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TO THE TABLE OF THE CONGRESS OF DEPUTIES

The undersigned Parliamentary Groups have the honor of addressing the Bureau, under article 124 et seq. of the current Regulations, to present the following Proposal for an Organic Law of amnesty for institutional, political and social normalization in Catalonia.

Likewise, it is requested that it be processed through the urgent procedure, under article 93 of the current Regulation.

In the Congress of Deputies, on November 13, 2023.

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STATEMENT OF MOTIVES

Any amnesty is conceived as a legal figure aimed at derogating from the application of fully valid regulations, when acts that have been declared or are classified as a crime or determining any other type of responsibility have occurred in a specific context.

This legislative power is configured in the system as an appropriate means to address exceptional political circumstances that, within a rule of law, pursue the achievement of a general interest, such as the need to overcome and channel deep-rooted political and social conflicts. , in the search for improving coexistence and social cohesion, as well as an integration of various 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 by the Constitution to the Cortes Generales, which are established as the body in charge of representing popular sovereignty in the constituted powers and freely configure the general will through the exercise of legislative power through pre-established channels.

Amnesty has been used on numerous occasions in our legal tradition. It is not a new way, it has numerous precedents in Spain. The most important, but not the only one, is the Amnesty Law of 1977 (Law 46/1977, of October 15).

Furthermore, it is recognized in the constitutional order of many of the countries in our geographical environment and legal influence. Thus, it is expressly provided for in the constitutional texts of Italy, France or Portugal, which have applied this measure on various occasions, the most recent being Law 38-A/2023, of August 2, of Portugal, which grants amnesty to all young people between sixteen and thirty years old for the commission of certain crimes, on the occasion of Pope Francis' visit to that country.

There are also other constitutional norms of European countries that, although they do not expressly mention amnesty, as in the case of Germany, Austria, Belgium, Ireland or Sweden, this has not prevented their constitutionality from being affirmed. Since the Second World War, more than fifty of these laws have been enacted in the aforementioned countries, considering the doctrine itself that an amnesty is applicable in the constitutional State in circumstances of special political crisis.

From the perspective of European Union law, the institution of amnesty is perfectly approved. In this sense, for example, the Council Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between States stands out.

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Member States, Article 3 of which provides that when the crime is covered by the amnesty in the executing Member State, the European arrest warrant will be refused. More recently, also the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, on the one hand, and the United Kingdom of Great Britain and Northern Ireland, Article 600 of which contains a provision similar to that mentioned above. .

Consistently, the Court of Justice of the European Union, in its ruling of April 29, 2021, issued in case C-665/20 PPU, not only recognizes the possibility of the existence of amnesties but also establishes that the same “aims to strip the facts of their criminal nature.” which is applied, in such a way that the crime can no longer give rise to criminal proceedings and, in the event that a sentence has already been imposed, that its execution is put to an end, therefore implies, in principle, that "The sanction imposed can no longer be carried out." And more recently, in its ruling of December 16, 2021, issued in case C-203/20, the same court has established the possibility of shelving criminal proceedings and ending the sentences, based on judicial resolutions issued under of an amnesty resulting from a legislative procedure.

Along the same lines, the European Court of Human Rights has recognized the validity and political opportunity of the amnesty, setting as a limit the serious violations of human rights, as these are facts that cannot be left outside the obligation of the States of prosecute and sanction them (among others, the judgment of May 27, 2014 of the Grand Chamber, issued in the Marguš v. Croatia case).

And, for its part, the European Commission for Democracy through Law (Venice Commission) has also made clear the validity of measures such as amnesty and their compatibility with judicial decisions, both in its Recommendation CM/Rec (2010)12 , as in its plenary session on March 8 and 9, 2013.

II

This organic law amnesties acts that have been declared or were classified as crimes or as conduct determining administrative or accounting responsibility, linked to the consultation held in Catalonia on November 9, 2014 and the referendum of October 1, 2017 (declared both unconstitutional in the rulings of the Constitutional Court 31/2015, of February 25, and 114/2017, of October 17), which had been made between January 1, 2012, the year in which the events of the independence process, and November 13, 2023. The amnesty covers not only the organization and holding of the consultation and the referendum, but also other possible crimes that have a deep connection with them, such as, as an example, the preparatory acts, the different protest actions to allow their celebration or show opposition to the prosecution or conviction of those responsible, including

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also the assistance, collaboration, advice or representation of any type, protection and security to those responsible, as well as all the acts object of this Law that accredit a political, social and institutional tension that this norm aspires to resolve in accordance with the powers that the Constitution confers on the Cortes Generales.

