

# OPINION PIECE

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## RULE OF LAW IS UNDER ATTACK IN EUROPE, AND NOT ONLY IN HUNGARY



Source: EITB

By **Arturo Encinar**

Treason, corruption, misappropriation of public funds and even terrorism are some of the crimes covered by the amnesty law recently passed by the Spanish Congress of Deputies. This law, that will most likely come into force in May of this year, aims to exonerate all Catalan leaders from their criminal responsibility following their attempted coup in which they tried to declare independence from Spain on October 1st 2017. Sponsored by Spanish President Pedro Sánchez in exchange for the support of Catalan nationalist parties for his government, amnesty is a frontal attack on the rule of law that should worry European institutions.

### ONE MAN'S UNBRIDLED AMBITION

Last July the Spanish people went to the polls in order to elect a new government. Incumbent socialist President Pedro Sánchez sought reelection to a second term aspiring to revalidate his coalition government with far-left ally Sumar (previously known as Unidas Podemos).

Opinion polling, as well as the ghost of the regional elections that took place just two months before and were a complete wash for the left all across Spain, were sources of pessimism for the incumbent. All indicators pointed towards a likely victory for the right and an ousting of the current government. But Sánchez, above all, is a survivor. And despite coming in second place and seeing a decrease in support for his coalition, the results of the election showed a very narrow –yet feasible– path to securing a second term. With one major caveat: he would need the support of each and every one of the minor regionalist and pro-independence parties that sit in Congress in order to revalidate his government.

The issue of regional identities in Spain is a never ending one. Certain regions of the country like Catalonia, the Basque Country or Galicia are recognized by the Constitution as “historical nations” owing to their distinct languages and traditions. This also means that they see sizable chunks of their populations favor political independence from Spain or, at least, to be granted more autonomy from the central government. These movements are represented by nationalist parties who run not only in regional elections, but also in the general election trying to seek representation in Congress in order to advance their regional agendas. Following the 2023 election, the combined sum of all these parties ascended to 28 out of 350 seats in Parliament, representing 8% of total seats. Usually, their influence in national politics is negligible, however, given the tight election results, the only way that Pedro Sánchez could ensure a second term would be with the affirmative vote from each and every one of them.

### Nationalist parties in the Spanish Congress



These parties are diverse amongst themselves and have different interests. In total there are six nationalist parties that obtained congressional representation in the 2023 election. The Basque Country sent to Parliament the centrist Basque Nationalist Party (PNV) with 5 seats and far left EH Bildu (the political heirs of terrorist organization ETA) with 6 seats. Galicia gave the leftist Galician Nationalist Bloc (BNG) one seat. The Canary Islands elected the centrist Canarian Coalition (CC) with 1 seat. And Catalonia gave representation to leftist party Republican Left of Catalonia (ERC) with 7 seats and catch-all-party Junts with another 7 seats.

It is precisely this last party, Junts, that requires a closer focus. All other nationalist parties were quick to pledge their support to Sánchez (in exchange for precious concessions, of course), but Junts is not like the others. They are the party led by former Catalan President Carles Puigdemont, currently living as a fugitive in Belgium escaping the criminal charges he incurred as the material leader of the illegal independence attempt in 2017. Junts (officially Junts per Catalunya, "Together for Catalonia") was established in 2020 on the foundations of historical party Convergència Democràtica de Catalunya, a traditional Catalan conservative force that had held the regional government between 1980 and 2003, and between 2010 and 2017. However, since Puigdemont and many of their leaders were either sent to prison or managed to escape the country, the party gave up any ideology in order to pursue only two goals: independence for Catalonia and amnesty for its leaders. Naturally, the main demand Junts had for Sánchez in exchange for their support for his government was amnesty. It was initially considered a long shot, given Sánchez's Socialist Party (PSOE) historical opposition to such a measure that would essentially erase the crimes and bury such a traumatic event for the whole of Spain.

In the past, President Sánchez had already granted Catalan leaders who had gone to prison a form of pardon that released them back into the streets, but did not erase their criminal liability. However, the President is one who is known for his malleable principles and his tendency to switch sides if it gives him an extra hour in power. The support of Junts' 7 deputies was essential to the formation of a government and, in an unsurprising move to many, Sánchez greenlighted amnesty, enabling his reelection but marking an unprecedented milestone for institutional erosion in Spain.

The move sparked protest in a way Spain had rarely seen before. The people took to the streets with demonstrations taking place every single day for over a month in all major Spanish cities, even seeing gatherings of hundreds of thousands of people in places like Madrid or Sevilla. The demonstrators demanded that Sánchez would back down from his power-grab and for Europe to take immediate action in the matter.



Source: El Español

## WHY IS AMNESTY RELEVANT FOR EUROPE?

The first proposal of an amnesty law was refused by Congress owing to the opposition of Junts, which deemed that it did not go far enough. The President's team had drafted a proposal that covered all political crimes (treason and all the crimes associated with the attempted illegal secession) but left out terrorism acts –committed by pro-independence militant groups like CDR and Tsunami– and misappropriation of public funds. Two offenses that finally made it to the final text despite having been initially described as “red lines” by Sánchez.

The bottom line of this story is that in 2024 in a modern European democracy, complying with the law is optional if it is in the President's personal interest. Amnesties are important and powerful tools used all across the world to bring peoples together or conclude periods of reconciliation, but in Spain it has not been used to that end. It has been a mere bargaining chip used to advance the ambitions of one man.

There has been no reconciliation whatsoever, but just the erasure of crimes committed by a group of people who do not regret their actions and if anything, have divided Spanish society even more

In other words, Pedro Sánchez with his amnesty law is telling the world that in Spain altering the Constitutional order and disobeying the law is acceptable. That corruption and using taxpayers money to advance illegal actions is acceptable. That terrorism, if it doesn't produce any casualties, is an acceptable way of doing politics. And the most concerning part, that criminals get to dictate the terms of their release from prison if it is politically convenient. To sum it up, that all citizens are not equal against the law, but instead, those who have political power in their hands, get to do crimes and not be punished for their wrongdoing.

Key European values such as the rule of law, equality against the law and even the very principles of democracy are under attack in Spain, and EU institutions should be paying closer attention. For now, the renowned Venice Commission –and advisory body of the Council of Europe that acts in matters of Constitutional Law– has concluded that amnesty in its current form is unacceptable. Their report points out that such a measure should be passed by a parliamentary qualified majority (instead of the absolute majority that Spain used), that it should not be used as a bargaining chip and that it could cause dangerous damage to the rule of law, equality and separation of powers. European Justice is expected to get into the matter in the following months, as EU Justice Commissioner Didier Reynders has been closely monitoring the passage of the law and has shown his concerns with the inclusion of terrorism and misappropriation of funds as part of the amnesty.

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