

Assessment Report on Spain's Amnesty Law of 10 June 2024

AMNESTY OVERSIGHT COMMITTEE
OF ÒMNIUM CULTURAL

Sindicatura per l'Amnistia
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1. Introduction

1.1. Executive Summary

This document presents the information and assessments conducted by the Amnesty Oversight Committee (Sindicatura de l'Amnistia) of Òmnium Cultural during the first four months of the application of the Amnesty Law, from June 11 to October 10, 2024.

The Committee is a tool created by Òmnium Cultural for civil society to oversee the implementation of the Amnesty Law, facilitate the exchange of information among those affected, support groups, and legal defenses, and also to influence compliance with the Amnesty Law. The goal of Òmnium Cultural is to ensure that those affected are granted amnesty while also showing the judicial, political, and media offensive by the Spanish State that is preventing its effective implementation.

The Amnesty Law is the result of the collective efforts of organized civil society aimed at recognizing the political conflict between Catalonia and the Spanish State, with the stated goal of rectifying the violation of fundamental rights, and accepting that the acts undertaken during the self-determination process were actually not crimes and should never have been prosecuted.

As of today, the two-month period established by the Law for its implementation has already passed, and in most cases eligible for amnesty, it has not yet been applied. Since its enactment on June 11, the Amnesty Law has had insufficient implementation, primarily due to the vocal opposition from the Spanish right and far-right, present both in the political leadership and in parts of the judiciary, particularly at highest levels. Nevertheless, nearly 22% of the affected individuals who have requested amnesty have already received it, while 50% remain unresolved. About 13% of the requests have been denied, and 14% are on hold due to issues raised before the Constitutional Court or the Court of Justice of the European Union. It is also noted that a significant number of individuals have yet to submit their applications. On the other hand, amnesty has been quickly applied to the Spanish police officers who committed violence against voters on October 1, without questioning the constitutionality of the Amnesty Law in these cases. The implementation of the Amnesty Law is not only slow but also unevenly affects the individuals with judicial proceedings: most amnesties have been granted to protesters from 2019, whereas political leaders have received more denials or suspensions.

The judicial leadership is making an ideological interpretation of the law and is taking procedural decisions that pursue delays. Moreover, it is raising multiple questions of unconstitutionality and prejudicial questions where they take the opportunity to express their political opinions, not only regarding the law but also about the mobilized Catalan social fabric advocating for the right to decide. Although the issues do not involve the suspension of the norm, they do suspend the specific proceedings in which the questions are raised.

Regarding economic sanctions, fines imposed have hardly been returned. Despite the efforts of the Department of Interior, only a small portion of those affected has requested a refund, as most are unaware of the possibility of reimbursement and how to process this claim.

1.610 Affected Individuals Eligible for Amnesty		
726 individuals with criminal cases** (691) and from the Court of Accounts (35) eligible for amnesty.	330 Processing Cases	72 amnesties
		45 denied
	396 no record of processing	47 on hold due to questions of unconstitutionality at the Constitutional Court or preliminary questions at the Court of Justice of the European Union
884 individuals with administrative sanctions	32 tramitacions	166 no hi ha constància de resposta judicial
		20 amnesties
		12 rejected
amnistia.omnium.cat		

1.2. Methodology

This evaluation focuses on the collection of data and the analysis of trends regarding the processing of amnesty for those affected, with special emphasis on the obstacles to its application. Although they are not affected individuals, the report also includes a follow-up on the cases of the police investigated for their actions during the October 1 events.

The data on judicial proceedings on which this report is based has been obtained from information provided voluntarily by the affected individuals, their legal defenses, and support groups, as well as from repressive organizations, judicial actors, and media coverage. Òmnium wishes to express its gratitude for the efforts of the affected individuals, their defenses, and support groups, as well as for their collaboration in the exchange of information that has made this evaluation possible.

However, it is important to note that the course of events is very changeable, which is why this document is presented as a snapshot of a specific moment in the evolution of the Law's implementation. It is necessary to take into account that the published figures are approximate and not definitive. Nevertheless, the Committee aims for this report to provide a series of parameters to refer to for future monitoring of the implementation.

The report is structured into an introduction, four analytical sections, and a conclusions section. In addition to analyzing the amnesties granted and providing a general follow-up on the degree of implementation of the Amnesty Law, the report focuses on analyzing the obstacles that the judiciary is placing on the application of the law.

