

## Spain's democratic memory policies: between impunity and international obligations

**Manuel Sánchez Moreno**

Complutense University of Madrid  
mansan11@ucm.es



Received: 03/02/2020 / Accepted: 28/03/2020

<https://dx.doi.org/10.5209/cgap.68387>

Translated by Pablo Picó Salort, edited by Carla Pérez Rúa

**Abstract.** Since the beginning of the Spanish Transition, a series of remedial measures have been implemented to provide reparation for the victims of the civil war. With a more consolidated democracy and under left-wing governments, laws for reparation have been expanded to condemn Francoism and vindicate the Second Republic. However, Spanish democracy is still far from meeting international standards and social demands in terms of democratic memory. The objective of this paper is to analyze these state laws from 1976 to the present day, considering their evolution and employing a qualitative methodology of content analysis.

**Keywords:** Historical and Democratic Memory, Transitional Justice, Spain, Francoism.

**Summary:** 1. Introduction. 2. International recommendations regarding historical memory. 3. First measures taken during the government of the Democratic Centre Union (1976 – 1982). 4. Measures during the presidency of Felipe González (1982 – 1996). 5. Measures during the presidency of José María Aznar (1996 – 2004). 6. Measures during the presidency of José Luis Rodríguez Zapatero (2004 – 2011). 7. Measures during the presidency of Mariano Rajoy (2011 – 2018). 8. New left-wing governments since 2018. 9. Final conclusions.

**How to cite:** Sánchez-Moreno, M. (2020): Las políticas de memoria democrática en España: entre la impunidad y las obligaciones internacionales, en *Cuadernos de Gobierno y Administración Pública* 7-1, 41-52.

For Chato Galante (1948 – 2020), resting forever in our memories.

"Me sirve tu batalla sin medalla.  
Me sirve la modestia de tu orgullo posible  
y tu mano segura sí me sirve.  
Me sirve tu sendero compañero."  
(Mario Benedetti).

## 1. Introduction

Judgment nº 101/2002 from the Criminal Division of the Supreme Court stated the legal impossibility of investigating crimes committed during the Spanish Civil War dictatorship in Spanish courts. It acknowledges that the Spanish transition was marked by 'absolute impunity with compensation to the victims', establishing clearly that reparative measures were solely economical and overlooking the pact among Spanish elites. Based on this 'sacralized' consensus, there is no right of reply (Sánchez-Moreno, 2019a: 285).

This lack of knowledge and historical understanding may be compared to juridical impunity and the non-applicability of crimes against humanity, in a sustained effort to justify the soft law required under international human rights law, the non-retroactivity of law, and the internal categorization of crimes. This perspective of 'transitional law' does not cover 'transitional justice' in a procedural sense nor in a global sense. All this confirms the legitimacy of Francoism, from which, later, democracy in Spain emerged.

There is a legal willingness for amnesia that interprets legislation in this equidistant sense, ignoring the reading of history and the importance of Law 46/1977 on Amnesty itself, to develop an amnestic justice based on the suffering of victims and their families (Mate, 2011: 229). This tendency is observed in a large part of the proposed historical memory laws.

The aim of this paper is to analyze these laws, since 1976, following a qualitative methodology of content analysis and limiting the use of secondary sources. Only state laws will be discussed, as the analysis of those of autonomous and local nature would extend the article too far. The bibliography is deliberately succinct, enhancing an analysis without previous bias and aimed at regulations. The approach of this methodology is based on a critical theory of human rights, legitimizing the victims in their struggles (Sánchez-Moreno, 2019b).

But what are we talking about when we address historical memory? Paloma Aguilar (1996: 41) defines it as "the 'borrowed memory' of past events which the individual has not experienced personally" (1996: 41). In it, tension between the two basic elements of this memory is very present: remembrance and oblivion. When this past refers to armed conflicts that destabilize or interrupt a democracy, or to non-democratic regimes that overthrow legitimate governments, we specifically speak of 'democratic memory', which we mention here tied to historical memory.

On the other hand, the IACHR (Inter American Commission on Human Rights) in its Principles on Public Policies of Memory in the Americas, understands as public policies on memory 'the various interventions, based on documentary and testimonial evidence, and formed by the participation of victims and civil society, oriented towards the State's acknowledgment of the facts and its responsibility for serious human rights violations committed, the vindication and preservation of the memory and dignity of the victims, the dissemination and preservation of historical memory, and the promotion of a culture of human rights and democracy as a guarantee of non-repetition'.<sup>1</sup>

These policies are based on the Joint Report of the United Nations (1997), in which Annex II defines transitional justice as 'the situations leading, within the framework of a national movement towards democracy or peace negotiations aimed at ending an armed conflict, to an agreement, in whatever form, by which the actors or parties concerned agree to take measures against impunity and the recurrence of human rights violations'.<sup>2</sup>

These measures against impunity, i.e. memory policies, must respect four rights. The first one is truth, as the duty to remember and establish the facts through extrajudicial investigation commissions or truth commissions, and preservation of archives related to human rights violations. The second one is justice, to investigate the violations, prosecute its perpetrators and, should their culpability be established, penalize them. The third one is the right to obtain reparation by restitution measures (with the aim of restoring the victim's previous situation); compensation

<sup>1</sup> Principios sobre Políticas Públicas de Memoria en las Américas. Resolution 3/2019. Available at: <https://www.oas.org/es/cidh/decisiones/pdf/Resolucion-3-19-es.pdf> [Accessed: March 15<sup>th</sup>, 2020].

<sup>2</sup> La cuestión de la impunidad de los autores de violaciones de los derechos humanos (civiles y políticos). Informe final elaborado y revisado por M. Joinet en aplicación de la decisión 1996/119 de la Subcomisión. E/CN. 4/Sub. 2/1997/20/Rev.1. Available at: <https://undocs.org/es/E/CN.4/Sub.2/1997/20/Rev.1> [Accessed: March 15<sup>th</sup>, 2020].

measures (covering the harm and prejudice both physical and moral, as well as the loss of opportunities, material losses, attacks to reputation and juridical assistance expenses); rehabilitation measures (medical and psychological or psychiatric care); and symbolic measures of moral reparation, such as the public and solemn acknowledgement by the State of its responsibility, the official declarations reestablishing the dignity of the victims, commemorative acts, monuments, etc. And, finally, guarantees of non-repetition, such as the dissolution of groups, derogation of all exemption clauses, legislative or of other nature; and dismissal of the senior officials implicated in the serious violations that have been committed.

As mentioned, our analysis begins with the Spanish Transition in 1976, and this report dates to 1997. Nonetheless, these measures were being applied long before that time. If we consider Francoist crimes as crimes against humanity, temporal aspects are not taken into consideration, as retroactivity of the law can be applied. When the previously mentioned measures cannot be applied during the transition to democracy, a later revision becomes possible once democracy is firmly established. Both cases are evident in Spain.

## 2. International recommendations regarding historical memory

The United Nations, through its conventional and extra-conventional human rights protection mechanisms, emphasizes Spain's responsibilities in these matters. During 2019 and 2020, Spain underwent its III Universal Periodical Exam, during which it reported on some of the legislative measures being undertaken. The results of this examination are not yet available, but Spain's position does not differ significantly from previous ones. This stance is grounded in law 52/2007 on historical memory and other legal proposals, such as the stolen babies law, which will be analyzed below, and the sanctity of the Transition and its 1977 Amnesty Law, closing off any judicial process. This situation fosters impunity, contravening international standards on human rights and the fundamental principles of transitional justice, as has been demonstrated.

