

# Catalonia v. Spain

Catalonia's right to self determination

Case concerning the dispute regarding the right to self determination of Catalonia

*Between*

The government of Spain

Represented by Adrià Font

*And*

The government of Catalonia

Represented by Lluna Gràcia

*Judge*

Jaroslav Kojtal

Adrià Font i Bofill

*Contemporary issues of International Public Law*

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# Index

1. Subject of dispute.....	1
2. Jurisdiction.....	1
3. Statement of facts.....	1
I. Historical Background.....	1
II. Contemporary background.....	2
4. Applicable law.....	3
I. Right to self determination	
i. International law.....	3
ii. Constitutional law.....	6
iii. Jurisprudence.....	7
iv. European law.....	8
II. Unilateral Declaration of Independence.....	8
5. Summary of reasoning.....	8
6. Requests.....	9

## 1. Subject of dispute

The ongoing conflict in Spain about the situation in Catalonia refers to the important increasing of the pro-independence options in this Autonomous Community of Spain, which has been shown in the streets with huge demonstrations, in the polls and also in the elections of the Catalan Parliament. The Catalan institutions have made some steps to go forward to the consecution of an independent state for Catalonia and some of these steps are in collision with the Spanish legality. The debate about the possible independence of Catalonia has a lot of dimensions (identity, economy, society, linguistic) but also legal.

Catalan forces calls to the process initiated last year as the exercise of the “Right to decide” in the framework of the “national transition” of Catalonia. In reality, in legal terms, we are talking of the classical Right to self determination. The dispute then is if Catalonia can exercise the Right to self determination and how. Subsidiary it has been argued by the Catalan forces that if it is impossible to make effective the Right to self determination it can be used the Unilateral Declaration of Independence.

The 6 of November 2014, the Government of Catalonia filed an application before the General Assembly of the United Nations due to the issue about the right to self determination of Catalonia. The General Assembly of the United Nations decided to refer the case and requested an advisory opinion before the International Court of Justice.

## 2. Jurisdiction

Catalonia is, according to Article 137<sup>1</sup> of the Spanish Constitution, a self-government community, so part of Spain. Considering that Article 34 of the Statute of the International Court of Justice states “Only states may be parties in cases before the Court.” it is impossible for Catalonia to apply to the ICJ. But the General Assembly of the United Nations decided to bring the case to the International Court of Justice for having an advisory opinion as the article 65 of the Statute of the Court permits.

## 3. Statement of facts

### Historical background

In 1939 it started the dictatorship of Francisco Franco after the Spanish Civil war, which end the Republic established in 1931. For almost 40 years the regime annulated fundamental rights and freedoms, not only for the Catalans but for all Spanish people. But in 20 of November of 1975 Franco dead and the Spanish transition began. In 1977 were the first democratic elections of Spain after the dictatorship, and it started the writing of the Constitution. It must be highlighted that two of the seven writers of the text, known as “the fathers of the Constitution”, were Catalans. After creating the text on 31th of October 1978, there was hold a Referendum on 6 of December. The result gives the victory to yes, also in Catalonia. In fact, whereas in all Spain the results in favour of the Constitution was a support of 87,78%, in Catalonia it raised to 90,46% and only 4,97% of the population voted against. The new Constitution provides a social and democratic state based in the Rule of law, which was a huge improvement compared with the previous situation.

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<sup>1</sup> “The State is organised territorially into muni-cipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests.” Spanish Constitution (Art. 137)

In the same year, 1977, the Generalitat de Catalunya (government of Catalonia), a Catalan medieval institution abolished by Franco, was reset, with the return of its President in the exile, Josep Tarradellas. Consequently it started the redaction of the Statute of Autonomy of Catalonia. This Statute is the main legal framework which sets the self government of Catalonia, but, as it is a Spanish law, it has to be passed in the legislative chamber of the State. Indeed, it isn't a simple act; it is an organic law, according to art. 144 of the Spanish Constitution, so it has some special requirements for being passed in the Congress of Deputies of Spain. Despite of the "cuts" of the Spanish government to the text, it was approved in the 25 of October of 1979 with a support of 88,15% of the Catalans.

