

Submission to the Universal Periodic Review (UPR) of Spain by Freemuse

For consideration at the 35<sup>th</sup> session of the Working Group in January 2020

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**Freemuse**

Freemuse is an independent international organisation advocating for and defending freedom of artistic expression. We believe that at the heart of violations of artistic freedom is the effort to silence opposing or less preferred views and values by those in power—politically, religiously or societally—mostly due to fear of their transformative effect. With this assumption, we can address root causes rather than just symptoms—if we hold violators accountable.

Freemuse's approach to artistic freedom is human rights-based as it provides an international legal framework and lays out the principles of accountability, equality and non-discrimination, and participation.

To accomplish such fundamental change, we monitor and document violations of artistic freedom, expose laws and policies that enable and sustain these violations, and leverage evidence-based advocacy for systemic structural changes at international, regional, and national levels. Working with partners, artists, and activists in the global south and north, we campaign for and support individual artists, focusing on women artists and other vulnerable groups of artists. We facilitate and grow locally owned national coalitions in their campaigns and capacity building to monitor and defend artistic freedom.

Freemuse has held ECOSOC status since 2012.

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## **1. Introduction**

Since the 2015 Universal Periodic Review (UPR) on Spain, Freemuse has observed a sharp increase in violations of freedom of artistic expression in the country. Artists have become increasingly subject to various limitations on their expressions, especially through censorship, detention, and imprisonment. These violations have been facilitated by the 2015 Law on Public Security and sections of the Spanish Criminal Code, alongside the socio-political environment that followed the 2017 referendum on Catalan independence.

The Law on Public Security has introduced into law a number of anti-terrorism measures that have enabled Spanish authorities to convict individuals, especially artists and journalists, for terrorism-related offences. Essentially it means that artists can be held guilty for violating provisions of the law because of their song lyrics, comedy performances as well as social media messaging. The hardening environment for freedom of expression across Spain is ultimately characterized by the authorities limiting both access to freely create and experience art.

## **2. The Law on Public Security and the Spanish Criminal Code**

The 2015 introduction of the Law on Public Security, amendments to the Spanish Criminal Code and the intensifying and ensuing political tensions surrounding Catalan independence has had a worrying impact on the freedom of expression landscape in Spain. Specifically, the Law on Public Security, often called ‘Ley Mordaza’ or gag law, criminalises social media activism and charges individuals disrespecting police officers. Fines imposed range between 600 and 30,000 Euros.

Further, legal amendments—specifically Article 578 of the Spanish Criminal Code—have broadened the scope of the legislation and increased penalties for those found guilty of ‘glorifying terrorism’ as well as ‘humiliating the victims of terrorism’. Under these amendments, authorities can imprison individuals for up to three years and impose an additional fine. Article 543 of the Spanish Criminal Code also carries a penalty of up to 12 months imprisonment or ‘verbal or written offences or outrages... against Spain, its Autonomous Communities or the symbols or emblems thereof’.<sup>1</sup> Both these provisions have resulted in a climate of self-censorship and have had a chilling effect on freedom of expression in Spain.

The rise in prosecutions—under the charges of terrorism—have taken place in a wider context in which the space for expressing dissent in Spain is rapidly shrinking. Austerity policies, which were implemented by the Spanish authorities following the 2008 domestic financial crisis, were met with waves of protests and mass opposition from emerging social movements. The Spanish authorities have responded to these developments by curtailing the rights to freedom of expression and peaceful assembly. This has included the introduction of a law which criminalises behaviour, such as singing songs and making jokes, and conflates these actions with committing acts of terrorism. This, in turn, has legitimised the prosecution of individuals, especially artists, who publicly express opposition to the establishment.