The Office of the UN High Commissioner for Human Rights, in agreement with memorial and human rights associations, insists that Spain must develop a national plan for searching for people who disappeared during the Civil War and Francoism, along with exhumation and identification of victims. This includes the creation of a truth commission, judicial advancements with penal responsibilities, and reparation for the victims. The previous revision period (2015) was affected by the economic crisis and, especially, by the lack of political will of the Partido Popular (Popular Party, PP),<sup>3</sup> which did not propose any measures.

While awaiting the latest report from the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees, we can examine its 2014 study. It highlights a significant gap between the positions of state institutions and those of victims and associations, with the latter promoting the most effective measures. It emphasizes the necessity to establish a mechanism that clarifies the truth, to eliminate or give new meaning to Francoist symbols and monuments, to establish a historical education based on human rights, and to strengthen the education of civil servants, including judiciary and security forces, in human rights and historical memory. Regarding reparation, the recommendations are as follows: to broaden the coverage to include victims who have been left out, including the restitution of documents and property to individuals; to make the nullity of sentences during the Civil War and Francoism effective; and to expand existing studies on violations of women's rights. Concerning Justice, the recommendations include: to deprive of legal effect every provision of the Amnesty Law that hinders all investigations and access to justice; to assume and implement international obligations; and to collaborate with foreign judicial processes, as well as promote universal justice.

That same year, Spain issued its report on these comments,<sup>4</sup> highlighting in paragraph 7 that 'Spanish Transition constitutes a unique case of national reconciliation without criminal justice, due to a deliberate and consensual decision of most parliamentary political forces to avoid transitional justice. The balance between different interests – peace and democracy, justice, and reconciliation – occurred in Spain at the expense of renouncing to criminal justice. The rights of the victims were initially relegated, but since the beginning of democracy, recognition and reparation measures were adopted, culminating in the adoption of the so-called Historical Memory Law in 2007.' In paragraph 10, it is stated that this consensual framework was adopted during the 1977 Amnesty Law and the judges 'do nothing more than apply the principles of legality and non-retroactivity of criminal law, the pillars of Rule of Law.'

<sup>3</sup> The PP, thus re-founded in 1989, is the former Alianza Popular. It was formed as a political party in 1976 by some ministers and people close to the dictator Francisco Franco, such as Manuel Fraga. The other party that emerged from the regime was the Unión de Centro Democrático (UCD), founded in 1977.

<sup>4</sup> Informe del Relator Especial sobre la promoción de la verdad, la justicia, la reparación y las garantías de no repetición, Pablo de Greiff. Misión a España: Comentarios del Estado al informe del Relator Especial (2014). Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/163/59/PDF/G1416359.pdf?OpenElement> [Accessed: March 15<sup>th</sup>, 2020].

Taking Spain's international compromises in terms of human rights as a reference, and those it is willing to carry out, we will see how memory policies evolve under governments.

### **3. First measures and measures taken during the government of the Unión de Centro Democrático (Democratic Centre Union) (1976-1982)**

In the moments following the death of dictator Francisco Franco and before the Constitution, the methodology established by the president of the Francoist Courts, Torcuato Fernández Miranda, prevailed. The approach was to go 'from the Law to the Law', avoiding political, administrative, and legal fractures in a Transition that never amounted to more than a mere transmission. This way, Francoist susceptibilities could be attenuated, and the desired democratic changes called for by the Democratic Organisms Platform would be accomplished (Muñoz de Córdoba, 2009: 455).

This 'reform in continuity' was based on downplaying the repression of Francoism by defending a 'sociological Regime' (Juliá, 1999: 215). There was a line of thinking, called 'gatopardismo', that argued for something to be changed while keeping power structures the same. One of its representatives was the president of the government, Arias Navarro, who eventually resigned, with Adolfo Suárez being appointed by the king as the President of the Government (Ruiz, 2002:30).

During 1976, various regulations, such as pardons and economic compensation for affected individuals, were issued, especially regarding the Civil War, considered as the only event truly negative, unlike Francoism. We refer to Decree 670/1976 dated March 5th, which regulates pensions in favor of Spaniards who, having suffered mutilation due to the past conflict, cannot integrate into the Corps of Mutilated Riders for the Motherland – a rule referring to the defeated side that could not be integrated into the aforementioned Corps.

In subsequent decrees, the 1976 Amnesty was extended to various social sectors and civil servants. The Royal Decree-Law 19/1977 dated March 14th, 1977, on measures of grace is approved, specifying that the 1976 amnesty excludes crimes that 'had put in danger or harmed the life or integrity of people'.

After the 1977 Amnesty, and particularly under the UCD government led by Suárez, the reparation measures became more extensive and specific, focusing on different subjects and social groups, especially those on the defeated side. Royal Decree-Law 6/1978, dated March 6th, 1978, regulated the situation of military forces who participated in the Civil War, providing economic benefits for them, widows, and orphans. The application of this decree was further defined by the Order related to Royal Decree-law 35/1978, dated November 16th, 1978. This later decree granted pensions to relatives of Spaniards who died because of the 1938-39 war<sup>5</sup>, given to the relatives of those who died during the Civil War, regardless of their side.

Royal Decree-law 43/1978 dated December 21st, 1978, recognized economic benefits for those who suffered injuries and mutilations in the Spanish Civil War, including the civilian population. These benefits were regulated by the Treasury Ministry through the Order of November 9, 1979, and the Order of the Ministry of Internal Affairs of February 24, 1979. In 1979, reparation measures related to the Civil War continued with Law 5/1979, dated September 18th. This law focused on recognizing pensions, medical-pharmaceutical assistance, and social assistance for widows and other relatives during the Civil War.

All these measures compensated women, be they widows, mothers of orphans, or unmarried daughters. The time frame also extended to 'after the war', covering cases where individuals died due to injuries, were deprived of liberty, or disappeared because of the war, according to Article 1.2. Article 3 establishes lifetime pensions for widows, orphans, or relatives, along with medical and pharmaceutical assistance for the victims and social assistance, especially for the elderly. The law was regulated by Royal Decree 2635/1979, dated November 16th, 1979, and by the General Directorate of the Treasury on November 27, 1979.

In 1980, several notable laws regarding benefits for the Republican side were introduced. Law 35/1980 dated June 26th, 1980, focused on pensions for mutilated ex-combatants in the Republican zone, improving and extending the provisions of Royal Decree-Law 43/1978 and Royal Decree-Law 6/1978. It targeted 'men or women, combatants or civilians, who suffered mutilation as a consequence of the war'. Despite this specification in the preamble, the established remunerations did not differentiate by sex.

Finally, it is noteworthy in this year the Order dated July 31st, 1980, through which the Board of Trustees of the Civil War Section of the National Historical Archive<sup>6</sup> is created, with its headquarters being in Salamanca. Its purpose

<sup>5</sup> It will be repealed by Law 5/1979, dated September 18<sup>th</sup>, 1979, which will be more extensive.