## **Contemporary background**

### 2006-2010: the new Statute

Since 1979 the Statute of autonomy of the same year was effective, but in 2006 the Catalan government, formed by three left-wing political party's agreement, promoted a new Statute which moves towards to the federalization of Spain. This Statute is, as said before, an organic law, so after the redaction by the Catalan forces it arrives to the Congress of Deputies. There, some amendments were introduced, especially by the right-wing Spanish party Partido Popular. Most of them passed so the contents of the Statute were modified by reducing the self-government of Catalonia. For example the word "nation" to refer to Catalonia was removed from the legal text and put it on the preamble. However, there was a Referendum on June of 2006 and the proposal of a new Statute, with the modifications of the Congress, reached the majority of votes (73,24%) in Catalonia. The only parties who were against were the Partido Popular, because they considered that the Statute breaks the unity of Spain, and, on the contrary Esquerra Republicana (ERC, the main independentist party) voted no because they considered that the cut in the Spanish congress had emptied the content of the Statute.

But after entered to force in 18 of June of 2006, were presented seven different appeals to the Spanish Constitutional Court by different actors: the Partido Popular against 187 sections, the Spanish Ombudsman against 112 sections, and five autonomous communities (Valencia, Aragón, Murcia, la Rioja and Islas Baleares) against some sections. On 28 June 2010 the Constitutional Court ruled in favour of the appeal of unconstitutionality of the Partido Popular and declared 14 sections unconstitutional and reinterpreted 27 more. It accepted the naming of "nation" of the preamble but stated that it hasn't any legal effect. Other sections pronounced unconstitutional were about the official language, the taxes, the judicial system, the transport or the competences of Catalonia.

### 2010-2014: The so-called national transition

The response to the Judgement was a multitudinous demonstration on July 2010, headed by the Catalan President at that time, José Montilla, of the Partit Socialista de Catalunya (federation of the big Spanish left-wing party). The same year 2010, and after this huge demonstration, the right-wing nationalist party Convergència i Unió (CiU) won the elections of Catalonia. But the mobilization didn't stop, and after the pro-independence demonstration in the "national day of Catalonia", the 11<sup>th</sup> of September of 2012 -one of the biggest in the Catalan history- called for elections to be sure that the majority of Catalans wants to initiate a process of self determination. On the elections of November 2012, although they lost a lot of votes (most of them going to Esquerra Republicana), CiU won again the elections and say that they will start a "national transition" to build "state structures"<sup>2</sup>.

On December 2013 four Catalan political parties (CiU, ERC, the radical left CUP and the ecosocialist green party ICV-EUiA) made an agreement to set a date for the referendum on the 9<sup>th</sup> of November. Conforming to this decision, on January 2013 the Catalan Parliament made a resolution called "Declaration of sovereignty and right to decide of the People of Catalonia". This text, which recognizes

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<sup>2</sup> "The goal is to provide Catalonia state structures" and "Now we make our transition" (12/09/2012) <http://www.324.cat/noticia/1884952/politica/Mas-Lobjectiu-es-dotar-Catalunya-de-estructures-dEstat#comentaris>

Catalonia as a “legal and political subject”, was appealed by the State’s attorney in representation of the Spanish government using the Art. 161.2 of the Spanish Constitution<sup>3</sup>, so only with the challenge to court the resolution are ineffective. A few months later the Court, in the definitive judgement, makes evident that it doesn’t exist any Catalan sovereignty, but the right to decide can be exercised if it suits the legality. The interpretation says that regardless the declaration hasn’t “legal binding effects”, it doesn’t mean that it hasn’t legal effects *tout court*, so although it is only a resolution, it is directed to draw the political action of the Catalan government, that’s why a simple resolution was suspended.