2. Analysis of the Application of Amnesty to the 1,610 Affected Individuals

Òmnium Cultural has recorded 726 individuals as eligible for amnesty, currently undergoing legal proceedings in criminal courts or the Court of Accounts, and 884 sanctioned in administrative procedures. Regarding criminal cases, 72 individuals have been granted amnesty. Of the 330 verified amnesty applications, 45 individuals have had their requests denied, and 47 are pending resolution of constitutional questions at the Constitutional Court and preliminary questions at the Court of Justice of the European Union. The majority of applications, 166, are still awaiting a response from judges and courts, having surpassed the two-month resolution period established by the law. For the remaining cases eligible for amnesty, there is no record of processing either ex officio or at the request of the parties involved.

Regarding individuals sanctioned administratively, among the nearly 1,000 eligible for amnesty according to sources from the Department of Interior of the Generalitat, only about twenty requests have resulted in the return of fines.

2.1. Granted Amnesties

Of the affected individuals who should be granted amnesty, only 72 of the 330 individuals with criminal cases that the Committee has verified have their requests in process, which amounts to 21.82%. As for those sanctioned under the “Mordassa Law,” only 32 individuals have applied, and 20 have been granted amnesty.

In terms of criminal cases and the offenses for which amnesty has been granted, the most common offenses are assault against authority and public disorder, followed by injuries, and to a lesser extent, abuse of power, embezzlement, damage, resistance to authority, and even disobedience. It is noteworthy that most of the granted amnesties originate from investigations related to the mobilizations following the 2019 ruling, but it also includes mayors and other political representatives.

The number of granted amnesties for cases where the sentence was already final is similar to the number of amnesties granted to cases that were still open, whether pending trial, appeal resolution, or in the investigation phase. In cases where there was no final sentence, the majority of amnesties have been granted when the case was pending trial or pending appeal, with only two in the investigation phase.

Regarding the court that granted the amnesty, if there was already a final sentence, it has been primarily the Superior Court of Justice of Catalonia, followed by the Provincial Courts of Barcelona and Girona. In cases pending trial or in the investigation phase, it has mainly been the Provincial Courts, and to a lesser extent, due to the procedural stage, investigating courts and two criminal courts. As for the Prosecutor’s Office, its role has generally been to promote the law, initiating, even ex officio, the processing of amnesty, sometimes before the defenses. Nevertheless, it has not opposed the submission of preliminary questions and constitutional issues, which in any case suspend the proceedings and postpone the final decision on the application of amnesty.

While initially the Superior Court of Justice of Catalonia, under the impetus of its appeal section, took the initiative in applying the Amnesty Law, granting the first amnesty on June 25 and subsequently processing about twenty more cases, followed by another 50 amnesties from other judicial instances, since September 16, there has been no record of the amnesty being applied in virtually any other procedure.

Although it is essential to note that August is a non-working month in the judicial calendar, except concerning investigation deadlines, it is evident that there has been a stagnation in the application of the Amnesty Law. A possible explanation is that the preliminary questions and constitutional issues raised by different courts have generated a dissuasive and delaying effect on the processing of initiated applications. Although questions of constitutionality do not create a suspensive effect on the amnesty request beyond the specific proceeding in which they are presented, it seems that many judges and courts are waiting for resolutions from the Constitutional Court, as will be developed in the following sections.

3. Obstacles in the Application of the Amnesty Law

3.1. Denial of the Application of the Law

As previously mentioned, one of the obstacles in the application of the Amnesty Law has been the denials by judges and magistrates themselves. This includes cases they deemed outside the objective scope of the law, such as cases where the sentence had already been served, resulting in the extinction of criminal responsibility. Consequently, courts and judges have opted to reject the request for amnesty. So far, according to collected data, 45 individuals have been affected by these denials.

Moreover, although Article 1 of the Amnesty Law includes the offense of embezzlement within its objective scope, as long as there was no intention of personal enrichment or material benefit, and additionally, the preamble of the Law establishes that the application of public funds to prepare and conduct the consultations of November 9, 2014, and the referendum of October 1, 2017, as well as any funds used to advocate for, promote, or seek the independence of Catalonia, should not be considered personal enrichment, the Supreme Court has questioned the constitutionality of the Amnesty Law from the outset. It has challenged both the executive and legislative powers and has claimed that there is indeed a personal financial benefit. Consequently, with an undoubtedly arbitrary and ideologically motivated interpretive criterion, it has asserted that the acts for which the leaders of the Catalan independence movement were accused, and in some cases convicted of embezzlement, fall outside the application scope of the law, thereby creating a situation of legal uncertainty contrary to the democratic application of criminal law. Thus, the Supreme Court has denied amnesty to seven political representatives.