<sup>6</sup> Repealed by Royal Decree 426/1999, dated March 12<sup>th</sup>, 1999, creating the General Archive of the Spanish Civil War, thus becoming an independent archive.

is to archive, conserve and make available for research documentation relating to the Spanish Civil War, which had retained during Francoism for repressive purposes. This archive, of Francoist origin and now functioning as a historical research center, was established as a repository for documentation seized from the 'enemies of the Motherland', compiling sources from the Office of Investigation and Anti-communist Propaganda (OIPA), the State Delegation for the Recovery of Documents (DERD) and the Special Tribunal for the Repression of Freemasonry and Communism.

In 1982, the last laws of the UCD government were enacted, under the presidency of Leopoldo Calvo-Sotelo. Royal Decree 391/1982, dated February 12th, 1982, integrated mutilated ex-combatants from the Republican zone into the General Social Security Regime for health care and social services. Additionally, Law 6/1982, dated March 29th, 1982, on pensions for civilian war wounded, improved the pensions provided for in Decree 670/1976, and was updated annually.

#### **4. Measures during the presidency of Felipe González (1982-1996)**

This period of the Partido Socialista Obrero Español (Spanish Socialist Workers' Party, PSOE), delved into the preceding economic reparations but with greater recognition of the Republican side and of the victims of Francoist repression, including socialists. Notable among these is Law 18/1984, dated June 8th, 1984, on the recognition of periods of imprisonment suffered as years worked for Social Security purposes. Additionally, Law 37/1984, dated October 22nd, 1984, on the recognition of rights and services rendered to those who formed part of the Armed Forces, Public Order Forces, and Carabinieri Corps of the Republic during the Civil War is worth mentioning.

It's worth noting that during this period, some reforms were carried out with the aim of democratizing some sectors, such as defense and security. This is evident in the case of Organic Law 1/1984, on the regulation of the basic criteria of national defense and military organization, or Organic Law 2/1986, dated March 13th, 1986, on Security Forces and Corps. It was a reform, but not a purification, as the hierarchies were maintained, and Francoist continuity was assured. The only interesting recognition regarding democratic memory and transitional justice is Law 24/1986, on the rehabilitation of professional officers, including the Democratic Military Union.<sup>7</sup>

One might ask what happened to the judicial sector. Democratization measures were just as timid, as seen in Organic Law 6/1985, dated July 1st, 1985, on the Judiciary,<sup>8</sup> which mandated judges to be elected by the Courts, in violation of the principle of the separation of powers.

In 1990, further progress was made concerning persons imprisoned during Francoism with Law 4/1990, dated June 29th, 1990, on the General State Budget. Its eighteenth additional provision established an extension of compensation for imprisonment based on the cases contemplated in the 1977 Amnesty Law. In 1993, the issue of the significant emigration during the Civil War and Francoism was revisited in Royal Decree 728/1993, dated May 14th, 1993, which established old age pensions in favor of Spanish emigrants.

A more explicit norm for the Republican side is Royal Decree 39/1996, dated January 19th, 1996, on the granting of Spanish nationality to combatants of the International Brigades in the Spanish Civil War. The International Brigades expressly supported the Republican side, and for the first time, we find legislation that indirectly recognizes the legitimacy of the Second Republic. These would be some of the few measures of symbolic reparation in the face of the insufficient, irregular, and inequitable economic measures that do not contemplate the full rights of the victims.

#### **5. Measures during the presidency of José María Aznar (1996-2004)**

We understand that there were changes in historical memory after the triumph of the PP in the general elections of 1996. This period will be marked by three factors: social mobilization, the weakening of the pact of silence, a transcript of impunity, and the politicization of memory. According to Paloma Aguilar, the pact of silence began to falter in 1993, when the socialist government entered a crisis, and the PP became a real threat as leader of the opposition. It was then that memory was instrumentalized and entered parliamentary debates (Aguilar, 2006: 282-283; Aguilar, 2008: 86).

These marks the beginning of the Spanish post-transition. Since the 1990s, revisionist voices of the recent past became more visible on the anniversaries of the Second Republic and the Civil War, acting as activators of memory. These voices became formally organized, and in the year 2000, a series of memorialist associations were created where victims or their relatives began to demand the right to memory in terms of justice or exhumations. In this year, the Asociación para la Recuperación de la Memoria Histórica (Association for the Recuperation of Historical Memory, ARMH) or the Federación Estatal de Foros por la Memoria (State Federation of Memory Forums), were created in

<sup>7</sup> Refers to the military personnel constituted on September 1, 1974, in favor of democratic change, who were prosecuted and condemned and were excluded from the 1977 Amnesty.

<sup>8</sup> Partially reformed with Organic Law 2/2001, dated June 21<sup>st</sup>, 2001.

2004. Relying on opposition parties and European and international regulations on the subject, the Transition Consensus and the 1977 Amnesty Law are questioned, and the State's inaction is challenged.

There are only two regulations from this period. On the one hand, Law 43/1998, dated December 15th, 1998, on the Restitution or Compensation to Political Parties of Assets and Rights Seized in application of the regulations on political responsibilities of the period 1936-39. For political parties outlawed during Francoism and not dissolved before 1995.

The other measure is Royal Decree 426/1999, dated March 12th, 1999, creating the General Archive of the Spanish Civil War, in response to the request made by the Higher Board of Archives in November 1996. The aim was for it to cease being a section of the National Historical Archive in Salamanca, and it should have its own entity on the same city. The objective was to 'gather together all the scattered documentation linked to that period of our past', as stated in the preamble. It is also mentioned that the interest of this archive is for historical research and providing documentation for Law 37/1984, dated October 22nd, 1984, on the Recognition of Rights and Services rendered to those who during the Civil War formed part of the Armed Forces, Public Order Forces, and Carabinieri Corps of the Republic. According to Article 7.1, the 'Centre for Studies and Documentation on the Spanish Civil War will be created within the archive to facilitate better knowledge of the war and to stimulate historical research.' In this way, the Civil War is consecrated as a historical past. Nevertheless, Aznar's government undoubtedly continues to maintain another memory, the one transmitted through the Transition. A series of subsidies are granted to the Francisco Franco National Foundation (FFNF), legally constituted in 1976 for the 'dissemination of the memory and work of Francisco Franco.' Between 2000 and 2003, they received a total of 146,811.92€ for the microfilming of their archive, which is only partially accessible. To this must be added the annual subsidies that the Valle de los Caídos, 'Valley of the Fallen', where Franco was buried and Primo de Rivera is still buried, continues to receive, with masses being held in their memory. Thus, in 2013, the Abbey received 340,000€ to 'lift the spiritual burdens' and 'attend to the social purpose of the foundation', according to the Court of Auditors. Indeed, this Benedictine abbey was founded in 1940 by Franco to commemorate his victory, establishing a series of obligations for its support, which continue to this day.<sup>9</sup> These are examples of other types of memory policies.