After that, on April 2014, three Catalan political parties presented a bill to the Congress of Deputies to make an assignment of competences to Catalonia with the aim of organize the legal and binding referendum about independence. With 299 votes against and only 49 in favour, the proposition was denied in the Spanish Congress. However, the Catalan Parliament made a “law of consultation” in 19 September 2014, the day after the Referendum of Scotland, to organize the referendum within “the Catalan and the international legality”<sup>4</sup>. This law was passed by the support of almost 80% of the Catalan Parliament and it was supposed to be the legal framework to organize the vote on 9<sup>th</sup> of November.

On 28 October the Catalan president Artur Mas signed the decree of convocation of the 9<sup>th</sup> of November. Nevertheless, the Spanish government presented again to the Constitutional Court both legal documents using the art. 161.2, so the consultation becomes illegal. The appeals of the State’s attorney pose that the consultations provided in the Law are real referendums, and only the central state has capacity to organize it. Also it says that the question of this concrete referendum affects to the national sovereignty that belongs to the Spanish people. In such a way that if the law is unconstitutional, the Catalan government has to do something else to organize the vote fixed on December 2013 by the majority of Catalan forces. So thereby they announced a participative process of vote for the 9<sup>th</sup> of November shared by the institutions and the civil society with volunteers. Finally, despite a new suspension of the alternative consultation by the Constitutional Court, the vote was held, disobeying the statement of the Court.

## 4. Applicable law

### I. Right to self determination

#### **International public law**

##### Introduction

This right to self determination isn’t a simple and one-dimensional right, in that sense it supports multiple meanings, basically three: first of all, the freely determination of the people of its political condition and form of government, linked to the Principle of democracy and the individual interest in front of the State; secondly the right of one people to maintain its political and economical organization, or to change it, without the interference of other states, which is linked with the principle of non-intervention; and finally exists the Right of self determination of one people, with its own identity and national character, to become a state and organize its political life and society without the interference of other states. The last meaning seems to be the most pure, in the sense that the others too can fit in other international institutions and principles, the first one match with the principle of democracy -in

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<sup>3</sup> “The Government may appeal to the Constitutional Court against provisions and resolutions adopted by the bodies of the Self-governing Communities, which shall bring about the suspension of the contested provisions or resolutions, but the Court must either ratify or lift the suspension, as the case may be, within a period of not more than five months.”

<sup>4</sup> Speech of the Catalan President Artur Mas, 10 april 2014. <http://www.telenoticies.com/noticia/2368673/politica/Mas-aposta-per-la-llei-de-consultes-i-marcs-legals-internacionals-per-al-9-N>

fact only relevant for the domestic law- and the second one with the sovereignty and non-interventionism.<sup>5</sup> So we will try to analyze the right of self determination in its specific meaning.

The right to self determination has a philosophical background since the French Revolution and it has been developed through the years having different meanings depending on the political global context. Also the Declaration of Independence of the United States of 1776 can be one of the first written examples of its origin. However, the modern conception of this right starts with a statement given by the United States president Woodrow Wilson in 1918, known as the "Fourteen points". The point number five opens the door to recognize, theoretically, the right to self determination of the colonies.<sup>6</sup> Others, like the leader of the Russian revolution, Vladímir Ilich Uliánov, "Lenin", defended the right to self determination of the worker class as a tool for its emancipation, always subordinated to the class war. Despite this pronouncements, and although the League of Nations was inspired in the Wilson's Fourteen Points, this international organization didn't recognized it as a positive rule of international public law. But after the Second World War, the Right to self determination ceased to be a political or rhetorical principle to become a right enshrined in the Charter of the United Nations of 1945, specifically in the articles 1 and 55 of the Charter<sup>7</sup>. In the Art. 1 the text exposes "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".

