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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SPAIN

LEGISLATIVE PROPOSAL 122/000019

FOR AN ORGANIC LAW ON THE AMNESTY FOR INSTITUTIONAL, POLITICAL AND SOCIAL NORMALISATION IN CATALONIA

OF 13 NOVEMBER 2023

LEGISLATIVE PROPOSAL

122/000019 Legislative Proposal for Organic Law on the amnesty for institutional, political and social normalisation in Catalonia.

Presented by the Socialist Parliamentary Group

The Bureau of the Chamber, at its meeting today, has adopted the following resolution in respect of the matter in question.

(122) Legislative proposals of the Parliamentary Groups of the Congress.

Author: Socialist Parliamentary Group

Legislative Proposal for Organic Law on the amnesty for institutional, political and social normalisation in Catalonia.

I hereby rule:

1. To admit to processing, to inform the Government to the effects of Article 126 of the Regulation, to publish in the Official Gazette of the Houses of Parliament and notify the author of the initiative.

2. In relation to the request for processing under the urgent procedure, to inform the first signatory of the request that the corresponding ruling shall only be adopted once the consideration of the initiative takes place.

In execution of said ruling, the publication is ordered in accordance with Article 97 of the Regulation of the Chamber.

Palacio del Congreso de los Diputados, 21 November 2023.—P.D. Secretary General of the Congress of Deputies, **Fernando Galindo Elola-Olaso**.

To the Bureau of the Congress of Deputies

The Socialist Parliamentary Group had the honour of addressing the Bureau, under Article 124 and subsequent of the Regulation in force, to present the following Legislative Proposal for Organic Law on the amnesty for institutional, political and social normalisation in Catalonia.

Furthermore, a request is made for processing under the urgent procedure, under Article 93 of the Regulation in force.

Palacio del Congreso de los Diputados, 13 November 2023.—**Patxi López Álvarez**, Spokesperson, Socialist Parliamentary Group.

LEGISLATIVE PROPOSAL FOR ORGANIC LAW ON THE AMNESTY FOR INSTITUTIONAL, POLITICAL AND SOCIAL NORMALISATION IN CATALONIA

Explanatory Memorandum

I

Any amnesty is conceived as a legal measure for the exemption of application of the rules in force where actions that have been declared or are classified as criminal offences or giving rise to any other form of liability, have taken place in a specific context.

This legislative instrument is established in the legal system as an appropriate measure to address exceptional political circumstances that, at the heart of the Rule of Law, seek to satisfy the public interest such as the need to overcome and re-direct deep-rooted political and social conflicts in the search for improved coexistence and social cohesion and an integration of diverse political sensitivities.

It is, therefore, an institution that articulates a political decision through a law approved by Parliament as an expression of the role granted under the Constitution to the Cortes Generales; the Houses of Parliament, established as the body responsible for representing popular sovereignty in its constituted powers and freely construct the general will through the exercise of legislative power through the pre-established channels.

The amnesty has been used on numerous occasions in our legal tradition. It is not a new method and there are numerous precedents in Spain. The most important, but not the only example, is the Amnesty Law of 1977 (Law 46/1977, of 15 October).

Furthermore, it is recognised in the institutional order of many countries in our region and of similar legal systems. It is expressly provided for in the constitutional texts of Italy, France and Portugal, and this measure has been applied on many occasions, the most recent being Portugal's Law 38-A/2023, of 2 August, granting an amnesty to all young people between the ages of sixteen and thirty, for specific criminal offences, on the occasion of the Pope Francis' visit to the country.

There are also other constitutional standards in European countries that, while they do not expressly refer to amnesty, such as in the cases of Austria, Belgium, Germany, Ireland and Sweden, have not prevented the constitutionality thereof to be affirmed. Since the Second World War, more than fifty such laws have been passed in the aforementioned countries, while the case law itself considers the amnesty to be applicable in the constitutional state in special circumstances of political crisis.

From the perspective of European Union law, the institution of the amnesty is resoundingly validated. In this regard, one such example is Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, Article 3 of which provides that when the criminal offence is covered by the amnesty of the executing Member State, the European arrest warrant shall be denied. More recently, the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, also contains, in Article 600, a provision similar to that mentioned above.

Coherently, the Court of Justice of the European Union, in its Judgment of 29 April 2021, on case C-665/20 PPU, not only recognises the possibility of the existence of amnesties, but, moreover, establishes that such an amnesty "is generally intended to decriminalise the acts which it covers, with the consequence that the offence can no longer be prosecuted and, if a sentence has already been handed down, its execution will be brought to an end, amnesty therefore implies that, in principle, the penalty imposed may no longer be executed". More recently, in Judgment

of 16 December 2021, case C-203/20, the same court established the possibility of archiving criminal proceedings and commuting sentences, based on judicial decisions dictated under an amnesty resulting from a proceeding of a legislative nature.

Along similar lines, the European Court of Human Rights has recognised the validity and political expediency of the amnesty, establishing limits of serious violations of human rights, as actions that cannot fall beyond the State's obligation to try and punish them (among others, Judgment of 27 May of 2014 of the Grand Chamber, in the case of Marguš v. Croatia).

For their part, both the Council of Europe and the European Commission for Democracy through Law (the Venice Commission), have also made clear the validity of measures like the amnesty and its compatibility with judicial decisions, both in Recommendation CM/Rec(2010)12 and Opinion 710/2012 CDL-AD (2013) 009, issued in the plenary session of 8 and 9 March 2013.