The events framed in the so-called independence process, promoted by the political forces at the head of the institutions of the Generalitat of Catalonia (President, Parliament and Government) and supported by part of civil society, as well as the political representatives at the head of a good number of the town councils of Catalonia, had as a precedent the intense debate on the political future of Catalonia opened following the ruling of the Constitutional Court 31/2010, of June 28. Furthermore, they led to a series of intense and sustained mobilizations over time, as well as pro-independence parliamentary majorities.

These events led to an institutional tension that gave rise to the intervention of Justice and a social and political tension that caused the disaffection of a substantial part of Catalan society towards state institutions, which has not yet disappeared and is rekindled on a recurring basis. when the multiple legal consequences that they continue to have are manifested, especially in the criminal field.

During this time, the Cortes Generales have had a preponderant role in shaping the response of popular sovereignty to this independence process. A role that this organic law reaffirms by recognizing its competence and legitimacy to make an evaluation of the political situation and promote a series of solutions that must be offered in each context, in accordance with the general interest.

Thus, with this organic amnesty law, the Cortes Generales once again resort to a constitutional mechanism that reinforces the rule of law to provide an adequate response more than ten years after the beginning of the independence process, when the most serious moments of the crisis and it is time to establish the foundations to guarantee coexistence for the future.
In this way, when the Cortes Generales assume this legislative policy decision, not only do they not invade other spaces, but, quite the contrary and in use of their powers, they assume the best possible way to address, from politics, a political conflict.

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 disaffection that keeps a part of the population away from state institutions. Consequences, furthermore, that could worsen in the coming years as judicial procedures are substantiated that affect not only the leaders of that process (who are the least), but also the multiple cases of citizens and even public employees who They perform essential functions in the

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autonomous and local administration and whose prosecution and eventual conviction and disqualification would produce a serious disruption in the functioning of the services in the daily lives of its neighbors and, ultimately, in social coexistence.

With the approval of this organic law, therefore, what the legislator intends is to exception the application of current norms to some events that occurred in the context of the Catalan independence process for the sake of the general interest, consisting of guaranteeing coexistence within the rule of law. , and generate a social, political and institutional context that promotes economic stability and cultural and social progress both in Catalonia and in Spain as a whole, while serving as a basis for overcoming a political conflict.

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

Thus, this amnesty cannot be interpreted as a departure from our legal framework. Quite the contrary, it is a tool that strengthens it and looks to the future, returning to parliamentary debate the divisions that continue to strain the seams of society, through a renunciation of the exercise of ius puniendi for reasons of social utility that is based on *the* achievement of a higher interest: democratic coexistence.

This organic law is one more step on a difficult path, but at the same time brave and reconciliatory; a demonstration of respect for citizens and that the application of legality is necessary, but, sometimes, it is not enough 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 rule of law are not, nor should they be, immovable; since it is the Law that is at the service of society and not the opposite, and therefore it must have the capacity to update itself by 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 regulations that implemented this measure in our country were approved: Royal Decree-Law 10/1976, of July 30, and the Law 46/1977, of October 15. At that time, they were part of the set of acts intended to put an end to a long dictatorship to begin the construction of a social and democratic State 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 the year 2023, Spain is characterized by being a democracy and a rule of law, in which the principle

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of legality, the democratic principle and respect for fundamental rights are essential pillars.

Since 1978, Spain has had a constitutional text comparable to that of the countries around us, which guarantees fundamental rights individually considered and preserves the ideological and political rights of all, and which establishes for public powers the obligation to interpret the norms. relating to fundamental rights and freedoms in accordance with the Universal Declaration of Human Rights and ratified international treaties and agreements, as recognized 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 conciliation through a sovereign act of the Cortes Generales, whose legitimacy is based on two pillars of different nature: for on the one hand, the constitutionality of the measure and, on the other, the need to address an exceptional situation in favor of the general interest, betting on a future of understanding, dialogue and negotiation between different political sensitivities,
ideological and national. A society that seeks to advance from a democratic point of view must have the capacity to favor and place among its priorities coexistence, dialogue, respect and eventual understanding between different democratic political positions and demands.

And, 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), configures political parties as a channel for the expression of popular will and as a fundamental instrument for political participation (article 6), the principle of legality, legal certainty and the prohibition of the arbitrariness of public powers (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 assembly and demonstration without weapons (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 taking into account that the 1978 Constitution is integrated into the liberal-democratic tradition that has given rise to contemporary social and democratic states of law. This requires that values such as political pluralism, justice and equality govern the foundation, purpose, scope and conditions of an amnesty law.