The main goal of these articles was to allow the colonies existing before the Second World War became new independent states. But, in the light of the complexity of the global order in the forties, it must be highlighted that the regime established in the Charter it is not as simple as enshrining a binding right, so these articles can be subjected to different interpretations. And that's why it has been said that this principle has only a programmatic value, because in reality the charter establishes two different regimes for the colonies: in Chapter XI, on the non-self-government territories, and the one of Chapters XII and XIII to provide for a system of international administration of trust territories. So, as we can see the Charter seems to be contradictory, because in one hand establish a legal framework under the categories of non-self-governing territories or the trust territories and in the other hand recognise the right to self determination of peoples<sup>8</sup>.

#### Scope of the right to self determination

But this dilemma find a solution rapidly because of the own dynamic of the UN and the international society, which convert what was a programmatic or desirable goal to a basic principle of international public law, considered a *ius cogens* rule in the light of article 53 of the Vienna Convention of the law on treaties. It was the Resolution 1514 of the UN of 1960<sup>9</sup> which enshrines the right to self determination but reducing the scope to the cases of colonial and foreign domination. In that sense the resolution, in its 6<sup>th</sup> paragraph says that "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations".

On the next day, the general assembly of the UN passed the Resolution 1541 developing more concretely the right to self determination, which can be exercised in three ways: becoming an independent and sovereign state, by the free association with another independent state or by the integration to an independent state. After that, in 1966, the general assembly made the Resolution 2189

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<sup>5</sup> "Los límites del principio de autodeterminación de los pueblos", Modesto Seara Vázquez (professor of political science of UNAM), conference pronounced in the Courses of Human Rights

<sup>6</sup> "Free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined."

<sup>7</sup> United Nations, Charter of the United Nations, 26 of June 1945, San Francisco

<sup>8</sup> "El derecho de autodeterminación de los pueblos a la luz del derecho internacional" Romualdo Bermejo Garcia (profesor of public international law of the University of Leon)

<sup>9</sup> "Declaration on the Granting of Independence to Colonial Countries and Peoples", United Nations general assembly resolution 1514 (XV), 14 of December 1960

which remember that colony regimes are a problem for peace and international security. But the big step to make this right definitively part of the international public law system were the two covenants of human rights of 1966, on one hand the International Covenant on Civil and Political Rights (ICCPR) and on the other the International Covenant on Economic, Social and Cultural Rights (ICESCR), which have in their identical article 1 right to self determination.

Also there was the UN Resolution 2625 of 1970<sup>10</sup> which developed the decolonization phenomena that UN had promoted and made clear that it is needed some basis to invoke the right. That's because, as has been said, it exists other principle of positive international law which is the respect for the national unity and the territorial integrity, repeated many times in the resolution. Although, this resolution it is not limited to self determination of colonies to become independent states: it is more open and can be interpreted in different sense. This resolution introduces, not only the right to self determination in the colonial, racist or foreign context, but imposes the *duty* of the states to respect and promote this principle. Also the resolution express that this principle must be applied in the states which have no colonies or neither occupied foreign territories under its sovereignty. These cases, when it is exercised the self determination but not to achieve the independence, it is called the internal self determination<sup>11</sup>.

The internal self determination is referred to situations where the option it isn't necessarily the independence, it can be an autonomy, federation, municipality or regional, or even the constitutional option for a unitary state and it was been stated thinking on those situations which the conflict can be solved with a different territorial organization. On the contrary, the external self determination is the one for colonies, occupied territories, national minorities whose human rights are violated and so on. The resolution ensure that the territorial integrity prevails to the right of self determination and only can be applied, even the independence, in this situations where the state hasn't a representing government of the all people. So for example it can be applied when a people of a state suffer marginalization because it can't participate in the political institutions or even in the public life or the economical and private area. On 1995 there was another Resolution of the United Nations -Resolution 49/148- which asserts: "Welcoming the progressive exercise of the right to self-determination by peoples under colonial, foreign or alien occupation and their emergence into sovereign statehood and independence". As we can see the UN insist in the fact that the peoples must comply some requirements to exercise the right to self determination.

