

## Spain

### Putting the chill in media freedom and free speech

In Spain, it has become risky for journalists to do their job since the so-called gag laws were passed in 2015. Even tweeting, writing, singing, satirizing and joking can be dangerous too. It can lead to a fine or, worse, to prison.

*By Silvia Chocarro*

The public security law (*Ley de protección de seguridad ciudadana*), the civil procedure act (*Ley de enjuiciamiento civil*) and the reform of the criminal code, all passed in 2015, have made Spain riskier for journalists to report freely, with its reach extending online to social media and curbing artistic freedom. Violating these laws is not a matter to be taken lightly. Penalties can include fines or prison or both. The chilling effect on freedom of the press and freedom of expression in general, is a clear and present danger.

#### How “securing citizens” can unsecure media freedom

Since it came into force in July 2015, over the objections of all members of the opposition in parliament, the public security law has resulted in more than 285.000 fines, totaling about 132 million euros as of December 2017. While only a small percentage of these penalties were brought against journalists, it is clear that overall space for public dialogue, debate and cultural expression is shrinking.

The first fines to journalists came in 2016.

In February 2016, Mercè Alcocer, a journalist for *Catalunya Ràdio*, was outside of a court in Madrid where the former president of Catalunya, Jordi Pujol, was testifying in a corruption case. When he was leaving the court building, she tried to approach him to ask some questions. The police stopped her. She did as she was told, as she has stated publicly, and never asked her questions. Three months later, she received a formal notice informing her she was being fined 601 euros for “disobedience to the authorities”, a “serious offense” provided for in Article 36.6. for which one can be fined up to 30,000 Euros. Since 2015, more than 12,000 penalties have been issued based on this article alone.

Axier López, a photojournalist, posted a few pictures online of the detention of Naroa Ariznabarreta, as she refused to appear in court for a hearing about a protest in which she had participated. López was asked to pay a penalty of 601 euros for posting photographs, “without authorization” (Art. 36.23) that could put law enforcement in danger according to the police; another “serious offense” stipulated under the new law.

Then, it was the turn for Esther Yáñez. While reporting on an eviction for VICE, she was fined 601 euros for “disobeying the authorities” when she crossed the security perimeter, an allegation she denied. The authorities pressed the same charges against journalist Mikel Saenz de Buruaga when he was covering a police intervention; Cristina Fallarás, too, while she was reporting on a rally. Journalist Raúl Solís was asked to pay 150 euros for “lack of respect to law enforcement authorities” (Art. 37.4); a “small” sanction, but one that has resulted in more than 22.000 fines being issued since 2015. The Spanish federation of unions, and many other civil society groups and some political parties, have repeatedly requested the repeal of this law.

### **Criminalizing speech in the name of the fight against terrorism**

The same year the public security law was passed, a reform of the criminal code with a special focus on the fight against terrorism also wound its way through the parliament. Since then, article 578 on “glorification of terrorism”, with dissemination via media and internet as an aggravating circumstance, is behind 84 people having been brought to court, two of them journalists and more than a dozen artists.

In 2013, two years before the changes to the criminal code, Alex García launched a YouTube channel called *Resistance Films* to which he uploaded interviews with people having been accused, for example, of glorification of terrorism. In 2017, he received a call; he was being brought to court for the same crime, “glorification of terrorism”. He faces 2 years and one day in prison and a penalty of 2,400 euros. Jorge Correa, a journalist nicknamed Boro, has been sentenced to one year and six months in prison on the same charges for posting messages on his Facebook page defending, for example, amnesty for prisoners of the Basque armed group ETA.

But the fight against glorifying terrorism in Spain is threatening cultural expression. In 2018, twelve rappers, members of the group *La Insurgencia*, were charged and are now facing 2 years and one day in prison. Two years in prison is the sentence applied to another rapper, Valtonyc. In both cases, the court considers their lyrics as glorifying terrorism; the authors, however, just see what rap is all about: social commentary wrapped in provocative messages. In the case of Valtonyc, he also faces an additional year in prison for insulting the Spanish Crown (Art. 490), which constitutes an offense in Spain, even though this is against international standards. “Medieval and mafia”, “parasite” and “thief” are some of the words in relation to the Spanish Crown that brought to prison another rap singer, Pablo Hásel. He also faces charges for “glorifying terrorism” in 64 tweets.

### **Sentenced for tweeting**

In 2017, the leader of the group Def con Dos, Cesar Strawberry, was sentenced to one year in prison for “glorifying terrorism” and “disregard and humiliation of victims of terrorism” for a dozen tweets posted in 2013 and 2014 on his Twitter account. He jokes about the killing of former President Luis Carrero Blanco during Franco’s dictatorship by the Basque armed group ETA in 1973. He did not serve jail, as Spanish law states that non-violent crimes do not require

incarceration for sentences under two years for people without prior criminal records. Still, this case is particularly worrying, as the Spanish Supreme Court affirmed that the intent was not relevant, setting a dangerous precedent for future cases.

How the Criminal Code's article 578 has been interpreted by Spanish courts, has been criticized by many civil society organizations, such as Amnesty International. In its report [Tweet, if you dare](#), Amnesty International states that consequences for the right to freedom of expression have been notorious and they are having a deterrent effect on the expression of critical views, where even making jokes, whether they are tasteless, shocking or offensive, cannot be subject to criminalization.

Ironically, as mentioned by the Plataforma por la Defensa de libertad de Informacion in its 2017 report [The year of offences of opinion](#), trials for "glorification of terrorism" have multiplied by a factor of six since the end of ETA. In 2011, the year in which the armed group surrendered arms, five cases were in court; in 2016, the number is 30.

### **The list goes on: censoring satire, religious offenses and other expressions**

In 2017, the editor of the satirical magazine El Jueves was ordered to appear in court, accused of slander by a Spanish police union after the publication of a satirical article entitled *The continued presence of riot police uses up cocaine reserves in Catalonia*. It was published a few days after several demonstrations took place to denounce violence against the citizens of Catalunya when voting on a referendum of independence declared illegal.

In 2018, a judge ordered a temporary ban on the book *Fariña* (flour), published in 2015 by the journalist Nacho Carretero. A former mayor had sued Carretero for libel, as he is mentioned in the investigative account of drug smuggling in Galicia, in the northeast of Spain.

At one of the most relevant artistic fairs in Spain, Arco, authorities removed a piece entitled *Contemporary Spanish Political Prisoners*, showing pixelated faces of Catalonia's jailed separatist leaders.

### **Laws bring press freedom on top the agenda**

And in 2017, a judge reopened the case of the "Procession of the holy insubordinate pussy", organized by feminist groups in 2014. In May of that year, a giant vagina was walked on the streets replicating the traditions of the Holy Week processions. Three women are now being prosecuted for offenses against religious feelings (Art. 525, criminal code). But the case does not end here. A well-known actor, Willy Toledo, is being investigated for "insulting God and the Virgin Mary". In response to the reopening of the case of the procession, he posted on Facebook: "I shit on God and the Virgin Mary... Hurrah to the insubordinate pussy!"

The consequences of the so-called gag laws have put the issue of press freedom and, more broadly, free speech, on the agenda as never before since the re-establishment of the Spanish

democracy 40 years ago. In March 2018, coinciding with the third anniversary of the so-called gag laws, civil society organizations, journalists' associations and unions, and some political parties took part in several marches in Spain demanding their repeal. Also, opposition groups in the parliament have started a process to review, if not repeal, the public security law.

A democracy is not sound when laws do not comply with international standards. A democracy is not sound when journalists, artists and citizens fear to report, tweet, sing, satirize and, even, joke.

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