On one hand, regarding the special case against the political leaders of the independence process, the order issued on July 1 by Judge Manuel Marchena (confirmed on September 30 when he dismissed the appeal filed by the defenses) provides the convoluted argument that the four individuals convicted of embezzlement¹ received a personal financial benefit because, by using

public funds, their own financial contributions became unnecessary. In this way, the Supreme Court challenges and completely overlooks the fact that the Law refers to a “purpose of personal enrichment,” which must logically be assessed in accordance with the Supreme Court’s own jurisprudence prior to the act of embezzlement itself². Furthermore, the established facts in the ruling against the political prisoners clearly indicate that the aim of their actions was political and sought the independence of Catalonia. In this case, the affected individuals will file a protection appeal with the Constitutional Court regarding the non-application of the Amnesty Law.

On the other hand, Judge Pablo Llarena, as the investigating magistrate of the Supreme Court, also opposed applying the amnesty for embezzlement³ to the three individuals prosecuted for this type of crime in the independence process, arguing that they fall within the two exceptions provided by the Law (that there was an intention to obtain personal financial benefit and that it affects the financial interests of the EU). The defenses filed reform appeals, and the Supreme Court has confirmed its position of denying the application of the Law to the crime of embezzlement, with a thesis supported only by VOX, while both the Prosecutor’s Office and the State Attorney’s Office oppose this, arguing that the embezzlement⁴ crime in this specific case falls within the application scope of the law.

Finally, to highlight the politically motivated – rather than legally motivated – interpretation of the Supreme Court, it is particularly relevant to recall that the Superior Court of Justice of Catalonia has indeed granted amnesty for embezzlement⁵, albeit against the opposition of the Catalan prosecutor, contradicting the position of the state prosecutor. Additionally, a court in Barcelona has granted amnesty to two more individuals accused of embezzlement⁶. In other words, these courts have interpreted the Amnesty Law in its literal sense and purpose: if there is no personal enrichment, the embezzlement crime must be amnestied.

Moreover, it is noteworthy that the Supreme Court chose not to raise a preliminary question to European justice (contrary to what was proposed in the dissenting vote), asserting that the alleged embezzlement cannot be amnestied because it affected the financial interests of the EU. This is based on the argument that a hypothetical independence would have consequences for community budgets due to the also hypothetical loss of Catalonia’s economic contribution. Aside from the embezzlement crime, courts have also excluded other acts from the application of the law, denying the processing of amnesty for actions they do not consider directly linked to the self-determination of Catalonia and all actions related to it. Specifically, excluded from the scope of application are protests against the imprisonment of Pablo Hasél, anti-fascist mobilizations, and at least one conviction for offenses against a judge in a Barcelona criminal court, despite occurring within the timeframe established by the Law.

Additionally, the Superior Court of Justice of Catalonia (TSJC) has decided not to apply amnesty to Artur Mas, Joana Ortega, and Irene Rigau for organizing the consultation of November 9, 2014. The reason given by the court is that when the law came into effect, the three convicted individuals had already served their disqualification sentences for disobedience. Therefore, sin-

¹ Order ATS 8322/2024 of July 1 regarding Oriol Junqueras, Raül Romeva, Dolors Bassa, and Jordi Turull, to whom the Supreme Court does not grant amnesty for the crime of embezzlement (<https://www.parlament.cat/document/intrade/421898164>).

² It is worth noting the content of the dissenting vote, which considers that not applying the Amnesty Law to embezzlement in this specific case violates the right to a fair trial, the right to the retroactive application of the most favorable law for the defendant, the right to effective judicial protection, and the right to legal certainty.

³ Ruling of July 1 regarding Carles Puigdemont, Antoni Comin, and Lluís Puig, who are charged with the crime of embezzlement and against whom detention orders remain in place.

⁴ <https://www.poderjudicial.es/cgpj/ca/Poder-Judicial/Tribunal-Suprem/Noticies-Judicials/El-magistrado-del-Tribunal-Supremo-Pablo-Llarena-confirma-la-no-aplicacion-de-la-amnistia-al-delito-de-malversacion-a-Carles-Puigdemont--Antoni-Comin-y-Lluís-Puig>

⁵ Cases of former minister Miquel Buch and Lluís Escolà, convicted of embezzlement.

