

Repression in Spain

Intro to the text: Maybe you have already read about the new spanish citizen security law, commonly called "Ley Mordaza (Gag)". About how with it, the State mechanism wants to repress any kind of civil disobedience. Maybe you also read about the recent denounces against singers, poets, and Tweeters... because their lyrics or jokes have been consider terrorism apology.

Clearly, the State forces are working hard in Spain!!

With this article, we want to show and explain which kind of laws legitimate the Spanish State actions. Where they come from and where they are going to. Past and future of Spanish repression...enjoy!!

The current anti-terrorist law source is the one from 1984, proposed by the Spanish Socialist Party - PSOE.¹

I don't know why we get still surprised by them. As the judge Jose Manuel Bandres said already during the 80s², this law was THE way to force an undercover exception state. With the excuse of being the legal instrument to fight against the ETA terrorist group³, basic social rights were rooted out⁴. Some of the mechanism helping the authorities to protect us (from us) were: possibility of being detained for ten days; if one person belonging to an organization was condemned, the authorities can decide to dissolve the political group; detentions, house searchings, surveillances and telephone tapping/email searching were allowed if the government authority consider them appropriate; and broadcast media closure or occupation were allowed by mandate of the judge. These actions were/are in conflict with the constitutional rights of: a maximum of 72 hours detention, inviolability of your house and your phone/mail without judicial warrant, freedom of speech, and the right to be informed, to meet, to associate and to not be discriminated. Anyway, so much for the constitutional rights.

The law has being updated in the last ten years, with great modifications. The Criminal Penal Code was reformed in 2000 to expand a term already existing, "apology of terrorism", to punish those who exalted or incited terrorist crimes. The maximum period of detention of 10 days was decreased to 5 days (that's the only good thing), suspects can be put in solitary confinement (maximum of 13 days)⁵, can not inform family or a 3rd person, cannot receive or send correspondence or communications, or receive private doctors visits, relatives, friends...no one. During this detention time the person has no right to hire a personal lawyer, or have a private interview with them. The whole investigation can be under "secret of summary" (secret of judiciary investigations) and can be declared totally or partially secret for all the parties involved.

Due to the consideration of the *Kale Borroka* (young radical independence left movement from Pais Vasco, active in violent protests against the government) as low level terrorism, the authorities allowed minors to be judged by the Audiencia Nacional, with punishments up to 18 years of prison⁶. In 2002, the modification of the Parties Law allowed to outlaw some political groups of the "abertzale left" because:

Political parties which attack this democratic regime of liberties, [...] or politically support the violence and activities of terrorist groups, complement or politically support the action of terrorist organizations, with the purpose of subverting the constitutional order, or seriously alters the public peace, terrorize the public authorities or certain individuals or groups, can be banned.

In 2003, Herri Batasuna, Euskal Herritarrok and Batasuna were banned (alleging they were the political arm of ETA), and afterwards, because linkages, Accion Nacionalista Vasca and Partido Comunista de las Tierras Vascas were also banned, and then Herritarren Zerrenda, Autodeterminaziorako Bilgunea...and more⁷. In 2006, the Communist Party of Spain – PCE was also banned because links with GRAPO⁸, and in 2009 the state tried to banned Iniciativa Internacionalista to avoid their election for the European Parliament.

1 https://es.wikipedia.org/wiki/Legislaci%C3%B3n_antiterrorista_espa%C3%B1ola

2 http://elpais.com/diario/1985/04/22/espana/482968810_850215.html

3 Documentary: Memoria, dignidad y lucha <https://www.youtube.com/watch?v=J9jzOIN6Jk8>

4 http://www.lahaine.org/est_espanol.php/ley-antiterrorista-de-espana-ejemplo

5 https://web.archive.org/web/20081115024604/http://www.hrw.org/spanish/informes/2005/spain0105/6.htm#_Toc93468088

http://www.elconfidencialdigital.com/politica/Juzgado-Menores-Audiencia-Nacional-Castro_0_520747936.html

6 <https://web.archive.org/web/20040618171714/http://web.amnesty.org/report2004/esp-summary-esl>

7 http://en.wikipedia.org/wiki/First_of_October_Anti-Fascist_Resistance_Groups

8 <https://www.diagonalperiodico.net/libertades/29391-enaltecimiento-la-pintada-al-twitter.html>

Prison policies were also modified, with maximum penalties for terrorist incremented from 30 to 40 years, with dispersion policies (just 3% of ETA prisoners are in the Pais Vasco or Navarra), with an automatic "first grade" classification for terrorist prisoners, or preventing advance probation and other benefits for them. In July 2015 some sections of the Criminal Code related to terrorism were again amended, including a broader definition, and allowing the apology of terrorism to be now punished with up to 3 years in prison, and therefore the authorities can order "pre-trial detention/remand".⁹

Who is the institution in charge of judging this terrorist crimes?