In this political moment, reluctant to return to the recent past of the vanquished, but not of the victors, as we have already seen, the left-wing and nationalist political forces that make up the Constitutional Commission, during the parliamentary session of November 20th 2002, made five motions, unanimously approved, on the victims of the Civil War and Francoism who disappeared and were murdered for defending republican values, exiled people, and on exhumations in mass graves.<sup>10</sup>

They value the 1978 Constitution as one of harmony and as the one that tried to put an end to the two opposing Spains, a matter closed with the Amnesty Law of 1977. These propositions are not in line with the justifiability of the past but rather promote issues such as the recognition of the people exiled by the Civil War, the children of the war, and the exhumations. These five proposals were accompanied by a declaration that was the first condemnation of the Francoism and the project of oblivion on which the Spanish Transition was based. It is made very clear that in Spain there is no right to memory, nor in this post-transitional moment, but rather a duty to forget agreed upon by the political parties.

Although it does not expressly state that Francoism was totalitarian, this nomenclature appears in a context of condemnation of the regime. Paragraph 2 states that 'it is in the interest of our democratic coexistence to maintain the spirit of concord and reconciliation that presided over the drafting of the 1978 Constitution, and which facilitated the peaceful transition from dictatorship to democracy'. Finally, paragraph 4 provides the only urgent measure, in the form of economic recognition, nationality, and voting rights for the descendants of those exiled during the Civil War.

On May 14, 2003, a motion presented in the Congreso de los Diputados, 'Congress of Deputies', asked the government for the elimination of criminal records for the homophobic laws of Francoism, the transfer of the

---

<sup>9</sup> Informe de fiscalización del organismo consejo de administración del Patrimonio Nacional. Ejercicio 2013. Available at: <http://www.tcu.es/tribunal-de-cuentas/.content/EnlacesBuscador/I1166>.

The FNFF continued to receive funds until 2015; there is no information on subsequent years. Other foundations susceptible to receiving public funds and maintaining Francoist memory include Fundación Las Hijas de Millán Astray y Capitán Cortés, Fundación Yagüe, Fundación Grupo de Estudios Estratégicos, Fundación José Antonio Primo de Rivera, Fundación Pro-Infancia Queipo de Llano, Fundación Blas Piñar, Fundación Ramiro Ledesma Ramos, and Fundación Serrano Súñer. As they are foundations, the contributions of benefactors and members have tax incentives.

<sup>10</sup> Boletín Oficial de las Cortes Generales VII Legislatura Serie D nº 448 (29-11-2002), pp. 12-14. Available at: [http://www.congreso.es/public\\_oficiales/L7/CONG/BOCG/D/D\\_448.PDF](http://www.congreso.es/public_oficiales/L7/CONG/BOCG/D/D_448.PDF) [Accessed: March 15<sup>th</sup>, 2020].

documentation related to historical archives, moral recognition, and economical reparation, recalling that these people did not benefit from the pardon of 1975 or the Amnesty of 1976.<sup>11</sup>

In the session of June 1st, 2004, a motion was approved on the recognition of the victims of the Civil War and Francoism<sup>12</sup>, which is important for the future Law of Historical Memory. The text, based on the 2002 propositions, urges the Government to carry out a study that systematizes the rights recognized by state and regional legislation for victims of the Civil War, Francoism, and the Transition (understood here as up to 1977), with proposals for improvement. In this way, and within a period of one year, a law of solidarity with the victims should be proposed. The proposal also calls for facilitating access to archives.

## 6. The measures during the presidency of José Luis Rodríguez Zapatero (2004-2011)

The PSOE opens a window of opportunity to the demands of memorialist associations and political parties. The first measure comes in the form of Royal Decree 1891/2004, dated September 10th, 2004, which created the Interministerial Commission for the study of the situation of the victims of the Civil War and Francoism. It would be a Commission that would establish the state of the question of reparations, as requested in the non-law proposal made months before and from which the legal proposals would emanate, publishing its report on July 28, 2006, as the basis for the so-called Law of Historical Memory<sup>13</sup>.

Law 3/2005, dated March 18th, 2005, which recognizes an economical benefit for citizens of Spanish origin displaced abroad during their minority of age as a result of the Civil War and who spent most of their lives outside the national territory, is dedicated to the exiled children who went abroad en masse and who, while still abroad or already in Spain, have low pensions.

In the same year, one of the most controversial laws was passed: Law 21/2005, dated November 17th, 2005, on the restitution to the Generalitat de Catalunya of the documents that were seized because of the Civil War kept in the General Archive of the Spanish Civil War and on the creation of the Documentary Centre of Historical Memory. The law is justified by the approval of the Statute of Cataluña in 1932, by the Second Republic, passing powers to this region, and the Law dated April 5th, 1938, that reverted these functions to the State in the midst of the Civil War, reverted these functions back to the State, seizing documents handed over to the State Delegation for the Recovery of Documents (DERD).

The repeal of the 1938 Law and the restitution of the Generalitat in 1977 meant 'the rebirth of the right of its Institutions to recover their historical memory and the restitution of their institutional archives, therefore, of the documents and effects seized during that tragic period of Spanish history', according to the explanatory memorandum. The documents to be restored were in the General Archive of the Spanish Civil War in Salamanca, where a duplicate document would remain, as established in Article 3. The second additional provision provides for the creation of a 'Documentary Centre of Historical Memory with headquarters in Salamanca, which will include the funds of the current General Archive of the Spanish Civil War'.<sup>14</sup>

In 2005, two bills were published in the Boletín Oficial del Estado (Official State Gazette, BOE) on December 2. One of them, entitled 'Sobre la memoria histórica republicana y antifascista' (On Republican and anti-fascist historical memory), presented by the Esquerra Republicana Parliamentary Group, explicitly alludes to the coup d'état that overthrew a legally constituted government. The aim of the proposal is to apply the United Nations doctrine on crimes against humanity committed during Francoism, proposing measures such as reparations for the diversity of repressed groups. In turn, the Law Proposal on the Promotion of the Recovery and Promotion of Democratic Memory and Culture, by the Izquierda Verde-Izquierda Unida-Iniciativa per Catalunya Verds Parliamentary Group, emphasizes on the defense of republican ideals to propose, among other measures, an Institute of Democratic Memory and Culture.

The year 2005 ended with the sixty-fourth additional provision of Law 30/2005, dated December 29th, 2005, on the General State Budget for 2006, which applied the 'exemption from payment of personal income tax to

<sup>11</sup> Boletín Oficial de las Cortes Generales VII Legislatura Serie D nº 544 (30-5-2003). Available at: [http://www.congreso.es/public\\_oficiales/L7/CONG/BOCG/D/D\\_544.PDF](http://www.congreso.es/public_oficiales/L7/CONG/BOCG/D/D_544.PDF) [Accessed: March 15<sup>th</sup>, 2020].

<sup>12</sup> Boletín Oficial de las Cortes Generales VIII Legislatura Serie D nº 31 (8-6-2004). Available at: [http://www.congreso.es/public\\_oficiales/L8/CONG/BOCG/D/D\\_031.PDF](http://www.congreso.es/public_oficiales/L8/CONG/BOCG/D/D_031.PDF) [Accessed: March 15<sup>th</sup>, 2020].

<sup>13</sup> Informe General de la Comisión Interministerial para el Estudio de la situación de las víctimas de la Guerra Civil y del Franquismo (2006). Available at: <http://www.memoriahistorica.gob.es/es-es/LaLey/Documents/InformeVictimas.pdf> [Accessed: March 15th, 2020].