II

This organic law grants an amnesty for the actions declared or classified as criminal offences or criminal conduct giving rise to administrative or accounting liability, linked to the consultation held in Catalonia on 9 November 2014 and the referendum of 1 October 2017 (both declared unconstitutional in the Judgments of the Constitutional Court 31/2015, of 25 February, and 114/2017, of 17 October), which took place between 1 January 2012, the year in which acts of the pro-independence process began, and 13 November 2023. The amnesty covers not only the organisation and holding of the consultation and referendum, but also other potentially illegal actions closely connected thereto, which may include, for example, preparatory actions, different protest actions in favour of holding a referendum or demonstrating opposition to the processing or sentencing of those responsible, including also attendance, collaboration, advising or representation of any form, providing protection and security to those responsible, and all those acts subject to this law indicative of a political, social and institutional tension this act endeavours to resolve, in accordance with the powers granted by the Constitution to the Cortes Generales.

The actions framed within the so-called pro-independence process, led by the political forces at the head of the institutions of the Regional Government of Catalonia (President, Parliament and Government) and supported by sections of civil society, and the political representatives leading a number of local authorities in Catalonia, came in the wake of intense debate on the political future of Catalonia arising from the Judgment of the Constitutional Court of 31/2010, of 28 June. They also led to a series of intense demonstrations, sustained over time, and pro-independence parliamentary majorities.

These actions entailed an institutional tension that led to the intervention of the Justice system and a social and political tension causing the disenchantment of a substantial section of Catalan society with the institutions of the state. Indeed, this has not yet dissipated, and is recurrently rekindled when the many ongoing legal consequences of the process arise, especially in the criminal sphere.

Over this time, the Cortes Generales have played a leading role in formulating the response of the popular sovereignty to this pro-independence process. A role that this organic law reaffirms in recognising the competency and legitimacy to make an assessment of the political situation and propose a series of solutions to be offered in each context, in accordance with the public interest.

Thus, with this organic law of amnesty, the Cortes Generales once again use a constitutional mechanism that reinforces the Rule of Law to give an adequate response over ten years after the start of pro-independence process, when the moments of most acute crisis have already been overcome, and the time has come to establish the foundations to ensure coexistence into the future. This way, by the Cortes Generales assuming this legislative policy decision, not only

do they not impinge on other spaces but, on the contrary, and in the exercise of their powers, assume the best possible path to overcoming a political conflict from a political perspective.

The approval of this organic law is understood, therefore, as a necessary step to overcome the aforementioned tensions and eliminate some of the circumstances that cause the disenchantment toward the state institutions that remains among a section of the population. Consequences that, moreover, could be aggravated over the coming years as judicial procedures are brought affecting not only the leaders of the process (who are fewer) but also, in many cases, citizens and even public servants exercising their essential functions in the regional and local administration and whose trial and ultimate conviction and disqualification would produce serious upheaval in the functioning of everyday services for their fellow citizens and, ultimately, in social coexistence.

With the approval of this organic law, therefore, the legislator intends to exempt the application of current rules to events that occurred in the context of the Catalan pro-independence process in the general interest, consisting of ensuring coexistence within the Rule of Law, and generating a social, political and institutional context that fosters economic stability and cultural and social progress both in Catalonia and in Spain as a whole, while also serving as a basis for overcoming a political conflict.

Furthermore, and in direct relation to the above, it should be borne in mind that there is no place in our constitutional system for a model of militant democracy, i.e. a model in which not only respect for, but positive adherence to the system is imposed. The goals to be pursued within the constitutional framework are plural. However, all paths must remain within the national and international legal order.

Thus, this amnesty cannot be interpreted as a deviation from our legal framework. On the contrary, it is a tool that strengthens it and looks to the future, bringing back into the fold of parliamentary debate the divisions that continue to strain the seams of society, by renouncing the exercise of *ius puniendi* for reasons of social utility based on the pursuit of a higher interest: democratic coexistence.

This organic law is one more step along a difficult but at the same time courageous and reconciliatory path; a demonstration of respect for citizens and the fact that the application of legality is necessary but, sometimes, not sufficient to resolve a political conflict sustained over time. Therefore, this amnesty constitutes a political decision adopted under the principle of justice in the understanding that the instruments available to a State based on the Rule of Law are not, nor should they be, immovable, given that it is the law that is at the service of society and not reverse, and it should therefore have the capacity to be updated, adapting to the context of each moment.

III

The legal and political context in which this amnesty is approved is very different from that in which the last two laws that implemented this measure in Spain were approved: Royal Decree-Law 10/1976, of 30 July, and Law 46/1977, of 15 October. At that time, they were part of a series of acts aimed at bringing a long dictatorship to an end in order to begin the construction of a social and democratic state under the rule of law within the framework of the European Union, presided over by the recognition of a wide range of fundamental rights and the division of powers. Today, in 2023, Spain is characterised by its status as a democracy and a state governed by the rule of law, in which the principle of legality, the democratic principle and respect for fundamental rights are essential pillars.

Since 1978, Spain has had a constitutional text that is comparable to those of our neighbouring countries, one which guarantees fundamental rights considered individually and preserves the ideological and political rights of all, and which establishes, for the public authorities the obligation

to interpret the rules relating to fundamental rights and freedoms in accordance with the Universal Declaration of Human Rights and the ratified international treaties and agreements, as recognised by the Constitution itself.