So, therefore, the possible arguments for the self determination of Catalonia can't be found in the International Public Law. First of all because Catalonia it is not a colony. It hasn't been any foreign invasion to Catalonia neither a racial domination there, because Catalans aren't a different race or ethnic minority. Spain respects the human rights and there aren't any violations which affects the Catalan people or its institutions. Spain is a consolidated state and its national unity is an objective reality. Catalans aren't discriminated in the public, economic or social life. So there is not any basis to exercise the external right to self determination. Neither the Charter of United Nations nor the resolutions which developed the principle, or the International Covenants of Human Rights, permit a territory like Catalonia to exercise this right.<sup>12</sup> In fact, Spain, as a member of the United Nations respects the right to self determination, and it has been exercised many times, for example when the Constitution was approved or when the Autonomous Communities like Catalonia had voted its Statutes of Autonomy. So if the Spanish States respects the right to self determination as a member state of the UN also it has the right to fight a possible unilateral independence protecting the national unity and the territorial integrity against internal or external attacks.

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<sup>10</sup> "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations", United Nations general assembly resolution 2526 (XXV), 24 of october 1970

<sup>11</sup> "The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."

<sup>12</sup> "The secession of territories in a member states:effects on the law of European Union", Araceli Mangas Martín (Professor of international public law and international relations of Universidad Complutense de Madrid)

## **Constitutional law**

### The right to self determination in the Constitution

In 1978, when the Spanish constitution was approved, there were some purposes to include the right to self determination in the text. From the radical left to some sectors of Christian democracy defended this inclusion, even the PSOE (big left-wing party) and the PCE (communist party) recognize this right as a political principle. The debate was in three different moments of the process.

Firstly, around the article 1.2 of the Constitution which states “National sovereignty belongs to the Spanish people, from whom all State powers emanate”. There were some amendments to be changed, for example the Basque nationalist purpose to establish that the sovereignty resides in the “peoples” and the Catalans prefer not putting any adjective or even talk in plural and establish that it reside in the “people” in abstract. None of these amendments were passed and the Constitution only recognizes the sovereignty of the Spanish people.

Secondly, the article 2 starts saying “The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards it recognises and guarantees the right to self government of the nationalities and regions of which it is composed and the solidarity among them all”. Basque nationalists wanted to replace the expressions “indissoluble unity of the Spanish Nation” for “the plurinationality of the Spanish State”. Catalans also wants to get out the expression of the indissoluble unity. Finally the majority defended the first option and these changes didn't thrive.

Thirdly, there was an amendment which purpose to include the right to self determination in the Constitution. Only the radical nationalist of the Basque country defended it, and the moderate nationalists, both Catalans and Basques, abstained.<sup>13</sup>

As we can see, there had been a rejection, coming not only for the Spanish parties but for most of the nationalist parties of Catalonia and the Basque country, to include the right in the constitutional text. Therefore the conclusion is that Spanish Constitution doesn't recognize in its body the exercise of the right to self determination. Articles 1.2 and 2 make clear that only exists one Spanish nation and that the sovereignty of the states comes from this unique nation. In fact, excluding the historic URSS or Yugoslavia Constitutions, there aren't any actual constitutions that recognize this right. But this is obvious because any state would be broken in different parts and one of the main goals of a state is to preserve its territorial integration.

### The right to self government

Despite the right to self determination is enshrined in the constitution, in Spain it exist different Autonomous Communities. But it must to be said that this autonomy, this self government, emerges from the Constitution. So the “State of autonomies” is created by a decentralization of power, not by an integration of different sovereign territories as the federal or condefederal model determine. This affirmation is also supported by the existence of article 145.1 which remarks that “Under no circumstances shall a federation of Self-governing Communities be allowed.” The Spanish Constitutional court in its judgement 4/1981<sup>14</sup> stated clearly that “autonomy is not sovereignty”(...)“in any case the principle of autonomy can oppose the principle of unity”.