This is the general legal framework in which the present amnesty law is conceived, in the clear understanding that, although there is no democracy outside the rule of law, it is necessary to create the conditions so that politics, dialogue and channels parliamentarians are the protagonists in the search for solutions to a political issue with a recurring presence in our history. It is, therefore, about using whatever instruments are in the hands of the

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State to seek institutional normalization after a period of serious disruption, as well as to continue promoting dialogue, understanding and coexistence. This process is also inspired by the interpretation offered by the Constitutional Court on the political obligations of public powers when it says that "the Constitution does not and cannot expressly address all the problems that may arise in the constitutional order […]. For this reason, the public powers and especially the territorial powers that make up our autonomous State are those who are called to resolve the problems that develop in this area through dialogue and cooperation" (ruling 42/2014, of March 24).

IV

The constitutionality of the amnesty was declared by the Constitutional Court, in its ruling 147/1986, of November 25, regarding precisely the application of Law 46/1977. In this statement, it is expressly 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 of pardon, such as general pardons, which have a very different legal nature from that of an organic law of amnesty, being the pardon a prerogative of the Executive Branch.
Sentence 147/1986 itself elaborates on this issue by stating that "it is erroneous to reason about pardon and amnesty as figures whose difference is merely quantitative, since they are found among themselves in a relationship of qualitative differentiation."

It seems reasonable to understand that the 1978 constituent did not prohibit the institution of the amnesty because, among other reasons, this would have implied the repeal of the aforementioned Royal Decree-Law 10/1976, of July 30, and Law 46/1977, of October 15, which constituted the starting point of the constitutional pact and without which the Democratic Transition would not have been possible nor the broad parliamentary and social consensus that endorsed and made it possible for the Spanish Constitution of 1978 to see the light. This circumstance is evident in the jurisprudence, since the Supreme Court has stated exhaustively that Law 46/1977 is "a current law whose eventual repeal would correspond, exclusively, to Parliament" (sentence 101/2012, of 27 February).

All of this allows us to infer that the amnesty, far from being an unconstitutional figure, is part of the founding pact of Spanish democracy and is presented as a power of the Cortes Generales, in which the entire Spanish people, holder of sovereignty, are represented. national. In this way, whoever is entitled to classify or declassify a certain conduct is recognized, as a logical consequence, with the power to amnesty those same acts without other limits than those that directly arise from the Constitution.

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It should be emphasized that the amnesty does not affect the principle of separation of powers or the exclusivity of jurisdiction provided for in article 117 of the Constitution because, as its own text states, the Judiciary is subject to the rule of law and is precisely a law with organic value which, within the parameters set out above, provides for the cases of exemption from liability, corresponding to the judges and courts, as well as the Court of Accounts or the administrative authorities that follow or have followed the procedures, processes , files and causes affected by the amnestied acts, their application to each specific case.

The above is as it has been implicitly recognized in our legal system, which normally incorporates the figure of amnesty in different provisions.

Among the state legislation, it is worth highlighting, for example, article 666.4ª of the Royal Decree of September 14, 1882, which approves the Law of Criminal Procedure, which provides for amnesty as one of the causes that require dismissal. As well as a whole series of regulations that have been approved since the 1980s, such as (i) article 16 of Royal Decree 796/2005, of July 1, which approves the General Regulations for the disciplinary regime of service personnel. of the Administration of Justice; (ii) article 163 of Royal Decree 1608/2005, of December 30, which approves the Organic Regulations of the Body of Judicial Secretaries; (iii) article 108 of Royal Decree 429/1988, of April 29, which approves the Organic Regulations of the Body of Judicial Secretaries; (iv) article 88 of Royal Decree 2003/1986, of September 19, which approves the Organic Regulations of the Official, Auxiliary and Agent Bodies of the Administration of Justice; and (v) article 19 of Royal Decree 33/1986, of January 10, which approves the Regulation of Disciplinary Regime of Officials of the State Administration, which provides that the disciplinary responsibility of the members of these bodies can be extinguished, among other causes, by amnesty. Or the explanatory statement and article 2 of the most recent Law 20/2022, of October 19, on Democratic Memory, where it is recognized that Law 46/1977, of October 15, on Amnesty, is part of the fully valid laws of the Spanish State.

