

If the EU is serious about freedom of expression it should take aim at Spain's controversial 'gag law'

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On 1 July, a new law in Spain enters into force which sets limits on the areas where public demonstrations can be held. [Stefanie Pukallus](#) writes on the debate surrounding the legislation, which has been dubbed a 'gag law' by its critics. She argues that the law has the potential to limit freedom of expression and that the EU's institutions should play a more active role in opposing it.



Unhappy and fearful of the consequences of public discontent with austerity and particularly acute levels of unemployment – in April 2015 unemployment stood at 22.7 per cent (with youth unemployment at 49.6 per cent) – the Spanish government has come up with a somewhat intriguing law. In March it adopted the 'Basic Law for the Protection of Public Security' which declares civil manifestations, public gatherings and peaceful protests as disturbances of and threats to public safety.

The new law, which has been nicknamed the 'Spanish gag law', enables the government to impose fines on individuals organising public meetings, demonstrations without prior notification, peaceful assemblies held close to official buildings if they disturb the public order, or manifestations held in facilities of community service. Fines range from €600 to €600,000. The law also prohibits the dissemination of photographs taken of police officers during demonstrations. It imposes fines for disobeying and resisting authorities and even 'disrespectful' behaviour towards the police can lead to a fine.



Credit: Adolfo Lujan (CC-BY-SA-3.0)

What this law exemplifies is the way that state power and control is extended under the guise of 'public security'. In a [joint letter](#) to members of the European Parliament and the European Commission, numerous civil society and human rights defenders have expressed exactly this concern: "Under the pretext of improving public safety, the law aims at dissuading citizens from expressing publicly their concerns and muzzling criticism by criminalising new forms of collective action and expression... including 'escraches' (demonstrations aiming at public denunciations), sit-ins, 'occupying' public spaces, peaceful 'surroundings' of parliaments and 'concerts of pots and pans.'" This is a view equally shared by the [New York Times](#), which writes that "the law's main purpose, it appears, is to help the ruling party maintain its hold on power by discouraging the anti-austerity protests that have snowballed into widespread support for the populist Podemos party".

Interestingly, the law was first suggested around the time that Spain received increased attention for the use of excessive police force. In a report in June 2013, Nils Muižnieks, Council of Europe Commissioner for Human Rights, 'raised concerns about the disproportionate use of force by law enforcement officials to control anti-austerity demonstrations and the imposition of fines on demonstrators'. Groups such as [Amnesty International](#) have voiced concern that with the new law, public security might be at risk more than ever before.

Whereas “footage recorded during public demonstrations has been essential to prove excessive use of force and other abuses by police” the new gag law does the contrary. It increases the power of the police as “police officers will be given broad discretion without procedural safeguards to fine people who show a ‘lack of respect’ towards them” and could possibly lead to an “increase of police impunity”. Not only that, it is a direct attack on freedom of expression and the media’s freedom to broadcast public gatherings.

The new Spanish law has also grabbed the attention of the EU’s institutions – or at least it did so when it was first approved in November 2013. In [parliamentary questions](#) to the European Commission on 3 December 2013 MEPs stated that “the [Spanish] government is clearly aiming to criminalise and thus prevent protests against its unpopular policies. The law prohibits actions having generated public pressure in the past, as a result of which the government changed its policies”.

They also pointed out that parts of the law contradict Supreme Court rulings, and that “Spanish constitutional lawyers believe that this law violates the freedoms of assembly and opinion [Article 12(1)], as well as other fundamental civic rights, and is therefore anti-democratic and repressive”. Importantly, MEPs have also recognised that the law “breaches the Union’s fundamental values (democracy and freedom, Article 2 TEU)”.

Art. 2 TEU enshrines the Union’s fundamental values, stating that: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.

If any of these fundamental values are breached (or if there is a serious and persistent risk of them being breached) as in the case of the Spanish gag law, then the EU has the possibility to invoke art. 7 TEU to enforce the safeguard of the Union’s fundamental values outlined in art. 2 TEU. In other words, art. 7 TEU provides the European Union with competencies that otherwise lie with the member states. As such, and according to a [High-Level Group on Media Freedom and Pluralism](#) that was invited by the European Commission to produce recommendations on the issue, art 7 “does remain available as a ‘last recourse’ instrument when a Member State’s activities are no longer in compliance with the EU basic values stated in Art. 2 TEU”.

In their question to the Commission, MEPs stated that ‘the Spanish Citizens’ Security Law should be regarded as presenting a clear risk of a serious breach of the common values of the Union, which should be addressed by means of a comprehensive political approach’ and subsequently asked the Commission whether it has considered implementing art. 7 TEU. Viviane Reding, then European Commissioner for Justice, Fundamental Rights and Citizenship, [replied](#) that “the maintenance of law and order and the safeguarding of internal security in the Member States fall within national competence and thus are outside Union law (Article 72 TFEU)”. This is a relatively disingenuous form of the public security rationale; a fact not lost on the many media organisations and groups and civil associations across the world that object to what is going on in Spain.

Further, Reding added that Member States are bound to respect the [European Convention on Human Rights and Fundamental Freedoms](#), which enshrines freedom of expression and freedom of assembly. In other words, respect for Human Rights is for Reding a de facto state of affairs that exists for member nations whilst matters of public security are nationally based and discretionary. In short, it has nothing to do with the EU. Having thus rejected responsibility for matters to do with ‘internal’ member state measures and how they go about securing public security – no matter how repressive or contradictory these measures might be – the net effect is that it leaves the EU Charter of Fundamental Rights, which gained primary law status with the entry into force of the Lisbon Treaty in 2009, as nothing other than a ‘parchment barrier’ (to quote James Madison) against abuse of human rights in the EU.

The fact that Reding “has full confidence in the willingness of Spanish authorities to ensure respect for fundamental rights as required by their own constitutional and international obligations” hardly helps or reassures. This year no statements have been made by the EU institutions on the Spanish ‘gag law’. Upon enquiry I received an email from the European Commission promising to provide answers to my questions very soon. In any case, this is not the first

time the EU has preferred silence to action and quietly watched the breach of fundamental rights.

The situation of freedom of expression of journalists in Croatia pre- and post-accession, the corruption in the Bulgarian media system and the Greek attempts to curtail media freedom and pluralism are only a few examples of their acquiescence to matters of 'public security'. What the entry into force of the Spanish gag law on 1 July 2015 therefore stands for is Spanish immunity to EU sanctions for the breach of fundamental rights and confirmation of the drift across the EU toward restrictions of freedom of expression and the increasing breach of fundamental values.

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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