According to this framework, an amnesty law can only be based on the solidity of the democratic system, which thus demonstrates its capacity for reconciliation through a sovereign act of the Cortes Generales, whose legitimacy is based on two pillars of a different nature: on the one hand, the constitutionality of the measure and, on the other, the need to address an exceptional situation in the general interest, with a firm commitment to a future of understanding, dialogue and negotiation between the different political, ideological and national sensitivities. A society that seeks to progress democratically must have the capacity to foster, and prioritise, coexistence, dialogue, respect and eventual understanding between different democratic political positions and demands.

In coherence with the European Convention on Human Rights and the European Charter of Fundamental Rights, it is necessary to remember that the Spanish Constitution of 1978 enshrines political pluralism as one of the highest values of our legal system (Article 1); establishes political parties as a channel of expression of the will of the people and as a fundamental instrument for political participation (Article 6); the principle of legality, legal certainty and the prohibition of arbitrariness on the part of the public authorities (Article 9); and guarantees the fundamental right to ideological freedom (Article 16); as well as the rights to freedom of expression and information (Article 20), the right to peaceful and unarmed assembly and demonstration (Article 21) and the right of association (Article 22). Based on these assumptions, there is an adequate articulation with the general principles and values of the constitutional text, especially considering that the 1978 Constitution is rooted in the liberal-democratic tradition which has given us the contemporary social and democratic state governed by rule of law. This means that values such as political pluralism, justice and equality guide the rationale, purpose, scope and conditions of an amnesty law.

This is the general legal framework within which this amnesty law is conceived, with the clear understanding that, although there is no democracy outside the rule of law, it is necessary to create the conditions to ensure politics, dialogue and parliamentary channels are the methods used in the search for solutions to a recurring political issue over the course of our history. It is therefore a matter of using all the instruments at the disposal of the state to ensure institutional normalisation after a period of serious disruption, and of continuing to promote dialogue, understanding and coexistence. This process is also inspired by the Constitutional Court's interpretation of the political obligations of the public authorities when it states that "the Constitution does not expressly cover, nor can it cover, all the issues that may arise in the constitutional order [...]. Thus, the public powers, to particularly include the territorial powers included in the Autonomous State, are the ones entrusted with resolving any matters arising in this sphere, through dialogue and cooperation. (Judgment 42/2014, 24 March).

IV

The constitutionality of amnesty was declared by the Constitutional Court in Judgement 147/1986, of 25 November, precisely in relation to the application of Law 46/1977. In this pronouncement, it is clearly stated that "there is no direct constitutional restriction on this matter".

The Constitution does not prohibit the legal institution of amnesty, but only a specific manifestation of the right to pardon, such as general pardons, which have a very different legal nature to that of an organic amnesty law, as pardons are the sole prerogative of the Executive Branch. Judgment 147/1986 itself elaborates on this issue by stating that "it is erroneous to reason about pardon and amnesty as instruments differing merely in quantitative terms, as the relationship between the two is one of qualitative differentiation".

It seems reasonable to understand that the 1978 constituent did not prohibit the institution of amnesty because, among other reasons, this would have implied the repeal of the aforementioned Royal Decree-Law 10/1976, of 30 July, and Law 46/1977, of 15 October, which constituted the starting point of the constitutional pact and without which neither the Democratic Transition nor the broad parliamentary and social consensus that endorsed and ushered in the Spanish Constitution of 1978 would have been possible. This circumstance is evident in the case law, since the Supreme Court has stated categorically that Law 46/1977 is "a law in force whose possible repeal would correspond, exclusively, to Parliament" (Judgement 101/2012, 27 February).

All of this allows us to infer that amnesty, far from being unconstitutional, forms part of the foundational pact of Spanish democracy and is presented as a power of the Cortes Generales, in which all the Spanish people, the holders of national sovereignty, are represented. In this way, whoever is legitimised to classify or declassify as criminal a certain form of conduct is, logically, recognised to have the power to grant amnesty for the same acts with no other limits other than those arising directly from the Constitution.

It should be stressed that the amnesty does not affect the principle of separation of powers nor the exclusivity of jurisdiction provided for in Article 117 of the Constitution because, as its own text states, the Judicial Branch is subject to the rule of law and it is precisely an organic law which, within the parameters set out above, provides for the cases of exemption from liability, with the responsibility for the application thereof in each specific case falling upon the judges and courts, as well as the Court of Auditors or the administrative authorities that pursue or have pursued the proceedings, processes, files and cases affected by the acts subject to amnesty.

This is so, as has been implicitly recognised in our legal system, which incorporates the concept of amnesty with complete normality in several different provisions.