In the regional regulations we also find references to amnesty as a cause for extinction of disciplinary responsibility in regulations approved since the 90s, for example, (i) article 144 of Legislative Decree 1/2020, of July 22, by which approves the consolidated text of the Police Law of the Basque Country; (ii) article 57.4 of the Provincial Law 8/2007, of March 23, of the Navarra Police; (iii) article 89.1 of Law 6/1989, of July 6, on the Basque Public Service; (iv) article 64 of Law 6/2005, of June 3, on the coordination of the Local Police of the Balearic Islands; (v) article 78.1 of the Law of the Parliament of Catalonia 10/1994, of July 11, on the Generalitat Police; or (vi) article 58.1 of the Law of the Parliament of Catalonia 16/1991, of July 10, on the Local Police.

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Finally, it should be noted that the amnesty is contemplated in more than thirty international agreements signed by Spain regarding the transfer of convicted persons or extraditions, more than twenty of them having the status of treaty or international agreement, which implies 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 established the requirements so that a law of these characteristics can be valid in our legal system. In this sense, it has insisted that this type of regulations, like the rest of the legal system, must conform to constitutional principles (rulings 28/1982, of May 26; 63/1983, of July 20; 116/1987 , of July 7, among others).

In this same sense, it is worth noting that the Council of State, whose task is also the examination of the constitutionality of the draft general provisions, in its Opinion 895/2005, issued on the occasion of the processing of the aforementioned Royal Decree 796/2005 , which approves the Disciplinary Regulations for personnel in the service of the Administration of Justice, did not criticize the inclusion of the amnesty as a cause for extinction of disciplinary responsibility (art. 16).

Well, once its constitutionality has been declared, this legislative option can only be understood within the framework of the singular laws, with respect to which the Constitutional Court has been maintaining its exceptionality, but also its conformity with the constitutional text by stating that "the dogma of generality of the Law is not an insurmountable obstacle that prevents the legislator from dictating, with the force of Law, specific precepts for unique cases or specific subjects” (ruling 166/1986, of December 19). 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” (ruling 129/2013, of June 4).

Now, the *ad casum* regulation that every singular law entails only surpasses the constitutional canon of equality when it comes to norms “dictated in response to a specific and singular factual assumption, which exhaust their content and effectiveness in the adoption and execution of the measure taken by the legislator in the face of this factual situation, isolated in the singular Law” (ruling of the Constitutional Court 129/2013, of June 4). This is precisely the parameter of constitutionality that the present organic law of amnesty meets, since its object and scope is directed at a specific group of recipients and exhausts its content in the adoption of the measure for a singular event, in this case. case the set of acts linked, in various ways, to the aforementioned independence process, which are materially and temporally limited.

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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 be no discrimination between people who are included in the enabling assumption of the norm (in this case, the determining acts of different types of responsibility in relation to the independence process). And this is because, as the highest interpreter of the Constitution has made clear, the principle of equality must be applied when there is "substantial identity of the legal situations", without being able to "make a comparison [...] between legal situations that have not originally existed." have been equated by the very rules that create them" (sentence 194/1999, of October 25), taking into account the principle of justification and reasonableness (sentences 62/1982, of October 15; 112/1996, of June 24 ; 102/1999, of May 31). This organic law respects, therefore, the principle of equality to the extent that the scope of application is identified in an objective and justified manner, in accordance with constitutional values, and without arbitrarily excluding assumptions with a substantial identity.

Framed this organic amnesty law in the category of singular law and defined the exceptional situation to which it seeks to respond, it is inspired, as it could not be otherwise, by the principles of reasonableness, proportionality and adequacy.

Its reasonableness is linked to the objective and reasonable justification of its uniqueness, which is framed in the need to overcome, as has already been revealed, the situation of high political tension that Catalan society experienced in a particularly intense way 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 consecrated, in the understanding that the reinforcement of coexistence justifies the present amnesty law, which represents a turning point, with the aim of overcoming obstacles and improving coexistence by moving towards the full normalization of a plural society that addresses the main debates about its future through dialogue, negotiation, and democratic agreements. In this way, the resolution of the political conflict is returned to the channels of political discussion.

The proportionality of the law derives from the specification of the list of acts that have been declared or are classified as crimes and behaviors that are amnesty and from their necessary connection with the acts carried out in a period of time limited by the law. In this way, a generic and imprecise reference is avoided, preventing the amnesty from covering other types of acts not directly connected with the independence process and its consequences, whose exoneration would have no place within the foundation on which this measure is built. .

All of this connects with the principle of adequacy and with the purpose intended by the norm, linked to the optimization mandate that derives from article 9 of the Constitution and that is addressed to all public powers, but particularly to the legislator, who is the one who configures the criminal types, who repeals them and who

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approves, as is the case, an amnesty law with a legitimate and constitutional purpose. Purpose, furthermore, that, due to its legal nature or the diversity of procedural situations in force at the time of the promulgation of this norm, could not be achieved with other types of legal figures such as the granting of pardons or the reform of the Penal Code.