### **2.1 *Imprisonment of Spanish rappers***

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<sup>1</sup> Ministry of Justice Spain (2011), *Criminal Code*,  
<http://www.ejtn.eu/Documents/About%20EJTN/Criminal%20Justice%20%20I%202015/CCEN.pdf>

Since 2017, Freemuse has documented the imprisonment of 13 rappers in Spain primarily prosecuted for song lyrics that are, under recently introduced provisions, alleged to be in support of proscribed terrorist organisations or insulting the Spanish Crown. This is evident in the case of Valtency (real name Jose Miquel Arenas Beltrán) who was prosecuted in 2017 after posting songs on YouTube, MySpace and HHGroups that the Spanish National Court considered to have insulted and threatened public figures, the Spanish royal family and politicians.<sup>2</sup> On 20 February 2018, he was sentenced to three years and six months in prison, alongside a fine of 3,000 euros and a ban from holding public office for eight years. Valtency appealed the sentencing at the Spanish National Court but the Tribunal Supremo (Supreme Court) upheld the judgement. In May 2018, Valtency appealed the sentence with the Constitutional Court in Spain on the grounds of freedom of expression but this appeal denied as well. In response, the rapper fled to Belgium some days before his period of voluntary entry to prison expired.

As a result, the Spanish National Court escalated their violation of artistic expression against the artist by issuing national, European and international arrest warrants against the rapper. In September 2018 however, a court in Ghent (Belgium) ruled that Valtency should not be extradited to Spain because ‘glorification of terrorism’ and ‘insulting the royal family’ are not crimes under Belgian law. Whilst awaiting the verdict of the prison sentence appeal to the European Court of Human Rights, on 23 May 2019, Valtency released his third album marking the anniversary of his exile.

In a similar case, in 2017 the 14-member rap group La Insurgencia were summoned to court after a street performance and prosecuted over the lyrics of their songs that were deemed to express support for the now-defunct Grupos de Resistencia Antifascista Primero de Octubre (GRAPO) organisation, which is categorised under Spanish law and the European Union as a terrorist organisation.<sup>3</sup> La Insurgencia’s reference to GRAPO’s ‘unjust imprisonment’ for the 84 assassinations committed in the 1970s and 1980s was used by Spain’s Public Prosecutor as justification for the imprisonment. Following their trial in December 2017, 12 members of the group were sentenced to two years and one day in prison, fined 4,500 euros and banned from standing for public office for nine years each on the charge of ‘supporting terrorism’ in their lyrics. One minor in the group was directed to a separate prosecution and the 14th member was acquitted.

On 19 September 2018, the Appeals Chamber of the National Court in Madrid reduced the sentence awarded to La Insurgencia from two years to six months on the basis that GRAPO were inactive when the rap group included references to it in its lyrics. The Public Prosecutors office has continued to request that the original sentence be upheld, but because the sentence is under two years, Spanish law allows the sentence to be suspended—at the judge’s discretion. La Insurgencia have announced their decision to appeal the charges.

In addition to the case of La Insurgencia, on 2 March 2018, rapper Pablo Hasel (real name Pablo Rivadulla) was found guilty of praising terrorism and insulting the Spanish State and royal institutions.<sup>4</sup> The charges were based on Hasel’s messages on Twitter about members of a now-defunct terrorist organisation<sup>5</sup> and a song he posted on YouTube in

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<sup>2</sup> Freemuse (2019). *The State of Artistic Freedom 2019*, <https://freemuse.org/wp-content/uploads/2019/03/saf-2019-online.pdf>

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> This organisation is the Basque Homeland and Liberty (ETA). They are considered a terrorist organisation by the European Union. The ETA abandoned armed conflict in 2011 and announced its full dissolution on 2 May 2018.

which he criticised the Spanish royal family. In September 2018, Hasel's sentence of two years and one day imprisonment and a fine of 24,300 euros was reduced to nine months imprisonment by the Appeals Chamber of the Spanish National Court on grounds that the rapper's social media messages did not pose a 'threat' to people reading the content. Given this amended sentence, Hasel would have been able to evade incarceration. However, in 2015 the musician was already given a suspended prison sentence of two years for glorifying terrorism. Given that the combined sentence is more than two years, the rapper is expected to be sent to prison any day.