<sup>14</sup> In response to Zapatero's law, several legal measures were initiated by the Popular Party of Castilla y León until the Constitutional Court's Judgment 20/2013, dated January 31<sup>st</sup>, 2013, ruled in favor of the State. The documents are kept in the General Archive of Catalonia.

compensation received by persons who, having suffered deprivation of liberty, are in the cases contemplated in Law 46/1977, dated October 15th, 1977, and who are in the cases contemplated in Law 46/1977, on Amnesty'.

The year 2006 will be a year of commemorations: the 75th anniversary of the proclamation of the Second Spanish Republic and the 70th anniversary of the beginning of the Civil War. Law 24/2006, dated July 7th, 2006, declares this year to be of historical memory. Approved by all political groups except the PP, it proposed several commemorative and cultural events. The first additional provision foresees that the government will present to the Constitutional Commission of the Congreso de los Diputados the reports drawn up by the Interministerial Commission for the study of the situation of the victims of the civil war and Francoism, previously constituted by Royal Decree 1891/2004, dated September 10th, 2004. It was at this time that there was a historical and moral recovery of the II Republic as a democratic period in which the Spain of the time should be viewed.

Two other laws stand out. Law 35/2006 dated November 28th, 2006, on income tax, whose nineteenth additional provision exempts aid and compensation for deprivation of liberty because of the cases contemplated in the 1977 Amnesty Law. Finally, Law 40/2006, dated December 14th, 2006, on the Statute of Spanish citizens abroad, which considers exile during the Civil War and Francoism as 'a loss for the economic, cultural and social development of Spain', in its Explanatory Memorandum I. These people are granted a series of rights of participation, administrative and economic recognition. The law recognizes the differential impact of exile on women, in Explanatory Memorandum I.9.

The year 2007 will be crucial for historical memory. First, Royal Decree 697/2007 dated June 1st, 2007, created the Historical Memory Documentary Centre. The Archive of the Spanish Civil War is integrated into this Centre and will continue to be in Salamanca, according to the Article 1, having among its functions 'to advise and cooperate in locating information for the reparation of memory and assistance to the victims of repression' based on Article 2.e.

At the end of the year, Law 52/2007 dated December 26th, 2007, was passed, recognizing, and extending rights and establishing measures in favor of those who suffered persecution or violence during the Civil War and the dictatorship, known as the 'Ley de Memoria Histórica' (Law of Historical Memory). It was promoted especially by PSOE, Izquierda Unida and Esquerra Republicana de Catalunya and criticized by the Partido Popular, which voted against it. It was the result of major debates between the PP, which considered it unnecessary, and the left-wing and nationalist groups, who considered it insufficient.<sup>15</sup> At the end, the law was approved with the negative vote of the Popular Party and Esquerra Republicana de Catalunya.

In its explanatory memorandum, the law echoes the 'rightful and fair requests' made by political parties and civic associations. It refers to the 2002 draft law and takes up Recommendation 1736 (2006) of the Parliamentary Assembly of the Council of Europe, with its international condemnation of Francoism and its human rights violations. It states clearly that this law is initial in the sense of setting: 'the basis for public authorities to carry out public policies aimed at the acknowledgement of our history and the promotion of democratic memory. [...] Its starting point is the consideration that the various aspects related to personal and family memory [...], take part in the legal status of democratic citizenship'. This insistence on personal memory seems to be a depoliticization of memory that clashes with reparatory measures and with what should be a true public policy.

Article 1 states that the purpose of the law is: 'To recognize and extend rights in favor of those who suffered persecution or violence, for political, ideological or religious reasons, during the Civil War and the Dictatorship, to promote their moral reparation and the recovery of their personal and family memory, as well as the knowledge of the facts of the past and their archival preservation.' Article 2 on the right: 'recognizes and declares the radically unfair nature of all convictions, sanctions, and all forms of personal violence'. However, these illegitimate convictions during the Civil War and Francoism are not annulled. The only measure against this is found in Article 4, which offers a declaration of reparation and personal recognition to those who were sentenced in that context.

Articles 5 to 10 recognize and improve benefits for pensions, widows, orphans, children of the deceased, and prisoners. Work plans and subsidies for exhumations will be established, as seen in Articles 12, 13 and 14, committing to financial collaboration with memorial associations, but not as a state obligation. Articles 15, 16 and 17 address the issue of symbols and monuments of Franco's exaltation to be removed by Public Administrations, the withdrawal of subsidies and public aid, including the Valle de los Caídos. Article 20 creates the Historical Memory Documentary Centre and the General Archive of the Civil War. Article 21 promotes the acquisition and protection of documents on the Civil War and the Dictatorship, as well as the right, in Article 22, to access to the documentary funds deposited in public and private archives.

---

<sup>15</sup> Diario de Sesiones del Congreso de los Diputados of October 31, 2007, pp. 14615 et seq. Available at: [http://www.congreso.es/public\\_oficiales/L8/CONG/DS/PL/PL\\_296.PDF](http://www.congreso.es/public_oficiales/L8/CONG/DS/PL/PL_296.PDF) [Accessed: March 15<sup>th</sup>, 2020].

The law will be developed by several regulations. The Order of the Ministry of the Presidency 3189/2008, of October 31, 2008, which publishes the Agreement of the Council of Ministers, of October the 31st 2008, whereby the measures for the development of Law 52/2007, dated December 26th,<sup>16</sup> 2008, with the following measures: obtaining Spanish nationality for children born abroad by exiled persons, access to the books of death records of the Civil Registries, drawing up the Protocol of multidisciplinary scientific action to carry out exhumations, and the elaboration of a map where the remains of the victims are located.

Royal Decree 1803/2008, of November 3, 2008, regulates the conditions and procedure for the payment of compensation recognized in Law 52/2007, dated December 26th, 2007, in favor of persons who died or suffered incapacitating injuries due to their activity in defense of Democracy. From the same year are the following Instructions from the Ministry of Justice: Instruction of November the 4, 2008, of the General Directorate of Registries and Notaries, on the right of option to Spanish nationality established in the seventh additional provision of Law 52/2007, dated December 26th, 2007. And the Instruction of November the 4, 2008, of the Directorate General of Registries and Notaries, on access to the consultation of the death books of the civil registers, issued in development of the eighth additional provision of Law 52/2007, dated December 26th, 2007.

Two Royal Decrees are regulated within the Ministry of Justice: Royal Decree 1791/2008, dated November 3rd, 2008, on the declaration of reparation and personal recognition to those who suffered persecution or violence during the Civil War and the Dictatorship, which implements Article 4 of the Law of Historical Memory. And Royal Decree 1792/2008, dated November 3rd, 2008, on the granting of Spanish nationality to volunteers who were members of the International Brigades, which repeals Royal Decree 39/1996, dated January 19th, 1996, which had the same purpose. For its part, the Ministry of Labor and Social Affairs is in charge of managing the provisions of Royal Decree 8/2008, dated January 11th, 2008, regulating the benefit in favor of Spaniards living abroad and returnees, provided for in Article 19 of Law 40/2006, dated December 14th, 2006.

The year 2008 continued with regulatory developments, as the Office for Victims of the Civil War and the Dictatorship was created, under the Undersecretariat of the Ministry of Justice and regulated by Order 3749/2008, of December 22, 2008, issued by the Agreement of the Council of Ministers of December 19, 2008, and included in the Human Rights Plan approved on December 12 of that year. The objective was to provide information on the Historical Memory Law and to coordinate exhumations.