An organization specially designed for this task. Terrorism crimes in Spain do not fall within the jurisdiction of the normal regional courts, but within the jurisdiction of the Audiencia Nacional¹⁰, located in Madrid and created in 1977. It can judge everyone who is "a member, or a supporter of an armed band"¹¹. Thus, this entity judges crimes against the crown, that alter national economy, organized drug traffic, crimes committed outside the national territory, or foreign courts criminal proceedings under international laws (but concerning Spain), as well as European extraditions and detentions.

The existence of this repression structures will not just affect activists. Every person can easily be guilty of terrorism apology, illicit association, or for being part of an armed band...because you never know when your perspectives and opinions will crash with the legal authority's ones.

Some recent cases (in between 2009 and 2015 the Audiencia Nacional has opened 1115 proceeding of terrorism exaltation) that have shown how the state is using this anti-terrorist law to banned opinions critical with their policies are:

- 2014, Pablo Hasel, a rap singer, was accused and condemned because exaltation due to his lyrics¹²
- 2014, a 21 year old was condemned to prison (12 months), absolut disqualification for 7 years and to pay the cost of the trial...for sticking an ETA sticker in a wall in front of police.¹³
- Aitor Cuervo, a poet that on 2014 was accused of doing terrorism exaltation because the content of his work, Twitter and Facebook posts (e.g. "It is more painful the death of a worker than the execution of a "pepero"-from PP right wing party-councilman "), and that has been condemned to 18 months of prison by the Audiencia Nacional.¹⁴
- Cesar Strawberry, singer of the group Def con Dos, who was charged with the prosecution demanding 20 months of prison for the content of some of his lyrics ("e.g. Esperanza Aguirre fascism without complexes makes me even miss the GRAPO"). He was released without charges.¹⁵ During January 2017, Cesar Strawberry was condemned to 2 years of prison by the Supreme Court, without another trial, accused for terrorism apology.
- These two persons prosecutions were part of the "Spider Operation III and II - Operacion Araña (there was a I)" - which chased more than 40 persons for terrorist apology (mostly using social media).¹⁶

9 <https://www.diagonalperiodico.net/libertades/29391-enaltecimiento-la-pintada-al-twitter.html>

10 https://en.wikipedia.org/wiki/Audiencia_Nacional_%28Spain%29

11 https://en.wikipedia.org/wiki/Audiencia_Nacional_%28Spain%29

12 <https://www.diagonalperiodico.net/libertades/29390-condenen-por-canciones-dice-mucho-del-estado-vivimos.html>

13 <http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7491673&links=enaltecimiento&optimize=20151014&publicinterface=true>

14 https://twitter.com/Aitor_Cuervo

<https://www.diagonalperiodico.net/global/29615-poeta-aitor-cuervo-se-enfrenta-restricciones-la-libertad-expresion.html>

15 <http://www.elmundo.es/cultura/2015/05/19/555bafb8268e3ee5418b4597.html>

<http://www.elmundo.es/pais-vasco/2015/05/19/555ae2b8e2704e874d8b456e.html>

http://cultura.elpais.com/cultura/2016/07/19/actualidad/1468922662_941636.html

16 http://politica.elpais.com/politica/2014/11/06/actualidad/1415258932_240977.html

http://politica.elpais.com/politica/2014/04/29/actualidad/1398796114_166592.html

- Jose Valtonyc, a rap singer that was accused recently of exaltation of terrorism (“e.g. armed occupation of Marivent” - which is a palace from the spanish monarchy in Palma de Mallorca).¹⁷
- Los titiriteros, a puppet/theater players which were detained (and isolated) because a really bad joke (“Gora ALKA-ETA”, which is something like “Cheers ALKA-ETA”) that can be consider as terrorist exaltation within the spanish law. They were released without charges.¹⁸

In 1992, the **Citizen Security Law**, commonly called the Corcuera Law (*kick on the door*)¹⁹, allowed the entrance to private houses if the police had some suspicion that something illegal was happening (it was banned one year after, because of unconstitutionality); the obligation to identify yourself with an identity card (DNI); and give the possibility of being detained (not jailed) without a lawyer. In July 2015, there was an upgrade of this “protection of public safety” law, now called: **the Mordaza (Gag) Law** (*kick on the mouth*). It was approved JUST with the People's Party (*Partido Popular*) votes, and with great concerns even from international human right organizations, such as Amnesty International²⁰ (PP did not need anyone else due to the awesome democratic system).