⁶ Cases of Francesc Homs and Senén Florensa.

ce 2020, their criminal responsibility had been extinguished, and according to the court, granting them amnesty would be meaningless.

Furthermore, Instruction Court 1 of Barcelona has denied the application of amnesty both in relation to the so-called Vólkhov case, which affects 19 individuals, and in relation to the separate piece it has opened regarding the so-called “Russian interference network,” denying amnesty to the 13 individuals under investigation.

3.2 Suspension of the Application of the Amnesty Law: Issues of Unconstitutionality before the Constitutional Court and Preliminary Questions before the Court of Justice of the European Union

The second major obstacle faced by the application of the amnesty law has been the suspension of the processing of amnesty requests that had already been filed, as a result of the submission of preliminary questions before the Court of Justice of the European Union (CJEU) and/or unconstitutionality questions before the Constitutional Court (CC). Specifically, there have been 47 individuals who have seen the processing of their amnesty requests halted due to the raising of these questions.

It is particularly interesting that it is the Supreme Court and the High Court of Justice that are questioning the law by submitting preliminary questions and, especially, unconstitutionality questions, rather than lower courts. This fact, on the one hand, shows that the judicial leadership is particularly politicized against the parliamentary majority that approved the amnesty law. On the other hand, it is very relevant for the effect it may have, and is in fact having, on first-instance judges: despite the theoretical fact that questions of unconstitutionality do not have suspensive effects beyond the procedure in which they are raised, it can be stated de facto that there is a relatively general halt regarding the processing of amnesties, due to the fact that these instances are their hierarchical superiors.

a) Supreme Court

On July 24, 2024, the Supreme Court submitted the first question of unconstitutionality against the amnesty law, focused on Article 17. The Constitutional Court has admitted it for processing and a resolution may take several months. The Supreme Court raised it, with the approval of the Public Prosecutor’s Office and against the position of the defense, in the context of an appeal against the judgment handed down by the High Court of Justice of Catalonia, which upheld the conviction of a person as the author of an aggravated public disorder offense for throwing stones at the courts in Girona during protests following the verdict on October 19, 2019.

The Supreme Court argues that the amnesty law violates the principle of exclusive jurisdiction of the courts that have the monopoly on judging and executing what has been judged, and claims that there is no legal scholar in Spain who defends the constitutionality of the law or claims that it is compatible with legal certainty, the principle of equality before the law, or the prohibition of arbitrariness. Furthermore, it is a text that continuously makes political assessments, does not spare any criticism of the Catalan self-determination movement, and believes that the true purpose of the law is for the Spanish government to remain in power and to obtain

⁷Text of the interlocutory order in which the Supreme Court raises a constitutional issue:
https://naciodigital.cat/politica/suprem-porta-llei-amnistia-tribunal-constitucional-primer-cop_1955981_102.html

votes for the Junts per Catalunya party. Finally, the Supreme Court considers that the amnesty law favors criminality because citizens will trust that, in the face of certain ideologies, amnesty laws will be approved.

This question of unconstitutionality may be halting not only the resolution of pending appeals before the Supreme Court regarding other cases that would be eligible for amnesty but also, collaterally, the processing of amnesty requests pending resolution in various courts.

In the case of those affected in the Special Cause 20907/2017 against the leaders of the October 1 referendum, the Supreme Court has also raised the possibility of formulating a question of unconstitutionality regarding the offense of disobedience, a classification given to the facts as an alternative after the repeal of the sedition offense. It considers that disobedience falls within the scope of application of the amnesty law, but since it calls into question the constitutionality of the law itself, it elevates this question. This situation affects the same seven people for whom the amnesty for the offense of embezzlement has been denied. In the case of the former mayor of Sabadell, Maties Serracant, who was convicted of serious disobedience, the Supreme Court has also asked the parties about the appropriateness of raising a question of unconstitutionality, understanding that "the law implies discriminatory treatment based on ideology without a constitutionally acceptable reason or cause."

It is noteworthy that there are cases in which the accused of disobedience were acquitted (members of the Parliament's Bureau under the presidency of Roger Torrent), where some disobedience convictions have recently been amnestied (the Marta Rovira case), and where the amnesty request is still pending in other cases involving disobedience convictions or accusations (members of the Parliament's Bureau under the presidency of Carme Forcadell or Clara Ponsatí, among others).

b) National Court (Audiencia Nacional)

Regarding the 13 individuals affected by the CDR in the Judas Operation, the defenses requested the application of amnesty, to which the Public Prosecutor's Office adhered, but the Criminal Chamber decided on September 5 to raise a preliminary question before the Court of Justice of the European Union, considering that the amnesty law could seriously contravene EU law and the EU's fight against terrorism.