This year the issue with former social prisoners was addressed in a special way, including sexual dissidents repressed during Francoism, by means of Law 2/2008, dated December 23rd, 2008, on the General State Budget for 2009, in its eighteenth additional provision. Including the victims or, in the event of their death, their spouses, this law would be implemented by Royal Decree 710/2009, dated April 17th, 2009, on the matter of pensions and compensations, specifically in articles 17 to 22 of Title II. The social and employment impact of Franco's severe repression on these people was only reflected in this specific measure, a law that had little economic or symbolic impact. Furthermore, it was limited in time until December 31, 2013, as the deadline for requesting compensation.

Finally, it should be mentioned that in this year, the signing of Ministry of Culture Order 3190/2008, of November 6, was completed. The order published the Agreement of the Council of Ministers of October 31, 2008, issuing instructions for the removal of Francoist symbols from the assets of the General State Administration and its dependent public bodies, implementing Article 15 of the Law of Historical Memory. Months later, a new Order of the Ministry of Culture 459/2009 of February 19, 2009, created a Technical Commission of Experts to assess symbols of Francoism. The Commission's scope was limited to state monuments. For the rest, the measure was to be applied under local competences which, on many occasions, are reluctant to comply with the regulations.

The measures continued in 2009, with Royal Decree 2134/2008, of December 26, 2008, which regulates the procedure to be followed for the restitution to private individuals of documents seized during the Civil War. Based on Law 21/2005, dated November 17th, 2005, on the return of documents seized during Francoism to the Generalitat de Catalunya, where it is established that legal persons may request seized documents from the autonomous communities, leaving an (authentic) copy or duplicate at the Historical Memory Documentary Centre, according to Article 5.4.<sup>17</sup> Order of the Ministry of the Presidency 3279/2009, of December 4, which recognizes members of the Armed Forces favorable to democracy such as the Unión Militar Democrática (Democratic Military Union). Law 26/2009, of December 23, on the General State Budget for 2010, in its sixtieth additional provision, makes a new modification to article 10 of the Law of Historical Memory, this time in its paragraph 2, which extends the beneficiary

<sup>16</sup> Additionally, the development of the law is anticipated in Measures 86 and 87 of the I Human Rights Plan of Spain (2008-2012). Available at: [http://www.ohchr.org/Documents/Issues/NHRA/Spain\\_NHRAP.pdf](http://www.ohchr.org/Documents/Issues/NHRA/Spain_NHRAP.pdf) [Accessed: March 15<sup>th</sup>, 2020].

<sup>17</sup> This documentary return of seized assets to individuals will not be paralleled by a claim for the return of confiscated real estate, as has been previously done with political parties and trade unions. In the Judgment of the Supreme Court (3<sup>rd</sup> Chamber) dated April 5<sup>th</sup>, 2006, with Rapporteur Mr. Manuel Campos Sánchez-Bordana, the lack of standing for individuals to claim their confiscated property based on Law 43/1998 is established.

family members in the case of deceased victims. Finally, that year, Royal Decree 2005/2009, of December 23, in its first additional provision, revalued and updated pensions for victims and family members for 2010.

The year 2010 will be marked in a more evident way by the economic crisis and social disenchantment, something which is noticeable in the memory regulations. Royal Decree 1816/2009, of November 27, approving the Regulation of Military Judicial Archives, which will not be published in the Boletín Especial del Estado (Official State Gazette) until January 2010, stands out. By means of this regulation, access to documents is enabled, based on Article 22 of the Law of Historical Memory. Finally, there is the Resolution of March 17, 2010, of the Undersecretariat, which provides for the publication of the Agreement of the Council of Ministers of January 22, 2010, extending for one year the period for exercising the right to opt for Spanish nationality as set forth in the seventh additional provision of Law 52/2007, dated December 26th, 2007.

The following year we find the Order of the Ministry of the Presidency 2568/2011, of September 26, 2011, which publishes the Agreement of the Council of Ministers of September the 23rd 2011, ordering the publication in the Boletín Oficial del Estado (Official State Gazette) of the Protocol for action in exhumations of victims of the Civil War and dictatorship, in order to solve the absence of regional protocols in this regard. In development of Article 16 and the sixth additional provision of the Law of Historical Memory on the Valle de los Caídos, which determine the site as a place of worship and public cemetery, prohibiting acts of exaltation of the Civil War, its protagonists, or of Francoism, and urging it to become a place of democratic collective memory, the Order of the Ministry of the Presidency 1396/2001, of May 27, 2001, was issued, by which the Agreement of the Council of Ministers was published, creating the Commission of Experts for the Future of the Valle de los Caídos. The Commission's report was published on November 29, 2011, stating, among other issues, the diversity of the buried victims, the impediment posed by the burials of Franco and Primo de Rivera that should be moved, the need to repurpose the whole complex without destroying it, and the inviolable nature of the basilica, which remains under the custody of the Benedictine order.<sup>18</sup>

## 7. Measures during the presidency of Mariano Rajoy

In December 2011 the PP returned to the government under the leadership of Mariano Rajoy. At this time, the achievements of the Law of Historical Memory were beginning to fade due to the economic crisis and the lack of political will. The general State budgets for 2012 dedicated to this Law were reduced by 60% and the Office for Victims of the Civil War and the Dictatorship in charge of the coordination of exhumations was abolished. This was the last economic endowment, which disappeared in the following budgets. It was only in 2012 that the *Ministry of Justice Order 2146/2012 of October 1, 2012*, was issued, creating certain personal data files related to cases of possible abduction of newborns.

## 8. New left-wing governments since 2018

Following a motion of censure on June 1<sup>st</sup>, 2018, there was a change of government led by Pedro Sánchez, the leader of PSOE. This led to the reinstatement of the Historical Memory Law and the return of memory policies to the agenda, with a General Directorate for Historical Memory within the Ministry of Justice. The socialist group already registered in 2017 the *motion for the reform of Law 52/2007, on 'Historical Memory'*, published in the *BOE no. 310 dated December 22<sup>nd</sup>, 2007*. It proposes the annulment of the Francoist sentences, the creation of a Truth Commission, a national census of victims, economic reparations, exhumation as the complete responsibility of the State, the judicial search for disappeared persons, including abducted minors. It is a proposal that does incorporate gender and affective-sexual diversity in an explicit manner. It is noteworthy that in Article 2 some definitions are made, and the one referring to justice, in the context of this legal proposal, is understood as investigating and not incriminating. Thus, it is closer to the right to truth and differs from the international doctrine. The following legal proposals of the PSOE, when in government, will be more timid in truth and justice.