This law allows²¹:

- Hot devolutions (repatriation) of migrants²² - Aliens Law were also amended to allow mass deportations from Ceuta and Melilla..
- Black lists (art 43.1) – and the Ministry of Interior will be the keeper of these grey statistics from 1 up to 3 years.
- Police statements/declarations to be enough proof (probative value) in “disrespect” cases (art 52).
- Preventive identifications and searchings (art 16). And if you do not give your ID, you can be held in the commissary for up to 6 hours.
- Police can record you...but you can not record the police.
- Severely limitation of freedom of assembly.

And...is a law completely full of ambiguities and holes. It is not clear why you are accused, or how what you did was illegal, because “perturbation of citizen security” (punishable with up to 600 000 euros) or “disrespect to police officers” are pretty subjective terms. The type of repression achieved with this law is the so called **Burorepression**. The state suppressed penal/criminal offence (there were 2 different penal levels, severe and minor) and has converted them into **personal offense** still inside the penal criminal code (e.g. when somebody punch you, you denounce the person), and **administrative infractions**, the ones against public order. These last are no longer inside the Criminal Penal Law, so you have not legal guaranties (at least the guaranties that a judge can give you) because the police and/or administration will be the judge. So in some cases the judiciary power and the executive are the same.

As an example, the next infractions can be directly punish with fines:²³

From 100 to 600 EURO:

17 <https://www.diagonalperiodico.net/libertades/32177-valtonyc-luchare-por-la-libertad-expresion-aunque-exista-riesgo-entrar-la-carcel>

18 <https://www.diagonalperiodico.net/panorama/29282-caso-titiriteros-madrid.html>

19 <http://pendientedemigracion.ucm.es/info/uepei/corcuera.html>

[https://es.wikipedia.org/wiki/Ley_Org%C3%A1nica_sobre_protecci%C3%B3n_de_la_seguridad_ciudadana_\(1992\)](https://es.wikipedia.org/wiki/Ley_Org%C3%A1nica_sobre_protecci%C3%B3n_de_la_seguridad_ciudadana_(1992))

20 <https://www.amnesty.org/en/countries/europe-and-central-asia/spain/report-spain/>

<https://www.es.amnesty.org/actua/acciones/espana-ley-seguridad-ciudadana-oct14/>

21 <http://www.nytimes.com/2015/07/01/world/europe/spains-new-public-safety-law-has-its-challengers.html>

http://www.eldiario.es/sociedad/Ley-Mordaza-vigor-manana_0_403859798.html

<https://www.theguardian.com/world/2015/mar/12/spain-security-law-protesters-freedom-expression>

http://www.nytimes.com/2015/04/23/opinion/spains-ominous-gag-law.html?_r=0

22 <https://www.amnesty.org/en/countries/europe-and-central-asia/spain/report-spain/>

<https://www.es.amnesty.org/actua/acciones/espana-ley-seguridad-ciudadana-oct14/>

23 <https://www.diagonalperiodico.net/tags-tags-tematicos/ley-mordaza>

<https://www.diagonalperiodico.net/blogs/laconquistadelderecho/la-ley-proteccion-la-seguridad-ciudadania.html>

- Meetings in public spaces.
- Climbing buildings.
- Occupation or in a building which is not yours.
- Occupation of the public space.
- "Making ugly" public goods.
- Peddling.

From 601 to 30000 EURO:

- Demonstrations in front of the congress, senate or autonomous parliaments.
- Refusal to dissolve a meeting.
- Preventing eviction.
- Resistance to the authority.
- Informative pickets.
- Publishing of images of the state security agents.

From 30001 to 600 000 EURO:

- Protests in telecommunications infrastructures such as RTVE.
- Celebration of public entertainment/shows/recreational activities...that have not been authorized.
- Illegal demonstrations

What has been happening since the approval of this security law?

In the period ranging from the approval of the law until February 2016, 40000 sanctions have been registered (18.3 million euros in fines) – 47% denounces have been for drugs and 38 % due to citizens security. Mostly of the last ones were for disrespect to the security forces (30 persons/day during the time studied), punishable with in between 100 to 600 euro. Just remember that in these administrative causes, the denunciation of the agent is enough to be fined.²⁴

- **31/10/16** Ivan Fernandez was fined by the Ertzaintza for using a jacket with the letters ACAB in a demonstration against the new education law (Lomce) in Bilbao.²⁵
- **27/10/16** Verstrynge (politologist) faced a prosecution of 3 years in prison after being detained in a demo against Felipe VI.²⁶
- **07/10/16** A person was charged after calling some agents, on Facebook, "mierdas de pikoletos" (police assholes).²⁷
- **22/07/16** A person was charged after calling some agents, on Facebook, something like "lazy bastards"²⁸