It should be noted that the amnesty law excludes terrorism offenses from its application and refers to the definition of terrorism as defined by European Directive 2017/541, which states that it must involve serious violations of human rights. In fact, as both the defenses and the Public Prosecutor's Office of the National Court have stated, the Chamber also considers in its interlocutory that "the facts object of this procedure are not included in the exclusions of the LO 1/2024 of amnesty, that is, in the assumptions in which the norm itself contemplates that these facts will not be amnestied." Therefore, although it considers that the facts fit within the amnesty law, in order to justify raising the preliminary question, the National Court criticizes the amnesty law for not distinguishing between intensities of terrorism and considers that, although there are no results harmful to human rights, the mere attempt could be considered terrorism.

c) High Court of Justice of Catalonia

The High Court of Justice of Catalonia (TSJC), specifically the Civil and Criminal Chamber (with a very different orientation from the Appeals Chamber, which promoted the proces-

sing of the amnesty at the beginning), has also not hesitated to present a series of questions of unconstitutionality and preliminary questions in five different cases, affecting a total of 9 individuals.

Regarding the case of Jové, Salvadó, and Garriga for preparatory acts of the October 1 referendum, the TSJC submitted both a question of unconstitutionality to the CC and a preliminary question to the CJEU on the offenses of disobedience, embezzlement, and malfeasance on July 30, 2024. Essentially, and with many similarities to what the TS raises, the TSJC considers that the amnesty law could contravene the inherent principles of the Social and Democratic Rule of Law, understanding that the law violates the principles of legal certainty and prohibition of arbitrariness, the fundamental right to equality before the law, the separation of powers, and the principle of jurisdictional reserve. Regarding the preliminary question concerning the offense of embezzlement, although it acknowledges that none of the accusations have referred to the personal enrichment of the accused, it considers that, even though we are dealing with public funds of a member state and not EU funds, the European anti-fraud directive refers to any manner, even potential, in which the interests of the EU could be affected.

On the same day, it also presented questions of unconstitutionality before the Constitutional Court in three more cases: in the case of the mayor of Agramunt, Bernat Solé, for his involvement in the preparation of the October 1 referendum, in the case of the former president Quim Torra, who was convicted for not removing a banner in support of political prisoners from the balcony of the Palau de la Generalitat during the election period, and in the case of Pau Juvillà, a councilor from Lleida who was disqualified for not removing yellow ribbons from his office at the Paeria. In all three cases, the court acknowledges that the facts fit within the scope of the amnesty law, but considers that the norm may violate constitutional provisions such as legal certainty, the prohibition of arbitrariness of public powers, the equality of citizens before the law, or the exclusivity of jurisdictional power, as well as the principles of separation of powers.

Finally, it is noteworthy that in the case of the “Tres de Granollers,” who were sentenced to three years in prison for throwing stones at a police van during a post-verdict protest in Barcelona, even though they were among the first to receive amnesty, following an appeal filed by one of the police officers, the TSJC has summoned the parties to position themselves regarding the possibility of raising a question of unconstitutionality to the CC.

d) Court of Auditors

Specifically, the Court of Auditors has submitted a document with eight preliminary questions⁸ to the Court of Justice of the European Union (CJEU), aimed at questioning the amnesty of expenses related to external action and the organization of the referendum. In summary, what this administrative body is questioning before the European Court of Justice, following the lawsuit filed for accounting responsibility for the “damages caused to the public heritage of the Generalitat,” is the compatibility of the amnesty law with the principles of effective and deterrent action against fraud and any illegal activity affecting the financial interests of the European Union; the principle of loyal cooperation; the principle of equality before the law; the principle of legal certainty; and the principles of the rule of law and effective protection in judicial proceedings. It is important to note that we are dealing with public funds of a member state and not EU funds. Additionally, the Court of Auditors also questions the two-month deadline established by the

⁸ <https://diariolaley.laleynext.es/content/Documento.aspx?params=H4slAAAAAAAAEAMtMSbH1CjUwMDQwsTQzNTVUK0stKs7Mz7Mty0xPzStJBfEz0ypd0pNDKgtSbdMSc4pT1RKTivNzSktSQ4sybUOKSIMBluqVd0UAAAA=WKE>

amnesty law for resolving cases, understanding that it jeopardizes the trial with all guarantees, even though it is evident that this deadline is not being observed by the courts in most cases.