On the other hand, the nature of a singular law that exempts the application of current norms to events that occurred in a certain context in the interests of the general interest must entail the immediate lifting of the precautionary measures that have been adopted, even when the approach of an appeal or a question of unconstitutionality, as well as the completion of the execution of the sentences imposed.

SAW

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

Title I delimits the objective scope of the amnesty. For these purposes, it first describes the acts classified as crimes or determinants of administrative or accounting responsibility linked, in one way or another, to the consultation of November 9, 2014 and the referendum of October 1, 2017, both declared unconstitutional, which are exonerated, delimiting the time frame period in which they must have occurred from January 1, 2012 to November 13, 2023.

It then identifies the criminal acts to which, in any case, this amnesty will not apply, with the understanding that not every act or crime can or deserves to be amnesty. As occurs with the facts provided for in article 3 of Directive (EU) 2017/541 of the European Parliament and of the Rabbit of March 15, 2017, relating to the fight against terrorism, or with article 3 of the European Convention on Rights Human Rights, which prohibits torture and inhuman or degrading punishments or treatment, which is supposed to be an insurmountable limit, a clear example of this. However, it is worth remembering that not every degrading act fits into said precept, since this requires that the action, in addition to being illicit, reach a minimum level of seriousness. Thus, according to the jurisprudence of the European Court of Human Rights, for the act to be considered degrading in accordance with article 3 of the aforementioned convention, it will usually be necessary that the bodily injuries caused or the suffering experienced by the victim be of a certain intensity or, In any case, they are capable of breaking a person's moral or physical resistance. A restrictive criterion of exclusions is chosen in the application of this law, because certain behaviors could generate confusion with other crimes, which would happen in some actions included in Chapter VII of Title XXII of Book II of the Penal Code.

Regarding article 1.1, it should be noted that the fact that this law extends the amnesty to criminal actions that could have been carried out in

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The defense of legality and constitutional order does not entail any demerit or reproach for the groups concerned. In no case does it imply the criminalization of officials who intervened in defense of public order, since the presumption of innocence is a basic principle of our legal system. Far from it, it seeks to alleviate the procedural situation of the defendants and with it the tensions derived from events that took place at a certain moment and as a consequence of the tensions existing then and over more than ten years. Likewise, this law aspires to lay solid foundations to, once and for all, continue mitigating the consequences of a conflict that should never have occurred and that, despite the steps taken in recent years, is still latent.

Title II describes the effects of the exemption from liability that the approval of this measure entails in the criminal, administrative and accounting spheres. Likewise, it dedicates an article to specify the consequences that arise from said exoneration for public employees. And, finally, it determines that the amnesty will not give the right to receive any compensation, nor will it give rise to the restitution of the amounts paid as a fine or penalty, nor will it exonerate civil liability towards individuals.

And 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 field, establishing a limitation period of 5 years for that those affected can request the amnesty recognized here. Additionally, the possibility of filing legal remedies against resolutions issued in application of this law is recognized.

For its part, the first additional provision aims to modify article 130 of the Penal Code to expressly include amnesty as a case of extinction of criminal responsibility, in line with the provisions already contained in the Criminal Procedure Law. The second additional provision aims to modify article 39 of Organic Law 2/1982, of May 12, of the Court of Accounts, to adapt it to the entry into force of this Law. And the final provision determines that this law will enter in force on the day of its publication in the Official State Gazette.

For all the above, and taking into account the criminal scope of this regulation (article 149.1.6ª CE) and its impact on fundamental rights (article 81.1 CE), the Cortes Generales approve the following organic law proposal.

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TITLE I

Target scope and exclusions

Article 1. Objective scope

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

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

In any case, 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 first paragraph of this letter, directly or through any public or private entity, as well as any other act classified as a crime that has the same purpose.

Also understood to be included in this case are those actions carried out, on a personal or institutional basis, with the aim of disseminating the independence project, gathering information and acquiring knowledge about similar experiences or getting other public or private entities to lend their support to the achievement of the independence project. independence of Catalonia.

Likewise, it will be understood to include those acts, linked directly or indirectly to the so-called independence process developed in Catalonia or to its leaders within the framework of that process, and carried out by those who, in a manifest and proven manner, have 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 letter, or have collected information for these purposes.