### 3. Political Tensions

The deepening political crisis relating to the Catalan independence referendum held in 2017—which was subsequently banned by the Constitutional Court in Spain—continued to be a highly controversial national issue. Prior to the referendum, the governing Spanish Popular Party called for the cancellation of several concerts in the Valencian Community, one of the 17 administrative regions in Spain, pointing to the alleged support of performing artists for Catalanian independence in advance of the 1 October referendum.<sup>7</sup>

The 1 October 2017 referendum produced an overwhelming result in favour of independence at 90 per cent. The polarisation of political opinion on the future of Spain significantly facilitated a divide within Spanish society and contributed to a challenging environment where individuals reporting on the referendum, though media or the arts, became victim to threats and abuse on both sides. Freemuse has documented a number of cases in which artists—who have expressed support for Catalanian independence—have been censored by non-state actors, and statistics collated by Reporters Without Borders reflect Freemuse's observations. In 2019, they reported a tally of 40 documented cases of abusive behavior targeted at journalists in Catalonia.<sup>9</sup>

In an effort to curb the independence movement, central authorities have placed several restrictions on the rights of artists to creative freedom. In 2018, the state intensified its crackdown on independence and those people, including artists, who have extended their support to the independence movement.

As one example, Santiago Sierra's artwork *Political Prisoners in Contemporary Spain* was removed from the Arco Contemporary Art Fair (ARCO) in Madrid hours before the exhibition's scheduled opening on 21 February 2018.<sup>10</sup> The artwork expressed support for Catalan independence and consisted of 24 pixelated photographs featuring prominent leaders of Catalan pro-independence groups and activists who are currently imprisoned and facing charges because of their support for independence.

Eduardo López-Puertas, the president of Institución Ferial de Madrid (Trade Fair Institution of Madrid), works to administrate and manage the fairs and congresses in the city and is controlled by the regional and local governments of Madrid. He reportedly made a personal request for the artwork to be removed to avoid controversy. The move was subsequently criticised by the Mayor of Madrid, Manuela Carmena, who highlighted that the decision was made without prior approval from any relevant governmental authorities. One year later, the same artwork was displayed at the ARCO Fair, but at a different venue.

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<sup>7</sup> Freemuse (2017). *Spain: Political party calls for cancellation of "pro-Catalan" performances*, <https://freemuse.org/news/spain-political-party-calls-for-cancellation-of-pro-catalan-performances/>

<sup>9</sup> Reporters Without Borders (2019). *Spain*, <https://rsf.org/en/spain>

<sup>10</sup> Freemuse (2019). *The State of Artistic Freedom 2019*, <https://freemuse.org/wp-content/uploads/2019/03/saf-2019-online.pdf>

In September 2017, a performance organised by the Valencian regional government in Torrevieja by Pep Gimeno (aka Botifarra) and his band Carraixet was cancelled. The band sing in Valencian (a variant of Catalan), prompting Member of Parliament and Secretary General of the Popular Party (PP) to demand that the Valencian government not grant a venue for the artists to perform. On 19 September 2017, the PP branch in Pinoso issued a statement on their Facebook page claiming that ‘In the PP we will defend our freedom to protect our mother tongue which is Spanish’.<sup>11</sup>

Similarly, Catalan singer Cesk Freixas had his September 2017 performance in Pinoso cancelled by the local PP branch due to Freixas’ alleged ties to a Catalan pro-independence political party.<sup>12</sup> The local PP branch published a Facebook statement demanding the Valencian Government cancel the concert, which they called ‘a political act funded with public money’. In response and without specifying details of the case, Freixas replied that the PP had tried to censor him previously when the Spanish paramilitary force appeared at his concert claiming they had received a complaint over the phone. His statement expanded on how after a brief interaction, the guard left the venue. Nevertheless, this particular performance went ahead.

In her 2017 statement to the UN Human Rights Council, the Special Rapporteur in the field of cultural rights categorically states that in general, only giving one dominating political affiliation as the right and only defensible one cannot justify suppression of dissent or censorship of views expressed through art, speech or by other means.<sup>13</sup>

#### **4. Influence of the Catholic Church on Spanish artistic expression**

The influence of the Catholic Church in Spain has generally decreased since the death of General Francisco Franco and the adoption of a new constitution in 1987. However, observers continue to note the influence of the Church on Spanish society and politics. Article 525 of the Spanish Criminal Code—part of the legacy from General Franco’s era punishes individuals found to have offended the feelings of the members of any religious group.

