ CORTINA, M. *La España Liberal (1868-1917). Política y Sociedad*. Síntesis, Madrid, 2006, page 181.

<sup>13</sup> BALCELLS, A. *El projecte d'autonomia de la Mancomunitat de Catalunya del 1919 i el seu context històric (in Catalan)*. Parlament of Catalonia. Barcelona, 2010.

courts as stated in the Spanish Law on Jurisdictions of 1906.

In the same way, hoisting or flaunting “*a different flag from the Spanish one*”, “*teaching or spreading any ideas promoting separatism*” or using the Catalan language “*in any national or international official events*” was prohibited. All local and provincial *authorities* “*were forced to use Spanish in their records and books, even in notifications and notices written in a regional language and which were not addressed to authorities*”.<sup>14</sup>

According to historian Shlomo Ben Ami, the anti-Catalanism defended by Primo de Rivera was due to internal dynamics of his dictatorial regime. Their motto was ‘*Spain: One, Great and Indivisible*’. Certain concepts such as decentralisation or autonomy were not allowed and were also against the nature of the country as their use would decrease the power of the dictatorship.<sup>15</sup>

In protest, Josep Puig i Cadafalch, president of the Commonwealth of Catalonia, tendered his resignation on 24<sup>th</sup> December 1923 due to the anti-Catalanist policies established by the dictatorship and self-exiled in France.<sup>16</sup>

Primo de Rivera dissolved all provincial councils on 12<sup>th</sup> January 1924 and approved the Provincial Statute of 1925 on 25<sup>th</sup> March. This statute, which established the regulations governing the provincial councils in Spain, entailed the dissolution of the Commonwealth of Catalonia.

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<sup>14</sup> ROIG I ROSICH, J. M. “L’impacte en el món cultural” in *L’Avenç* No. 72 (1984), page 70.

<sup>15</sup> BEN AMI, S. *El cirujano de hierro. La dictadura de Primo de Rivera (1923-1930)*. RBA, Barcelona, 2012, page 182.

<sup>16</sup> GONZÁLEZ CALLEJA, E. *La España de Primo de Rivera. La modernización autoritaria 1923-1930*. Alianza Editorial, Madrid, 2005, page 104.

In 1926, an attempted military invasion known as the **Prats de Molló plot** took place. This plot, which promoted the independence of Catalonia and the proclamation of the Catalan State, emerged in response to the anti-Catalan repression launched by Primo de Rivera. It was led by Francesc Macià, who later became the president of the Regional Government of Catalonia in 1932. This was just an attempt since it was uncovered and miscarried. After this, Macià started a propaganda campaign supporting the Catalan situation and went into exile in Latin America and Cuba. In October 1928, the **Constituent Assembly of Catalan Separatism** was convened and the Provisional Constitution of the Catalan Republic was approved.<sup>17</sup>

General Primo de Rivera's dictatorship was toppled in January 1930. Macià returned to Spain in February 1931. He was elected to Parliament in 1931 and 1933. On 14<sup>th</sup> April 1931, after the municipal elections which gave his new party (Republican Left of Catalonia, *ERC*) the control of the region, Macià proclaimed the Catalan Republic in the Palace of the Regional Government of Catalonia. This proclamation initiated a dispute with the newly formed Provisional Government of the Second Spanish Republic. Three days later, three ministers of the interim government, Marcelino Domingo, Lluís Nicolau d'Oliveras and Fernando de los Ríos went to Barcelona to negotiate and reach an agreement with Macià. In the agreement, Macià proposed that the Catalan Republic would be abandoned if an autonomy statute for Catalonia (recognising the Catalan Government which would be known as Regional Government of Catalonia) was presented by the new Constituent Parliament of the Second Spanish Republic.<sup>18</sup>

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<sup>17</sup> FALGUERA, O. "La Constitució de la República catalana, 1928". In *El Temps* No. 1009, Barcelona, 2003, pages 46-51.

<sup>18</sup> ESCULIES, J., SOLÉ I SABATÉ, J. M. & DURAN, L. "Somnis i malsons d'un president" in *Sàpiens* No. 96, Barcelona, 2010, pages 40-47.

As a result of this agreement, the Regional Government of Catalonia was restored with Macià as a president. All the Catalan city councils were convened by the Regional Government to elect the 45 members of the Provisional Council of the Regional Government of Catalonia. Their goal was to create a six-member committee to draw up the draft of their Statute of Autonomy. They gathered in the Sanctuary of the Virgin of Nuria and the draft was presented on 20<sup>th</sup> June. As agreed, the text was given to the president of the Provisional Government, Niceto Alcalá Zamora, who submitted it to the constituent assembly on 18<sup>th</sup> August.<sup>19</sup>

After four months of endless debates, the Statute of Autonomy for Catalonia – known as the Statute of Nuria– was finally approved on 9<sup>th</sup> September by 314 votes in favour (all parties supporting the government and most of the deputies of the Radical Republican Party), 24 against and about 100 abstentions.<sup>20</sup>

The Statute was then signed by the president of the Spanish Republic, Niceto Alcalá Zamora, on 15<sup>th</sup> September in the city of San Sebastián.<sup>21</sup>

According to Gabriel Jackson, “*Manuel Azaña risked the health of his government and staked his reputation on the approval of this statute. For such an intelligent Spanish nationalist, this statute was a perfect strategy contributing to a unified Spain based on mutual interests and not created by military interventions.*”<sup>22</sup>

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<sup>19</sup> GRANJA, J. L. de la, BERAMENDI, J. & ANGUERA, P. *La España de los nacionalismos y las autonomías*. Síntesis, Madrid, 2001, page 125.

<sup>20</sup> TUSELL, J. *Historia de España. Vol. XII. La Segunda República. De la Segunda República a la Guerra Civil*. Espasa Calpe, Madrid, 1997, page 74.

<sup>21</sup> GRANJA, J. L. de la, BERAMENDI, J. & ANGUERA, P. *La España de los nacionalismos y las autonomías*. Síntesis, Madrid, 2001, page 127.

<sup>22</sup> JACKSON, G. *La República Española y la Guerra Civil, 1931-1939*.

However, this Statute caused disappointment among many Catalans. The 52 articles proposed were reduced to 18 and the original objectives of this project were also reduced. While the original document stated that “*Catalonia was an independent State within the Spanish Republic*”, the final text stated that “*Catalonia was an autonomous region within the Spanish Republic.*”

Any reference sovereignty, which was also included in the original document, was removed from the final document. The statement “*the power of Catalonia emanates from the people*” was removed and the definition of Catalonia as an “*independent state*” was replaced by “*an autonomous region*”. The Spanish language was then imposed as an official language and, therefore, Catalans were not allowed to communicate with the central government in Catalan. Many specific powers which had been granted to the Regional Government of Catalonia were reduced (especially in education, public policies and justice). The transfer of powers from the central government to the Catalan government took some time and the underfunding of the services transferred generated a progressive budget deficit in Catalonia, resulting in an increased disappointment. In spite of everything, the statute was considered a useful tool which would help the region to create specific regional laws.<sup>23</sup>

Despite this reduction of powers, the statute gave substantial autonomy to Catalonia: the Regional Government was composed of a Parliament, a president and an Executive Council. Moreover, some public policies and the administration of justice were also granted.

However, the Statute of Nuria was not in force for a very long time. On 5<sup>th</sup> April 1938, the city of Lérida was invaded by General Francisco Franco. He repealed the statue and imposed the Spanish language as the only official

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Crítica, Barcelona, 1976, page 83.

<sup>23</sup> GRANJA, J. L. de la, BERAMENDI, J. & ANGUERA, P. *La España de los nacionalismos y las autonomías*. Síntesis, Madrid, 2001, page 127.

language and the Spanish personality as the single personality of the whole country.

The thirty-six years of dictatorship were one of the darkest periods in the history of Catalonia. During this period, no significant progress was made and many of the rights which were achieved during the Second Republic were lost. The first twenty years of the dictatorship were characterised by an intentional repression towards the defeated. We must also highlight that there was a terrible social and economic situation, which was characterised by an autarchic interventionism, salary impositions made by the government, constant electricity restrictions, rationing of food, difficulties in the repatriation of foreign capital, the overvaluation of the peseta compared to the main international currencies or the lack of decent housing.<sup>24</sup>

Despite the strict control of the State over any attempt against the regime, in October 1944 the Spanish guerrillas known as *maquis* tried to invade the Arán Valley. However, some of them died in this attempt. In the same year, the president of the Regional Government of Catalonia, Josep Irla, formed in France the only government in exile, which ended four years later.

Movements against Franco's regime were not common until the seventies. This was caused by the creation of the Coordinating Commission of Political Forces in Catalonia (1969) and the Catalan Assembly, which was created on 7<sup>th</sup>

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<sup>24</sup> Regional Government of Catalonia [online]: *El franquismo en Cataluña*. Retrieved from <[http://www.gencat.cat/culturcat/portal/site/culturacatalana/menuitem.be2bc4cc4c5aec88f94a9710b0c0e1a0/es\\_ES/index1a6e.html?vgnextoid=841c5c43da896210VgnVCM1000000b0c1e0aRCRD&vgnnextchannel=841c5c43da896210VgnVCM1000000b0c1e0aRCRD&vgnnextfmt=detall2&contentid=0e613c084ded7210VgnVCM1000008d0c1e0aRCRD&newLang=es\\_ES](http://www.gencat.cat/culturcat/portal/site/culturacatalana/menuitem.be2bc4cc4c5aec88f94a9710b0c0e1a0/es_ES/index1a6e.html?vgnextoid=841c5c43da896210VgnVCM1000000b0c1e0aRCRD&vgnnextchannel=841c5c43da896210VgnVCM1000000b0c1e0aRCRD&vgnnextfmt=detall2&contentid=0e613c084ded7210VgnVCM1000008d0c1e0aRCRD&newLang=es_ES)>, [Consulted: 6<sup>th</sup> May 2016].

November 1971 in the Church of San Agustín in Barcelona.<sup>17</sup>

The main proposals of the assembly, driven by the Unified Socialist Party of Catalonia (*PSUC*), was the achievement of political freedom, amnesty of political prisoners, restoration of the Statute of Autonomy of Catalonia and the coordination of the Spanish peoples against Franco's regime. Despite suffering several arrests, the assembly still had enough strength to carry out a demonstration of hundred thousand people in San Baudilio de Llobregat to celebrate the Eleventh of September of 1976.

Although the regime showed signs of weakness after the murder of the prime minister Carrero Blanco by the terrorist organisation *ETA*, the dictatorship decided to control this situation by murdering the anarchist Salvador Puig i Antich in 1974 with a strangulation technique known as *garrote vil*. However, a real political transformation was not possible until Franco's death on 20<sup>th</sup> November 1975 when a new political era known as the Spanish Transition started.<sup>25</sup>

The new Spanish Constitution of 1978 was approved on 15<sup>th</sup> June 1977. The Catalan Parliamentary Assembly, composed of all deputies and senators elected by the four Catalan districts, created a new twenty-member committee to prepare the draft of the new Statute of Autonomy. They met at the Sau Hotel and, on 29<sup>th</sup> December 1978, they presented the draft to the plenary session in which it was approved. The debate in the Parliament did not begin until the elections of March 1979 were over. These elections were won by the Union of the Democratic Centre (*UCD*), the party of the prime minister Adolfo Suárez.<sup>26</sup>

The new Statute of Autonomy of Catalonia was submitted to a referendum in

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<sup>25</sup> *Ibidem*.

<sup>26</sup> GRANJA, J. L. de la, BEREMENDI, J. & ANGUERA, P. *La España de los nacionalismos y las autonomías*. Síntesis, Madrid, 2001, page 215.

the region on 25<sup>th</sup> October. It was supported by 88.1 % of voters (although the turnout was low –59.6 %– due to *the “weakness of the Provisional Regional Government”* perceived by Catalans). This perspective was due to *“the lack of effective powers, the prominent role of the regional president, the erosion of political unity caused by election confrontations, the several elections called in just a few months, and the isolation of immigrants who were not interested at all in the plebiscite”*. The Statute was finally approved at the plenary session of the Spanish Parliament on 19<sup>th</sup> November 1979 and by the Senate on 12<sup>th</sup> December 1979.<sup>27</sup>

Once the Statute of Sau came into force, it was seen as a useful tool since the demands of the nationalists were fulfilled in a certain way (a higher level of autonomy was granted to Catalonia). All the nationalist parties played an important role in the development and approval of the Statute (especially *CiU*). Their most representative figure, Jordi Pujol, who was president of the Regional Government of Catalonia from 1980 to 2003, stated that *“Spain is a close reality that exceeds the administrative reality. However, the way many Catalans feel Spain is very different from what other Spaniards feel. We cannot be Spaniards if our basic right to be Catalans is not respected.”*<sup>28</sup>

A Catalan perspective that, during the first 30 years of democracy, has been more focused on nationalism rather than independence. A perspective which has claimed its sovereignty, self-government and its own legal personality within Spain. Moreover, Catalan nationalism has contributed to some extent to the development of the State of self-governing regions, not only in Catalonia

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<sup>27</sup> GRANJA, J. L. de la, BEREMENDI, J. & ANGUERA, P. *La España de los nacionalismos y las autonomías*. Síntesis, Madrid, 2001, pages 215-216

<sup>28</sup> TRIAS, X. “La aportación del nacionalismo mayoritario catalán a la construcción del Estado de las autonomías” in *AA. VV. Cataluña-España: Relaciones políticas y culturales*. Icaria, Barcelona, 2003, page 163



but in the rest of the autonomous regions. In fact, some parties like *CiU* have played an important role when passing certain laws in the Parliament which have favoured the self-government of some regions.<sup>21</sup>

From the perspective of Catalan nationalism, the State of self-governing regions reflects a broad consensus that incorporates a major decentralisation of the State and recognition of historical realities.

In the twentieth century, the newly appointed president of the Regional Government of Catalonia, the socialist Pasqual Maragall, presented a new proposal to modify the statute in force and which was caused by the investiture agreement reached by the *PSC*, *ERC* and *ICV* to control the regional government. The main aims of this change were to deal with new issues in immigration, the relationships of the regional government with the European Union and a Charter of Social Rights.