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

In any case, the acts
classified as crimes of usurpation of public functions or embezzlement aimed at financing, defraying or facilitating the carrying out of

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any of the behaviors described in the previous paragraph, as well as any other act classified as a crime that has the same purpose.

c) Acts of disobedience, whatever their nature, public disorder, attack against the authority, its agents and public officials or resistance that had been carried out with the purpose of allowing the holding of the popular consultations referred to in the letter. b) of this article or its consequences, as well as any other acts classified as crimes carried out with identical intention.

In any case, acts classified as crimes of prevarication or any other acts that would have consisted of the approval or execution of laws, regulations or resolutions by authorities or public officials that have been carried out with the purpose of allowing, favor or contribute to the holding of the popular consultations referred to in letter b) of this article.

Amnesty will also be granted for acts of inconsideration or criticism expressed against public authorities and officials, public entities and institutions, as well as their symbols or emblems, in the course of demonstrations, assemblies, works or artistic or other activities of a similar nature that had the purpose of object to vindicate the independence of Catalonia or to hold the consultations referred to in letter b) or to provide public support to those who have carried out the acts amnestied in accordance with this law.

d) Acts of disobedience, whatever their nature, public disorder, attack against authority, its agents and public officials, resistance or other acts against public order and peace that have been carried out with the purpose of showing support for the objectives and purposes described in the preceding letters or to those prosecuted or convicted for the execution of any of the crimes included in this article.

e) Actions carried out in the course of police actions aimed at hindering or preventing the carrying out of the acts determining criminal or administrative responsibility included in this article.

f) Acts committed with the purpose of favoring, procuring or facilitating any of the actions determining criminal, administrative or accounting liability contemplated in the previous sections of this article, as well as any others that were materially related to such actions.

2. Acts determining criminal, administrative or accounting liability amnestied under section 1 of this article will be amnestied regardless of the degree of execution, including preparatory acts, and regardless of the form of authorship or participation.

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3. The acts whose execution had begun before January 1, 2012 will only be understood to be included in the scope of application of this law when their execution ends after that date.

The acts whose execution had begun before November 13, 2023 will also be understood to be included in the scope of application of this law even if their execution ended after that date.

Article 2. Exclusions

In any case, the following are excluded from the application of the amnesty provided for in article 1:

a) Intentional acts against persons that have resulted in death, abortion or injury to the fetus, the loss or uselessness of an organ or member, the loss or uselessness of a sense, impotence, sterility or a serious deformity .

b) Acts classified 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 they exceed a minimum threshold of severity.

c) Acts classified as terrorist crimes punishable in Chapter VII of Title XXII of Book II of the Penal Code as long as a final sentence has been handed down and they have consisted of the commission of any of the conduct described in Article 3 of the Directive (EU) 2017/541 of the European Parliament and of the Council of March 15, 2017.

d) Crimes of treason and against the peace or independence of the State and related to National Defense of Title XXIII of Book II of the Penal Code.

e) Crimes that affect the financial interests of the European Union.

f) Crimes in the execution of which racist, anti-Semitic, anti-gypsy motivations or other types of discrimination regarding the religion and beliefs of the victim, their ethnicity or race, their 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 such conditions or circumstances actually existed in the person on whom the behavior occurred.

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TITLE II
Effects

Article 3. Extinction of criminal, administrative or accounting liability

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

Article 4. Effects on criminal liability

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

Totally or partially served custodial sentences may not be paid in other criminal proceedings in the event that the acts that motivated the sentence carried out are amnestied in application of this law. The same rule will apply in relation to periods of preventive detention not followed by conviction due to the entry into force of this law.

2. Criminal records resulting from the conviction for the amnestied criminal act will be expunged.

3. The search and arrest warrants and imprisonment of the people to whom this amnesty applies, as well as the national, European and international arrest warrants, will be void.

4. The entry into force of this law will imply the immediate lifting of the precautionary measures that have been adopted with respect to actions or omissions amnestied in relation to the persons benefited by the amnesty, with the sole exception of the civil measures to which Article 8.2 refers. Likewise, it will mean the completion of the execution of the sentences imposed for those actions or omissions that have been amnestied.

In any case, the aforementioned precautionary measures will be lifted even when an appeal or question of unconstitutionality against this law or any of its provisions takes place.

Article 5. Effects on administrative responsibility 1. The

competent administrative body will agree to the definitive archive of any administrative procedure initiated in order to make effective the administrative responsibilities incurred.

2. Precautionary measures of any type will be lifted adopted in the administrative procedure, without prejudice to those measures that must be maintained in order to satisfy the responsibility

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civil provision provided for in article 8.2 of this law, returning, where appropriate, the amounts that have been consigned.