Section 2 of the Constitution makes three important affirmations. The first one is the sentence “the constitution is based”. So the Constitution comes after the Spanish Nation, which determines that Spain is an ethical reality. The second one came immediately after and states “on the indissoluble unity of the Spanish Nation” which is stressed by the next words “the common and indivisible homeland of all Spaniards”. And finally, the third one recognizes the “right to self government of the nationalities and

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<sup>13</sup> “El derecho de autodeterminación en nuestra reciente vida constitucional: análisis y problemática”, Revista de Derecho político, núm. 34, 1991, pp. 143-188

<sup>14</sup> Judgement 4/1981, of 2 of february 1981. Case “L.R.B.R.L.”



regions".<sup>15</sup> So, as we can see the self government is totally submitted to the previous sentences which ensure the unity of the Spanish state.<sup>16</sup>

In accordance with articles 166 to 168 of the Constitution<sup>17</sup>, are the General Courts of Spain the unique institution which is allocated to configure the state organization, so they represent the constituent power that can even make a constitutional change. Without changing the constitution it is impossible to include the right to self determination in the Spanish legal system because it will be against the principles of the text of 1978.

In conclusion, the constitutional law of Spain didn't recognize the right of self determination for Catalonia, or other territory or autonomous community, but there is no basis to say that it can't be included if the Constitution is modified.

## **Jurisprudence**

If we take a look over the world in some cases concerning the same problem analysed here, rapidly we'll realise that there aren't many cases with the same characteristics than this one. Although there are a lot of national liberation movements around the world, most of them reflects situations of ethnic or religious conflicts, and are located in states without democratic tradition or directly involved in war. But we can find a similar case in Canada with Quebec, something which has been approached by the Supreme Court of Canada in Reference re secession of Quebec in 1998.<sup>18</sup>

The opinion of the Court reaffirms what have been said. First of all the Court stated that the unilateral secession was not legal under the Canadian Constitution, something that seems to be obvious. But the interesting point is its opinion about the question of the paper that international law can take. The Court affirm that international law "does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their 'parent' state". It says that the right to self determination can be exercised only within the legal system of the state by negotiation, but not unilaterally. The Court accepts that in some situations and under certain circumstances the international law permits the self determination, but this situation is neither the Quebec nor the Catalan.

The Court determines that to prevent threats to an existent state's territorial integrity the right to self determination must be sufficiently limited. This limitation occurs when the government represents the whole of the people of its territory without discrimination and respects the principle of self determination in its own internal arrangements, and then the right can be exercised unilaterally. The Court opinion remembers that the right to secede was meant for peoples under a colonial rule or foreign occupation. The case of Quebec, and of course of Catalonia, doesn't fit in these definitions, so the way to exercise the right is negotiating the terms politically. The Court is very clear when it says "Although much of the Quebec population certainly shares many of the characteristics of a people, it is not necessary to decide the "people" issue because, whatever may be the correct determination of this issue in the context of Quebec, a right to secession only arises under the principle of self-determination of people at international law where "a people" is governed as part of a colonial empire; where "a people" is subject to alien subjugation, domination or exploitation; and possibly where "a people" is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state."

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<sup>15</sup> Preliminary part, section 2, Spanish Constitution.

<sup>16</sup> "sobre el derecho de autodeterminación y su compatibilidad con la constitución" Jorge Rodríguez-Zapata Pérez (professor of Constitutional law. Greatest lawyer of the Council of State. Supreme Court judge)

<sup>17</sup> "The right to propose a constitutional amendment shall be exercised under the provisions of section 87, subsections 1 and 2", Part X, Constitutional amendment, section 166. Spanish Constitution

<sup>18</sup> Reference re Secession of Quebec, 20 of August 1998, 2 S.C.R. 217, case number 25506

## European Law

The European Union is an economical and political union of some states of Europe, and nowadays Spain is part of the EU since 1986. The European Union was created by states and they are the cornerstone of it. It is based in different treaties, fundamentally in the Treaty on the European Union (Maastricht treaty of 1992) and the Treaty on the Functioning of the European Union. It is important to say that, unlike in the activities of the international organizations the custom becomes law, the EU is a *sui generis* organization which totally respects the Legality principle, a matter that the European Court of Justice has made clear.