In his inaugural speech<sup>29</sup> to the Parliament of Catalonia, Maragall said:

*“The statute we want shall be a new agreement reached by all the people of Spain. [...] This new relationship with Spain can only be developed under a slogan: ‘Union and freedom’. The new statute should be the Catalan proposal for Spain because the statute must be in accordance with a constitutional reform that cannot be postponed. [...]*

*Although I do not want to determine the final result of the proposed self-government improvement that can be agreed in this Parliament, I consider we must share the main ideas shared by most of the parties here represented: constitutional consideration of the Regional Government as State –not as a State–, redefinition of the powers granted to the Regional government, presence of Catalonia in the European Union and international organisations,*

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<sup>29</sup> RUSIÑOL, P. (16<sup>th</sup> December 2003). “La relación con España no puede regirse por refranes mercantiles”, *El País*.

*cooperation between the Regional Government and the local governments and, obviously, improvement of the regional funding. [...] Catalonia wants a plural Spain defending and promoting all languages and cultures as inalienable wealth... What we want is what's happening in Switzerland, where the whole country knows that there are four different languages."*

Once the Statute was duly processed by the Parliament of Catalonia, it was finally approved by the Spanish Parliament and approved by 73.90 % of the Catalans in a regional referendum.

The approval of the new statute was the subject of endless controversy. Several national and social institutions such as the General Council of the Judiciary, the Bank of Spain and the Catholic Church, among others, opposed the reform of the statute.

Politically, the Popular Party led the fiercest opposition to the new Statute, demanded the holding of a referendum in Spain on the statute, and began collecting signatures so that the Spanish Parliament could not approve this project.<sup>30</sup>

Other parties also suffered collateral damages with this reform, especially when including the definition of Catalonia as a nation in the document. The federal committee of the Spanish Socialist Workers' Party (*PSOE*), the ruling party at that moment, urged its secretary general and prime minister José Luis Rodríguez Zapatero to bring the debate on the statute to an end or to end the whole process. *ERC* had an agreement with the *PSC* at that time and finally voted against the draft reform in the Parliament provoking an internal crisis in the regional government. The Catalan tripartite collapsed with the expulsion of the six members of *ERC* from the Catalan government. The Catalan president, Pasqual Maragall, removed three of the regional ministries that were held by

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<sup>30</sup> EFE. (25<sup>th</sup> April 2006) "Rajoy presenta en el Congreso cuatro millones de firmas por un referéndum sobre el Estatuto", *El País*.

ERC.<sup>31</sup>

Meanwhile, the Popular Party (PP) continued its crusade against the new statute. On 31<sup>st</sup> July 2006 they lodged an appeal on the grounds of unconstitutionality against the new Statute of Catalonia (114 of 223 articles and 12 provisions). Mariano Rajoy listed the eight main elements of unconstitutionality argued by his party: 1) Catalonia as a nation, since “*from a constitutional point of view, Spain is the only nation with sovereignty*” and this nation “*cannot be compared with the other peoples and regions conforming its territory*” since “*their statutes are based on the Constitution*”; 2) the privileges granted to the Catalan language which must be known and spoken and “*the use of the Catalan language as the only language in schools*”, which “*is against the right of the parents to be free to choose the language their children are taught at school*”; 3) the “*different rights and duties*” of Catalans when compared with the rest of Spain and “*which is not guaranteeing equality between Spaniards*”; 4) the Judiciary since “*the whole legal system of Spain is not respected*”; 5) the distribution of the different powers between Catalonia and Spain; 6) the principle of bilateralism “*privileging Catalonia and laying the foundation of an asymmetric confederate model*” which represents “*an unacceptable inequality in the Constitution*”; 7) international relationships of Catalonia, and 8) its own funding system since it should be agreed between all the regions.<sup>32</sup>

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<sup>31</sup> NOGUER, M. (14<sup>th</sup> May 2006) “Maragall refuerza a sus dos principales colaboradores sin aclarar su sucesión”, *El País*.

<sup>32</sup> MARCOS, P. (1<sup>st</sup> August 2006) “El PP recurre al Constitucional el Estatuto catalán «para impedir un daño irreparable»”, *El País*.

### III. SPANISH CONSTITUTIONAL FRAMEWORK REGARDING THE POSSIBLE INDEPENDENCE OF CATALONIA

In this chapter we will focus on how Catalonia fits in within the current constitutional framework. We will analyse the Spanish Constitution, how the different powers are executed by the State and the regions, as well as the mechanisms and legal procedures that would have to be followed so that an autonomous region could become a sovereign State.

In the Preamble of the Constitution of 1978, the Spanish Nation, in the exercise of its sovereignty, proclaims its will to guarantee democratic co-existence under the Constitution and to consolidate a State of Law which ensures the rule of law as an expression of the popular will. According to article 1.2, *“national sovereignty is vested in the Spanish people, from whom emanate the powers of the State.”*

According to J. A. González Casanova, *“in the original draft of the constituent paper, the provision stated that ‘The powers of all organs of the State emanate from the Spanish people, to whom tis sovereignty belongs.’ However, they decided to include the adjectives ‘national’ and ‘Spanish’ that were criticised by radical Catalan and Basque nationalists. They proposed to remove these terms since they did not represent the plurality of the nations and peoples taking part in the whole constituent process. The in voce amendment proposed by the Catalan socialists, which was supported by the whole left and pleased the radicals, was rejected for this reason.”*<sup>33</sup>

J. J. Solozábal Echavarría analysed the concept of sovereignty as it is described

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<sup>33</sup> GONZÁLEZ CASANOVA, J. A. “La cuestión de la soberanía en la historia del Constitucionalismo Español” in *Soberanía y Constitución* No. 1 (1998), page 309.

in the Constitution and asserted that “*conferring the constitutional powers of sovereignty to the Spanish people identifies the owner of the fundamental power of the State, from whom these powers emanate. Sovereignty is vested in the Spanish people, who are a collective subject endowed with sufficient homogeneity to execute this fundamental power of the State which they own. No mention is made to the peoples of the State (or the peoples of Spain –as if it was necessary to take precautions against an unclear vision of its plurality–) as a group who decided by common consent to share their sovereignty. In this way, they evaded the idea of a contract or agreement in which the origin of the State would be based on and that could be interpreted as several sovereignties which could be revived or recovered if the political framework established was inappropriate for the said peoples.*”<sup>34</sup>

Solozábal Echavarría also declared that our Constitution “*recognises the Spanish people as the owners of the original and current sovereignty and whose homogeneity, inherent to its capacity to act, does not have to be understood as inflexible but compatible with the acceptance of other nationalities and regions conforming Spain*”<sup>34</sup>

Sovereignty is indivisible as, “*according to our Constitution, it is exclusively, indivisibly and originally vested in the Spanish people. It only belongs to the Spanish people who are citizens of this country and not a mix of peoples and ethnical-cultural communities.*”<sup>34</sup>

“*The Constitution presupposes the homogeneity of the Spanish people since we are holders of our sovereignty and able to execute the functions related to it: this reference (of sovereignty) to the nation denotes certain identifying features. In short, a cultural affinity generated by history and a common purpose of jointly facing the same political fate. Whatever the terms in which*

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<sup>34</sup> SOLAZÁBAL ECHEVARRÍA, J. J. “El problema de la soberanía en el Estado autonómico” in *Soberanía y Constitución* No. 1 (1998), page 471.

*the national status of the Spanish people is expressed, we are the constitutional subject who can execute this sovereignty: such actions, as we shall see, will strengthen and show its unity, its own consciousness, and its self-identification as a political subject”.*<sup>35</sup>

This identification of sovereignty with the Spanish nation might be seen as one of the reasons of the Constitutional Court to deny any legal validity to the declaration of Catalonia as a nation included in the Preamble of the Statute of Autonomy of 2006.

The said preamble establishes that *“in reflection of the feelings and the wishes of the citizens of Catalonia, their Parliament has defined Catalonia as a nation by an ample majority.”*

The Constitutional Court considers that this statement, along with the reference to the *“national reality of Catalonia”*, has no *“interpretive legal effect”* since preambles or statements have no legal value and, therefore, cannot be declared as unconstitutional.

The official judgement declares that *“a defence of ideological concepts that would attempt to define a certain group as a national community, based on an understanding of the social, cultural and political reality, would particularly fit. This may in fact be a principle that could actually be the basis for the formation of a constitutionally legitimated will that could be translated into a legal reality, through a timely and appropriate reform of the Constitution. However until that happens, the rules of the legal system cannot be ignored or led to any doubts about the “indissoluble unity of the Spanish Nation” proclaimed in article 2 of the SC. No nationalities apart from the one specified in the Constitution can be claimed since this is the only one identified by the whole nation. Moreover, the irrelevant ambiguity induced by the use of the*

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<sup>35</sup> SOLAZÁBAL ECHEVARRÍA, J. J. “El problema de la soberanía en el Estado autonómico” in *Soberanía y Constitución* No. 1 (1998), page 471.

*term “nation” to any other subject different from the people holding that sovereignty is not allowed in the legal/constitutional context in which this court is the only empowered authority.”<sup>36</sup>*

Legal ground no. 12 states that *“the relevant nation here is solely and exclusively the nation in its legal and constitutional sense. And in that specific sense, the Constitution only recognises the Spanish Nation, which is mentioned in the preamble, on which the Constitution is based (article 2 of the SC) and which expressly describes the sovereignty that, exercised by the Spanish people as its sole recognised holder (article 1.2), has been declared as the people’s wish to constitute the State in the positive provisions of the Spanish Constitution.”<sup>36</sup>*

Bearing in mind the aforementioned grounds and the current constitutional framework, we can assert that secession is not possible for Spanish regions and, therefore, an independent State could not be founded. This would be possible if the whole country agreed on this decision.

However, in recent years, different Spanish regions have demanded their right to decide on the various territories composing our country. In 2003, the president of the Basque Country at that moment, Juan José Ibarretxe, proposed a new Statute of Autonomy for the Basque Country based on the right of the Basque people to decide if they want to be independent. This was known as the Ibarretxe Plan. However, this project was immediately rejected by the Constitutional Court.<sup>37</sup>

In Catalonia, we can consider the year 2003 as the turning point at which

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<sup>36</sup> SPAIN. Constitutional Court (Plenary meetings). Judgement no. 31/2010, of 28<sup>th</sup> June 2010.

<sup>37</sup> TORNOS MAS, J. *De Escocia a Cataluña. Referéndum y Reforma Constitucional*, Iustel, Barcelona, 2015, page 98.

people began questioning the current regional model. Once the tripartite government was created (*PSC, ERC* and *ICV*), a statutory reform was then started. It tried to modify the relationships between Catalonia and Spain (without modifying our Constitution) and recognise the special situation of Catalonia.<sup>38</sup>

As described above, the Constitutional Court pronounced its judgment no. 31/2010 and rejected many modifications that had been included in the new statutory text. Surprisingly, some of these non-approved modifications were later included in other statutory reforms such as the one from Andalusia, the Balearic Islands, Aragon, Valencia, Extremadura, Castile and León and Navarre, making the autonomic system increasingly complex and, at the same time, weak.<sup>38</sup>

With the economic crisis, the tension between Catalonia and the Spain increased and the regional model was criticised from different perspectives: the financing system is not feasible and should be changed, the possibility of simplifying certain administrations should be analysed, some powers should be subject to analysis so that they could be under Spain's control again, etc.<sup>39</sup>

In any case, Catalonia has always followed its own way by focusing on its demand for an improvement in the quality of the powers granted, by demanding a new financing system increasing their regulatory capacity management and limiting the levels of solidarity, and by demanding the recognition of their national identity and their own self-governing entities.<sup>39</sup>

However, it was not until 2012, after the demonstration that took place on the Day of Catalonia (11<sup>th</sup> September 2012) in which Catalans claimed their right

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<sup>38</sup> *Ibidem*

<sup>39</sup> TORNOS MAS, J. *De Escocia a Cataluña. Referéndum y Reforma Constitucional*. Iustel, Barcelona, 2015, pages 99-100.



to be a new country in Europe, that the secessionist option was openly discussed. The statutory reform is then forgotten and the new objective of Catalonia is to guarantee its right to decide if it can become a new independent country in Europe but only if the majority of Catalans agree. To reach this objective, the Decision no. 742/IX of 27<sup>th</sup> September 2012 was announced. *CiU*, *ERC*, *ICV-EU*, and *SI* voted for while *PP* and *C's* voted against. The *PSC* abstained. This decision solemnly proclaims the imprescriptible and inalienable right of Catalonia to self-determination (as a reaffirmation of their sovereignty as a nation) and states a new stage based on their right to decide, without forgetting their ultimate objective: Catalonia as a new state in Europe.<sup>40</sup>

After early elections held on 25<sup>th</sup> November 2012, the new Parliament ratified the basic grounds described in the aforementioned decision (Decision no. 5/X 2013). This decision was contested by the Spanish Government before the Constitutional Court. The appeal was accepted and the validity and application of the said decision were revoked. On 25<sup>th</sup> March 2014, the Court unanimously adopted an important judgement (42/2014) in which, after justifying the admission of the proposed action, analysed the scope and content of the so-called **right to decide** and how it can be fitted in the constitutional text.<sup>41</sup>

Joaquín Tornos Mas analysed the judgement “*which contains statements of unquestionable value for their clarity. On the one hand, it established that the first clause of the declaration proclaiming the political and legal nature of the Catalans must be considered unconstitutional and void. On the other hand, nothing should oppose the aspiration of considering the right to decide a political aspiration reached through a constitutional legality process since it is*

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<sup>40</sup> *Ibidem*

<sup>41</sup> TORNOS MAS, J. *De Escocia a Cataluña. Referéndum y Reforma Constitucional*. Iustel, Barcelona, 2015, pages 100-101.