Article 6. Effects on public employees

1. Sanctioned or convicted public employees will be reintegrated into their full active and passive rights, as well as their reincorporation into their respective bodies, if they have been separated.

2. Public employees will not have the right to receive any salary for the time in which they have not provided effective service, but their seniority will be recognized as if there had been no interruption in the provision of services.

3. Unfavorable notes will be removed from service records for any reason other than the sanction, even when the sanctioned person has died or been on sick leave.

Article 7. Effects on compensation and restitution

1. The amnesty of an act determining criminal, administrative or accounting liability will not give the right to receive compensation of any kind nor will it generate economic rights of any kind in favor of any person.

2. Nor will it give the right to restitution of the amounts paid as a 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 law will be extinguished, including those that are being the subject of procedures processed before the Court of Accounts,
except those that have already been declared by virtue of a final and executed administrative ruling or resolution.

2. Without prejudice to what is established in the previous section, the amnesty granted will always protect the civil liability that may apply for damages suffered by individuals, which will not be substantiated before the criminal jurisdiction.

3. The precautionary measures agreed upon in the preliminary or first instance proceedings phase provided for in articles 47 and 67 of Law 7/1988, of April 5, on the Operation of the Court of Auditors, will be lifted.

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TITLE III

Competence and procedure

Article 9. Competence for the application of the amnesty

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

2. The amnesty for conduct that constitutes infractions of an administrative nature or that determines accounting liability will be applied to the competent bodies for the initiation, processing or resolution of the procedures followed for such conduct, depending on the state in which they are found. , after hearing the interested party.

3. An act determining specific criminal, administrative or accounting liability may only be understood as amnesty when it has been declared so by a final resolution issued by the competent body for this purpose in accordance with the precepts of this law.

Article 10. Preferential and urgent processing

The application of the amnesty in each case will correspond to the judicial, administrative or accounting bodies determined in this law, who will adopt, on a preferential and urgent basis, the decisions
relevant in compliance with this law, regardless of the status of the administrative procedure or the judicial or accounting process in question.

Decisions will be adopted within a maximum period of two months, without prejudice to subsequent appeals, which will not have suspensive effects.

Article 11. Procedure in the criminal field

1. The amnesty will be applied by the judicial bodies at any stage of the criminal process.

2. If applied during the investigation phase or the intermediate phase, the free dismissal will be decreed, after hearing the Public Prosecutor's Office and the parties, by the competent judicial body in accordance with art. 637.3.º of the Criminal Procedure Law.

3. If applied during the oral trial phase, the judicial body that was hearing the prosecution will issue an order of free dismissal or, where appropriate, an acquittal sentence, after completing the following procedures:

a) The parties and the Prosecutor's Office may propose the application of the amnesty as an article of prior pronouncement in accordance with the provisions

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provided in article 666.4. of the Criminal Procedure Law, in accordance with the provisions of Title II of Book III of the Criminal Procedure Law or, where appropriate, in article 786 of the same law.

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

c) When the parties or the Public Prosecutor's Office are not interested in the application of the amnesty, the judicial body must do so ex officio, after hearing the Public Prosecutor's Office and the parties, if the budgets for this exist, issuing for this purpose an order of free dismissal. or, where appropriate, acquittal.

4. In the case of sentences that have not become final, the following rules will 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 law when filing it and request that the crimes attributed to the accused person be declared amnestied.

b) If the appeal against the sentence is being heard, the court, ex officio or at the request of a party or the Public Prosecutor's Office, will give them a hearing for a period of five days so that they can rule on whether they consider all or any of the crimes that have been amnestied. They constitute the subject of the procedure in accordance with the precepts of this law.

c) In any case, when resolving the appeal against the sentence, the court will declare ex officio that the acts classified as crimes committed by the accused person are amnestied when the budgets for this are met in application of this law.

5. If applied during the execution phase of the sentences, the judicial bodies that were responsible for the prosecution in the first instance will review the final sentences in application of this law, even in the event that the sentence imposed was suspended or the person convicted person is on conditional release.

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

7. Firm judicial resolutions that would have assessed the extinction of criminal responsibility due to the statute of limitations of the crime in accordance with article 130.1.6 of the Penal Code will not be reviewed.

Article 12. Procedure in the contentious-administrative field

1. In procedures processed before the contentious-administrative jurisdiction that have as their objective the review of administrative resolutions imposing sanctions for acts determining administrative or accounting responsibility, the application of the amnesty,

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When the budgets established for this purpose in this law are met, it will correspond to the judicial bodies before which the contentious-administrative appeal is being processed, at any phase of the process.

