

# AG: Spanish Law on Catalan Amnesty Does Not Violate EU's Financial Interests



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News

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According to Advocate General (AG) *Dean Spielmann*, the Spanish amnesty law, which exempts politicians and officials from liability in connection with the unlawful independence referendum in Catalonia on 1 October 2017, and acts carried out in connection with the Catalan independence process, does not conflict with Union law on the protection of the EU's financial interests. However, certain provisions may be incompatible with the right to effective judicial protection.

## Background to the case

The reference for a preliminary ruling to the ECJ arose in a public action before the Spanish Court of Auditors (*Tribunal de Cuentas*) which deals with the responsibility of persons entrusted with handling public funds. The "Catalan Civil Society Association" and the State Counsel's Office are seeking the defendants' accounting liability for the undue spending of public money on the promotion of independence of Catalonia at an international level from 2011 to 2017. Shortly before the judgment in the case was set to be delivered, the Spanish Parliament adopted on 10 June 2024 "a law on amnesty for institutional, political and social normalisation in Catalonia" ("the LOA"). It includes the extinction of the defendants' liability in respect of public funds arising from the LOA. The referring Spanish Court of Auditors doubts whether the LOA is compatible with Art. 325 TFEU and Regulation 2988/95, which establish the effective and deterrent protection of the EU's financial interests. Additionally, the referring Court raised questions regarding the compatibility of the LOA's impact on ongoing liability proceedings with the principle of effective judicial protection enshrined in the second subparagraph of Art. 19(1) TEU. The case has been referred as *C-523/24 (Sociedad Civil Catalana)*

## AG Spielmann's Opinion with regard to the protection of the EU's financial interests

In its first question, the Spanish Court of Auditors saw a violation of Art. 325 TFEU, as the LOA expressly excludes "acts that constitute criminal offences affecting the financial interests of the EU" from its scope, but not administrative liabilities, as in the present case. According to the Court, the term "financial interests" must be interpreted broadly to include *potential* harm to the EU budget arising from the illegal referendum, such as a reduction in the revenue which a Member State is required to make available to the EU budget. However, *AG Spielmann argues* that the use of EU money for the promotion of the Catalan independence could not be proven, and that there is no general obligation for Member States to set up measures to address any potential impact on the EU's financial interests. The applicability of Art. 325 TFEU rather requires

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a *direct link* between acts relating to public funds and a reduction in the revenue made available to the EU budget. This link cannot be seen in the present case.

### AG Spielmann's Opinion with regard to the effective judicial protection

With regard to the compatibility of certain provisions of the LOA with rule of law issues, the referring Court first argued that the LOA provides a time limit according to which any decision relating to the application of the amnesty in a given case must be adopted within a maximum period of two months; this period would not allow the national court to determine whether the assets affected by the acts giving rise to liability in respect of the public funds under examination constitute EU funds. This puts judges under "external pressure" and thus compromises the court's independence, in breach of Art. 19 TEU. According to *AG Spielmann*, such a time limit may indeed constitute an indirect influence, capable of shaping the decisions given by the courts concerned, and thus infringe the requirement of independence arising from the second subparagraph of Art. 19(1) TEU. However, considering the nature of amnesty, this timeframe must be *mandatory* in order to prevent the national court from adopting the investigative measures necessary to determine whether the assets affected by the acts giving rise to liability in respect of the public funds under examination constitute EU funds. It is up to the referring court to determine whether the time limit in the LOA is mandatory or merely "indicative".

A second criticism of the LOA is that it violates the right to be heard, as it does not expressly mention that the parties who brought the action in the public interest are heard before the national court takes its decision exonerating natural or legal persons from liability. *AG Spielmann* sees this as a violation of the second subparagraph of Art. 19 TEU, because it would prevent those parties from engaging in an adversarial debate on the matters of fact and law that are crucial to the outcome of the proceedings.

Conversely, the legal mechanism whereby the national court must close the procedure without having had the opportunity to assess the evidence to determine whether the defendants committed the acts is inherent in any amnesty and thus no violation of the obligation to ensure effective judicial protection occurs.

Thirdly, regarding the impact of the LOA on a request for a preliminary ruling, the AG clarifies that the amnesty law must be interpreted in such a way as to guarantee the effectiveness of the ECJ's response to the reference. Therefore, national provisions cannot require national courts to adopt a decision exempting liability in respect of public funds and to lift the interim measures ordered at an earlier stage of the proceedings within a maximum period of two months, even if the ECJ, hearing a request for a preliminary ruling, has not yet given its decision.

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