The Catalan Amnesty in the Spanish Constitutional Court

A Triumph of Pragmatism Over Principle

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On 26 June 2025, the Spanish Constitutional Court ruled that the Amnesty Act "for the Institutional, Political and Social Normalization in Catalonia" is constitutional. This controversial Act, passed by the Spanish Parliament in May 2024, grants amnesty from all criminal liability for actions related to the Catalan independence process, including the criminal convictions handed down against pro-independence Catalan politicians for organising a unilateral independence referendum in October 2017. In its judgment, the Court upholds the Act but reinterprets its scope of application, ruling that the amnesty must apply not only to actions in favour, but also to actions against Catalan independence and self-determination. The decision appears to reflect a pragmatic rather than a principled understanding of the amnesty – in other words, it treats the amnesty as an instrument to normalise the political situation in Catalonia rather than a measure for redressing possible rights violations resulting from the criminal convictions.

The context

In 2019, the Spanish Supreme Court imposed long prison sentences for sedition and embezzlement on nine Catalan pro-independence leaders, including both politicians and civil society figures. They were prosecuted for organising a unilateral secession referendum on 1 October 2017 in contempt of the rulings of the Constitutional Court. The referendum marked the culmination of the so-called Catalan "independence process" – a period during which the Catalan government, backed by a parliamentary majority, continued to demand a referendum on independence despite repeated refusals by the Spanish government. Following the 2017 unilateral referendum, some of the leaders, including former Catalan president Carles Puigdemont, went into exile, while others were jailed and prosecuted by the Supreme Court. Although those who were imprisoned were pardoned and released from prison in 2021, some remained disqualified from public office and were therefore unable to run in elections.

The Amnesty Act resulted from a political agreement between the Spanish Socialist Party (PSOE) and the leading Catalan pro-independence parties — Junts per Catalunya and Esquerra Republicana — in exchange for their support in securing the re-election of PSOE leader Pedro Sánchez as Prime Minister in November 2023. The amnesty applies not only to the Supreme Court proceedings against the aforementioned leaders but also to a broader range of acts "committed with the intention of claiming, promoting or procuring" the independence of Catalonia within a given time frame and subject to certain conditions (see Article 1 of the Act). Thus, the amnesty has been used to stop over 300 prosecutions against activists, civil servants or mayors, among others, related to the 2017 referendum. The amnesty has not, however, enabled former Catalan president Carles Puigdemont to return from exile. Based on a strained interpretation of the Act, the Supreme Court ruled that the amnesty is not applicable to his case.

The principled view and the pragmatic view

Within the coalition that secured the passing of the Amnesty Act we may distinguish two different views about the purpose of that Act: a principled and a pragmatic view. On the one hand, the Catalan pro-independence forces hold a principled view of the amnesty:

they believe that the Act's purpose is to redress a violation of fundamental rights resulting from the Supreme Court's prosecution. Indeed, several international organisations and NGOs – including, for example, the UN Working Group on Arbitrary Detentions – have expressed concerns in relation to that prosecution, warning that it may have infringed the rights to freedom of expression and freedom of assembly of the Catalan leaders. As Neus Torbisco and Nico Krisch put it, the amnesty is, from this perspective, a "rectification", an acknowledgement that the actions of the Catalan leaders "should never have been subject to criminal prosecution in the first place".

On the other hand, the Spanish governing party PSOE holds a pragmatic view of the amnesty: it views it as an instrument to achieve the political and social "normalisation" of Catalonia. Accordingly, the amnesty does not constitute a recognition of any rights violation but rather represents an act of "clemency" needed to promote "dialogue, understanding and forgiveness". Thus, it sees the amnesty in purely pragmatic instrumental terms. "Normalising" the situation in Catalonia could contribute to strengthening the unity of Spain – a unity that was threatened by the Catalan independence process. In the terms of Pau Bossacoma, we may say that the PSOE sees the amnesty as a measure of "utilitarian" rather than "deontological" character.

The Constitutional Court's decision

Opposition parliamentarians challenged the Amnesty Act before the Constitutional Court. In its judgment, the Court upheld the Act as a whole and extended its scope of application. Furthermore, two minor provisions were declared unconstitutional: one concerning the law's potential prospective effects, which was struck down [pp 136–137], and another relating to the application procedure, which the Court reinterpreted [pp 207–209]. Six judges formed the majority in the judgment, while four issued bold dissenting opinions. Within the judgment, we can distinguish two parts. In the first part, the Court addresses whether an amnesty, in the abstract, can be acceptable within the framework of the Spanish Constitution [pp 73-100]. In the second part the Court examines whether this specific amnesty is constitutionally permissible, considering both the Act as a whole [pp 100-162] and some individual provisions [pp 162-209].