*based on principles such as democratic legality, dialogue and legality.”<sup>42</sup>*

*The court also declared that the supremacy of the Constitution should not be confused with a demand to positively adhere to the fundamental rule. In this sense, any contrary approaches can be accepted. However, the procedure followed to impose these approaches will require that the correct steps described in the Constitution are completed for its successful reform. **“These procedures are unavoidable and must always be respected.”***

*In short, the Constitutional Court stated that understanding the “right to decide” as an aspiration of regional authorities to modify their relationships with Spain, nothing prevents this approach to be defended, but can only be done through a constitutional reform (articles 87.2 and 166 of the SC). Once this reform proposal is submitted to the Spanish Parliament, they should consider it. Obviously, the approach defended by the Court is far from coinciding with the approach of those considering this “right to decide” as the right of the Catalan people to vote on their relationship with the State and impose the content of the voting (...) or even as the right to be consulted by the Regional Government. According to the Constitutional Court, the Catalan government has no right to hold a referendum on the relationship between Catalonia and the State or to call a binding consultation based on the ius secessionis right. The right to decide is admissible only if it is understood as a political aspiration that should be exercised by demanding the constitutional reforms established by law.”<sup>43</sup>*

And what are the procedures established by that the Spanish Constitution to ensure that an autonomous region can exercise its right to decide?

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<sup>42</sup> *Ibidem*

<sup>43</sup> TORNOS MAS, J. *De Escocia a Cataluña. Referéndum y Reforma Constitucional*. Iustel, Barcelona, 2015, pages 101.

Firstly, our Constitution is inflexible and this means reforming it would entail a very difficult process. The constitutional reform is described in Title X. *A priori*, there are two procedures that could be followed: an ordinary procedure (described in article 167) and an extended procedure (specified in article 168). The difference between the two procedures lies in the section of the constitutional text that should be modified:

- Extended procedure (article 168.1): when a total revision of the Constitution is proposed, or a partial revision thereof, affecting the Preliminary Title, Chapter Two, Section 1 of Title I, or Title II.
- Ordinary procedure (article 167): to be followed if article 167 is not applicable.

In any case, whatever the part of the constitutional text affected by the reform, this must be proposed by the Government, the Chamber of Deputies or the Senate, in accordance with the Constitution and Regulations of the chambers (article 87.1 of the SC). According to Article 87.2 of the SC, *“The Assemblies of the Autonomous Communities may request the Government to pass a bill or refer a non-governmental bill to the Parliamentary Committee and to delegate a maximum of three assembly members to defend it.”* In any case, the process of Constitutional amendment may not be initiated *“in time of war or when any of the States outlined in article 116 are in operation.”*

The jurisprudence of the Constitutional Court has clarified the constitutional reform process by complementing the constitutional text.

According to the Constitutional Court (judgements 48/2003, FJ 7 and 103/2008, FJ 2), the Spanish Constitution can be modified with no limits, that is to say, without any explicit or implicit intangibility clauses, as long as they respect the established legal procedure. Moreover, no referendums can be held before the constitutional reform (judgement of the Constitutional Court 103/2008, FJ 4).

Once these procedures are duly understood, we can confirm that the constitutional articles to be amended are article 1.2 (Preliminary Title), as stated at the beginning of this chapter:

*“National sovereignty is vested in the Spanish people, from whom emanate the powers of the State.”*

and article 92 (Title III):

- 1. Political decisions of special importance may be submitted to all citizens in a consultative referendum.*
- 2. The referendum shall be called by the king at the proposal of the prime minister, following authorisation by the Chamber of Deputies.*
- 3. An organic law shall regulate the terms and procedures for the different kinds of referendum provided for in this Constitution.*

In the synopsis of article 92 of the Constitution made by Carlos Gutiérrez Vicén, legal advisor of the Parliament, he analyses the generic concept of referendum and refers to judgment 103/2008 of the Constitutional Court, of 11<sup>th</sup> September, ruling *“the constitutional appeal against Law 9/2008 of the Basque Parliament, of 27<sup>th</sup> June, on the announcement and regulation of a popular consultation in order to gather Basque citizens’ opinions on the opening of a negotiation process for achieve peace and political normalisation. According to this judgement made by the Constitutional Court, the referendum is an instrument of direct and political participation. More specifically, the referendum is a species of ‘popular consultation’ which does not collect information about the opinion of each group on any matters of public interest and through any procedures, but a consultation which is aimed at gathering the opinions of the citizens concerning any public affairs related to article 23 of the Constitution, and which is confirmed by an election (judgement 103/2008, FJ 2). The Constitutional Court specifies that, in these cases in which electors are consulted, we face public consultations that are verified by*

*referendums, and as such, they can only be held by the State as stated in article 149.1.32 of the Constitution.*

*Considering these definitions and bearing in mind that in our system of representative democracy, direct democracy formulas are the exception, referendums can only be held in those cases in which it is expressly necessary, and no implied powers can be assumed (judgement 103/2008).<sup>44</sup>*

According to article 149.1.32 of the SC:

*“The State holds exclusive competence over the following matters:*

*(...)*

*xxxii) authorisation for popular consultations through the holding of referendums.”*

In any case, according to the articles mentioned above, the Spanish Government would have the right to call referendums, but these should be called to all citizens (article 92) and bearing in mind that the right will be exercised by the whole Spanish people and not on a part of it (article 3). *A priori*, a constitutional reform referendum would not be necessary if the whole country takes part in it.

However, taking into account the sovereignty claims that argue that the consultation should be made to those Spanish citizens residing in Catalonia, the only solution would be to carry out an extensive constitutional reform covering articles 1, 92 and 149, among others. In any case, the consultation would have a great impact on the sovereignty and, therefore, article 3 of the Constitution. The extended procedure described in article 168 would be applied as follows:

Once the amendment proposal is submitted, the Chamber of Deputies and the

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<sup>44</sup> GUTIÉRREZ VICÉN, C. *Constitución Española, Sinopsis del artículo 92*. National Assembly, Madrid, 2003.

Senate should pass it by a two-thirds majority of the members of both chambers. Once approved, the Chamber of Deputies and the Senate should be dissolved and a new call for an election would take place (article 168.1 of the SC).

The new chambers will have to “*ratify the decision and proceed to examine the new Constitutional text*” (article 168.2 of the SC). However, a problem arises since the majority required for such ratification is not indicated. If we consult the Regulations of the Parliament, no solution is given. In this case, Aragón Reyes (2001)<sup>45</sup> states that, in accordance with the provisions of articles 79.2 of the Constitution and 79.1 of the Regulations of the Parliament, it should be understood that a simple majority of deputies is necessary. Regarding the Senate, the Rules of the Senate ratification requires approval by an absolute majority of the Senators (article 159).

Once the amendment has been passed by the chambers, it shall be analysed and passed by a two-thirds majority of the members of both chambers (article 168.2).

Finally, the amendment passed shall be submitted to ratification by referendum (Article 168.3).

In any case, the idea of holding a referendum or starting a new constitutional reform to grant this right to the regions seems unlikely if we bear in mind the current political situation which will be discussed in the next chapter.

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<sup>45</sup> ARAGÓN REYES, M. *Temas básicos de derecho constitucional (vol. II): Organización del Estado*. Civitas Ediciones, Madrid, 2001.

## IV. THE CURRENT POLITICAL SITUATION IN CATALONIA

As described in the previous chapter, judgement 42/2014 of the Spanish Constitutional Court states that regions have no right to hold a referendum regarding the established organisation and the basic constitutional order. This judgement was seen as a turning point by the Catalan separatist sectors since their ambitions were undermined. The role of the Constitutional Court was questioned by the Regional Government of Catalonia as well as other separatist sectors. They criticised how quickly this court had proceeded with the unconstitutional appeal presented by the Spanish Government against the decree allowing the said independence referendum and the Catalan Law on Public Plebiscites on which it was based.<sup>46</sup>

As a result, the 9N sovereignty plebiscite was automatically invalidated by the Constitutional Court (CC). However, on 9<sup>th</sup> November 2014 the polling stations were opened in Catalonia.

The questions proposed to all Catalans were the following:

- *Do you want Catalonia to be a State? YES / NO*
- *If so, do you want Catalonia to be an independent State? YES / NO*

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<sup>46</sup>MANETTO, F. (27<sup>th</sup> September 2014). “Sáenz de Santamaría: ‘Lamentamos profundamente el error de Mas’”, *El País*.



*Figure 1. Ballot used for the 9N referendum. Source: Regional Government of Catalonia.*

The two non-independent political parties *UPyD* and *PxC* reacted against this situation and reported it to the Duty Magistrates' Court. They requested that the leaders of the Regional Government of Catalonia were arrested and that the whole process was cancelled since all this was against the decision approved by the Constitutional Court.<sup>47</sup>

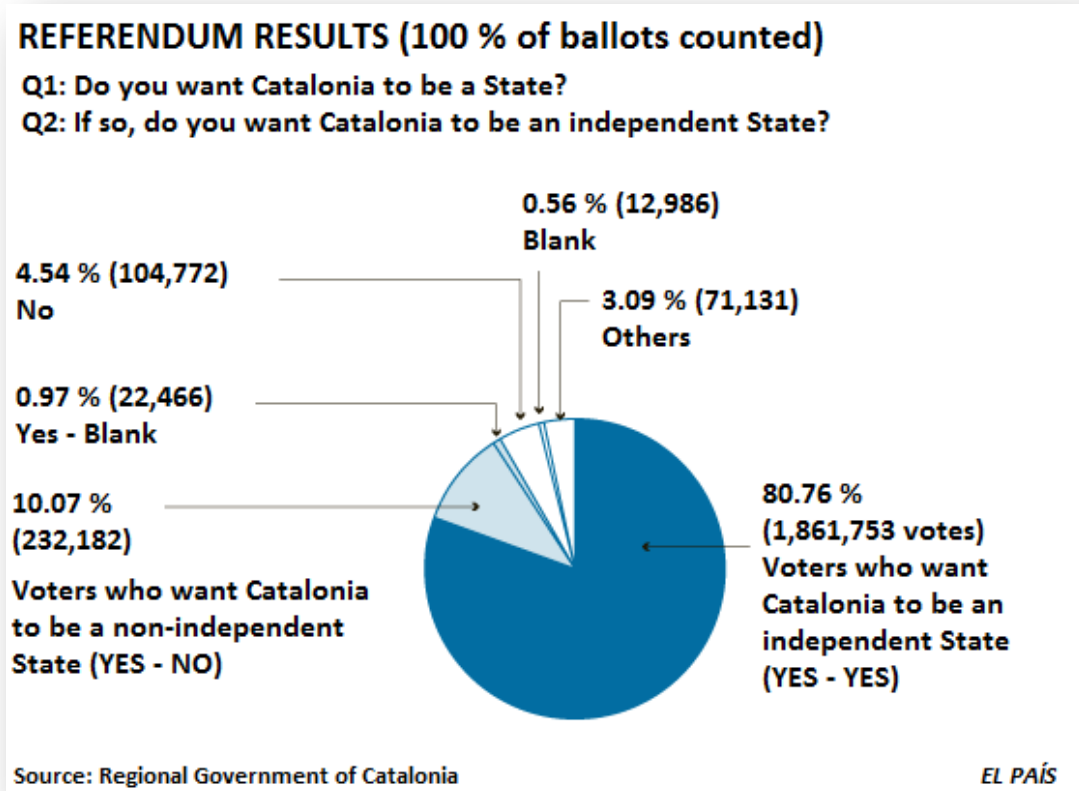
Despite of this, a turnout of 37.02 % was reached. It only represented about a third of the census of citizens who –in theory– were called to the polls.

According to the Regional Government of Catalonia, the results obtained were the following:

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<sup>47</sup> EUROPA PRESS (9<sup>th</sup> November 2014). “UPyD denuncia a Mas, Rigau y Espadaler, pide cerrar colegios y detener a voluntarios”, *20 minutos*.





*Figure 2. Results of the referendum in Catalonia.*

*Source: El País as confirmed by the Regional Government of Catalonia*

The results given by the Regional Government and the ones given by the Spanish Government were completely different.

Artur Mas, the former president of the Regional Government of Catalonia, said that the referendum was a “success” and a “great lesson in democracy” which demonstrated that “Catalonia wants to govern itself”.<sup>48</sup>

The results published by the Regional Government were seen by the Spanish Government as non-reliable data. They also highlighted that two thirds of the

<sup>48</sup> LA VANGUARDIA (11<sup>th</sup> November 2014). “Resultados del 9N: La independencia se impone con un 81% de los más de 2,3 millones de votos.”

Catalan census did not vote since this process was a “farce”.<sup>49</sup>

The minister of Justice Rafael Catalá said that this process was nothing but a useless and futile sham with no democratic value. Moreover, it only contributed to aggravate the differences between Catalans and make the relationships with the rest of Spain even worse.<sup>50</sup>

In any case, the referendum held on 9<sup>th</sup> November 2014 was not a real democratic plebiscite since there was not an official census of registered voters. All people above 16 years old, with residence in Catalonia and with Spanish ID card or foreigners’ ID card (issued more than 3 years ago) were called to the polls. All Spanish citizens living abroad and officially registered in the Catalan census before their departure were also called.<sup>51</sup>

For all these reasons and due to the explicit ban of the Constitutional Court, this referendum was declared illegal with no binding results.

After the referendum, Artur Mas declared that his idea was to call a final, legal and binding referendum which would be agreed with the Spanish Government. If this idea was not possible, early elections would be called and a new political list would be created with other political parties promoting the independence of Catalonia. Their aim was then to call new elections and consider the votes received as a binding result for the independence of the region.<sup>52</sup>

On 13<sup>th</sup> December 2014, the Spanish Government and its leader, Mariano Rajoy, expressed their intention not to change the Constitution. This was

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<sup>49</sup> LA VANGUARDIA (11<sup>th</sup> November 2014). “Resultados del 9N: La independencia se impone con un 81% de los más de 2,3 millones de votos.”

<sup>50</sup> *Ibidem*

<sup>51</sup> PÉREZ, F.J. & RÍOS, P. (10<sup>th</sup> November 2014). “1,8 millones de personas votan por la independencia catalana en el 9-N”, *El País*.

