

Press Release

THE RULE OF LAW CANNOT BE THE PRICE OF AN INVESTITURE

Hay Derecho/Rule of Law Foundation, which has been working since 2015 for the promotion and defense of the rule of law, has gathered in the last days the support of more than 50,000 citizens against the amnesty

<https://actuahayderecho.org/peticion/amnistia>

Madrid, 10 November 2023– The first problem with the content of the political agreements reached between PSOE and ERC and Junts, and in particular the amnesty that has already been announced, is that such a large and exceptional measure is not aimed at contributing to coexistence. It is done without debate or political or social consensus either in Catalonia or in the rest of Spain, and in order to gain access to the investiture, after a shift imposed by electoral arithmetic. The legitimate political interest of a party to gain access to government should not be confused with the legitimacy of an exceptional measure in a social and democratic state governed by the rule of law, such as an amnesty, which should be in the interest of the state.

Opposing amnesty in favour of the constitutional guarantees of the rule of law is not a question of left or right. On the contrary, to go down a path where the end justifies the means is to undermine the limits that the exercise of power should have, whoever governs.

Hay Derecho expresses its concern regarding the investiture agreement signed between PSOE and Junts on Thursday 9 November, for several reasons:

→ **Stroke to the Constitutional Court.** The Constitutional Court, in particular its ruling on the reform of Catalonia's Statute (2010), is singled out as the source of the conflict. The Constitutional Court declared in 2010 that the reform of Catalonia's Statute passed in 2006 was unconstitutional regarding specific items of the reform. The Constitutional Court has a function of preventing the excesses of other powers and preserving the conformity of contested laws with the Constitution. Potential disconformities with such a constitutional

framework should be sought under the process of constitutional reform, not contesting the work of the guarantee bodies, such as the Constitutional Court.

→ **Interference in the judiciary.** In the PSOE-Junts document, an amnesty is agreed for events linked to the so-called *procés* of independence, for which the conclusions of parliamentary commissions of enquiry into cases of “lawfare or judicialisation of politics” should be taken into account, which, furthermore, could “give rise to actions of responsibility or legislative modifications”. **Such statements imply that there is politically motivated judicial persecution in Spain, which is not true, and seek to place judicial action under the supervision of political bodies, which is unacceptable in a state governed by the rule of law.** The main judicial and prosecutorial associations, both progressive and conservative, have echoed their concern regarding judicial independence.

If there are or have been actions by judges that do not strictly comply with the law, they will have to be held accountable through the procedures provided for (crime of prevarication), and not by amending the action of the courts as a whole.

→ **Impairment of control over political power.** The document refers to de-judicialising politics when, in fact, it seeks to secure immunity from political power for political power.

→ **Breach of equality before the law.** Equality before the law fades out when a Parliament intends to pass a singular law that declares certain persons legally immune from prosecution because of their political motivation.

→ **The response to fundamental issues for the territorial organisation of our State cannot take place in bilateral negotiation** forums between parties, but rather in the parliamentary arena.

→ **A referendum on self-determination cannot be held “under the protection of Article 92 of the Constitution”** (as expressed in the agreement). The Constitutional Court has a consolidated jurisprudence in which it has established that questions affecting the foundations of the constitutional order – such as this one – “can only be the object of popular consultation by means of a referendum on constitutional revision”.

We recall that “respect for the law and the rights of others are the basis of political order and social peace” (art. 10.1.in fine Spanish Constitution).

The agreement published on 9 November has unleashed a wave of communiqués from institutions and professional bodies: the opinion of the General Council of the Judiciary, a joint communiqué from all judges’ associations, bar associations, solicitors, notaries, civil servants’ bodies (Union of Labour and Social Security Inspectors, Association of Spanish Diplomats, Association of the Higher Corps of State Auditors and Auditors), and law firms.

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Hay Derecho is a non-profit, independent foundation that works to defend the rule of law, the proper functioning of institutions and to promote the fight against corruption. We investigate and contribute to democratic debate by analysing current affairs. We approach authorities and institutions to demand transparency and accountability.