

February 9th, 2018

The Catalan Ombudsman warns of the risk of normalizing the regression of rights and demands respect and dialogue to all political positions

- The Spanish Citizen's Safety Law and the judicialization of politics are entailing violations of rights such as freedom of expression, assembly and demonstration
- Political illegal actions committed by Catalan institutions should not be confronted with criminal disproportion or jail. The Catalan Ombudsman also reiterates the need to investigate October 1st events at the Parliament of Catalonia
- The financial intervention of the Catalan Government, the application of article 155 of Spanish Constitution and the State's appeals against Catalan social laws have affected social policies and rights
- The Catalan Police should have full access to the state and international police coordination bodies and the complete clarification of 17 August terror attacks
- The increase in the arrival of unaccompanied migrant adolescents has affected the system for the protection of children
- In total, there were more than 10,000 complaints filed, 281 ex-officio actions opened and 60,500 has directly concerned

The Ombudsman of Catalonia, Rafael Ribó, delivered on Friday, February 9th, to the President of Catalan Parliament, Roger Torrent, the Annual Report 2017. The report and a summary of all decision issued are available on the website [www. sindic.cat](http://www.sindic.cat).

With regard to figures, in 2017 10,166 complaints have been filed, more than 16,000 have been processed and 281 ex-officio actions have been opened. Since many complaints have a collective nature, the people concerned by these actions have been more than 60,000, which is more than double than the previous year.

In the last two months of 2017, the Catalan Administration has undergone internal changes and cessation of people in positions of responsibility under article 155 of the Spanish Constitution. This has slowed down the acceptance or non-acceptance of the Catalan Ombudsman's decisions. Even so, the percentage of resolutions accepted in whole or in part exceeds 98% of those issued. In fact, only 1.6% have been rejected by the Administration, while in another 22.2% have been only partially accepted.

Also worth noting is the work done by the Ombudsman's itinerary office, which has visited 115 different municipalities. This year more than 7,000 complaints and queries related to municipalities have been processed, 45% of the total amount.

Regression on civil and political rights

The Spanish Citizen's Safety Law (known as the Gag Law), which in two years has generated more than 300,000 sanctions throughout the State, many directly linked to the restriction of rights of assembly, expression and manifestation, is still valid even though one year ago its amendment or abolition was proposed in the Spanish Parliament. This is one of the key factors in the regression of rights in Spain, as highlighted by the Catalan Ombudsman in the *Report on human rights: freedom of expression of elected officials and separation of powers in the Kingdom of Spain*, submitted in April 2017.

After the approval of Law 19/2017, of September 6th, of the referendum on self-determination, many events took place. Among these, the disproportionate use of the police force on October 1st, the prison on remand of independence political and social leaders, the application of article 155 of the Spanish Constitution and violations of the right of expression and political participation. These actions, according to the Catalan Ombudsman, have transcended the democratic limits, since illegal acts derived from the application of the laws declared legally null should have been confronted with the current legal order, and also with dialogue and political solutions.

Likewise, the rights of political participation of children and adolescents also seem to have been ignored in the Instruction of September 27th of the Juvenile Coordinating Unit of the State Attorney General addressed to the provincial offices of Catalonia.

Finally, the Catalan Ombudsman reaffirms that the criminal qualification of rebellion (and also of sedition) proposed by the State Prosecutor Office and accepted by the highest jurisdictional bodies seems completely disproportionate to describe the facts of all known, as was the order of prison on remand imposed on Jordi Sànchez and Jordi Cuixart, which remains today, despite the substantial modification of the circumstances in which that ruling took place.

The Catalan Ombudsman has carried out 264 actions related to the regression of democratic rights. Of these, 125 refer to the rights of participation and 89 to citizen's safety. In this sense, the Report explains the actions carried out as a result of the police baton charges to polling stations on October 1st. The Catalan Ombudsman already asked for an investigation by the Government to clarify what the orders were and who gave them.

The Catalan Ombudsman has transferred these complaints and their recommendations to the Spanish Ombudsman, the Spanish Minister of Domestic Affairs and the Spanish Government Delegation in Catalonia. The ombudsman has also informed the European Commissioner for Human Rights, the European Ombudsman, the UN High Commissioner for Human Rights and the President of the International Ombudsman Institute. The Catalan Ombudsman considers it would be appropriate to establish a committee on the 1st of October in the Parliament of Catalonia.

Terror attacks of Barcelona and Cambrils

The terror attacks of Barcelona and Cambrils last August have reopened the debate on the existing prevention measures and the analysis of the causes of these events, of incomprehensible violence. In this regard, the Catalan Ombudsman submitted a report to Parliament in November that echoed public policies regarding the prevention of terrorism, hatred and discrimination.