<sup>52</sup> NOGER, M. (10<sup>th</sup> November 2014). “CiU amenaza con unas elecciones plebiscitarias si Rajoy no negocia”, *El País*.

known as the *Declaration of La Granja* in which the party showed their opinion on this issue.<sup>53</sup>

As a result, the regional president, Artur Mas, announced on 14<sup>th</sup> January 2015 that early elections would take place in Catalonia. They would be held on 27<sup>th</sup> September 2015 and the final results would be regarded as binding on the independence issue.<sup>54</sup>

*CDC*, *ERC*, the *ANC* and *Omnium Cultural* followed the same strategy promoting the independence movement in Catalonia and included a declaration of independence that should be submitted within 18 months.<sup>55</sup>

*UDC* had a different perspective for this strategy. As a result, they asked their members on 14<sup>th</sup> June 2015 about this new situation and they voted against it. The coalition formed was over.<sup>56</sup>

In the summer of 2015, a unique pro-independence slate was proposed under the name *Together for Yes (JxSí)*. It was composed of different members of *CDC* and *ERC* as well as different pro-independence entities.<sup>57</sup>

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<sup>53</sup> CUÉ, C. E. (13<sup>th</sup> December 2014). “El PP defiende la Constitución frente a «ensoñaciones» independentistas”, *El País*.

<sup>54</sup> GIL DEL OLMO, C. (14<sup>th</sup> January 2015). “Mas gana el pulso a ERC y convoca elecciones para el 27 de septiembre”, *El País*.

<sup>55</sup> NOGUER, M. (31<sup>st</sup> March 2015). “Mas y Junqueras pactan un plan para declarar la independencia en 18 meses”, *El País*.

<sup>56</sup> NOGUER, M. (19<sup>th</sup> June 2015). “La ruptura de CiU dona via lliure a Mas per bolcar-se en el pla sobiranista”, *El País*.

<sup>57</sup> DIEGO, S. de (10<sup>th</sup> August 2015). “La lista de 'Junts pel Sí' de Artur Mas y Oriol Junqueras roza los 32.000 candidatos”, *El Confidencial*.



*Figure 3. Picture of Artur Mas (president of the Regional Government of Catalonia and CDC), Oriol Junqueras (president of ERC), Raül Romeva (first candidate of the electoral list), Carme Forcadell (second candidate) and Muriel Casals (third candidate). Source: EFE*

The results obtained in the Catalan regional elections held in September 2015 were very interesting. *JxSí* obtained 39.6 % of the ballots counted which represented 62 seats in the Catalan Parliament. The other independent list led by the *CUP* obtained 8.2 % of the ballots counted which meant 10 seats. This figures reflected that the pro-independence parties won the elections if we consider the total number of seats (72 when the absolute majority was 68). However, they did not win the elections if we take into account the total number of votes. Pro-independence votes (*JxSí* and *CUP*) represented 47.8 % while non-independent votes (*PSC*, *C's*, *PP*, *CSQP* and *UDC*)<sup>58</sup> represented 50.62 %.

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<sup>58</sup> NOGUER, M. (28<sup>th</sup> September 2015). “Los independentistas ganan las elecciones y pierden su plebiscito”, *El País*.

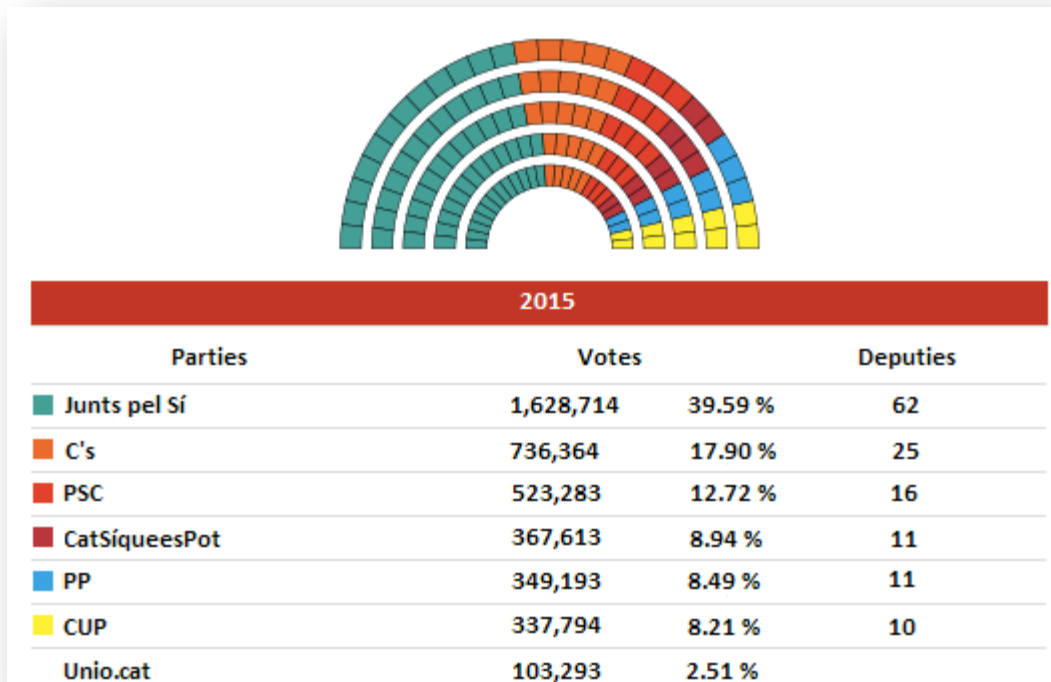


Figure 4. Catalan Parliament election results (2015).

Source: Regional Government of Catalonia

On 27<sup>th</sup> October 2015 and once the new Catalan Parliament was formed, the parliamentary groups of *JxSí* and *CUP* put forward a decision calling for “the beginning of a process for the creation of an independent Catalan State in the form of a republic”.<sup>59</sup> This resolution was finally approved on 9<sup>th</sup> November 2015 with 72 votes in favour (*JxSí* and *CUP*) and 63 against (*PSC*, *PP*, *C's* and *CSQP*).<sup>60</sup>

After this approval, the Spanish Government led by Mariano Rajoy lodged an appeal on the grounds of unconstitutionality against the new decision with the Constitutional Court which accepted it for consideration. On 2<sup>nd</sup> December 2015 this court unanimously declared that this decision was against the Spanish

<sup>59</sup> JULVE, R. (27<sup>th</sup> October 2015). “JxSí y la CUP registran en el Parlament la declaración de «inicio del proceso» hacia la independencia”, *El Periódico*.

<sup>60</sup> RÍOS, P. (10<sup>th</sup> November 2015). “La mitad de Cataluña rompe con la democracia española”, *El País*.

Constitution.<sup>61</sup>

In the same way, the articles of the new Catalan Law 3/2015 on Fiscal, Financial and Administrative Measures (focused on the creation of a regional treasury department) were declared null and void by the Constitutional Court on 7<sup>th</sup> July 2016. This law was published in the *Official Gazette of the Regional Government of Catalonia* no. 6830 dated 13/03/2015.<sup>62</sup>

With this decision, the Constitutional Court stopped the creation of a regional treasury department which should be used to manage all the taxes of a future Catalan State. Moreover, all additional provisions of the said law were declared null and void. They were focused on the creation of new strategic infrastructures; a master plan on energy systems, telecommunications, information systems, and trains; the modification of the current Catalonia Weather Service so that it could be granted new powers on aerial navigation; and the restrictions for construction new businesses in public ports. The Constitutional Court considered that this proposal was against our Constitution since it granted certain powers to the regional government, which can only be exercised by the Spanish Government. This new judgement had a big impact on the Catalan Government's aspirations to become an independent country.

However, the Catalan Parliament started a new process to draw up the three laws that they consider necessary to become independent: the law on provisional legal adaptation, the law on the creation of a new treasury department, and the law on the Catalan Social Security. The Constitutional Court has only approved the creation of the Catalan Agency for Social Protection (similar to a Social Security system) which is considered as a 'state

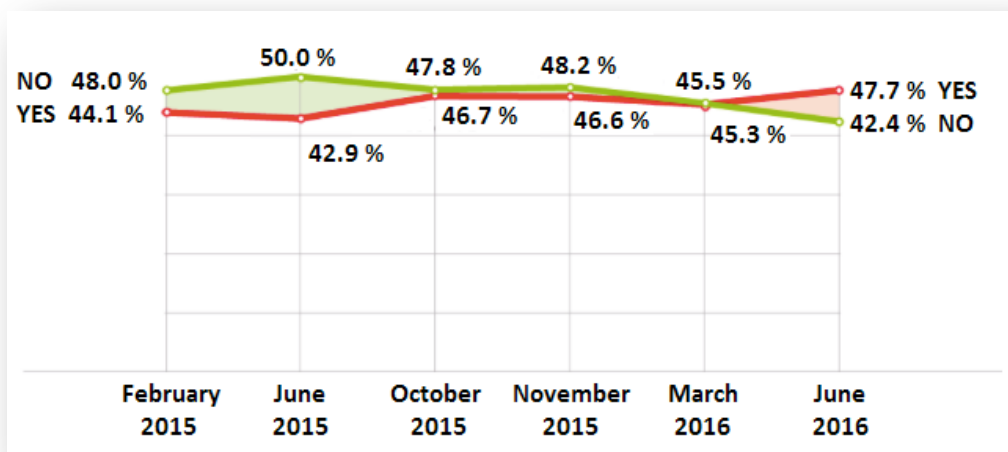
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<sup>61</sup> SPAIN. Constitutional Court (plenary session) judgement no. 259/2015, of 2<sup>nd</sup> December 2015.

<sup>62</sup> SPAIN. Constitutional Court (plenary session) judgement dated 7<sup>th</sup> July 2016 in accordance with the appeal on the grounds of unconstitutionality no. 3493-2015.

structure' by the Regional Government and whose laws are already being processed.<sup>63</sup>

According to the Centre of Opinion Studies and regarding the public opinion on the independence of Catalonia and the whole process to be followed for that purpose, it is the first time in history that the number of pro-independence Catalan voters is higher than the number of non-independence voters. The last study published in June 2016 showed that 47.7 % of voters were in favour of the independence process while 42.4 % were against it.



*Figure 5. Do you want Catalonia to become an independent State? Opinions in the last year. Source: Centre of Opinion Studies of the Regional Government of Catalonia*

This study was carried out between 28<sup>th</sup> June and 13<sup>th</sup> July 2016 using a sample size of 1500 people and with a margin of error of 2.5 % once the elections held on 26<sup>th</sup> June had passed.<sup>64</sup>

With regard to the structure of State to be established, 41.6 % of those polled

<sup>63</sup> CORDERO, D. (7<sup>th</sup> July 2016). “El Constitucional anula las estructuras de Estado catalanas por unanimidad”, *El País*.

<sup>64</sup> PIÑOL, A. (22<sup>nd</sup> July 2016). “El 26-J da aire al independentismo”, *El País*.

proposed an independent state, 26.5 % proposed to continue with the regional structure, 20.9 % proposed a new state within Spain as a federal State, 4 % proposed to be only a region, 5.6 % was not sure and 1.3 % did not know.

Which caused then an increase in the number of voters who were in favour of the independence process? Similar studies revealed that there are five main causes.<sup>65</sup>

- The political manipulation of the judgement of the Constitutional Court against the Statute of Autonomy and propaganda done before and after this judgement.
- The refusal to a fiscal agreement.
- The measures adopted by the *PP* since they were not accepted by the majority of Catalans (e.g. the new Law on Education).
- The new changes in the independence policy proposed by *CDC*. Many old voters of this party still think it is the best option for them and have decided to support their new goals.
- The economic crisis. Many Catalans think leaving Spain would improve the economy of the region and therefore their situation would be much better.

In any case, the new political status of Catalonia as an independent state is still unclear. In the following chapter we will analyse the different opinions of some international organisations such as the EU and the consequences derived from this situation.

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<sup>65</sup> YÉCORRA, F. (16<sup>th</sup> November 2015). “¿Cuándo creció el Independentismo en Cataluña?”, *Debate21*.



## V. CATALONIA IS NOT SCOTLAND

On 18<sup>th</sup> September 2014 Scotland was asked to vote in a referendum on independence. Scots voted against becoming an independent country by 55.3 % to 44.7 %.

Catalan supporters of independence often cite Scotland as an example of independence process. They also aspire to hold a referendum with the same characteristics of the plebiscite held in Scotland.<sup>66</sup>

We have to highlight that the Scottish legal framework is quite different from the Catalan one. The United Kingdom has no written constitution. The Act of Union, which was passed by the English and Scottish Parliaments in 1707, establishes that Scotland may apply for its independence if Scots do wish to leave the UK. However, the Spanish Constitution approved by the Chamber of Deputies and the Senate in 1978 reaffirms the “indissoluble unity of the Spanish nation”.<sup>67</sup>

Historically, Scotland was an independent country until 1707 when the Act of Union with England led to the creation of Great Britain. With regard to Catalonia, we can affirm that it has never been a country. In the Middle Ages, the Catalan territory was organised in different counties that were controlled by the Crown of Aragon and later by the Kingdom of Spain, once the kingdoms of Castile and Aragon united as a single unity in the 15<sup>th</sup> century. Catalonia has never been established as a nation or even as a kingdom.

On the other hand, other parts of Spain like Jaen, Murcia or Valencia were

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<sup>66</sup>EL PERIÓDICO (5<sup>th</sup> May 2016). “*Artur Mas subraya que el modelo "bueno" es el de Escocia y no el de Kosovo*”.

<sup>67</sup>BBC Mundo (22<sup>nd</sup> September 2014). “*En qué se parecen y se diferencian Escocia y Cataluña*”.

recognised kingdoms.<sup>68</sup>

According to Alsina Roca<sup>69</sup>, comparing Catalonia to Scotland has no sense. Until the 17<sup>th</sup> century, Scotland was an independent kingdom with its own monarchs. Great Britain is a union of several kingdoms that were independent for a very long time.