On the other hand, it is relevant to highlight that the Court of Auditors is not properly a court; it does not have judges at the helm and does not belong to the judiciary. Instead, it is an administrative body with a certain jurisdictional function that audits the economic management of the public sector. The decision of the CJEU on whether or not to admit the questions raised by this body is still pending.

Moreover, the Public Prosecutor's Office of the Court of Auditors believes that the questions should refer to the interpretation or validity of European Union law, but in no case to the interpretation of national laws, such as the amnesty law. It also emphasizes that the CJEU should only rule on preliminary decisions when European law is applicable to the disputed matter in the main litigation, which is not the case with the current preliminary questions. Therefore, it considers that raising these questions is not appropriate.

Out of the 35 individuals sued in this case, 24 have requested amnesty. Now the proceedings for all of them remain suspended until the preliminary question is resolved.

3.3 Stagnation of Proceedings: Procedural Labyrinths

Finally, the delays in the application of the amnesty law have also been caused by procedural labyrinths that have obstructed decision-making regarding its processing.

a) Investigating Courts 13 and 18 of Barcelona

Around thirty individuals (high-ranking officials, civil servants, and entrepreneurs) are being investigated for the preparations for the referendum and for the external expenditure of the Generalitat. Initially, this investigation was conducted separately between the Investigating Courts 13 of Barcelona—around twenty individuals—and 18—about ten individuals—but it is now consolidated into a single procedure at Investigating Court 13. When the latter referred the proceedings to Section 21 of the Provincial Court of Barcelona, the latter initiated, via a provision dated July 11, 2024, the processing of amnesty for those who had already been charged for the referendum preparations, thereby excluding the ten individuals from Investigating Court 18 who were still in the investigation phase.

However, on July 30, 2024, under pressure from the Public Prosecutor's Office, Section 21 of the Provincial Court of Barcelona annulled the July 11 provision, which had requested the parties to express their views regarding both the application of the amnesty and the possible elevation of preliminary questions and issues of unconstitutionality.

Thus, once the proceedings returned to the hands of Investigating Court 13, the judge issued a provision initiating the amnesty process, considering that no charges were necessary to declare the summary concluded, as requested by the defense. This provision has also been subject to a reform appeal and a subsidiary appeal by the Public Prosecutor's Office, which deems it necessary to process all investigated individuals, with the corresponding procedures, before considering the summary concluded and restarting the amnesty application process.

The conclusion of the summary was issued by the judge of Court 13 in early October, and the

reform appeal has been dismissed by Investigating Court 13 of Barcelona. It is pending resolution of the subsidiary appeal by Section 2 of the Provincial Court of Barcelona—following the corresponding appeal hearing on October 3—which must decide whether it is compatible with the Amnesty Law to continue conducting investigative procedures, as requested by the Public Prosecutor’s Office.

Nonetheless, even if Section 2 of the Provincial Court dismisses the Public Prosecutor’s appeal, it is expected that, once the summary is concluded without charges, Section 21 will not apply the amnesty law without further processing. Instead, as other bodies have already done and as Section 21 did in July, questions of unconstitutionality and/or preliminary questions will be raised before the Constitutional Court and the CJEU, respectively.

Among those investigated awaiting a resolution in this procedural mess are former Minister of Foreign Affairs Raül Romeva, as well as former high-ranking officials Albert Royo and Amadeu Altafaj.

b) Criminal Court 11 of Barcelona

In another procedural labyrinth that hinders the application of the amnesty—in this case, concerning the Electoral Board of the October 1 referendum—Criminal Court 11 of Barcelona took three months to rule on the amnesty requested by the defenses, declaring itself incompetent regarding this decision, as it believes that the Superior Court of Justice of Catalonia (TSJC) must handle it due to the status of one of the accused individuals.

In this regard, concerning the competent body, it should be noted that the defenses filed a reform appeal and a subsidiary appeal nearly a year ago, in December 2023, and the reform appeal has not been resolved—having been dismissed—until September 30, 2024. Therefore, the appeal to the Provincial Court of Barcelona has not been processed yet. This, in turn, results in further delays in the resolution regarding the application of the amnesty, which the Criminal Court conditions on the decision about the competent body.