In terms of national legislation, it is worth noting, for example, Article 666.4.a of the Royal Decree of 14 September 1882 approving the Law on Criminal Proceedings, which provides for amnesty as one of the grounds for dismissal. As well as a whole series of rules that have been approved since the 1980s, such as (i) Article 16 of Royal Decree 796/2005, of 1 July, approving the General Disciplinary Regulations for personnel in the service of the Administration of Justice; (ii) Article 163 of Royal Decree 1608/2005 of 30 December, approving the Organic Regulations of the Corps of Court Clerks; (iii) Article 108 of Royal Decree 429/1988 of 29 April, approving the Organic Regulations of the Corps of Court Clerks; (iv) Article 88 of Royal Decree 2003/1986, of 19 September, approving the Organic Regulations of the Corps of Officials, Assistants and Agents of the Administration of Justice; and (v) Article 19 of Royal Decree 33/1986, of 10 January, approving the Regulations on the Disciplinary Regime of Civil Servants of the State Administration, which provides that the disciplinary responsibility of the members of these corps may be terminated, on among other grounds, by amnesty. Or the explanatory memorandum and Article 2 of the most recent Law 20/2022, of 19 October, on Democratic Memory, which recognises that Law 46/1977, of 15 October, on Amnesty, forms part of the fully valid laws of the Spanish State.

In regional legislation we also find references to amnesty as grounds for termination of disciplinary liability in regulations passed since the 1990s, for example, (i) Article 144 of Legislative Decree 1/2020, of 22 July, approving the revised text of the Law on the Police Force of the Basque Country; (ii) Article 57.4 of the Foral Law 8/2007, of 23 March, on the Police Forces of Navarre; (iii) Article 89.1 of Law 6/1989, of 6 July, on the Basque Civil Service; (iv) Article 64 of Law 6/2005, of 3 June, on the coordination between the Local Police Forces of the Balearic Islands; (v) Article 78.1 of the Law of the Parliament of Catalonia 10/1994, of 11 July, on the Police Force of the Regional Government of Catalonia; or (vi) Article 58.1 of the Law of the Parliament of Catalonia 16/1991, of 10 July, on Local Police Forces.

Finally, it should be noted that amnesty is provided for in more than thirty international agreements signed by Spain on the transfer of convicted persons or extraditions, more than twenty of which have the status of international treaties or conventions, implying a prior review of their full constitutionality.

V

The Constitutional Court has not only made clear the constitutionality of amnesty laws in general, but on the occasion of the amnesty approved in 1977, it has also established the requirements for such a law to be valid in our legal system. In this regard, it has insisted that this type of rules, like the rest of the legal system, must comply with constitutional principles (judgments 28/1982, of 26 May; 63/1983, of 20 July; and 116/1987, of 7 July, among others).

Likewise, it should be noted that the Council of State, whose task it is also to examine the constitutionality of draft general provisions, in its Opinion 895/2005, issued on the occasion of the processing of the aforementioned Royal Decree 796/2005, approving the Disciplinary Regulations for personnel in the service of the Justice Administration, contained no criticism whatsoever for the inclusion of amnesty as grounds for the termination of disciplinary liability (Article 16).

So, with its constitutionality thus declared, this legislative option can only be understood within the framework of singular laws, with respect to which the Constitutional Court has been upholding their exceptionality, but also their conformity with the constitutional text by affirming that "the dogma of the generality of the law is not an insurmountable obstacle that prevents the legislator from issuing, with the force of law, specific provisions for unique cases or specific subjects" (Judgement 166/1986, of 19 December). This jurisprudence has been maintained over time and, decades later, our supreme interpreter has continued to affirm that "the concept of law present in the Constitution does not prevent the existence of singular laws" (Judgment 129/2013, of 4 June).

So, the *ad casum* regulation that any individual law entails only passes the constitutional canon of equality where it is a matter of rules "dictated in response to a specific and singular set of facts, which exhaust their content and effectiveness in the adoption and execution of the measure taken by the legislator in the face of that set of facts, isolated in the individual law" (Constitutional Court Judgement 129/2013, of 4 June). This is precisely the parameter of constitutionality that this organic law on amnesty fulfils, given that its purpose and scope is aimed at a specific group of recipients and its content is exhausted in the adoption of the measure for a singular event, in this case the set of acts linked, in different ways, to the aforementioned pro-independence process, which are materially and temporally limited.

In effect, the principle of equality does not imply the need to give universal scope to the effects of the amnesty, but rather that there should be no discrimination between persons who are included in the enabling circumstances of the rule (in this case, the acts giving rise to different forms of liability related to the pro- independence process). This is because, as the highest interpreter of the Constitution has made clear, the principle of equality must be applied where there is "substantial identification of legal situations", without being able to "make comparisons [...] between legal situations which in origin have not been equated by the very rules that create them" (Judgment 194/1999, of 25 October), taking into account the principle of justification and reasonableness (Judgments 62/1982, of 15 October; 112/1996, of 24 June; 102/1999, of 31 May). This organic law therefore respects the principle of equality insofar as the scope of application is identified in an objective and justified manner, in accordance with constitutional values, and without arbitrarily excluding cases of substantial identification.

As this organic law on amnesty is framed in the category of a singular law and the exceptional situation to which it aims to respond has been defined, it is inspired, naturally, by the principles of reasonableness, proportionality and appropriateness.

Its reasonableness is linked to the objective and reasonable justification of its singularity, which is framed within the need to overcome, as has already been made clear, the situation of high political tension that Catalan society has experienced particularly intensely since 2012. The will to advance along the path of political and social dialogue necessary for the cohesion and progress of Catalan society is thus legally enshrined, on the understanding that the strengthening of coexistence justifies this amnesty law, which represents a turning point, with the aim of overcoming obstacles and improving coexistence by advancing towards the full normalisation of a plural society that addresses the main debates on its future through dialogue, negotiation and democratic agreements. Thus, the resolution of the political conflict is returned to the channels of political discussion.