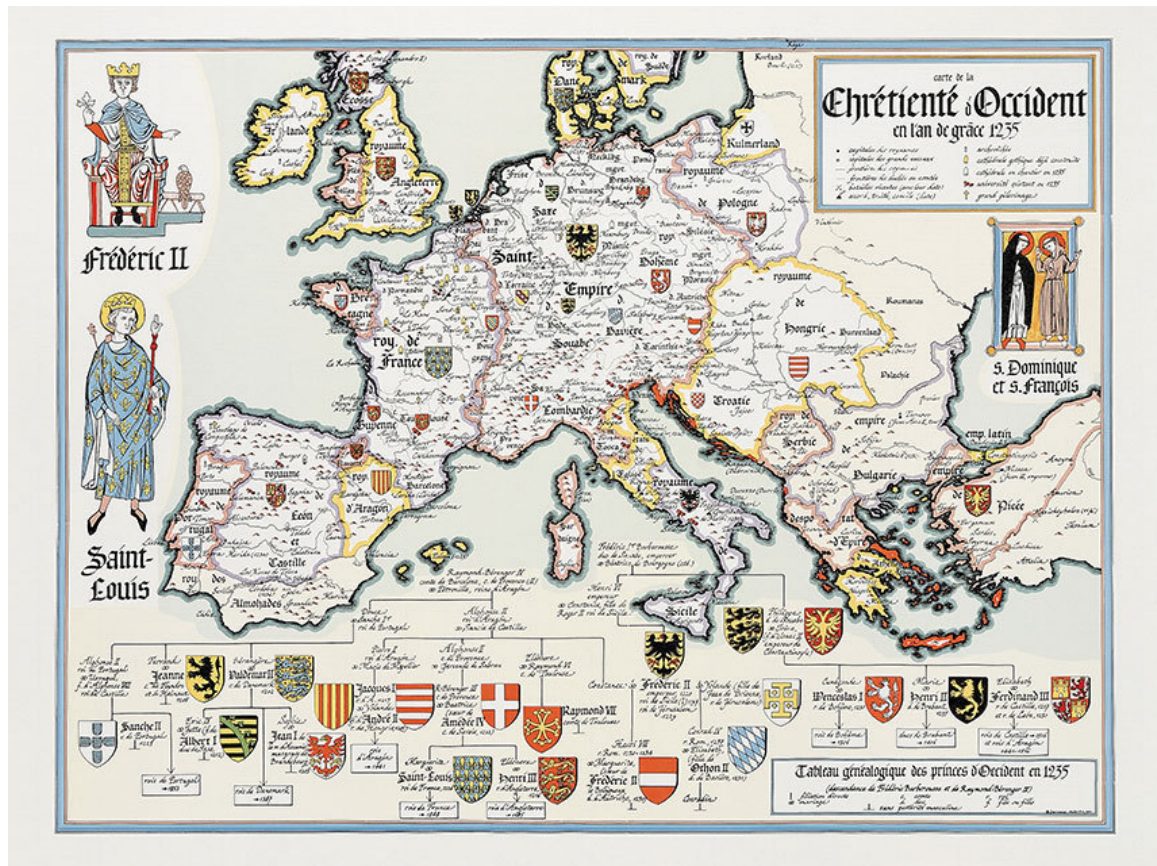


Figure 6. Christian kingdoms in 1235. Source: Éditions d'Art Daniel Derveaux.

<sup>68</sup> ALSINA ROCA, J.M. (10<sup>th</sup> September 2013) “Cataluña nunca ha existido históricamente como nación”, *Te Interesa*.

<sup>69</sup> *Ibidem*



Figure 7. Map of Europe in 1500. Source: Éditions d'Art Daniel Derveaux.

The Catalan independence movement is mainly based on a cultural separatism in which the Catalan language plays an important role as a differentiating factor which justifies the fact of being part of a different social group. For this reason, the Regional Government led by Artur Mas toyed with the possibility of following the route started by Kosovo to obtain international recognition as a new Catalan State.<sup>70</sup>

However, we have to consider the decision approved by the UN in 1960 (Decision 1514 XV) which established the principles of integrity of sovereign states. A principle which was reiterated in 1970 with the Declaration of Principles of International Law. According to these principles, secession is

<sup>70</sup> GONZÁLEZ, M. (9<sup>th</sup> November 2015). “Cataluña ve a Kosovo como modelo de reconocimiento internacional”, *El País*.

only possible in cases of colonialism, racist regimes and disintegration of the State<sup>71</sup>. A series of requirements which are not satisfied by the Catalan region. In any case, in the next chapter I will detail in depth the possible legal consequences, both nationally and internationally, of a possible declaration of independence by the Catalan institutions.

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<sup>71</sup> TORNOS MAS, J. *De Escocia a Cataluña. Referéndum y reforma constitucional*. Iustel, Barcelona, 2015, page 109.

## VI. ARGUMENTS FOR THE INDEPENDENCE OF CATALONIA

Pro-independence parties have raised several arguments when talking about the independence of Catalonia. In this project, we will focus on the most relevant ones: the economic and legal arguments.

### VI.1 ECONOMIC ARGUMENTS

Ros Hombravella<sup>72</sup> has presented several arguments, which are commonly raised by the supporters of Catalan independence, to justify the positive economic effects of an independent Catalonia.

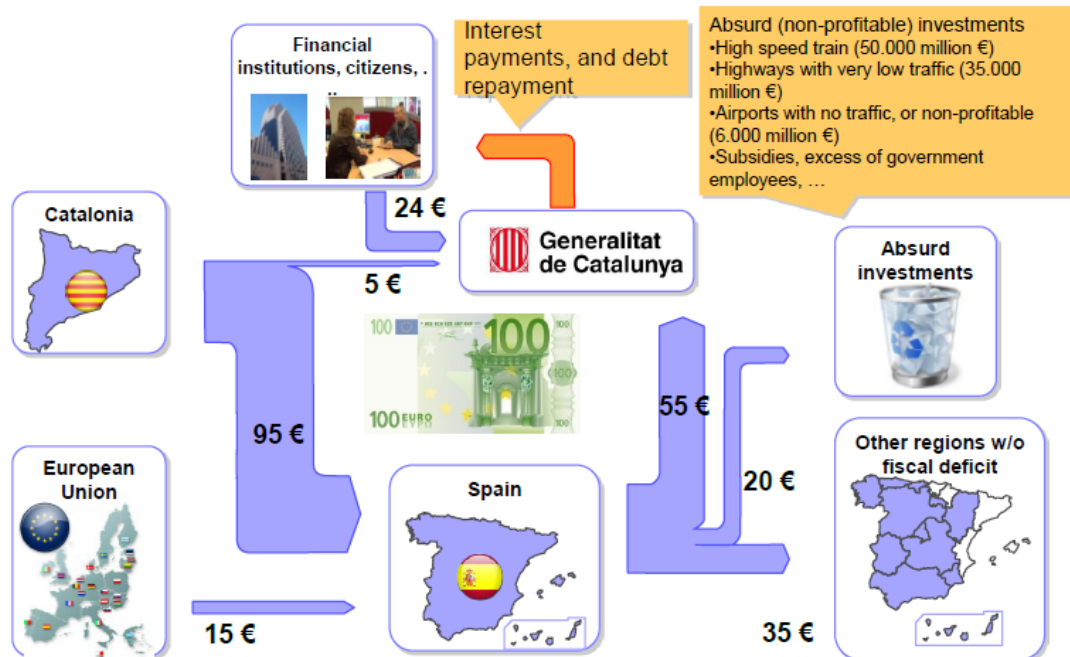
The first economic argument raised in favour of this process –and which has also been supported by López Tena<sup>73</sup>– is the current fiscal deficit of Catalonia when compared to the rest of Spain. The second argument holds that the economic policies implemented in Spain have been detrimental to Catalonia, especially in the last six years in which the economy has been severely affected by the crisis. And finally, the third economic argument refers to trade. Ros Hombravella considers that the impact would be hardly noticeable, given the downward trend observed in the trade surplus of Catalonia when compared to the rest of Spain (in two deficit periods).

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<sup>72</sup> ROS HOMBRAVELLA, J. *Més val sols... la viabilitat econòmica de la independència de Catalunya*. RBA and Dèria, Barcelona, 2009.

<sup>73</sup> LÓPEZ TENA, A. *Catalunya Sota Espanya. L'opressió Nacional en Democràcia*. RBA and Dèria, Barcelona, 2007.

## Fiscal deficit - GDP VA For 100 € of taxes in Catalunya



Source: Analysis of CCN based on data from "Resultats de la Balança Fiscal de Catalunya amb l'Administració Central 2002-05", Grup de Treball per a l'actualització de la Balança Fiscal de Catalunya, 2008. "Pressupost de la Generalitat de Catalunya, 2011", "Fons de Cohesió", Juan Carlos Martínez Lázaro

CCN  
Cercle Català de Negocis

▶ 29

Figure 8. Catalonia's fiscal deficit explained by the Catalan Business Association. Source [www.ccncat.cat/wp-content/uploads/2013/06/130317-Investment-opportunities-in-new-Catalan-State-1.pdf](http://www.ccncat.cat/wp-content/uploads/2013/06/130317-Investment-opportunities-in-new-Catalan-State-1.pdf)

Pinyol argues that the fact of becoming an independent state would have “practically no monetary and commercial impact” since Catalonia “would automatically become a member of the European Union.”<sup>74</sup> His argument is based on an interpretation of the Vienna Convention on Succession of States in respect of Treaties (1978). The second economic argument employed by Pinyol is that Spain is always adopting “an economic strategy aimed at reducing the Catalan economy to a provincial economy.”<sup>75</sup>

<sup>74</sup> PINYOL BALASCH. *Declaració unilateral d'independència. Catalunya, Estat de la Unió Europea*. Llibres de l'índex, Barcelona, 2009, page 23.

<sup>75</sup> *Ibidem*, page 56.

## VI.2 LEGAL ARGUMENTS

The legal arguments are mainly based on the legitimacy of the Catalan people to exercise their right to decide. Del Clot and Noales<sup>76</sup> describe that legitimacy by focusing on the following aspects:

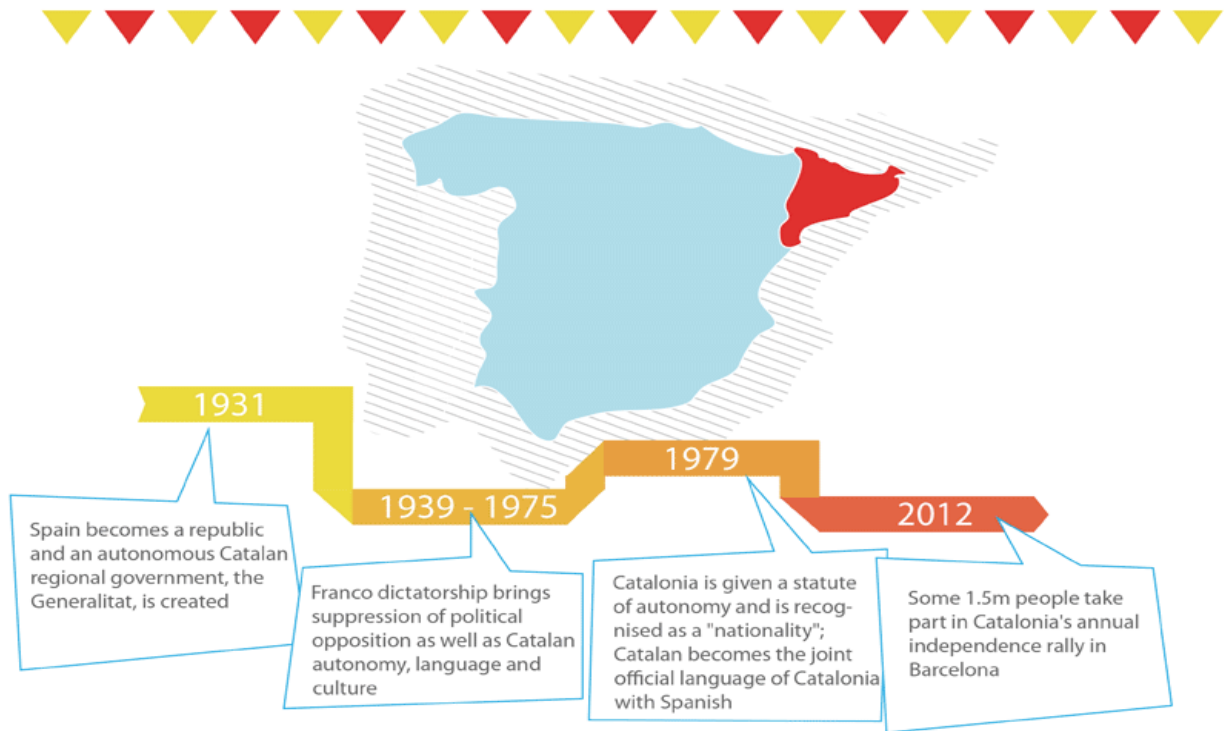
- Historical legitimacy based on the Catalan political history, nationalism, Franco's repression and democratic parliamentarism.
- Theoretical legitimacy based on theoretical models and feasible cases that have been accepted internationally.
- International legitimacy based on other cases of independence processes (Quebec, Kosovo, Montenegro and Scotland).
- Social legitimacy based on the existence of platforms such as the Platform for the Right to Decide, the Catalan National Assembly, the National Pact for the Right to Decide and the Catalan Way.
- Legal legitimacy based on a referendum on the application of the Spanish and Catalan law in Catalonia, on a non-referendum consultation or a unilateral declaration of independence approved in a plebiscitary election if a referendum is not allowed.
- Political legitimacy based on the current parliamentary majority that is in favour of independence and some international support.

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<sup>76</sup> CLOT, D. & NOALES, J.M. *DECIDIR, un exercici de legitimitat democràtica*. Vienna Ed., Barcelona, 2014.

# CATALONIA INDEPENDENCE

IN FOCUS



## AGAINST

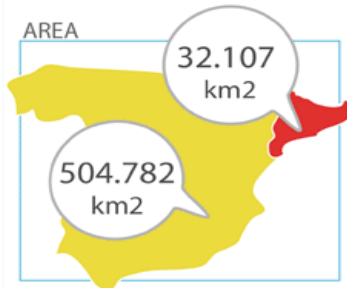
### 1. BALKANISATION OF EUROPE

We risk opening Pandora's box if Catalonia becomes independent. Nationalists in Scotland, Flanders, Padania, Madeira, Bavaria, Scania and elsewhere are also all clamouring for independence (and that's just in Western Europe!). Europe could end up split into a mosaic of squabbling, ever-diminishing micro-states.