The report demands the full access of the Catalan Police to the state and international police coordination bodies and the complete clarification of the links between the leader of the terrorist cell with the secret services of the State.

Rights affected by the appeals before the Spanish Constitutional Court, the economic intervention of the Catalan Government and the application of article 155 of Spanish Constitution

The area of social rights is one of the most affected by the Spanish Government appeals before the Constitutional Court against many of the laws passed by the Catalan Parliament. Since 2006, the Spanish executive has filed more than forty appeals, of which more than half have affected the Catalan social policies and the collection of taxes of the Catalan Government.

One of the most illustrative cases is Law 24/2015, on urgent measures to tackle the emergency in the area of housing and energy poverty (suspended). Other examples are Law 2/2014, of fiscal, administrative, financial and public sector measures; Law 17/2015, of effective equality between women and men, or Law 4/2016, of measures to protect the right to housing of persons at risk of residential exclusion, also suspended.

The economic intervention of the Government of Catalonia and the application of article 155 of the Spanish Constitution have also had a negative impact on social rights and policies, both due to delays in payments and the shutdown of approved projects.

In this regard, the Catalan Ombudsman has been aware of damages to the Catalan Administration as a result of the application of article 155 of the Spanish Constitution. In the area of social services, the 2016-2019 Contract for the coordination, cooperation and collaboration between the Department of Work, Social Affairs and Families and the City Council of Barcelona has been paralyzed. The Viability Plan of the Catalan Agency for Development Cooperation has also been paralyzed and may entail the suspension of the economic compensation received by the ex-political prisoners of the Civil War and the Franco regime. Following the democratic memory policies, the application of 155 has affected the Plan of actions concerning mass graves during the Civil War and Franco's dictatorship for the year 2017, developed by the Department of Foreign Affairs, Institutional Relations and Transparency

In the LGTBI area, the paralysation of the approval of the draft decree developed by the LGBT National Council, the citizen participation body in matters of rights and duties long requested by defence entities of rights LGTBI. Institutions such as the Parliament of Catalonia had urged the Government to

present the decree shortly and the Catalan Ombudsman also recommended its approval without further delay.

The Catalan Ombudsman is also investigating the paralysis, on the one hand, of the implementation of a strategic plan for rural agents for the period 2017-2025 and, on the other, regulation to allow rural agents to carry weapons.

Social vulnerability and discrimination

This year, the actions taken in the area of social rights have again stood for nearly a third of the total of the complaints received by the institution, through it must be mentioned that for the first time in many years, complaints in this area did not reach 30% of the total.

Emergency Social Housing

The Catalan Ombudsman has reiterated on several occasions that the response of the Administration to a situation of residential social emergency must be immediate and must be addressed from the triple perspective of: facilitating, with agility and speed, access to a home; guarantee social support, and promote the reinsertion of the people affected.

Given the complaints received, it is necessary to review the effectiveness of the emergency committees as a mechanism or instrument of the Administration to respond to situations of residential emergency.

Overcrowding of Emergency Services

In the area of the right to health, complaints have continued to be received from persons who have had to go to the hospital emergency department and/or their family members, mainly for the hours they have to remain there and the conditions in which they do so, often on gurneys in the department corridors. In the Catalan Ombudsman's view, this situation not only affects the enjoyment of the right to the best possible standards of health, it also contravenes patients' right to privacy.

Childhood protection and unaccompanied migrant adolescents

The increase in the arrival of unaccompanied migrant adolescents has affected the system for the protection of children and has shown the need to promote family support. The difficulties in addressing this situation have caused many unaccompanied foreign children to remain in the custody area of the City of Justice, without being arrested, more than four days, in closed cells without natural light and without a suitable meal for so many hours, waiting to be assigned a place in a foster care centre. The use of this place of detention to attend child protection has been denounced by the Catalan Ombudsman since 2009. In November 2017 these facilities stopped taking care of these kids.

Tariff subsidy and guaranteed income for citizens

First, on September 15th, Law 14/2017 of July 20th, on guaranteed income for citizens came into force. This law creates and regulates a new social benefit of an economic nature, and received on a regular basis, with the character of a subjective right. Its purpose is to ensure the minimums of a dignified standard of living for individuals and families who find themselves in situations of poverty.