Therefore, none of the treaties of the Union recognize the right to self determination. In fact the article 4 of the Treaty of Lisbon (the Treaty on European Union) states in its paragraph 2 that "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." As we can see the "territorial integrity of the state" is established in the treaty as one of the principles of the EU.

The European Union has made clear that the internal conflicts must be resolved by internal ways, and it is not in the scope of the UE consider the problems of the territorial organization of state members. In that sense, on 3 of November 2013 the President of the European Parliament, Martin Schulz, made a declaration on the conflict here being analysed saying that "it is impossible to make comments because it isn't an affair of the European Parliament, it has to be debated and solved in Spain and in Catalonia"<sup>19</sup>. He wasn't the only who talked about this issue, a few days after the President of the European Commission, Van Rompuy, on 12 of December said that he hasn't the duty to respond to internal questions of the states and she ensured that if Catalonia became a new state it won't be *ipso facto* member of the EU.<sup>20</sup>

## II. Unilateral declaration of independence

The unilateral declaration of independence is a matter that is not going to be analysed here because the case of Kosovo can't be compared to Catalonia. Not only because the armed conflict ongoing a few years ago, also because the situation of discrimination and ethnic prosecution occurred. It is known that the advisory opinion of Kosovo<sup>21</sup> state that the declaration of Kosovo didn't violate the international public law, but this is a specific case that might be studied in another paper. The only think must to be said here is that the Spanish constitution states "The mission of the Armed Forces, comprising the Army, the Navy and the Air Force, is to guarantee the sovereignty and independence of Spain and to defend its territorial integrity and the constitutional order."

## 5. Summary of reasoning

The self determination is a complex right which is connected to the historical and political context of its time. It is a right with a huge importance in the international public law, and had had an important role with the decolonization and the construction of the current global order. But, international public law is, fundamentally, created by states, and states don't want to lose neither power nor territory. So the evolution of this right meant that it can only be applied to some stipulated cases. Although a literal interpretation of the Charter of the United Nations, or even the Covenants of New York, could seem to be an argument for any People to exercise the right, the resolutions of the UN have limited the scope of

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<sup>19</sup> <http://www.lavanguardia.com/politica/20131103/54393006025/martin-schulz-catalunya-no-mellara-estabilidad-europa.html>

<sup>20</sup> Madrid, 12 December 2013 (EUCO 267/13)

<sup>21</sup> Advisory opinion No. 141 of 22 of July 2010. International Court of Justice

its effectiveness. Catalonia doesn't fit in any of these cases so it can't exercise the external right to self-determination for becoming an independent state.

The Spanish Constitution only recognizes the Spanish People, and is very clear to state the unity of the Spanish state and its territorial integrity. This Constitution has been voted by the majority of Catalans and permitted the Spanish State to become a modern and democratic state in the European Union. We have seen that the Constitution, in fact, ensures an autonomous regime for Catalonia, which is enshrined in the text. The Constitution also can be changed and there exist two procedures to do it, so if it is modified in its articles 1 and 2, in the sense to recognize other Peoples in the state, the Right to self-determination of Catalonia can be exercised. The jurisprudence of the Supreme Court of Canada insists in the same idea, opening the door to a constitutional reform to find a solution.

To conclude, the conflict about the territorial model of Spain is not under the scope of the right to self-determination of international public law so it has to be solved in legal terms and always in the framework of the supreme law of the legal order: the Constitution.

## 6. Requests

On the basis of the preceding submissions, the Government of Spain prays the court to adjudge and declare that:

1. The right to self-determination enshrined in the international public law can't be applied in the case of Catalonia.
2. The solution of the ongoing conflict in Spain must be resolved using the legal framework and always within the Constitution, which can be changed by its own procedures.