The proportionality of the law is derived from the specification of the list of acts that have been declared or are defined as crimes and conducts to be granted amnesty and their necessary link with the acts carried out in a period of time delimited by the law. This way, a generic and imprecise reference is avoided, ensuring the amnesty does not cover other types of acts not directly related to the pro-independence process and its consequences, whose exoneration would have no place within the basis on which this measure is built.

All of this connects with the principle of adequacy and with the purpose of the law, which is linked to the mandate of optimisation derived from Article 9 of the Constitution and which is addressed to all public authorities, but particularly to the legislator, who is the one who configures criminal offences, who repeals them and who approves, as in this case, an amnesty law with a legitimate and constitutional purpose. A purpose, moreover, which, due to its legal nature or the diversity of procedural situations in force at the time of the enactment of this regulation, could not be achieved with other types of legal instrument such as the granting of pardons or the reform of the Criminal Code.

On the other hand, the nature of a singular law that exempts the application of the rules in force to the facts that have occurred in a certain context in the general interest must entail the immediate lifting of the precautionary measures that have been adopted, even when an appeal or a question of unconstitutionality is lodged, as well as the termination of the execution of the sentences imposed.

VI

This law consists of 16 articles, divided into three titles, two additional provisions and one final provision.

Title I defines the objective scope of the amnesty. To this end, it first describes the acts classified as criminal offences or giving rise to administrative or accounting liability linked, in one way or another, to the consultation of 9 November 2014 and the referendum of 1 October 2017, both declared unconstitutional, which are exonerated, delimiting the time frame in which they must have occurred from 1 January 2012 to 13 November 2023.

It then identifies the criminal acts which shall not, under any circumstances, be covered by the amnesty, on the understanding that not every act or offence can be, nor deserves to be, amnestied. As is the case with the facts provided for in Article 3 of Directive (EU) 2017/541 of the European Parliament and of the Council, of 15 March 2017, on combating terrorism, or with Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment considered equivalent to crossing that line and thus a clear example thereof. However, one must remember that not every degrading act is covered by this provision, as it is necessary that the action, in addition to being unlawful, reaches a minimum level of seriousness.

Thus, according to the case law of the European Court of Human Rights, for the act to be considered degrading under Article 3 of the Convention, it will usually be necessary for the bodily

harm caused or the suffering experienced by the victim to be of a certain intensity or, in any case, capable of breaking a person's moral or physical resistance. A restrictive criterion of exclusions is chosen for the application of this law, due to the fact that certain conducts could generate confusion with other crimes, which would be the case in some actions included in Chapter VII of Title XXII of Book II of the Criminal Code.

With regard to Article 1.1, it should be specified that the fact that this law extends the amnesty to criminal actions that may have been carried out in defence of legality and constitutional order does not imply any demerit or reproach for the groups concerned. Under no circumstances does it imply the criminalisation of officials who intervened in defence of public order, as the presumption of innocence is a basic principle of our legal system. Rather, it seeks to alleviate the procedural situation of the defendants and thus the tensions arising from events that were framed within certain time and as a consequence of the tensions that existed at that time and over more than ten years. Furthermore, this law aims to lay a solid foundation to, once and for all, continue to mitigate the consequences of a conflict that should never have arisen and which, despite the steps taken in recent years, remains latent.

Title II describes the effects of the exoneration from liability that the adoption of this measure entails in the criminal, administrative and accounting spheres. It also devotes an article to specifying the consequences arising from this exemption for public servants. It also determines that the amnesty shall not afford any right whatsoever to compensation, nor shall it give rise to the restitution of sums paid as fines or sanctions, nor shall it exonerate any civil liability vis-à-vis individuals.

Finally, Title III identifies the competence to apply this amnesty to each specific case and describes the procedure in the criminal and contentious-administrative order, as well as in the administrative and accounting sphere, establishing a statute of limitations of five years for those affected to apply for the amnesty recognised here. In addition, the possibility of lodging the appropriate legal appeals against the decisions issued in application of this law is recognised.

For its part, the aim of the first additional provision is to amend Article 130 of the Criminal Code to expressly include amnesty as grounds for termination of criminal responsibility, in line with the provisions already contained in the Law on Civil Proceedings. The purpose of the second additional provision is to amend Article 39 of Organic Law 2/1982, of 12 May, on the Court of Auditors, in order to adapt it to the entry into force of this law. And the final provision determines that this law will enter into force on the day of its publication in the "Official State Gazette".

In light of the above and taking into account the criminal scope of this regulation (Article 149.1.6.a of the Spanish Constitution) and its effect on fundamental rights (Article 81.1 of the Spanish Constitution), the Cortes Generales approve the following legislative proposal for organic law.

TITLE I

Objective scope and exclusions

Article 1. *Objective scope.*

1. The following acts that determine criminal, administrative or accounting liability, carried out in the framework of the consultations held in Catalonia on 9 November 2014 and 1 October 2017, their preparation or their consequences, are hereby amnestied, provided that they were carried out between 1 January 2012 and 13 November 2023, as well as the following actions committed in the period between these dates, even if they are not directly related to these consultations or even if they were carried out after the respective consultations have taken place:

a) Acts committed with the intention of claiming, promoting or procuring the secession or independence of Catalonia, as well as those that would have contributed to the achievement of such purposes.