In a case illustrating the Church’s continuing impact on artistic expression, Spanish actor Willy Toledo was detained in Madrid on 12 September 2018 for ‘offending religious sentiments’ following a comment he posted on a 5 July 2017 social media post.<sup>14</sup> In his post, Toledo commented on the 2014 trial of three women in Spain who had been charged with insulting the Virgin Mary after parading around Seville with a large model of a vagina known as an ‘insubordinate pussy’. Toledo stated that ‘I shit on God, and I have enough shit left over to shit on the dogma of the sanctity and virginity of the Virgin Mary. This country is unbearably shameful. I’m disgusted.’

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<sup>11</sup> Partido Popular de Pinoso (2017). *Nota Prensa*,

[https://www.facebook.com/permalink.php?story\\_fbid=1820771661547306&id=1450789105212232](https://www.facebook.com/permalink.php?story_fbid=1820771661547306&id=1450789105212232)

<sup>12</sup> Freemuse (2017). *Spain: Political party calls for cancellation of “pro-Catalan” performances*,

<https://freemuse.org/news/spain-political-party-calls-for-cancellation-of-pro-catalan-performances/>

<sup>13</sup> UNSR Cultural Rights (2017). *Cultural rights threatened by global avalanche of hate – UN Special Rapporteur*,

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21282&LangID=E>

<sup>14</sup> Freemuse (2019). *The State of Artistic Freedom 2019*, <https://freemuse.org/wp-content/uploads/2019/03/saf-2019-online.pdf>

The complaint filed by the Spanish Association of Christian Lawyers stated that Toledo had violated Article 525 of the Spanish Criminal Code. The artist ignored two summonses to court and was consequently arrested. He was, however, released without bail after giving a testimony to the judge. Toledo has since been charged and is awaiting trial after a directive issued by Judge Juan Javier Pérez Pérez in which the judge stated that legal proceedings must continue despite the public prosecutor's office recommendation that the case be withdrawn and archived.

In a similar case, the Association of Christian Lawyers filed a complaint in December 2017 against artist Drag Sethlas (real name Borja Casillas) for offending religious feelings using elements of the Catholic religion in his artistic drag performance.<sup>15</sup> During his performance, Sethlas dressed as the Virgin Mary and a crucified Christ. In response to the complaint, he Sethlas that there was no malicious intent to offend religious feelings, but it was only intended to be a performance at a 'transgressive', 'exaggerated' and 'daring' party. The Provincial Court of Las Palmas dismissed the appeal on 30 July 2018 and the Association of Christian Lawyers were asked to reimburse the legal fees incurred during the process.

## **5. Conclusion and Recommendations**

Following a sharp proliferation of sentences found to have violated freedom of artistic expression throughout 2017, several convictions of artists were also reviewed by judges in 2018. As a result, some artists like Pablo Hasel and the twelve members of rap group La Insurgencia have had their sentences reduced.

However, whilst these reduced sentences bring some relief to the artist community in Spain, Freemuse believes the original verdicts are concerning and are likely to push artists towards self-censorship. Serious challenges for undermining the Spanish government's commitment and obligations under international human rights law remain—particularly Article 19 of the ICCPR, which underpins the importance of all people's right to freedom of speech and artistic expression.

We therefore recommend that Spain undertake the following actions:

- Review the 2015 Law on Public Security (or gag law), to ensure that artists and cultural workers can perform their jobs without undue censorship and fear of prosecution
- Repeal Articles 578 and 579 of the Spanish Criminal Code and draft specific definitions for 'public glorification or justification' and other justifications for terrorist acts
- Work alongside civil society organisations to understand the importance of freedom of artistic expression in society
- Amend criminal defamation laws so that they comply with relevant international human rights safeguards

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<sup>15</sup> Freemuse (2019). *The State of Artistic Freedom 2019*, <https://freemuse.org/wp-content/uploads/2019/03/saf-2019-online.pdf>

- Develop programmes to increase dialogue and create awareness between diverse religious groups and artists to prevent artists facing undue pressure or harassment, as well as violations based on their support for certain political ideologies and or religious expressions.