For its part, the Parliamentary Group of Unidas Podemos – En Comú Podem – En Marea also presented a *Law proposal on the reform of Law 52/2007*, published in the *Boletín Oficial del Estado dated January 12<sup>th</sup>, 2018*. Shorter than the socialist one, it revises some issues such as the nullity of sentences or the State's responsibility to locate and identify victims. It also presents a *comprehensive Law of democratic memory and of recognition and reparation to the victims of Francoism and the Transition*, published in the *Boletín Oficial del Estado of July 13, 2018*. In this proposal there is a greater presence of criminal justice, seeking the perpetrator and not simply in the investigation and location of the victim when, for instance, they are missing, as proposed by the legal reform of PSOE. More extensive and complete than the Socialist proposal, it has a more detailed impact on the victims for reasons of gender

<sup>18</sup> Report of the Commission of Experts on the Future of the Valley of the Fallen (2011). Available at: <http://www.memoriahistorica.gob.es/es/es/vallcaidos/Documents/InformeComisionExpertosValleCaidos.pdf> [Accessed: March 15<sup>th</sup>, 2020].

and affective-sexual diversity. Both, this proposal, and the Socialist proposal, will incorporate a block of sanctions with proposals to modify the Criminal Code or the Law on the Statute of the Victim of Crime.

As a complement to the previous ones, which have echoed the issue, the *BOE* of October 5, 2018, published the *motion on Stolen Babies in the Spanish State*. Presented by the Confederal Parliamentary Groups of Unidas Podemos – En Comú Podem – En Marea, of Esquerra Republicana, Socialist and Members of the Mixed Parliamentary Group. In this proposal, the first one at a state level, the temporal framework from July 17, 1936, without a closing date, given the prolongation of this crime of forced disappearance of minors in the aftermath of Francoism and the Transition. It contemplates the right of access to all types of archives; the creation of a specialized prosecutor's office that will act *ex officio*; free exhumations and DNA tests; and the creation of a State Commission for the Right to Identity, among other measures. For the first time, all the groups unanimously approved the processing of this bill, perhaps because it is an issue that goes beyond the limits of Francoism. The *BOE* of March 6, 2019, published the amendments and the *BOE* of March 6<sup>th</sup>, 2020, presented the legal proposal once again.

As a matter of urgency, the Directorate-General for Historic Memory was established by *Article 11 of Royal Decree 1044/2018 dated August 24<sup>th</sup>, 2018*, within the Ministry of Justice, with two bodies: the Sub-directorate General for Aid to Victims of the Civil War and the Dictatorship, and the Division of Administrative Coordination and Institutional Relations. But, perhaps, the most controversial measure is *Royal Decree-Law 10/2018, dated August 24<sup>th</sup>, 2018*, which adds a paragraph 3 to Article 16 of Law 52/2007, with the following: 'only the mortal remains of persons who died as a result of the Spanish Civil War may lie in the Valle de los Caídos, as a place of remembrance of and tribute to the victims of the conflict'. This measure was declared to be 'of urgent and exceptional public interest, as well as of public utility and social interest'. A sixth additional provision was added to the aforementioned law to implement this modification. This leads to the exhumation and transfer of Franco's remains, given the democratic anomaly of a dictator being buried in a place of worship that is receiving public funds.

After the motion of censure which enabled the government of the *Spanish Socialist Workers' Party* (PSOE), two general elections are convened: on April 28, 2019, won by the PSOE but inconclusive, which led to new elections on November 10, 2019. In these elections, Pedro Sánchez (PSOE) won again, and was able to form a coalition government with the progressive party, Unidas Podemos (UP). These two elections had a key consequence: a new party on the Congress of Deputies, the ultraconservative party, VOX, with 52 deputies, which was opposed to memory policies or to any that condemned Francoism. For its part, the coalition government would give a new institutional structure to historical memory. To this effect, it was created a Presidential Ministry for relations with Parliament and Democratic Memory, and the *Royal Decree 373/2020 of February 18, 2020*, which established a State Secretariat for Democratic Memory, upon which there was created a Directorate-General for Democratic Memory, empowered to develop a Democratic Memory State Plan.

Between one electoral process and the next, the Socialist Parliamentary Group proposed a *Historical and Democratic Memory Bill*, published in the State Official Gazette, *BOE*, 'Boletín Oficial del Estado' of July 30<sup>th</sup>, 2019. With a text that synthesized the proposal to amend the law presented by the same group in 2017. In the explanatory memorandum, it stressed the need to have a state policy on historical memory that went beyond the ideological tendency of the government. The legal proposal once again focused on exhumations, the creation of a DNA bank and a census of victims, the creation of a Memory Council as a consultative and participatory body, educational and research measures with special consideration for women victims of repression, symbolic reparation actions, as well as the revocation of rewards and decorations for Francoist security agents. Lastly, this proposal introduced a set of provisions to modify Law 52/2007, proposing the nullity of Francoist sanctions, the responsibility of the State to exhume and search for disappeared persons, the Valle de los Caídos and access to archives. It also introduces an amendment to Law 15/2015 on Voluntary Jurisdiction, referring to judicial declarations on past events.

There were several proposals for remembrance in the last few months of 2019 and the first few months of 2020. Perhaps, the main one was the exhumation of the dictator from the Valle de los Caídos to re-bury him on October 24, 2019, in the pantheon of his family in the *Mingorrubio* cemetery, located in *El Pardo*. Based on a report by the *Consejo Superior de Investigaciones Científicas* (CSIC)<sup>19</sup>, 'Superior Council for Scientific Research', Patrimonio Nacional, 'National Judicial Board for Public Lands and Funds', authorized in November 2019, the exhumation of the victims of the Civil War buried in the basilica of the Valle de los Caídos for the families who request it. There is also an intention to remove the Benedictine community from the valley, in order to give new meaning to the monument; and to include the apology for Francoism as a crime in the Criminal Code.

<sup>19</sup> Inspection of the state of six lateral crypts and of the levels of the crypts of the backside of the chapels of the Holy Sacrament and the Sepulcher of the Basilica of the Valle de los Caídos. Available at: [https://www.patrimonionacional.es/sites/default/files/2019-11/informe\\_del\\_ic-cet\\_vc.pdf](https://www.patrimonionacional.es/sites/default/files/2019-11/informe_del_ic-cet_vc.pdf) [Accessed March 15<sup>th</sup>, 2020].

On December 30, 2019, PSOE and Unidas Podemos signed a coalition agreement that made it possible to form a government.<sup>20</sup> Sub-paragraph 5.4 of the agreement refers to the recovery of democratic memory as a recognition and commemoration of the victims of the Civil War and dictatorship; a program for exhumations; a removal of regime symbols from public spaces and a prohibition for exaltation and glorification of Francoism in public spaces; a withdrawal of decorations and benefits awarded to individuals that committed non-judged criminal acts during Francoism; a declaration of nullity of punishments and sanctions of Francoism; and an audit of the assets seized during the regime to return them to their lawful owners.

We can tell these are the minimum programmatic targets agreed upon both political parties, ruled by PSOE's conservative approach on democratic memory rather than by the progressive approach of Unidas Podemos, with more comprehensive regulations, for example, upon criminal justice. This means that memory policies were under the socialist mandate. In the same vein, the Socialist Parliamentary Group is once again presenting the *Bill on Historical and Democratic Memory*, published in the Official State Gazette of January 31, 2020, insisting on implementing a State policy on historical memory issues. Perhaps for this reason, and in order to achieve consensus, the proposal is less innovative than previous ones. In fact, it is pretty much the same as the one presented in July 2019, in order to be able to take it forward with this new government.