Regarding the first part, concerning the permissibility of amnesties in general, the Court considered whether the absence of an express constitutional provision on amnesties should be read as a prohibition. In the Court's opinion, the Constitution is an "open norm" establishing a "negative framework" within which Parliament is free to legislate [p 78]; therefore, constitutional silence cannot be interpreted as a prohibition. Moreover, the interdiction of "general pardons" contained in the Constitution cannot be interpreted as an implied prohibition of amnesties, since there is a "qualitative difference" between pardons and amnesties: while the former are executive measures, amnesties are acts of legislative power, enacted by Parliament as legislation [p 82]. Finally, the Court stated that amnesties do not violate the principle of separation of powers, since they do not entail an exercise of judicial power by the legislature, but rather a "redefinition of the punishable character of actions committed in the past" [p 90].

In the second part of the judgment, the Court examined the constitutionality of the specific amnesty in question. In this part, we see the Court decisively siding with the pragmatic view of the Act, acknowledging that the amnesty "does not respond to an ideal of justice" [p 101]. Thus, the Court confirmed that this amnesty differs from other amnesties conferred in the past for prosecutions during the Franco dictatorship [p 102]. While those amnesties aimed to revoke criminal convictions deemed unjust, this one serves a more pragmatic purpose: resolving the Catalan secessionist crisis. The lack of a principled rationale for this amnesty does not, however, render it unconstitutional. In the Court's view, it is justified by the exceptionality of the political crisis that resulted from the independence process [p 102], "one of the greatest crises that our constitutional democracy has had to face, both from a social and an institutional perspective" [p 127]. In this exceptional context, the Court regarded the amnesty as a "suitable means" for reducing social conflict [p 128]. This position reflects a purely instru-

mental view of the amnesty, one that avoids making any negative judgements as to the fairness of the convictions handed down against the pro-independence leaders.

Despite upholding the Amnesty Act, the Court ruled that it is unconstitutional in one specific aspect: in restricting its application only to actions in favour of the 2017 referendum and of Catalan independence, not providing amnesty for actions against those political ends (except for those of the Spanish police forces during the referendum, which were covered). Thus, the Court extended the scope of application of the Act to include actions opposing independence [pp 129-131]. This conclusion seems reasonable if one accepts the pragmatic view of the amnesty. If the Act were aimed at redressing human rights violations, as the "principled view" suggests, then it would need to cover only those affected by those violations – the independence movement and its leaders. If, however, it is a pragmatic measure to achieve "normalisation" after a political conflict, then it seems unjustified to restrict its application only to those on one side of the conflict. We should note, however, that the extension of the Act's scope of application will have limited relevance in practice since there have been no judicial prosecutions against individuals for actions opposing the referendum or independence.

The fundamental rights question remains open

As we have seen, the Constitutional Court embraced the pragmatic view of the amnesty, regarding it as an instrumental measure to achieve social and political "normalisation" in Catalonia. This is not surprising given the Act's name – Act of "Amnesty for the Institutional, Political and Social Normalization in Catalonia" – and indeed, the pragmatic view seems the most plausible reading of the Act's preamble. However, it makes the Act more difficult to justify. In his dissenting opinion, magistrate César Tolosa suggests that amnesties should be grounded in reasons of justice to be constitutionally permissible, otherwise they "become acts of arbitrary power" [p 72]. Indeed, allowing the legislature to lift criminal liability for pragmatic reasons can open the doors to potential abuses that may undermine the rule of law. It is not difficult to imagine future governments invoking similarly pragmatic justifications to grant amnesties to political allies or powerful interest groups.

The fact that the amnesty is a pragmatic measure rather than a principled one has a further consequence: if the prosecution of the Catalan independence leaders violated human rights, then the amnesty offers no redress for that breach. The European Court of Human Rights is currently examining whether the Supreme Court's conviction infringed the leaders' rights to freedom of expression and freedom of assembly. Thus, under the Constitutional Court's pragmatic interpretation, the amnesty leaves open the question of whether the fundamental rights of the Catalan leaders were violated. That question is now for Strasbourg to decide.

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