In any case, this shall include acts classified as criminal offences of usurpation of public functions or embezzlement aimed at financing, supporting or facilitating the commission of any of the conducts described in the first paragraph of this point, directly or through any public or private entity, as well as any other act classified as a criminal offence which had the same purpose.
This will also include actions carried out, in a personal or institutional capacity, with the aim of disseminating the pro-independence project, gathering information and acquiring knowledge of similar experiences, or obtaining the support of other public or private entities for the achievement of Catalan independence.

Likewise, acts directly or indirectly linked to the so-called pro-independence process in Catalonia or to its leaders within the framework of that process, and carried out by those who have manifestly and demonstrably provided assistance, collaboration, advice of any kind, representation, protection or security to those responsible for the conduct referred to in the first paragraph of this point, or have obtained information to that effect, shall also be understood to be included.

b) Acts committed with the intention of calling, promoting or procuring the holding of the consultations that took place in Catalonia on 9 November 2014 and 1 October 2017 by anyone who lacked the powers to do so or whose calling or holding has been declared unlawful, as well as those that would have contributed to their achievement.

In any case, this shall include acts classified as crimes of usurpation of public functions or embezzlement aimed at financing, defraying or facilitating the performance of any of the conducts described in the previous paragraph, as well as any other act classified as a criminal offence with the same purpose.

c) Acts of disobedience, whatever their nature, public disorder, attacks against the authority, its agents and public officials or resistance carried out for the purpose of allowing the holding of the referendums referred to in section b) of this Article or their consequences, as well as any other acts classified as criminal offences carried out with the same intention.

In any case, this shall include acts classified as crimes of prevarication or any other acts that have consisted of the approval or execution of laws, regulations or resolutions by public authorities or public officials that have been carried out with the purpose of facilitating, favouring or assisting the holding of the referendums referred to under letter b) of this Article.

Acts of disrespect or criticism of public authorities and public servants, public bodies and institutions, as well as their symbols or emblems, in the course of demonstrations, assemblies, artistic or other similar works or activities aimed at calling for the independence of Catalonia or the holding of the consultations referred to in section b), or public support for those who have carried out the acts granted amnesty under this law, shall also be granted amnesty.

d) Acts of disobedience, regardless of the nature thereof, public disorder, attacks against the authority, its agents and public officials, resistance or other acts against public order and peace which have been carried out with the purpose of showing support for the objectives and aims described in the preceding sections or for those accused or convicted for the execution of any of the offences covered by this article.

e) Actions carried out in the course of police actions aimed at hindering or preventing the commission of the acts that give rise to criminal or administrative liability covered by this article.

f) Acts committed for the purpose of favouring, procuring or facilitating any of the actions giving rise to criminal, administrative or accounting liability referred to in the preceding paragraphs of this Article, as well as any other actions materially related to such actions.

2. Acts giving rise to criminal, administrative or accounting liability granted amnesty under paragraph 1 of this Article shall be granted amnesty irrespective of their degree of execution, including preparatory acts, and irrespective of the form of authorship or participation.

3. Acts which had begun to be performed before 1 January 2012 shall be deemed to fall within the scope of this Act only if their performance is completed after that date.

Acts which had begun to be performed before 13 November 2023 shall also be deemed to fall within the scope of this Act, even if their performance is completed after that date.

Article 2. *Exclusions*.

The following acts are excluded from the application of the amnesty provided for in Article 1 under any circumstances:

a) Malicious acts against persons resulting in death, miscarriage or injury to a foetus, loss or disablement of an organ or limb, loss or disablement of a sense, impotence, sterility or serious deformity.

b) Acts defined as crimes of torture or inhuman or degrading treatment in accordance with Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, provided that they exceed a minimum threshold of severity.

c) Acts classified as terrorist offences punishable under Chapter VII of Title XXII of Book II of the Criminal Code, provided that a final judgment has been passed and that they had consisted of the commission of any of the conducts described in Article 3 of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017.

d) The crimes of treason and against the peace or independence of the State and relating to National Defence in Title XXIII of Book II of the Criminal Code.

e) Crimes affecting the financial interests of the European Union.

f) Crimes found to be motivated by racist, anti-Semitic, anti-Gypsy or any other form of discrimination referring to a victim's religion and beliefs, ethnicity or race, sex, age, sexual or gender orientation or identity, reasons of gender, aporophobia or social exclusion, the illness they suffer from or their disability, regardless of whether these conditions or circumstances actually applied to the person who was the object of said conduct.

TITLE II

Effects

Article 3. *Termination of criminal, administrative or accounting liability*.

The amnesty declared by virtue of this law produces the termination of criminal, administrative or accounting liability, under the terms provided for in this Title.

Article 4. *Effects on criminal liability*.

1. The competent judicial body shall order the immediate release of persons benefiting from the amnesty who are in prison.

The custodial sentences, fully or partially served, may not be considered in other criminal proceedings in the event that the acts for which the sentence was executed are granted amnesty in application of this law. The same rule shall apply in relation to periods of pre-trial detention not followed by a conviction on account of the entry into force of this Law.

2. The criminal record resulting from the conviction for the criminal act for which amnesty has been granted shall be expunged.

3. Warrants for the arrest and detention of persons covered by this amnesty, as well as national, European and international arrest warrants, shall be cancelled.