Second, Royal Decree 897/2017, of October 6th, regulates the figure of the vulnerable consumer, tariff subsidies and other protection measures for domestic consumers of electrical energy. Despite the social advancement that this legislation may mean for the most vulnerable social groups, the Catalan Ombudsman must express his concern regarding this report and the possible overload of work it may bring about for social service centres, in terms of increasing the number of formalities to be completed by professionals, as well as the higher number of persons accessing the social services network. The insufficient allocation of resources may worsen the situation.

Equality between women and men

In the topic of equality between women and men, this year there has been a noteworthy ex officio action to investigate whether the principle of parity is respected in elected offices and executive posts of Catalan institutions. From the information gathered, it can be concluded that male-female parity in elected offices, mandatory in electoral lists, progressively disappears in the most relevant posts of political responsibility. For example the Parliament of Catalonia elected in 2015 had an acceptable level of parity, but this did not translate into a gender-balanced Executive Council. To the contrary, when it was dismissed, the Executive Council was made up of nine men and four women. It is worth noting that the election of the new Presiding Board of Parliament following the December 21, 2017 election, with six men and one woman, makes for a regression in the parity of men and women in representative bodies.

Furthermore, despite the ever-increasing number of women holding posts at the municipal level (councillors and mayors), local councils, in general, are still far from gender-balanced, a situation that worsens at the second-level municipal governments (provincial governments and county councils). Along these lines, the lack of female provincial MP's is especially severe in the Tarragona and Girona provincial governments.

Statutory institutions do not have an exemplary status either, especially as regards the politically elected collegiate bodies, especially the Council of Statutory Guarantees, where female elected officials have an absolutely token presence, as has historically been the case in the Catalan Public Audit Office. Nevertheless, the situation improves if the focus is turned to the senior posts of these institutions.

Territorial sustainability

The area of territorial policies, including such matters as town planning or protection of the environment, has stood for 24% of the Catalan Ombudsman's interventions this year. Considering only the complaints

received, this percentage rises to 32%, and stands for the area of the institution in which the most new complaints have been filed this year.

The illegal landfill of tires

Through the media, the Catalan Ombudsman was aware of the existence of illegal and uncontrolled dumping of tire waste in the demarcation of Barcelona. Up to 6,000 tires were counted in nineteen municipalities, almost all deposited in non-urban land of forest interest. It was noted that, although the administrations were aware of this situation, in some cases they had not intervened.

The Catalan Ombudsman considers that before the existence of an illegal landfill the administrations involved must act immediately and effectively to restore the environment and guarantee the health and safety of people.

Noise caused by annual festival of towns or outdoor activities

A great many complaints have been received due to noise caused by festivals, outdoor dances or concerts organized by local councils, or in municipal facilities or premises that do not have the necessary soundproofing. This also applies to outdoor activities, especially the annual festivals of towns or cities, as has been detailed in the monographic reports on this topic in 2016 and 2017. In such cases, the Catalan Ombudsman has reminded the local councils that the acoustic impact of the events held in their towns must be analyzed to ensure that public spectacles and recreational activities carried out in public facilities do not contravene the rights of the neighbors.

The Catalan Ombudsman considers that outdoor activities should be limited to the maximum of twelve established by the regulations. In addition, it would be necessary to develop a law of protection and promotion of civic coexistence as a tool to establish general criteria of behavior and as a mechanism to control a good coexistence.

Reparation of affected rights in the Castor project

In November, 2014, the Catalan Ombudsman presented in Parliament his Report on the Castor Project, written following a number of meetings with professional associations and sufferers' groups. Over these years, the Catalan Ombudsman has continued his follow-up. This year, two developments have brought the Castor project back into the public eye.

First, in May 2017 the report prepared by the Massachusetts Institute of Technology (MIT) on the Castor offshore gas rig was published. It confirmed that the earthquakes were caused by the injection of gas into the underground storage facility, causing seismicity along the Amposta fault line. Second, the ruling by the Constitutional Court of December 21, 2017, invalidating articles 2.2, 4, 5 and 6 of Royal Decree-law 13/2014, therefore including those that regulate the compensation that could be paid to Escal UGS, SL, and the manner in which this is charged to consumers, by recognition of rights in favor of Enagás to collect monetary amounts on the gas system, which are regularly charged to consumers' gas bills, as determined every year by

ministerial order. Now it will be necessary to demand the full application of the ruling and the reparation of affected rights.

Other outstanding issues:

- Complaints about the Catalan Institute of Medical Assessments
- School segregation
- The limits of freedom of expression and the collective LGTBI
- Registration of squatters
- Odour pollution
- The planning of worship centres in the cities
- Use of Catalan in the Justice Administration