2. Once the administrative file is received and at any time prior to the issuance of the sentence, the Court or Chamber, ex officio or at the request of a party, will apply the amnesty after hearing the parties and will issue a sentence declaring the supervening nullity of the administrative act. contested.

3. When the procedure has already been resolved by a ruling that has not become final, the following rules will be observed:

a) If the appeal has not yet been filed, the parties may invoke the precepts of this law when formulating it and request that the amnesty be applied and the supervening nullity of the administrative act be declared.

b) If the appeal is pending resolution, the court competent to resolve it, ex officio or at the request of a party, will hold a hearing for a period of five days so that the parties can rule on whether they consider the amnesty and the subsequent declaration of nullity to be applicable. occurrence of the act.

c) In any case, upon resolving the appeal, the court will apply the amnesty and declare the supervening nullity of the contested act when the requirements of this law are met.

4. If at the time the amnesty was to be applied a final judgment had been issued, the procedure provided for in article 102 of Law 29/1998, of July 13, on the Contentious-Administrative Jurisdiction, will be applied.

Article 13. Procedure in the accounting field

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

2. In the previous actions provided for in articles 45,46 and 47 of Law 7/1988, of April 5, on the Operation of the Court of Accounts,
the corresponding resolutions declaring the proceedings to be filed, after hearing the Public Prosecutor's Office and the public sector entities affected by the impairment of public funds or effects related to the amnestied events, when they have not objected.

3. If the process of demanding accounting responsibility processed by the Court of Accounts is in the first instance or appeal phase, the competent bodies of said Court, after hearing the Public Prosecutor's Office and the public sector entities affected by the impairment of the public funds or effects related to the amnestied events, will issue a resolution absolving the persons of accounting responsibility.

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natural or legal entities sued, when said entities have not opposed.

Article 14. Procedure in the administrative field

1. In procedures that are in the investigation phase in relation to the commission of administrative infractions, the assessment of the amnesty will be carried out ex officio or at the request of a party by the competent administrative body, if the budgets for this exist, dictating to such effect the resolution to terminate the procedure and the filing of the proceedings.

2. If the amnesty is appreciated against final administrative acts or during the phase of execution of the sanctions, the competent administrative bodies will proceed to review ex officio or at the request of a party, the corresponding resolutions.

3. In the case of resolutions that have not become final because they have been appealed, the body competent for the resolution of the corresponding administrative appeal will declare, ex officio or at the request of a party, that the facts that are the subject of the procedure are amnestied when the budgets for them are met. this in application of this law.

Article 15. Deadline for recognition of the rights included in this law

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

Article 16. Resources

1. The remedies provided for in the legal system may be filed against the resolutions that resolve on the extinction of criminal liability or administrative and accounting infractions in application of this law.

2. In the face of resolutions that resolve the review of sentences or final administrative resolutions, the same appeals may be filed that, where appropriate, would have proceeded against the sentence handed down in the first instance.

First additional provision

Section 1 of article 130 of the Penal Code is modified, which is worded as follows:

"1. Criminal liability is extinguished:

1. For the death of the prisoner.

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2. For compliance with the sentence.

3. For the definitive remission of the sentence, in accordance with the provisions of sections 1 and 2 of article 87.

4.º For amnesty or pardon.

5. For the forgiveness of the offended person, when it comes to minor crimes that can be prosecuted at the request of the aggrieved person or the law so provides. Forgiveness must be expressly granted before the sentence has been handed down, to which end the sentencing judicial authority must hear the person offended by the crime before passing it on.

In crimes committed against minors or people with disabilities in need of special protection that affect eminently personal legal assets, the forgiveness of the offended person does not extinguish criminal responsibility.

6. By the prescription of the crime.

7.º By the prescription of the penalty or security measure.»

Second additional provision

Article 39 of Organic Law 2/1982, of May 12, of the Court of Accounts, which is worded as follows:

«Article thirty-nine.

One. Those who act under due obedience will be exempt from liability, provided that they have warned in writing of the imprudence or legality of the corresponding order, with the reasons on which they are based.

Two. Nor will liability be required when the delay in the rendering, justification or examination of the accounts and in the solvency of the objections is due to the failure by others of their specific obligations, provided that the person responsible has stated this in writing.

Three. Those who have committed acts that have been amnestied in the terms established by law will be exempt from liability. »

Final disposition

This law will come into force on the same day of publication in the Official State Gazette.

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BACKGROUND

Spanish constitution.

Law 46/1977, of October 15, on Amnesty.

Organic Law 10/1995, of November 23, of the Penal Code.

Royal Decree of September 14, 1882, which approves the Criminal Procedure Law.