At a time of profound crisis and mounting populist nationalism, the rush to breakaway could create dangerous potential for conflict.



### AREA



### CATALAN LANGUAGE



## FOR

### 1. CATALONIA IS NOT SPAIN

Catalans don't dance flamenco and they've banned bullfighting as cruel and barbaric. They are part of a distinct, proud nation with its own language, history, culture and flag, and that separate identity has survived Franco's brutal attempts to suppress the Catalan language in the decades after the Civil War.

Supporters of independence argue that their language and culture is not sufficiently respected by the Spanish central government, and they worry that, unless something is done, their culture will be absorbed.



Figure 9. Main arguments raised for and against the independence of

Catalonia

Source: Debating Europe

([www.debatingeurope.eu/focus/independence-catalonia](http://www.debatingeurope.eu/focus/independence-catalonia))



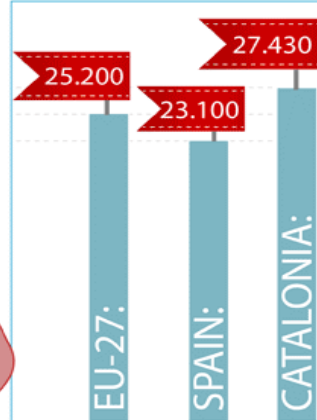
## 2. SELFISH NATIONALISM

Catalonia receives billions from EU structural funds, and the regional government is in debt to the tune of €42 billion, creating the possibility of an independent Catalonia being forced to apply to the EU's bail-out mechanism. In this crisis, Europe needs solidarity, not selfish economic nationalism.

If Catalonia refuses to support less prosperous regions of Spain, why should the rest of Europe help Catalonia save its banks or finance its growing pension bill? Is now the right moment to add the costs of armed forces, diplomatic service and all the other trappings of independence to the tax bill? And on top of all that, Catalonia will have to cope with economic chaos and an exodus of spooked foreign investors while they wait to re-apply for membership of the European Union, the euro-zone and the EU's single market.



GDP per capita (M€, 2011)



## 2. UNEQUAL PARTNERSHIP

Every year, Catalans are forced to contribute €17 billion of their hard-earned taxes to the Spanish government's coffers in Madrid.

Those demands have pushed Catalonia into debt and left a wealthy country struggling to provide basic services for its own people. The refusal of the Madrid government to grant Catalonia even the fiscal autonomy enjoyed by the Basque Country shows that, according to this argument, only through independence will Barcelona be able to take control of its finances and its economic future.

The split can be smooth and there is no reason why the Catalan Republic cannot remain in the European Union, euro-area and Schengen zone.



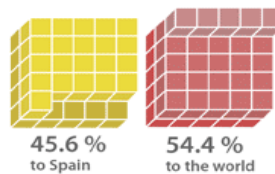
## 3. NOT SO DIFFERENT

Catalans undeniably have their own distinct culture, but they also have much in common with the rest of Spain (perhaps more than they would care to admit!) – from late-night dining and a passion for football to a cool modern counter-culture. Barcelona benefits enormously from the cultural interplay with Madrid, and critics argue that isolated monoculturalism would dull its creative edge.



## EXPORTS

In the first quarter of 2012 Catalonia exported:



Exporting regions in Spain in 2011:

CATALONIA:	25.9%
MADRID:	11.4%
ANDALUSIA:	10.7%
BASQUE COUNTRY:	9.8 %
VALENCIA:	9.3 %

## 3. THE PEOPLE'S CHOICE

There is now a clear majority of Catalans who want independence – up to 57% in some polls.

It would be undemocratic not to let them exercise their right to self-determination.

The Catalan people have clearly rejected attempts by the government in Madrid to roll back the autonomy which Catalonia has gained since the death of Franco in 1975.

**Catalans do not want to live in a centralised Spanish state under a monarchy for whom they have little affection.**

The time has come for the Catalans, Scots, Flemish and other peoples of Europe to choose the state they want to live in.



Figure 10. Main arguments raised for and against the independence of

Catalonia

Source: Debating Europe

([www.debatingeurope.eu/focus/independence-catalonia](http://www.debatingeurope.eu/focus/independence-catalonia))

## VII. CATALONIA: CONSEQUENCES OF A DECLARATION OF INDEPENDENCE

Bearing in mind the situation described in the previous chapter of this project, we can affirm that Catalan institutions are in favour of the independence. Many questions have been raised about this process since a new state would ‘appear’ within the EU. This would result in several consequences affecting the EU as a whole.

We are not going to discuss the political solutions that could be implemented to solve this problem. We will analyse the possible consequences of a declaration of independence and how this would affect Catalonia. The recent events in the Catalan Parliament have shown how this process is nearer and nearer. On 27<sup>th</sup> July 2016 the Catalan Parliament approved the final conclusions presented by the Constituent Process Committee and disobeyed the Constitutional Court. For this reason, the current president of the Catalan Parliament, Carme Forcadell, could be disqualified and fined since she authorized that this decision was finally voted by the parliament.<sup>77</sup>

In any case, the consequences derived from this situation will be classified in two groups: economic consequences and political consequences.

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<sup>77</sup> CORDERO, D. (27<sup>th</sup> July 2016). "El Parlament aprueba la vía unilateral y desobedece al Constitucional", *El País*.

## V.1. ECONOMIC CONSEQUENCES

A report carried out by Credit Suisse<sup>78</sup> (important multinational financial services holding company that is in the service of institutions, multinational companies and government agencies) who says that Catalonia's HDI (Human Development Index) would improve if this region got its independence from Spain. Moreover, it says that Catalonia would rank 20<sup>th</sup> globally when compared with other countries. Spain ranks currently 23<sup>rd</sup> and would slip to 26<sup>th</sup> without Catalonia. According to this report, services in small countries are more unified and, therefore, more efficient. Big countries need more funds to guarantee these services. Small countries are more globalised and focused on foreign trade and better intangible structures (education, governability and law).

According to experts, "if Catalonia wants to be economically strong, they should focus on specialisations as Switzerland, Singapore and Iceland have been doing." Moreover, they state that "the magic formula for the development of a small country is to have a sense of strategic planning, globalisation and being aware of external factors such as markets, trade and immigration."

However, a different study carried out by Credit Suisse states that if Catalonia became an independent state, it would lose up to 20 % of its GDP and would remain below the average per capita income of the rest of Spain.<sup>79</sup>

Credit Suisse also says that Catalonia "is the richest region in Spain" and its per capita GDP "is only slightly below the average of the eurozone and a fifth above the per capita wealth of the rest of Spain." In addition, "the Catalan

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<sup>78</sup> NATELLA, S. & O'SULLIVAN, M. *The success of the small countries*. Publisher Credit Suisse, Zurich, 2014.

<sup>79</sup> VV. AA. European Economics (November 2012). *Catalonia's choice*. Credit Suisse, Zurich.

economy is fairly diversified” and exports are very common.

However, “regarding trade, Catalonia is not self-sufficient; it needs Spain. Although exports to France are substantial (14 %), ten of the fifteen most important trading partners of Catalonia are Spanish regions (more than 60 %).”

“Catalonia is still very dependent on the Spanish market. Although Catalonia has continuously exported more goods abroad, its trade balance –when compared with the rest of the world– is negative with about 8 % of the Catalan GDP. The trade balance of goods in Catalonia only becomes positive once net sales in Spain are taken into account. In Spain, the trade balance surplus reaches 11 % of GDP.”

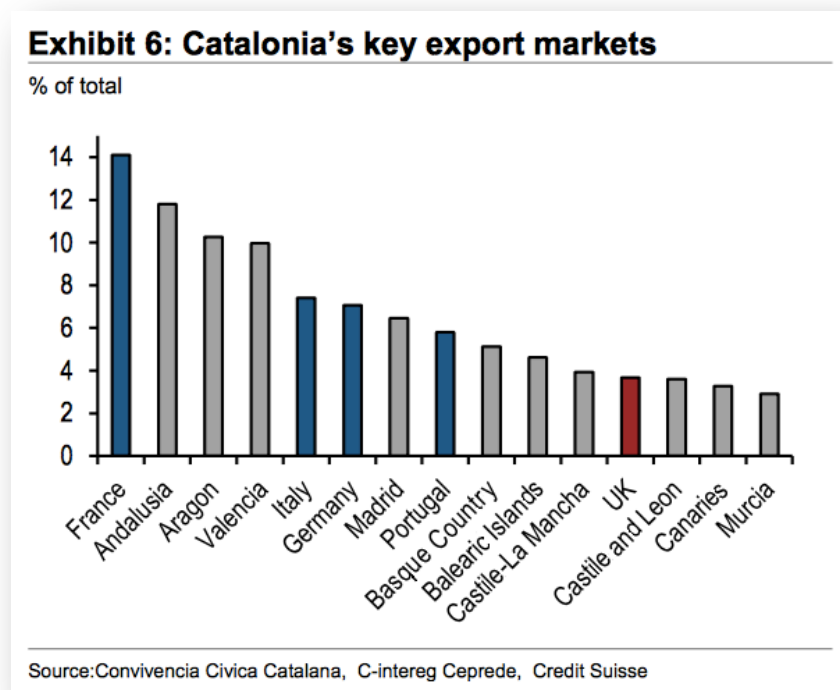


Figure 11. Catalonia's key export markets. Source: Convivencia Cívica Catalana

According to the report carried out by Diego López Garrido<sup>80</sup> for the Alternativas Foundation, if Catalonia becomes an independent state, they would be out of the European Single Market. Common custom duties would be abolished, exports would be reduced and European funds for agriculture, cohesion and regions would be cut. Similarly, they would not benefit from funding from the European Stability Mechanism (ESM) created in 2013 to deal with any financial destabilisations in the EU Member States with the euro as currency. Nevertheless, the most significant loss for Catalonia would be that it would not be part of the economic and monetary union established in the Maastricht Treaty.

In accordance with article 128.1 of the Treaty on the Functioning of the European Union (TFEU):

*“The European Central Bank shall have the exclusive right to authorise the issue of euro banknotes within the Union.”*

Article 282.3 of the TFEU states the following:

*“The European Central Bank shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence.”*

Article 283 of the TFEU states the following:

*“The Governing Council of the European Central Bank shall comprise*

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<sup>80</sup> LÓPEZ GARRIDO, D. (Coordinator), ALDECOA, F. & CÁMARA, G. *Cataluña ante la Unión Europea. Las consecuencias jurídicas de la independencia investigación jurídica*. Alternativas Foundation, Madrid, 2015.

*the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States whose currency is the euro.”*

As described in the aforementioned articles, if Catalonia was not part of Spain, it could not be part of the ECB and they would not be allowed to use the euro as currency. Moreover, Catalonia would not be represented in the Eurogroup.

Not being part of the EU does not mean that countries cannot use the euro as currency. In fact, some countries like Montenegro and Kosovo<sup>81</sup> are using it even if they have not signed a formal agreement with the EU. However, it does not mean that these countries are part of the Eurozone or the euro system. Catalonia could not then take part in the decisions adopted by the ECB, receive funds or even issue money.

In addition, an independent Catalonia would not have preferential access to EIB financing. According to article 3 of Protocol No. 5 on the Statute of the EIB:

*“In accordance with article 308 of the Treaty on the Functioning of the European Union, the Bank’s members shall be the Member States.”*

Article 308 of the TFEU states the following:

*“The members of the European Investment Bank shall be the Member States.”*

In any case, any region from a Member State which decides to be independent shall not be part of the EU and, therefore, it shall not have access to the four European Structural and Investment Funds:

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<sup>81</sup> Before the euro was used as the EU currency, the German mark was used as *de facto* legal tender.

- The European Regional Development Fund (ERDF)
- The European Social Fund (ESF)
- The European Agricultural Fund for Rural Development (EAFRD)
- The European Maritime & Fisheries Fund (EMFF)

According to the information provided by the Spanish newspaper *CincoDías*,<sup>82</sup> Catalonia received 1,400 million euros between 2007 and 2013 which were given by the EU and the supplementary payment made by Spain.

More than 1,400 million euros have been allocated to Catalonia in the current budget (2014-2020) as stated in the Association Agreement signed by Spain and the European Commission.

Catalonia is the fourth Spanish region with more benefits after Andalusia, Extremadura and Castile-La Mancha. Catalonia shall receive 808.4 million euros from the ERDF (infrastructures), 348.5 million euros from the EAFRD (agriculture) and 304.7 million euros from the ESF (employment).

If they had no access to these funds, the Catalan economy would be highly affected.

Another consequence that could have a great impact on the Catalan economy is the **relocation** of many national and international companies.

According to a report<sup>83</sup> published by the Ministry of Foreign Affairs and Cooperation in 2012, many foreign multinationals from the automotive, chemical, textile, electronics and food industries located in Catalonia would not

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<sup>82</sup> MOLINA, C. (12<sup>th</sup> November 2014). “Las 10 consecuencias económicas de una Cataluña independiente”, *CincoDías*.

<sup>83</sup> SPANISH MINISTRY OF FOREIGN AFFAIRS AND COOPERATION (2012). *Consecuencias económicas de una hipotética independencia de Cataluña*.

be prepared to bear the costs of leaving the EU and face a new market. Furthermore, many Catalan companies are considering the possibility of moving to other Spanish regions due to the high commercial, economic and financial costs that would be applied if Catalonia was not in the EU.

We consider that the **debts** and **funding** of Catalonia should be also considered. As described in the report published by the Ministry of Foreign Affairs and Cooperation and the Bank of Spain, the total amount of the debts run up by Catalonia was 53,665 million euros in September 2013, which represented more than 27 % of its GDP. If Catalonia became an independent state and settled a portion of the public debt of Spain –in proportion to its role in the Spanish economy (18.9 % of GDP)–, the new debt run up by the new Catalan Republic would reach 78.4 % of its GDP.

