

OPEN LETTER TO
COMMISSION PRESIDENT JUNCKER AND EUROPEAN COUNCIL
PRESIDENT TUSK

cc. First Vice-President Frans Timmermans

UPHOLDING THE RULE OF LAW IN THE EUROPEAN UNION

31 October 2017

Dear President Juncker, dear President Tusk:

We are scholars, politicians, public intellectuals and members of the European Parliament writing to you with the following concern:

The European Union has proclaimed the Rule of Law principle and respect for fundamental rights and freedoms to be binding on its Member States (Articles 2 and 6 of the Lisbon Treaty). The EU's leadership has been a staunch protector of these fundamental norms, most recently in countering the Polish government's attempts to undermine the independence of judges as well as the Hungarian government's actions to limit civil society and media freedoms.

However, we are deeply concerned that the EU's governing bodies are condoning the systematic violation of the Rule of Law in Spain, in particular regarding the Spanish central authorities' approach to the 1 October referendum on Catalan independence. We do not take political sides on the substance of the dispute on territorial sovereignty and we are cognizant of procedural deficiencies in the organisation of the referendum. Our concern is with the Rule of Law as practised by an EU Member State.

The Spanish government has justified its actions on grounds of upholding or restoring the constitutional order. The Union has declared that this is an internal matter for Spain. Issues of national sovereignty are indeed a matter of domestic politics in liberal democracies. However, the *manner* in which the Spanish authorities have been handling the claims to independence expressed by a significant part of the population of Catalonia constitutes a violation of the Rule of Law, namely:

1/ The Spanish Constitutional Tribunal banned the referendum on Catalan independence scheduled for 1 October, as well as the Catalan Parliament session scheduled for 9 October, on grounds that these planned actions violate Article 2 of the Spanish Constitution stipulating the indissoluble unity of the Spanish nation, thus rendering secession illegal. However, in enforcing in this way Article 2, the Tribunal has violated Constitutional provisions on freedom of peaceful assembly and of speech – the two principles which are embodied by referendums and parliamentary deliberations irrespective of their subject matter. Without interfering in Spanish constitutional disputes or in Spain's penal code, we note that it is a travesty of justice to enforce one constitutional provision by violating fundamental rights. Thus, the Tribunal's judgments and the Spanish government's actions for which these judgments provided a legal basis violate both the spirit and letter of the Rule of Law.

2/ In the days preceding the referendum, the Spanish authorities undertook a series of repressive actions against civil servants, MPS, mayors, media, companies and citizens. The shutdown of Internet and other telecom networks during and after the referendum campaign had severe consequences on exercising freedom of expression.

3/ On referendum day, the Spanish police engaged in excessive force and violence against peaceful voters and demonstrators – according to Human Rights Watch. Such disproportionate use of force is an undisputable abuse of power in the process of law enforcement.

4/ The arrest and imprisonment on 16 October of the activists Jordi Cuixart and Jordi Sànchez (Presidents, respectively, of the Catalan National Assembly and Omnium Cultural) on charges of sedition is a miscarriage of justice. The facts resulting in this incrimination cannot possibly be qualified as sedition, but rather as the free exercise of the right to peaceful public manifestation, codified in article 21 of the Spanish Constitution.

The Spanish government, in its efforts to safeguard the sovereignty of the state and indivisibility of the nation, has violated basic rights and freedoms guaranteed by the European Convention on Human Rights, the Universal Declaration of Human Rights, as well as by Articles 2 and 6 of the basic law of the EU (the Lisbon Treaty). *The violation of basic rights and freedoms protected by international and EU law cannot be an internal affair of any government. The silence of the EU and its rejection of inventive mediation is unjustifiable.*

The actions of the Spanish government cannot be justified as protecting the Rule of Law, even if based on specific legal provisions. In contrast to rule-by-law (rule by means of norms enacted through a correct legal procedure or issued by a public authority), Rule of Law implies also the safeguarding of fundamental rights and freedoms – norms which render the law binding not simply because it is procedurally correct but enshrines justice. It is the Rule of Law, thus understood, that provides legitimacy to public authority in liberal democracies.

We therefore call on the Commission to examine the situation in Spain under the Rule of Law framework, as it has done previously for other Member States.

The EU leadership has reiterated that violence cannot be an instrument in politics, yet it has implicitly condoned the actions of the Spanish police and has deemed the actions of the Spanish government to be in line with the Rule of Law. Such a reductionist, maimed version of the Rule of Law should not become Europe's new political common sense. It is dangerous and risks causing long-term damage to the Union. We therefore call on the European Council and Commission to do all that is necessary to restore the Rule of Law principle to its status as a foundation of liberal democracy in Europe by countering any form of abuse of

power committed by Member States. Without this, and without a serious effort of political mediation, the EU risks losing its citizens' trust and commitment.

When this declaration appears, the crisis will have developed further. We follow closely the situation with the interests of democracy in Catalonia, Spain and Europe in mind, as they cannot be separated, and we insist all the more on the importance for the EU to monitor the respect of fundamental freedoms by all parties.