3.4 Political Offensive Against the Amnesty Law

a) The Constitutional Appeals

The application of the amnesty law has also faced a flurry of constitutional appeals, almost entirely filed by the Popular Party and its regional governments and assemblies, as well as by the socialist government of Castilla-La Mancha.

On September 12, the amnesty law became the norm with the most constitutional appeals in the history of this court, with a total of sixteen appeals arguing, in summary, that the law violates the principle of equality and the prohibition of arbitrariness. However, four days later, the Constitutional Court suspended the processing of the appeals, questioning the competence of their initiators, as the Organic Law of the Constitutional Court (LOTCC) only considers these challenges from the executives and Assemblies of the autonomous communities when it concerns norms that may directly affect their competencies, making it clear that a law pertaining to criminal matters would fall outside this scope.

For the moment, over the next two months, the Plenary of the Constitutional Court will consider whether to admit the first appeal filed, that of Aragón, so that the Plenary’s ruling on this

specific appeal will apply when evaluating the admission of the remaining fifteen. Nevertheless, judicial sources also indicate that it is likely that the admission will be resolved in the same ruling.

b) The Far Right's Involvement: Abuse of Popular Accusations

On the other hand, the Spanish far right has also fought against the application of the law by becoming a popular accusation in various proceedings, opposing the processing of the requests and favoring the submission of preliminary questions and issues of unconstitutionality, thereby contributing to the blockage of the implementation of the law.

Specifically, VOX has joined the case against the CDR (Committees for the Defense of the Referendum), the case against the Parliamentary Board; it has also joined with Societat Civil Catalana in the Canelons Summary; and with the Sindicato Manos Limpias in the Procés Trial.

Additionally, Abogados Catalanes por la Constitución (Catalan Lawyers for the Constitution) and Societat Civil Catalana joined the case in the Court of Accounts, while the professional police union, Unión Federal de Policía, Asociación Arca Ibérica, and Sindicato Manos Limpias participated in the judicial proceedings regarding the organization of the 9N consultation.

Moreover, it is worth noting that the courts (Supreme Court, TSJC, and AN) have accepted the far right's arguments in the elevation of preliminary questions and issues of unconstitutionality, which have only been raised based on the cases of the repressed individuals and not as a result of the amnesty requested by the police bodies.

4. On the Treatment of Police Violence

On July 1, the Investigating Court Number 7 of Barcelona, which was investigating police violence during the celebration of the October 1 referendum, decided to grant amnesty to 46 agents of the Spanish National Police. The decision was applied en bloc, without individually assessing the different severity of their actions, as it was deemed that the violence did not reach the threshold of seriousness established by law as an exemption. Organizations acting as popular and private accusation (Òmnium, ANC, and Irdia) have appealed against this decision, arguing that the amnesty law excludes from its scope the crimes of torture or inhuman or degrading treatment, prohibited by Article 3 of the European Convention on Human Rights.

The decision of Investigating Court Number 7 of Barcelona may have established a line of response in the remaining investigations into police violence. On July 4, the Provincial Court of Lleida granted amnesty to the officer investigated for the injuries against Enric Sirvent. The Ombudsman is monitoring investigations into 144 police officers, of which 51 have been granted amnesty—47 national police officers and 4 Mossos d'Esquadra.

It is noteworthy that no judicial instance has raised questions of unconstitutionality or preliminary questions in this regard.

5. Administrative Sanctions

Regarding administrative sanctions, the Law recognizes the right to the return of amounts imposed for minor and serious violations of the citizen security law. The Department of Interior has stated that the number of affected individuals may vary between one thousand and six thousand, with this imprecise estimate due to the difficulty of linking the sanctions to the context in which the violations occurred in connection with the self-determination process. Furthermore, the return of fines cannot be carried out *ex officio*, which is why, although the Generalitat has established a very simple processing system for the return of fines—only requiring the identity document number to claim the amnesty of the sanctions—it is little known and rarely requested.

At the beginning of October, the number of applications barely exceeded thirty, and of these, twenty have been accepted, resulting in the return of fines totaling approximately 12,000 euros. The widespread lack of knowledge among the repressed individuals regarding the possibility of obtaining the return of fines and the absence of mass public dissemination have resulted in a very low number of applications.