## 9. Final conclusions

1. Legally speaking, Spain is entrenched in a 'total impunity with compensation for the victims'. This situation stems from a transition to democracy that did not break with Francoism, within the alleged social and political consensus of a mythical, idyllic Transition with the Amnesty Law, which generates impunity.
2. The situation described above leads to measures primarily focused on economic and symbolic reparation, along with some non-repetition measures related to education and awareness-raising, but not related to truth and justice in a comprehensive sense.
3. The measures adopted by the central government have been fragmented and ideological. The comprehensive and multidisciplinary nature of memory policies and the fight against impunity place the responsibility for change not only on the central government but also on regional and local administrations, making implementation even more challenging.
4. It is difficult to establish a state policy on memory, given that the PP is a party rooted in Francoism, and VOX can be considered an extreme right-wing faction with ideological links to Francoism. The PSOE supports reparation policies but is hesitant to propose measures related to the right to truth, such as truth commissions, and even less so on the right to justice, breaking with the Amnesty Law. For Ciudadanos, a party that formed alliances with PP and VOX, this was not a political priority. Unidas Podemos and its left-wing coalition, along with some nationalist parties, were more aligned with social demands and the requests of international institutions, such as the UN human rights treaty bodies of the United Nations system.
5. The first measures, promoted by one of the parties that originated from Francoism, the UCD, (Democratic Centre Union), and under the 1977 Amnesty Law, called for pardons and economic compensation for the victims of the Civil War, without the slightest condemnation of Francoism, nor allusion to the Second Republic overthrown by a *coup d'état*.
6. It was not until 1980 that the first economic reparation that made a difference was proposed to ex-combatants from the Republican zone, under Law 35/1980. During the Socialist government between 1982 and 1986, this trend continued, with economic reparations for people who had been deported, carabinieri of the II Republic, the Democratic Military Union, the International Brigades, or people in exile.
7. It should be noted that during the PP government between 1996 and 2004, no progress was made on reparations measures. Instead, economic measures were taken to support foundations aimed at maintaining and disseminating Francoist memory. However, it was at that time, which we can consider post-transitional, that civil society became more organized and visible, supported by international organizations, and lobbied political parties to move from mere reparations to more comprehensive memory policies.
8. With Rodríguez Zapatero (PSOE) governing between 2004 and 2011, the first results appeared, and we may consider the first Law of Historical Memory, Law 52/2007, dispensable for the PP and insufficient for nationalist parties. Ultimately, it focused, in essence, on economic and symbolic reparations, partially addressing the right to truth and justice.

---

<sup>20</sup> Progressive Coalition: A New Agreement for Spain. Available at: <https://www.psoe.es/media-content/2019/12/30122019-Coalici%C3%B3n-progresista.pdf> [Accessed: March 15<sup>th</sup>, 2020].

9. After a new PP government between 2011 and 2018, there was an absence of political will and an economic crisis, causing Law 52/2007 to become inactive.

10. With the 2018 motion of censure and the coalition government of PSOE and Unidas Podemos, memorialist measures were taken up again but under the moderate influence of socialism. In this XIV Legislature, it will be seen whether the new legal proposals on democratic memory and stolen babies are finally approved. The former follows the measures of symbolic and economic reparation, and opts for exhumations, but without strong measures on the right to truth, such as the creation of a commission for clarification, and less on justice. The process of debate and amendments will determine the future of democratic memory in Spain.

11. Law 52/2007 was a milestone in Spanish history, but it was in the middle ground looking for a consensus that never came. If the new socialist proposal succeeds, it will represent a new step forward that satisfies neither social demands nor the national interests, which have been sacrificed for the sake of a new supposed consensus and a state policy that, be that as it may, is improbable given the refusal of the right-wing parties to accept these memorialist policies. So, is it better to return to a more moderate law of consensus, or to take advantage of the progressive coalition in government to present a law more in line with social and international demands? In any case, having the possibility of bringing back memorial laws and policies is quite an achievement.

12. We must highlight Spain's strong social and moralist movement, which, in line with various United Nations bodies, carries out political advocacy and social mobilization work, promoting new laws, supporting the victims, and taking on the government role: ARMH, *Coordinadora de Apoyo a la Querella Argentina* (CEAQUA), *Plataforma por la Comisión de la Verdad*, *Asociación de la Memoria Social y Democrática* (AMESDE), *la Comuna de lxs presxs del franquismo*, *Todos los niños robados son también mis niños*, etc. There are many more, it is impossible to mention all of them, but it would be interesting if they were to form a State Coordinator for Democratic Memory in Spain.

13. Finally, a conclusion summarizing the necessary measures – some of which are included in the latest legal proposals analyzed – for Spain to meet international standards against impunity on transitional justice and democratic memory: to repeal, modify or interpret the Law on transitional justice and democratic memory 46/1977 by having recourse to the law; to investigate; to collect statements; to establish criminal responsibility; and to create a specific prosecutor's office; to override judicial procedures and sanctions of Francoism; to make the State accountable for the location, exhumation and identification of disappeared persons, including stolen babies; to create a Truth Commission; to remove Francoist symbolism and to redefine monuments in terms of democratic memory; to make available public and private archives with information on the Civil War and Francoism; to train civil servants in democratic memory; to implement specific and transversal inclusion of democratic memory in the curricula of all educational stages and to promote research; to seek symbolic, economic and patrimonial reparation for victims; to fight for a reform of the criminal code against apology of Francoism and fascist organizations prone to hate speech and hate crimes. All these measures should be reflected organically in the proceedings of central administration, along with the autonomous regions and civil society. Furthermore, they should incorporate an approach based on human rights, gender and diversity to ensure maximum inclusion and appropriate positive measures.

## Bibliography

Aguilar Fernández, P. (1996). *Memoria y olvido de la Guerra Civil Española*. Madrid: Alianza Publisher.

Aguilar Fernández, P. (2008). *Políticas de la memoria y memorias de la política*. Madrid: Alianza Publisher.

Santos, J. (1999). *Un siglo de España. Política y sociedad*. Madrid: Marcial Pons Publisher.

Mate, R. (2011). *Tratado de la injusticia*. Barcelona: Anthropos Publisher.

Muñoz de Córdoba, M. Á. (2009). *Reflexiones en torno a nuestro pasado reciente. España, los años 30 del siglo XX*. Madrid: Cultiva Libros Publisher.

Ruiz, D. (2002). *La España democrática (1975-2000). Política y sociedad*. Madrid: Síntesis Publisher.

Sánchez-Moreno, M. (2019). *Desalmadas y maleantes. Memoria de género en Argentina y España (1936-2018)*. Málaga: Publisher UMA.

Sánchez-Moreno, M. (2019b). 'Memoria e historia: una aproximación internacional desde el ámbito jurídico', on Amnis Magazine, no. 18. Available at: <http://journals.openedition.org/amnis/4390> (Accessed: March 15<sup>th</sup>, 2020).

## Author's Biography

**Manuel Sánchez Moreno, Carlos III University of Madrid:** Historian and International PhD in Legal Sciences. Master's degree in Development Cooperation and NGO Management. Master's degree in Human Rights and Democratization. International Diploma in Economic, Social and Cultural Rights and Indigenous Peoples. Associate Professor in the Department of International Relations and Global History at UCM and at the Faculty of Law, Social Sciences and Humanities of UNIR.