In this hypothetical situation, who would be the moneylender for Catalonia and its debt? We have to take into account that it would not be part of the EU, the Eurozone, and the ESM. Moreover, they would not have access to the Regional Liquidity Fund and the Supplier Payment Plan created by the Spanish Government to help the Spanish regions.

Another relevant issue to be considered is the fact that Barcelona is an international centre for logistics and transport. It is one of the most important places in Spain and Europe since many goods are received in this area. According to José Manuel García-Margallo,<sup>84</sup> minister of Foreign Affairs and Cooperation, Barcelona would receive fewer goods due to the independence process and these goods would be relocated in other ports of the Mediterranean like the port of Valencia.

In addition, the transit of goods would be greatly affected by customs matters.

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<sup>84</sup> EL CONFIDENCIAL AUTONÓMICO. (19<sup>th</sup> March 2014). “Margallo advierte a Cataluña: la independencia perjudicaría al puerto de Barcelona en beneficio de Valencia”.



It is more than likely that the large Mediterranean Corridor project would no longer be financed with European funds.

The report prepared by the ministry also states that Catalonia would need to **create a more powerful administrative structure** which would require more investment. If the Catalan Republic was finally declared, many services which are currently being paid by the Spanish Government would have to be paid by the new government (defence, security, diplomacy, expenses derived from international memberships such as the IMF, the World Bank, the UN, or the NATO).

These costs, which have been analysed by different studies conducted mainly by investment banks, are around 5.8 % of GDP, according to the ministry.

The ministry also states that the **Catalan GDP would fall** by 20 %. These estimates are just basic suppositions since many other factors have not been considered such as financial instability, the establishment of a new currency, capital flight or the new services which are currently being paid by the Spanish Government (defence, security and diplomacy).<sup>85</sup>

The **tourism industry** would suffer from a sharp fall. According to the Ministry of Foreign Affairs and Cooperation, tourism is one of the main economic pillars of the Catalan economy. In 2013 this region hosted 15.5 million international visitors (25.7 % of the total) and earned 14,022 million euros (23.7 % of the total), which means that each tourist spent 903 € during their visit.

How would the tourism industry be affected if Catalonia was not part of the

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<sup>85</sup> SPANISH MINISTRY OF FOREIGN AFFAIRS AND COOPERATION (2012). *Consecuencias económicas de una hipotética independencia de Cataluña*.

Eurozone? According to *CincoDías*,<sup>86</sup> no relevant consequences would be noticed since the main problem would be to maintain the current infrastructure network. The Barcelona-El Prat airport is one of the busiest airports in Europe and its flights and services have strongly increased in recent years, especially flights outside the Eurozone. The Spanish high-speed train or *AVE* has also become an important means of transport which is being used massively, especially by domestic tourists. Independence would no longer benefit from the funds and support provided by Spain for all these infrastructures whose conservation would be damaged and whose deterioration could tarnish the good image of the Catalan tourism.

In turn, the ministry<sup>87</sup> considered that being out of the EU could have a negative impact on tourists from the Eurozone (the most common tourists in Catalonia), since they would not be using the euro. For every 100,000 foreign tourists visiting other destinations in Spain instead of going to Catalonia, Catalans would lose 90.3 million euros, which would represent 0.04 % of its GDP.

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<sup>86</sup> MOLINA, C. (12<sup>th</sup> November 2014). Las 10 consecuencias económicas de una Cataluña independiente, *CincoDías*.

<sup>87</sup> SPANISH MINISTRY OF FOREIGN AFFAIRS AND COOPERATION (2012). *Consecuencias económicas de una hipotética independencia de Cataluña*.

## V.2. LEGAL CONSEQUENCES

Would Catalonia be part of the EU after its independence? This is one of the most important questions raised recently.

According to article 4.2 of the TEU:

*“The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.”*

In this sense, a declaration of independence would be against EU law since the territorial integrity of a Member State of the European Union is supported by this article. Therefore, this type of declaration would not fit into the current Spanish legal system (as discussed in previous chapters) or the European legal system.

Moreover, the citizenship of the EU is regulated in article 9 of the said treaty:

*“In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.”*

With regard to their representation, articles 10.2 and 10.3 state the following:

*“2. Citizens are directly represented at Union level in the European Parliament.*

*Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.*

*3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.”*

All citizens from a new independent state would lose their status as EU citizens and would not be represented within the institutions of the EU.

However, nationality would be understood in a different way as stated in article 11.2 of the Spanish Constitution:

*“Spanish nationality shall be acquired, retained and lost in accordance with the provisions of the law.”*

If Catalan citizens acquired a new Catalan nationality, they could lose their Spanish nationality as stated in article 24 of the Spanish Civil Code:

*“1. Emancipated persons habitually resident abroad who voluntarily acquire another nationality or who exclusively use their foreign nationality attributed prior to their emancipation shall lose their Spanish nationality. A person who has lost his Spanish nationality may recover it by declaring before the officer in charge of the Civil Registry their intention to recover Spanish nationality*

*2. Such loss shall take place after the lapse of tree years, counting, respectively, from the acquisition of the foreign nationality or from the emancipation. [...]*

*3. In any event, emancipated Spaniards who expressly renounce their Spanish nationality shall lose it if they have another nationality and have their residence abroad.”*

In a certain sense, Catalan nationality would not exist until Catalonia was an internationally recognised state. Moreover, it would be contradictory if Catalans decided to retain their Spanish nationality since the aim pursued with independence is precisely the fact of not being Spanish anymore.

In any case, if Catalonia decided to leave Spain, it would also leave the EU as confirmed by many EU leaders:

- **José Manuel Durão Barroso**, the former president of the **European Commission**, answered some written questions (P-009756/2012 and P-009862/2012) in November 2013 and he declared the following:

*“If part of the territory of a Member State would cease to be part of that state because it were to become a new independent state, the Treaties would no longer apply to that territory. In other words, a new independent state would, by the fact of its independence, become a third country with respect to the EU and the Treaties would no longer apply on its territory.*

*Under Article 49 of the Treaty on European Union, any European state which respects the principles set out in Article 2 of the Treaty on European Union may apply to become a member of the EU. If the application is accepted by the Council acting unanimously, an agreement is then negotiated between the applicant state and the Member States on the conditions of admission and the adjustments to the Treaties which such admission entails. This agreement is subject to ratification by all Member States and the applicant state.”*

- **Herman Van Rompuy**, the former president of the **European Council**, remarked the following during the press conference held in Madrid on 12<sup>th</sup> December 2013 with the Spanish prime minister Mariano Rajoy. He was asked about the situation of Catalonia and its place in the EU in

case of independence.<sup>88</sup>

*“I just want to recall some of the principles that would apply in such a scenario. The separation of one part of a Member State or the creation of a new State would not be neutral as regards the EU Treaties. The European Union has been established by the relevant treaties among the Member States. The treaties apply to the Member States. If a part of the territory of a Member State ceases to be a part of that state because that territory becomes a new independent state, the treaties will no longer apply to that territory. In other words, a new independent state would, by the fact of its independence, become a third country with respect to the Union and the treaties would, from the day of its independence, not apply anymore on its territory. Under article 49 of the Treaty on European Union, any European State which respects the principles set out in Article 2 of the Treaty on European Union may apply to become a member of the Union according to the known accession procedures. In any case, this would be subject to ratification by all Member States and the Applicant State.”*

- In its 100<sup>th</sup> plenary session held in April 2013, the **Committee of the Regions**<sup>89</sup> declared that:

*“makes clear that in accordance with Article 4(2) TEU, developments in the direction of the independence of a region should basically be seen as an internal matter for the state concerned;*

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<sup>88</sup> EUROPEAN COUNCIL (12<sup>th</sup> December 2013). *Remarks by President of the European Council Herman Van Rompuy, on Catalonia.*

<sup>89</sup> COMMITTEE OF THE REGIONS (11<sup>th</sup>-12<sup>th</sup> April 2013). *100<sup>th</sup> plenary session.*

*recalls that if a region, having achieved independence, wanted to join the EU, it would be required to make a formal application to the Council and to follow the accession procedure under Article 49 TEU in the same way as any other country that wished to become an EU Member State;”*

- **Joaquín Almunia**, vice-president of the **European Commission** and **European Commissioner responsible for Competition Policy** in 2013, said in a conference at the Barcelona Centre for International Affairs or Cidob<sup>90</sup> on the commitment to Europe that *“the segregated part is not a member of the EU”* and also stressed that *“the autonomy or independence of Catalonia is an internal problem of Spain, it is not a European problem. It must be resolved following the guidelines of the Spanish Constitution and not through the European treaties”*.

Most of the leaders and officials agree with the statements described above and think that an independent Catalonia would be out of the EU (a third country) and a formal request should be submitted to be part of the EU again. This request should be accepted by all the EU countries, including Spain.

Throughout the history of the EU, we can find several cases of territories of a Member State where treaties were no longer applied due to independence processes or changes in their self-government statuses.

A very good example is **Algeria**. This country was once part of the European Coal and Steel Community (ECSC) since this territory was controlled by the French colonial empire. Algeria proclaimed its independence from France on 5<sup>th</sup> July 1962 and all relationships with the ECSC were broken off.

Another example is **Greenland**. This territory joined the European Communities since it was an integral part of Denmark in 1973. However, due

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<sup>90</sup> EUROPA PRESS (16<sup>th</sup> September 2013). Almunia advierte a Cataluña de que si se independiza saldrá de la UE, *El Mundo*.

to a dispute over the exploitation of its fishery resources and the referendum that was held, Greenland obtained more power to govern itself and, therefore, they abandoned the EC in 1985.

Both cases could represent the hypothetical scenario of a future Catalonia. On the one hand and following the route started by Algeria, we could have a completely independent and non-EU state that would have to submit a formal request to become a member of the EU. On the other hand and following the route started by Greenland, we would have a region with a higher level of self-government when compared with the other regions of the same state. It would be out of the EU but not as an independent state. In this case, if the region decided to be part of the EU again, a different process would be applied (return of a region dependent on a Member State). In any case, the geographic location has also played an important role against these two territories due to the fact that they are physically outside Europe, which is not the case with Catalonia.

Another issue that is being discussed is if Catalonia would be included in the Schengen Area. It is true that the areas comprising the Schengen Area and the European Union are not the same. There are states that have not ratified this agreement (e.g. United Kingdom and Ireland) and other non-EU states that are part of it (Norway, Iceland, Switzerland and Liechtenstein). Other countries like Bulgaria, Romania, Cyprus and Croatia, are not part of the Schengen Area but are currently making some changes to join.

However, what would happen in the case of Catalonia? According to López Garrido,<sup>91</sup> once Catalonia was established as an independent country, its borders would no longer be EU borders and, therefore, it would not be part of the European area of free movement of people. Access controls would be then

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<sup>91</sup> LÓPEZ GARRIDO, D. (Coordinator), ALDECOA, F. & CÁMARA, G. *Cataluña ante la Unión Europea. Las consecuencias jurídicas de la independencia investigación jurídica*. Fundación Alternativas, Madrid, 2015.



established by the EU for the whole territory of Catalonia.

López Garrido says that Catalonia would have to submit a formal request to be included in the Schengen Area. Since this area was created by a mixed treaty signed by all Member States and the EU itself, this request should be accepted unanimously by all the countries, including Spain.

There are other international organisations which see this independence process as a problem:

- In December 2013, the **NATO** said that “in general, for any nation to be incorporated into the alliance the consensus of all the NATO allies will be necessary.”<sup>92</sup>
- In an interview with *El Mundo*, **Ban Ki-moon, Secretary-General of the UN**, said that “when one speaks of self-determination, certain areas have been recognised by the United Nations as non-autonomous territories. But Catalonia does not fall into this category.”<sup>93</sup>

One of the most important consequences of not being part of these international organisations, especially the UN, would be the loss of diplomatic and consular protection granted by Spain worldwide. The costs of this protection are quite important today. Moreover, they would lose the rights acquired during the 30 years in which Spain has been a member of the European Union. These rights would not be lost if Catalans kept their Spanish nationality, but this decision would be taken by Spain and not by Catalonia.

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<sup>92</sup> EFE (2<sup>nd</sup> December 2013). La OTAN dice que la adhesión de una Cataluña independiente necesitaría el consenso aliado, *20 minutos*.

<sup>93</sup> MENESES, R. (30<sup>th</sup> October 2015). Cataluña no está incluida entre los territorios sin autogobierno con derecho de autodeterminación., *El Mundo*.

## VIII. CONCLUSIONS

As a region, Catalonia has always sought preferential treatment. Having a different language has contributed very positively to create its own cultural identity. This strong identity has been recognised and protected by several regulations such as the Spanish Constitution and the Catalan Statute of Autonomy.

Since Spain was founded and especially from the mid-19<sup>th</sup> century, Catalonia has always claimed that its territory is different from the rest of Spain. Such claims have fostered a great and constant political tension between Spain and Catalonia. However, these claims have contributed positively to the existing regional model. In fact, all Spanish regions have benefited from self-governments thanks to the Basque Country and Catalonia. This situation also contributed to create a social and political coexistence framework which was ratified by all Spaniards in the Constitution of 1978.

It seems that the existing constitutional framework does not satisfy the most independence sector of Catalonia which pretends to go beyond the proclamation of a new state within the European Union. Moreover, the strict position defended by the Constitutional Court and the Spanish Government in favour of the Constitution has sharply increased the tension between Catalonia and Spain.

Due to this strict position, the role of the Constitutional Court has been questioned by the highest authorities of the Catalan institutions. They consider this court is blocking any steps in favour of independence (e.g. a law on consultations or creating state institutions).

In any case and taking into account the current constitutional framework, no consultations on sovereignty can be held in a Spanish region if the whole country is not involved. If an independence referendum was held to determine the future of Catalonia, it could only be called by Spain (article 149.1.32). All

Spanish citizens should take part in this plebiscite since it is a really important political decision (article 92.1) which would affect our national sovereignty (article 1.2).

If the power to hold referendums was granted to a region, a constitutional reform would be required by applying the extended procedure.