Signatories (in personal capacity):

Albena Azmanova, University of Kent

Barbara Spinelli, writer, Member of European Parliament

Etienne Balibar, universit  Paris Nanterre and Kingston University London

Cristina Lafont, Northwestern University, USA (Spanish citizen)

David Gow, editor, *Social Europe*

Kalypto Nicolaidis, Oxford University, Director of the Center for International Studies

Mark Davis, University of Leeds, Founding Director of the Bauman Institute

Ash Amin, Cambridge University

Yanis Varoufakis, DiEM25 co-founder

Rosemary Bechler, editor, *openDemocracy*

Gustavo Zagrebelsky professor of constitutional law, University Turin

Antonio Negri, Philosopher, *Euronomade* platform

Ulrike Gu erot, Danube University Krems, Austria & Founder of the *European Democracy Lab*, Berlin

Costas Douzinas, Birkbeck, University of London

Judith Butler, University of California, Berkeley and European Graduate School, Switzerland

Philip Pettit, University Center for Human Values, Princeton University (Irish citizen)

J n Baldvin Hannibalsson, former minister for foreign affairs and external trade of Iceland

Anastasia Nesvetailova, Director, City Political Economy Research Centre, City University of London

Craig Calhoun, President, *Berggruen Institute*; Centennial Professor at the London School of Economics and Political Science (LSE)

Jane Mansbridge, Kennedy School of Government, Harvard University

Arjun Appadurai, Institute for European Ethnology, Humboldt University, Berlin

Thor Gylfason, Professor of Economics at the University of Iceland and Research Fellow at CESifo, Munich/former member Iceland Constitutional Council 2011

Judith Revel, Universit  Paris Nanterre

Robert Menasse, writer, Austria

Nancy Fraser, The New School for Social Research, New York (International Research Chair in Social Justice, Coll ge d' tudes mondiales, Paris, 2011-2016)

Roberta De Monticelli, University San Raffaele, Milan.

Sophie Wahnich, directrice de recherche CNRS, Paris

Christoph Menke, University of Potsdam, Germany

Robin Celikates, University of Amsterdam

Eric Fassin, Université Paris-8 Vincennes - Saint-Denis
 Alexis Cukier, Université Paris Nanterre
 Diogo Sardinha, university Paris/Lisbon
 Dario Castiglione, University of Exeter
 Hamit Bozarslan, EHESS, Paris
 Frieder Otto Wolf, Freie Universität Berlin
 Gerard Delanty, University of Sussex
 Boaventura de Sousa Santos, Coimbra University and University of Wisconsin-Madison
 Sandro Mezzadra, Università di Bologna
 Camille Louis, University of Paris 8 and Paris D
 Philippe Aigrain, writer and publisher
 Yann Moulier Boutang and Frederic Brun, *Multitudes* journal
 Anne Querrien and Yves Citton, *Multitudes* journal
 Susan Buck-Morss, CUNY Graduate Center and Cornell University
 Seyla Benhabib, Yale University; Catedra Ferrater Mora Distinguished Professor in Girona (2005).
 Bruce Robbins, Columbia University
 Michèle Riot-Sarcey, université Paris-VIII-Saint-Denis
 Zeynep Gambetti, Bogazici University, Istanbul (French citizen)
 Andrea den Boer, University of Kent, Editor-in-Chief, *Global Society: Journal of Interdisciplinary International Relations*
 Moni Ovadia, writer and theatre performer
 Guillaume Sibertin-Blanc, Université Paris 8 Saint-Denis
 Peter Osborne, Centre for Research in Modern European Philosophy, Kingston University, London
 Ilaria Possenti, University of Verona
 Nicola Lampitelli, University of Tours, France
 Yutaka Arai, University of Kent
 Enzo Rossi, University of Amsterdam, Co-editor, European Journal of Political Theory
 Petko Azmanov, journalist, Bulgaria
 Etienne Tassin, Université Paris Diderot
 Lynne Segal, Birkbeck College, University of London
 Danny Dorling, University of Oxford
 Maggie Mellon, social policy consultant, former executive member Women for Independence
 Vanessa Glynn, Former UK diplomat at UKRep To EU
 Alex Orr, exec mbr, Scottish National Party/European Movement in Scotland
 Bob Tait, philosopher, ex-chair Langstane Housing Association, Aberdeen
 Isobel Murray, Aberdeen University
 Grahame Smith, general secretary, Scottish Trades Union Congress
 Pritam Singh, Oxford Brookes University
 John Weeks, SOAS, University of London
 Jordi Angusto, economist at Fundació Catalunya-Europa
 Leslie Huckfield, ex-Labour MP, Glasgow Caledonian University
 Ugo Marani, University of Naples Federico II and President of RESeT
 Gustav Horn, Scientific Director of the Macroeconomic Policy Institute of the Hans Böckler Stiftung
 Chris Silver, journalist/author
 James Mitchell, Edinburgh University
 Harry Marsh, retired charity CEO
 Desmond Cohen, former Dean, School of Social Sciences at Sussex University
 Yan Islam, Griffith Asia Institute
 David Whyte, University of Liverpool

Katy Wright, University of Leeds
Adam Formby, University of Leeds
Nick Piper, University of Leeds
Matilde Massó Lago, The University of A Coruña and University of Leeds
Jim Phillips, University of Glasgow
Rizwaan Sabir, Liverpool John Moores University
Pablo Ciochini, University of Liverpool
Feyzi Ismail, SOAS, University of London
Kirsteen Paton, University of Liverpool
Stefanie Khoury, University of Liverpool
Xavier Rubio-Campillo, University of Edinburgh
Joe Sim, Liverpool John Moores University
Hannah Wilkinson, University of Keele
Gareth Dale, Brunel University
Robbie Turner, University of St Andrews
Will Jackson, Liverpool John Moores University
Louise Kowalska, ILTUS Ruskin University
Alexia Grosjean, Honorary member, School of History, University of St Andrews
Paul McFadden, York University
Phil Scraton, Queen's University Belfast
Oscar Berglund, University of Bristol
Michael Lavalette, Liverpool Hope University
Owen Worth, University of Limerick
Ronnie Lippens, Keele University
Andrew Watterson, Stirling University
Steve Tombs, The Open University
Emily Luise Hart, University of Liverpool
David Scott, The Open University
Bill Bowring, Birkbeck College, University of London
Sofa Gradin, King's College London
Michael Harrison, University of South Wales