24 http://www.eldiario.es/sociedad/sanciones-diarias-Policia-Ley-Mordaza_0_489951750.html
http://www.eldiario.es/andalucia/APDHA/primer-aniversario-Ley-Mordaza-ultimo_6_536556347.html
<http://kaosenlared.net/mas-de-17-mil-personas-multadas-en-el-primer-ano-de-la-ley-mordaza-averigua-los-motivos/>

25 http://www.eldiario.es/sociedad/Multan-Ley-Mordaza-ACAB-Bilbao_0_575342867.html

26 http://www.eldiario.es/politica/Verstrynge-paso-vamos-quedar-calabozos_0_573943553.html

27 <https://www.amnesty.org/en/countries/europe-and-central-asia/spain/report-spain/>
<https://www.es.amnesty.org/actua/acciones/espana-ley-seguridad-ciudadana-oct14/>

28 <http://www.ecorepublicano.es/2015/07/demo-que-le-aplican-la-ley-mordaza-por.html>

- **05/07/16** A guy was fined because he called the police who was doing him an alcohol test “colega” (dude)..²⁹
- **07/06/16** 600 euro fine to 2 yayoflautas (elder activist) from Cordoba, because police said that they did not identify themselves when complaining to police about PP electoral publicity being given to school children.³⁰
- **23/05/16** Belen Lobeto was charged by the police for wearing a bag with a cat face and the message “All Cats Are Beautiful”³¹
- **21/05/16** 600 euro fine for a Catalunya Radio journalist, due to disobedience to authority (police did not allow journalist to enter the judiciary dependences).
- **06/05/16** Jose Manuel Rodriguez was fined 600 Euro because of a video on Youtube showing how police requisitioned fish in Cadiz.³²
- **06/04/16** “Argia” Axier Lopez published without permission images of a police operation, 600 Euro fine (images were about the detention of Naroa Ariznabareta).³³
- **13/02/16** Police fined a baker woman (Emilia Navarrete) for saying loudly that a police car was parking badly (and the police owner of the car was buying some sweets there).³⁴
- **16/08/15** A woman was fined with €800 for posting a photograph of a police car parked illegally in a disabled bay.³⁵
- **15/02/14** Repression to the PCE (communist party), police assault to the social center 13 Rosas in Alcala de Henares (Madrid), where they detained 2 people (Elena and Jesus, still waiting for the trial) and hurt 5 more.³⁶
- **December 2015:** A member of the platform No Somos Delito (We are not a crime) was detained and judge because a demonstration against the Ley Mordaz

Clearly, these reinforcements in both the anti-terrorist (broadening of the term terrorism apology, deprivation of access to a lawyer, increase on detention time, isolation and solitude confinement, deprivation of communication, prison dispersion) and the public safety (punishment of *escratches*³⁷, symbolic actions, protests, right of demonstration and meeting) laws want to protect the current status quo, and are completely oriented to avoid social fights against this situation...they are tying up loose ends, as action-reaction forces.

29 http://www.forotransportistas.es/discussion/4612/ley-mordaza-300-euros-de-multa-por-por-llamar-colega-a-un-guardia-civil#Item_1

30 http://www.eldiario.es/andalucia/cordoba/Multa-protostar-propaganda-electoral-PP_0_524247713.html

31 http://www.eldiario.es/sociedad/Multada-Ley-Mordaza-siglas-ACAB_0_518998719.html

http://www.eldiario.es/rastreador/siglas-ACAB-extienden-Twitter-Malasana_6_520457954.html

32 http://www.eldiario.es/sociedad/Multado-Ley-Mordaza-Youtube-actuacion_0_513049210.html

33 <https://www.diagonalperiodico.net/libertades/29933-multan-por-primera-vez-periodista-por-la-ley-mordaza.html>

34 <http://www.forotransportistas.es/discussion/5999/un-policia-multa-a-una-panadera-por-comentar-que-ha-aparcado-mal-el-coche-patrulla/p1>

35 <https://www.theguardian.com/world/2015/aug/16/spanish-woman-fined-gagging-law-photographing-police>

36 http://www.eldiario.es/tribunaabierta/dia-sentimos-mordazas_6_576802352.html

37 *Escratches* ist ein Begriff, der in Argentinien, Uruguay, Paraguay... und Spanien für eine direkte Aktion benutzt wird, bei der eine Gruppe von Aktivist_innen vor dem Haus oder Arbeitsplatz einer Person demonstriert, um diese Person bloß zustellen, gegen diese zu protestieren und die Öffentlichkeit darauf aufmerksam zu machen, welche schlimmen Dinge diese Person getan hat.