4. The entry into force of this law shall entail the immediate lifting of any precautionary measures that may have been adopted with regard to actions or omissions granted amnesty in relation to the persons benefiting from the amnesty, with the sole exception of the measures of a civil nature referred to in Article 8.2. It shall also entail the termination of the execution of the sentences imposed for those acts or omissions granted amnesty.

In any event, such interim measures shall be lifted even when an appeal or a question of unconstitutionality is lodged against this Act or any of its provisions.

Article 5. *Effects on administrative liability*.

1. The competent administrative body shall decide on the definitive closure of any administrative proceedings initiated with a view to enforcing the administrative liabilities incurred.

2. The precautionary measures of any kind adopted in the administrative proceedings shall be lifted, without prejudice to those measures that must be maintained for the purposes of satisfying the civil liability provided for in Article 8.2 of this law, and any sums deposited shall be returned.

Article 6. *Effects on public servants*.

1. Sanctioned or convicted public servants shall be reinstated in full active and passive rights, as well as reinstated in their respective bodies, in cases where they had been dismissed.

2. Public servants shall not be entitled to receive any credit for the time during which they have not rendered actual service, but their seniority shall be recognised as if there had been no interruption to their service.

3. Unfavourable marks on service records for any reason other than the sanction shall be removed, including when the sanctioned person is deceased or on sick leave.

Article 7. *Effects on compensation and refunds*.

1. The amnesty of an act which gives rise to criminal, administrative or accounting liability shall not entitle any person to compensation of any kind and shall not create any economic rights of any kind in favour of any person.

2. Nor shall it afford any entitlement to reimbursement of the sums paid by way of fine.

Article 8. *Effects on civil and accounting liability*.

1. The civil and accounting liabilities arising from the acts described in Article 1.1 of this Act shall be extinguished, including those that are the subject of proceedings before the Court of Auditors, except those that have already been declared by virtue of a final and enforced administrative ruling or decision.

2. Without prejudice to the provisions of the previous section, the amnesty granted shall at all times respect any civil liability that may apply for damages suffered by individuals, which shall not be substantiated before the criminal courts.

3. The precautionary measures agreed at the preliminary or first instance proceedings stage provided for in Articles 47 and 67 of Law 7/1988, of 5 April, on the Functioning of the Court of Auditors, shall be lifted.

TITLE III

Competence and procedure

Article 9. Competence for the application of the amnesty.

1. Amnesty for acts classified as crimes shall be applied by the judicial bodies determined in Article 11 of this law, ex officio or upon request of a party or the Public Prosecutor's Office and, in any case, after hearing the Public Prosecutor's Office and the parties.

2. The amnesty for conduct constituting infractions of an administrative nature or giving rise to accounting liability shall be applied by the bodies competent for the initiation, processing or resolution of the proceedings in respect of such conduct, depending on the stage reached, after hearing the interested party.

3. A specific act giving rise to criminal, administrative or accounting liability may only be considered to be granted amnesty when it has been so declared by a final decision issued by the competent body in accordance with the provisions of this law.

Article 10. *Preferential and urgent processing*.

The application of the amnesty in each case shall be the responsibility of the judicial, administrative or accounting bodies determined in this law, which shall adopt, as a matter of priority and urgency, the relevant decisions in compliance with this law, regardless of the stage of the administrative procedure or the judicial or accounting process in question.

Decisions shall be taken within a maximum period of two months, without prejudice to any subsequent appeals, which shall have no suspensive effect.

Article 11. *Procedure in criminal matters*.

1. Amnesty shall be applied by judicial bodies at any stage of criminal proceedings.

2. If applied during the investigation phase or the intermediate phase, the competent judicial body, in accordance with Article 637.3 of the Law on Criminal Proceedings, shall dismiss the case, after hearing the Public Prosecutor's Office and the parties, in accordance with Article 637.3 of the Law on Criminal Proceedings.

3. If it is applied during the oral trial phase, the judicial body hearing the prosecution shall issue an order of dismissal or, where applicable, acquittal, once the following formalities have been conducted:

a) The parties and the Public Prosecutor's Office may propose the application of the amnesty as a preliminary ruling article in accordance with the provisions of Article 666.4.a of the Law on Criminal Proceedings, in accordance with the provisions of Title II of Book III of the Law on Criminal Proceedings or, where applicable, Article 786 of the same Act.

b) The parties and the Public Prosecutor's Office may also request its application when formulating their final conclusions.

c) When the parties or the Public Prosecutor's Office do not request the application of the amnesty, the judicial body must do so ex officio, having heard the Public Prosecutor's Office and the parties, provided the conditions for this are met, by issuing an order of dismissal or, where applicable, a judgement of acquittal.

4. In the case of judgments which have not become final, the following rules shall be observed:

a) If the appeal against the sentence has not yet been substantiated, the parties and the Public Prosecutor's Office may invoke the provisions of this Act when lodging the appeal and request that the offences attributed to the accused be declared granted amnesty.

b) If the appeal against the judgement is being heard, the court shall, of its own motion or upon request of a party or the Public Prosecutor's Office, give them a hearing within a period of five days to decide whether they consider all or any of the offences which constitute the subject matter of the proceedings to have been granted amnesty in accordance with the provisions of this Act.

c) In any case, when deciding on the appeal against the sentence, the court shall declare ex officio that the acts classified as offences committed by the accused person are amnestied when the conditions for amnesty are met in application of this law.

5. If applied during the enforcement of sentences, final judgments under this Act shall be reviewed by the judicial bodies responsible for the first instance prosecution, even if the sentence imposed is suspended or the convicted person is on probation.