Bearing in mind the current political situation, only a constitutional reform or national consultation would be accepted. However, it seems that these two options would not be considered since the two most relevant political parties in Spain disagree with all this. Moreover, the Chamber of Deputies and the Senate would bring everything down.<sup>94</sup>

Nationalist groups have raised several economic and legal arguments to justify the independence of Catalonia. They defend the legitimacy of the Catalan people to claim for their independence from Spain based on historical, social or political reasons, among others.

If a unilateral declaration of independence was presented by Catalonia, it would be considered a serious political irresponsibility as it does not guarantee that the promises made by the Catalan institutions could be reached.

A unilateral declaration of independence would be against our Constitution and the treaties of the EU which guarantee the integrity of the different territories, our democracy and the rights of the EU citizens. Moreover, the declaration would have no legal effect since it would be against the Spanish legislation and many international laws.

Breaking all those laws would put Catalonia in a difficult situation internationally. The UN would not recognise it as a sovereign state and many international organisations such as the NATO, EU, IMF, etc. would have to

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<sup>94</sup> Both the *PP* and the *PSOE* (absolute majority in the Spanish Parliament and Senate) have declared that they are against any consultation on independence.

discuss its situation and membership. Many of these organisations –such as the EU– have already declared that this is a domestic problem that must be solved by Spain and, if a unilateral declaration of independence was signed, Catalonia would lose its position in many institutions.

Economically, the independence of Catalonia would have an immediate negative impact on Catalonia's foreign trade. Leaving the EU would entail new customs duties and other taxes described in previous chapters which would result in a fall in trade flows.

The effects on the trade balance, the foreign sector, debts, finance and investment, would also lead to a decline in the Catalan GDP of about 20 %, regardless of financial instability, capital flight, the new currency or the services that would be necessary to create the basic structure of a new state.

Taking into account all this information and the premises described, the effects on Catalonia would be really negative. The region could not maintain its current structure and many services would be reduced while taxes would be increased.

With regard to Spain, the impact of the secession of Catalonia would be really important. It would mean a loss of approximately 20 % of our GDP, resulting in a decline within the EU.

In any case, the historical background and the current situation we are living do not justify the independence of Catalonia since it does not meet the requirements established by the UN for a territory to become independent. Moreover, the UN are always promoting the integration of states.

## IX. REFERENCES

### *Legal and Government Documents*

- *Constitutional Court (Plenary meetings). Judgement no. 31/2010, of 28th June 2010*
- *Constitutional Court (Plenary meetings). Judgement no. 259/2010, of 2<sup>nd</sup> December 2015*
- *Constitutional Court (Plenary session) judgement dated 7<sup>th</sup> July 2016 in accordance with the appeal on the grounds of unconstitutionality no. 3493-2015*
- *Spanish Constitution*
- *Spanish Civil Code*
- *Protocol (No 5) on the Statute of the European Investment Bank*
- *Treaty on the Functioning of the European Union (TFEU)*
- *Treaty on European Union (TEU)*

### *Newspaper articles*

- ALSINA ROCA, J.M. (10<sup>th</sup> September 2013) “Cataluña nunca ha existido históricamente como nación”, *Te Interesa*.
- BBC Mundo (22<sup>nd</sup> September 2014). “*En qué se parecen y se diferencian Escocia y Cataluña*”.
- CORDERO, D. (7<sup>th</sup> July 2016). “El Constitucional anula las estructuras de Estado catalanas por unanimidad”, *El País*.
- CORDERO, D. (27<sup>th</sup> July 2016). “El Parlament aprueba la vía unilateral y desobedece al Constitucional”, *El País*.
- CUÉ, C. E. (13<sup>th</sup> December 2014). “El PP defiende la Constitución frente a «ensoñaciones» independentistas”, *El País*.
- DIEGO, S. de (10<sup>th</sup> August 2015). “La lista de 'Junts pel Sí' de Artur Mas y Oriol Junqueras roza los 32.000 candidatos”, *El Confidencial*.
- EFE. (25<sup>th</sup> April 2006) “Rajoy presenta en el Congreso cuatro millones de firmas por un referéndum sobre el Estatuto”, *El País*.

- EFE (2<sup>nd</sup> December 2013). “La OTAN dice que la adhesión de una Cataluña independiente necesitaría el consenso aliado”, *20 minutos*.
- EL CONFIDENCIAL AUTONÓMICO. (19<sup>th</sup> March 2014). "Margallo advierte a Cataluña: la independencia perjudicaría al puerto de Barcelona en beneficio de Valencia”.
- EL PERIÓDICO (5<sup>th</sup> May 2016). "Artur Mas subraya que el modelo "bueno" es el de Escocia y no el de Kosovo".
- EUROPA PRESS (16<sup>th</sup> September 2013). Almunia advierte a Cataluña de que si se independiza saldrá de la UE, *El Mundo*.
- EUROPA PRESS (9<sup>th</sup> November 2014). “UPyD denuncia a Mas, Rigau y Espadaler, pide cerrar colegios y detener a voluntarios”, *20 minutos*.
- GIL DEL OLMO, C. (14<sup>th</sup> January 2015). “Mas gana el pulso a ERC y convoca elecciones para el 27 de septiembre”, *El País*.
- GONZÁLEZ, M. (9<sup>th</sup> November 2015). “Cataluña ve a Kosovo como modelo de reconocimiento internacional”, *El País*.
- JULVE, R. (27<sup>th</sup> October 2015). “JxSí y la CUP registran en el Parlament la declaración de «inicio del proceso» hacia la independencia”, *El Periódico*.
- LA VANGUARDIA (11<sup>th</sup> November 2014). “Resultados del 9N: La independencia se impone con un 81% de los más de 2,3 millones de votos”.
- MANETTO, F. (27<sup>th</sup> September 2014). “Sáenz de Santamaría: 'Lamentamos profundamente el error de Mas'”, *El País*.
- MARCOS, P. (1<sup>st</sup> August 2006) “El PP recurre al Constitucional el Estatuto catalán «para impedir un daño irreparable»”, *El País*.
- MENESES, R. (30<sup>th</sup> October 2015). “Cataluña no está incluida entre los territorios sin autogobierno con derecho de autodeterminación”, *El Mundo*.
- MOLINA, C. (12<sup>th</sup> November 2014). “Las 10 consecuencias económicas de una Cataluña independiente”, *CincoDías*.
- NOGUER, M. (14<sup>th</sup> May 2006) “Maragall refuerza a sus dos principales

- colaboradores sin aclarar su sucesión”, *El País*.
- NOGER, M. (10<sup>th</sup> November 2014). “CiU amenaza con unas elecciones plebiscitarias si Rajoy no negocia”, *El País*.
  - NOGUER, M. (31<sup>st</sup> March 2015). “Mas y Junqueras pactan un plan para declarar la independencia en 18 meses”, *El País*.
  - NOGUER, M. (19<sup>th</sup> June 2015). “La ruptura de CiU dóna via lliure a Mas per bolcar-se en el pla sobiranista”, *El País*.
  - NOGUER, M. (28<sup>th</sup> September 2015). “Los independentistas ganan las elecciones y pierden su plebiscito”, *El País*.
  - PÉREZ, F.J. & RÍOS, P. (10<sup>th</sup> November 2014). “1,8 millones de personas votan por la independencia catalana en el 9-N”, *El País*.
  - PIÑOL, A. (22<sup>nd</sup> July 2016). “El 26-J da aire al independentismo”, *El País*.
  - RÍOS, P. (10<sup>th</sup> November 2015). “La mitad de Cataluña rompe con la democracia española”, *El País*.
  - RUSIÑOL, P. (16<sup>th</sup> December 2003). “La relación con España no puede regirse por refranes mercantiles”, *El País*.
  - YÉCORA, F. (16<sup>th</sup> November 2015). “¿Cuándo creció el Independentismo en Cataluña?”, *Debate21*.

### ***Published Sources***

- ARAGÓN REYES, M. *Temas básicos de derecho constitucional (vol. II): Organización del Estado*. Civitas Ediciones, Madrid, 2001.
- BALCELLS, A. *El projecte d'autonomia de la Mancomunitat de Catalunya del 1919 i el seu context històric (in Catalan)*. Parliament of Catalonia, Barcelona, 2010.
- BEN-AMI, S. *El cirujano de hierro. La dictadura de Primo de Rivera (1923-1930)*. RBA, Barcelona, 2012.
- CLOT, D. & NOALES, J.M. *DECIDIR, un exercici de legitimitat democrática*. Viena Ed., Barcelona, 2014.

- CLUA I FAINÉ, M. *Catalan, immigrants and charnegos: “race”, “cultura” and “mixture” in Catalan Nationalist Rhetoric*. Autonomous University of Barcelona, 2011.
- COMMITTEE OF THE REGIONS (11<sup>th</sup>-12<sup>th</sup> April 2013). *100<sup>th</sup> plenary session*.
- CRUZ PARCERO, J. A. *Los métodos para los juristas* in COURTIS, C. (Coordinator), *Observar la ley, ensayos sobre metodología de la investigación jurídica*. Ed. Trotta, Madrid, 2006.
- ESCULIES, J., SOLÉ I SABATÉ, J.M. & DURAN, L. “Somnis i malsons d'un president” in *Sàpiens* No. 96, Barcelona, 2010.
- EUROPEAN COUNCIL (12th December 2013). *Remarks by President of the European Council Herman Van Rompuy, on Catalonia*.
- EUROPEAN PARLIAMENT (20th November 2013). Parliamentary questions. *Answer given by Mr Barroso on behalf of the Commission*.
- FALGUERA, O. “La Constitució de la República catalana, 1928”. In *El Temps* No. 1009, Barcelona, 2003.
- GONZÁLEZ CALLEJA, E. *La España de Primo de Rivera. La modernización autoritaria 1923-1930*. Alianza Editorial, Madrid, 2005.
- GONZÁLEZ CASANOVA, J. A. “La cuestión de la soberanía en la historia del Constitucionalismo Español” in *Soberanía y Constitución* No. 1 (1998).
- GRANJA, J. L. de la, BERAMENDI, J. & ANGUERA, P. *La España de los nacionalismos y las autonomías*. Síntesis, Madrid, 2001
- GUERRA SESMA, D. (Ed.) *El pensamiento territorial de la Segunda República*. Ed. Athenaica, Seville, 2016.
- GUTIÉRREZ VICÉN, C. *Constitucion Española, Sinopsis del artículo 92*. National Assembly, Madrid, 2003
- JACKSON, G. *La República Española y la Guerra Civil, 1931-1939*. Crítica, Barcelona, 1976.
- LARA CHAGOYÁN, R. *Argumentación jurídica e investigación en derecho*, in COURTIS, C. (Coordinator), *Observar la ley, ensayos sobre*



- metodología de la investigación jurídica*, Ed. Trotta, Madrid, 2006.
- LÓPEZ GARRIDO, D. (Coordinator), ALDECOA, F. & CÁMARA, G. *Cataluña ante la Unión Europea. Las consecuencias jurídicas de la independencia investigación juridical*. Alternativas Foundation, Madrid, 2015.
  - LÓPEZ TENA, A. *Catalunya Sota Espanya. L'opressió Nacional en Democracia*. RBA and Dèria, Barcelona, 2007.
  - MANGAS MARTÍN, A., & LIÑÁN NOGUERAS, D. J. *Instituciones y Derecho de la Unión Europea*. Tecnos, 7<sup>th</sup> edition, Madrid, 2012.
  - MOLAS, P. *Edad Moderna (1474 – 1808)*. Espasa Calpe, Madrid, 1988.
  - MOLINA, I. *Independentismo e integración europea (I): la imposible adhesión automática a la UE de un territorio secesionado*. Elcano Royal Institute, Madrid, 2012.
  - MORENO FERNÁNDEZ, L. *Identificación dual y autonomía política: Los casos de Escocia y Cataluña*. International Association of Sociology, Madrid, 1988.
  - NATELLA, S. & O'SULLIVAN, M. *The success of the small countries*. Publisher Credit Suisse, Zurich, 2014.
  - PÉREZ CALVO, A. La vía jurídica hacia la independencia de un territorio español. *Revista Jurídica de Navarra*, January-December 2013. No 55-56. Pages 147-161.
  - PÉREZ, J. *Historia de España*. Editorial Crítica, Barcelona, 2006.
  - PINYOL BALASCH. *Declaració unilateral d'independència. Catalunya, Estat de la Unió Europea*. Llibres de l'índex, Barcelona, 2009
  - PUIG, V. “Bienvenido mister 1714” in *AA. VV. Derecho a discutir*. El País Libros, Madrid, 2012.
  - ROIG I ROSICH, J. M. “L'impacte en el món cultural” in *L'Avenç* No. 72
  - ROS HOMBRAVELLA, J. *Més val sols... la viabilitat econòmica de la*

- independència de Catalunya*. RBA and Dèria, Barcelona, 2009.
- SOLAZÁBAL ECHEVARRÍA, J. J. “El problema de la soberanía en el Estado autonómico” in *Soberanía y Constitución* No. 1 (1998).
  - SPANISH MINISTRY OF FOREIGN AFFAIRS AND COOPERATION (2012). *Consecuencias económicas de una hipotética independencia de Cataluña*.
  - SUÁREZ CORTINA, M. *La España Liberal (1868-1917). Política y Sociedad*. Síntesis, Madrid, 2006.
  - TORNOS MAS, J. *De Escocia a Cataluña. Referéndum y Reforma Constitucional*, Iustel, Barcelona, 2015.
  - TRIAS, X. “La aportación del nacionalismo mayoritario catalán a la construcción del Estado de las autonomías” in *VV. AA. Cataluña-España: Relaciones políticas y culturales*. Icaria, Barcelona, 2003.
  - TUSELL, J. *Historia de España. Vol. XII. La Segunda República. De la Segunda República a la Guerra Civil*. Espasa Calpe, Madrid, 1997.
  - VILCHES, J. *Progreso y Libertad. El Partido Progresista en la Revolución Liberal Española*. Alianza Editorial, Madrid, 2001.
  - VV.AA. European Economics (November 2012). *Catalonia’s choice*. Crédit Suisse, Zurich.