6. Conclusions

Ending the political repression against the independence movement has been a long-time demand of the majority of Catalan society. After achieving a parliamentary majority favorable to this objective, the amnesty should allow for the cessation of the judicialization of the political conflict between Spain and Catalonia and return it to the political arena, where it should have always been. Furthermore, it should serve to put an end to the multiple violations of human rights that repression entails, rectifying the actions of both the judiciary and the executive, since there should never have been convictions and sanctions for organizing or supporting the referendum or for exercising the right to protest in all its dimensions. As stated in the preamble of the Law, the aim of the legislation is to end the execution of convictions and judicial processes affecting all individuals, without exception, who participated in the independence process.

So far, the Amnesty Law has seen insufficient and irregular application, exceeding the two-month period intended for its processing and generating legal insecurity for those affected by repression. To date, the law has been hindered primarily by a judicial leadership that acts in coordination with the tenets of the Spanish right and far-right, with the intent of continuing to criminalize the Catalan movement in favor of self-determination.

Through contact with the defenses and support groups for the individual defendants, the Ombudsman has been able to learn of their main concerns, which are primarily: the lack of response to amnesty requests pending resolution from courts; the costs arising from civil liability for damages to individuals that those affected must bear despite having been granted amnesty, in some cases as compensation for injuries to police officers; and the interaction between the Amnesty Law and cases that are intended to be brought or have already been brought before the European Court of Human Rights.

From the previous sections, the following conclusions can be drawn:

- Not all individuals with an amnestiable case have processed their request, and among those who have, approximately half have not yet received any response. Moreover, the courts have not acted ex officio to apply the amnesty except in very rare cases. This sluggishness contrasts sharply with the speed with which the Amnesty Law has been applied to members of the state security forces who violently repressed voters and protesters.
- Most amnesties have been granted to individuals exercising their right to protest, primarily those who demonstrated during the fall of 2019 against the Supreme Court's ruling of over 100 years of imprisonment for political prisoners. In contrast, political leaders who were at the forefront of organizing the October 1 referendum, and whose judicial proceedings are in instances mobilized against the amnesty, such as the Supreme Court or the High Court of Justice of Catalonia, have received more rejections or suspensions of their requests.
- Regarding the rejections and exclusions from the scope of application of the law, it can be asserted that this constitutes an arbitrary and ideological interpretation by judges and magistrates that does not respect the separation of powers between the legislative and judicial branches. Beyond this, it causes delays and wastes time and energy, forcing those affected to appeal the denial to the Constitutional Court.
- Additionally, it was expected that the judicial leadership, as represented by the Supreme Court, the National Court, and the High Court of Justice, would raise questions of unconstitutionality or preliminary issues. Until the Constitutional Court issues a ruling, many judges and courts will remain in limbo and will not decide on requests in either direction.
- As for the processing of amnesty requests, the preferred resolution period of two months indicated by the law is hardly being respected, with many requests remaining unanswered for more than three months after the law came into force. This is likely partly due to the deterrent effect of questions of unconstitutionality and preliminary issues.
- Another issue associated with the lack of resolution of requests is related to the procedural labyrinths that have opened in various cases after the amnesty request, partly due to the novelty of this law and partly due to a lack of will to resolve matters promptly.
- The economic repression through the imposition of administrative sanctions has not been rectified. Of the thousands of sanctioned individuals, only about twenty have benefited from the return of fines. Despite the ease put in place by the Department of Interior, the inability to return funds ex officio and the lack of social awareness regarding the possibility of claims have resulted in the amnesty not being applied in this area. It is evident that there is a need to increase publicity to reach more people.

It is clear that to enhance the monitoring and reporting on the lack of application of the amnesty, it is essential to increase communication among defenses, affected individuals, social and political organizations, and support groups. In light of the contrary legal interpretations from the Supreme Court and the High Court of Justice, Omnia believes that the best strategy to continue denouncing the non-application of the law is to increase the number of amnesty requests, both judicial and administrative, and to combine this with strong social, political, and institutional pressure, both nationally and internationally, with the goal of hi-



highlighting injustices and reinforcing the demand for respect for fundamental rights and the separation of powers, which is crucial in any democratic state.

The Amnesty Oversight Committee (Sindicatura de l'Amnistia) of Òmnium Cultural will convey this analysis regarding the insufficient degree of application of the amnesty and the obstacles to its implementation to various national, state, and international bodies: the Spanish and Catalan Ombudspersons offices, the European Ombudsman, as well as the Universal Periodic Review of Spain at the United Nations, among others.



SINDICATURA PER L'AMNISTIA

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