6. The granting of a total or partial pardon prior to the entry into force of this law shall not prevent the review of the final sentence.

7. Final court rulings that have established the termination of criminal liability due to the statute of limitations of the offence in accordance with Article 130.1.6 of the Criminal Code shall not be reviewed.

Article 12. *Procedure in the contentious-administrative sphere*.

1. In proceedings before the contentious-administrative jurisdiction whose purpose is the review of administrative decisions imposing sanctions for acts giving rise to administrative or accounting liability, the application of the amnesty, when the conditions established for this purpose in this law are met, shall correspond to the judicial bodies before which the contentious-administrative appeal is processed, at any stage of the process.

2. Once the administrative file has been received and at any time prior to the delivery of the judgment, the Court or Chamber, either ex officio or upon request of a party, shall apply the amnesty after hearing the parties and shall deliver a judgment declaring the supervening nullity of the contested administrative act.

3. Where the proceedings have already been decided by a judgment which has not become final, the following rules shall apply:

a) If the appeal has not yet been lodged, the parties may invoke the provisions of this Act when lodging the appeal and request that the amnesty be applied and the administrative act declared null and void.

b) If the appeal is pending, the court with jurisdiction to rule on it shall, *ex officio* or upon request of a party, give the parties a hearing within five days to decide whether they consider the amnesty to be applicable and the resulting declaration of nullity of the act.

c) In any case, when ruling on the appeal, the court shall apply the amnesty and declare the expunged act null and void where the requirements of this law are met.

4. If, at the time when the amnesty is to be applied, a final judgement has been delivered, the procedure provided for in Article 102 of Law 29/1998, of 13 July, on Contentious-Administrative Jurisdiction, shall apply.

Article 13. *Procedure in the accountancy sphere*.

1. The amnesty shall be applied by the Court of Auditors at any stage of the process.

2. In the preliminary proceedings provided for in Articles 45, 46 and 47 of Law 7/1988, of 5 April, on the Functioning of the Court of Auditors, the corresponding resolutions shall be issued declaring the proceedings closed, after hearing the Public Prosecutor's Office and the public sector entities harmed by the impairment of public funds or effects related to the acts granted amnesty, where no objection has been raised by said entities.

3. If the accounting liability proceedings before the Court of Auditors are at the first instance or appeal stage, the competent bodies of the Court of Auditors, having heard the Public Prosecutor's Office and the public sector entities harmed by the loss of public funds or effects related to the acts granted amnesty, shall issue a decision absolving the respondent natural or legal persons from accounting liability, where no objection has been raised by said entities.

Article 14. *Procedure in the administrative sphere*.

1. In proceedings that are in the investigation phase in relation to the commission of administrative offences, the assessment of amnesty shall be carried out ex officio or upon request of a party by the competent administrative body, if the conditions thereof are met, issuing a decision to this effect to terminate the proceedings and close the case.

2. If amnesty is granted in respect of final administrative acts or during the enforcement of penalties, the competent administrative bodies shall review the relevant decisions, either ex officio or upon request of a party.

3. In the case of decisions that have not become final because they have been appealed, the competent body to resolve the corresponding administrative appeal shall declare, ex officio or upon request of a party, that the acts comprising the subject of the procedure are granted amnesty when the conditions thereof are met in application of this law.

Article 15. *Time limit for the recognition of the rights covered by this law*.

Actions for the recognition of the rights established in this law shall be subject to a statute of limitation of five years.

Article 16. *Appeals*.

1. Appeals may be lodged against decisions ruling on the termination of criminal liability or administrative and accounting infractions in application of this Law, as provided for in the legal system.

2. The same appeals may be lodged against decisions ruling on the review of judgments or final administrative decisions as would have been lodged against the judgment handed down at first instance.

First additional provision.

Article 130(1) of the Criminal Code is hereby amended to read as follows:

«1. Criminal liability is terminated:

1. On the death of the offender.

2. On completion of the sentence.

3. By final remission of the sentence, in accordance with the provisions of Article 87 (1) and (2).

4. By amnesty or pardon.

5. By the forgiveness of the offended party, where the offence is a misdemeanour that may be prosecuted at the request of the aggrieved person or where so provided for in law. Such forgiveness must be expressly granted before a sentence has been passed. For this purpose, the sentencing judicial authority must hear the offended party before passing sentence.

In the case of criminal offences committed against minors or persons with disabilities in need of special protection that affect eminently personal legal assets, the forgiveness of the offended party shall not terminate criminal liability.

6. By expiry under the statute of limitations for the offence.

7. By expiry under the sentience or the security measure"

Second additional provision.

Article 39 of Organic Law 2/1982, of 12 May, on the Court of Auditors, is amended to read as follows:

“Article thirty-nine.

One. Those who act in virtue of due obedience shall be exempted from liability, provided that they have warned in writing of the imprudence or lawfulness of the corresponding order, with the reasons on which they are based.

Two. Similarly, no liability shall be incurred where the delay in rendering, justifying or examining the accounts and clearing the objections is due to the failure of others to comply with their specific obligations, provided that the person responsible has so stated in writing.

Three. Those who have committed acts which have been granted amnesty under the terms of the law shall be exempted from liability.”

Final provision.

This Act shall enter into force on the day of its publication in the "Official State Gazette".