

LAWS AND DEMOCRATIC CULTURE: THE REGULATION OF PUBLIC POLICIES CONCERNING HISTORICAL MEMORY IN CATALONIA, THE BALEARIC ISLANDS AND THE VALENCIAN COUNTRY*

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Abstract

In recent years, laws and public policy programmes concerning historical and democratic memory with a nationwide and regional scope have been passed in Spain. The article presented deals with this phenomenon of legal and political science interest within the territorial scope of the autonomous communities of Catalonia, the Balearic Islands and the Valencian Country. The purpose of the text is to analyse the theoretical foundations, the structure and the contents of the laws that structure the Catalan, Balearic and Valencian legal frameworks concerning the matter, based on a preliminary review of the central government legislation. Consequently, it points out shortcomings in the (central and regional government) legislation examined, and makes proposals for interdisciplinary coordination between public administrations among the public powers, in order to better meet the public's demands concerning the rights to truth, justice, reparations and guarantees of non-repetition, conceived of as principles of transitional justice.

Key words: memory; laws; public policy; truth; justice; reparations; non-repetition.

LLEIS I CULTURA DEMOCRÀTICA: LA REGULACIÓ DE LES POLÍTIQUES PÚBLIQUES DE MEMÒRIA HISTÒRICA A CATALUNYA, LES ILLES BALEARS I EL PAÍS VALENCIÀ

Resum

Durant els darrers anys s'han aprovat a Espanya lleis i programes de polítiques públiques de memòria històrica i democràtica d'abast estatal i autonòmic. L'article presentat tracta aquest fenomen d'interès jurídic i polítològic, en l'àmbit territorial de les comunitats autònomes de Catalunya, les Illes Balears i el País Valencià. El text estudia els fonaments i els continguts de les lleis que conformen els marcs jurídics català, balear i valencià en la matèria, a partir d'un breu comentari preliminar sobre la llei estatal. En conseqüència, assenyala mancances de la legislació –central i autonòmica– examinada i planteja propostes de coordinació interadministrativa i interdisciplinària entre els poders públics, per tal d'atendre millor les demandes ciutadanes entorn dels drets a la veritat, la justícia, la reparació i les garanties de no repetició, concebuts com a principis de justícia transicional.

Paraules clau: memòria; lleis; polítiques públiques; veritat; justícia; reparació; no repetició.

* This article is a translation and a shorter version of an original one published in Catalan to which we refer for more extensive and in-depth treatment of the topic. Dedicated to the memory of Josep Ignasi Sardà Rico.

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Article received: 19.12.2019. Blind review: 11.01.2020 and 11.01.2020. Final version accepted: 09.03.2020.

Recommended citation: Digón Martín, Raül. (2020). Laws and democratic culture: the regulation of public policies concerning historical memory in Catalonia, the Balearic Islands and the Valencian Country. *Revista Catalana de Dret Públic*, 60, 148-166. <https://doi.org/10.2436/rcdp.i60.2020.3393>.

Summari

- 1 Historical and democratic memory in Spain and Spanish Law 52/2007 of 26 December
- 2 Other memory laws: Catalonia, the Balearic Islands and the Valencian Country
 - 2.1 The Catalan case: from precursor regulation to possible legislative consolidation
 - 2.2 The Balearic case: legislative duality and common public policy
 - 2.3 The case of the Valencian Country as a model for a comprehensive law of democratic memory
- 3 Conclusions
- 4 APPENDIX. The legal framework of the policies of historical and democratic memory in the Catalan Countries
- 5 References

1 Historical and democratic memory in Spain and Spanish Law 52/2007 of 26 December

Any legislative scope involves regulating the institutions and technical measures of each legal area (such as the concepts of property law, labour relations or education policy), but also the social projection of the values that underlie them. One example of this is the legislation on (democratic, historical and/or collective) memory policies,¹ the ethical implications of which transcend mere legal significance, with a considerable historical background.

The process of political transition to re-establish democracy involved keeping silent and forgetting the rights of the victims of the Civil War and the Franco regime, as a model of “disremembering” (Elster, 2004: 62). There was no truth commission or determination of responsibilities (Gil, 2009; Jimeno Aranguren, 2018). The public powers limited their care for victims to measures such as pensions or compensation, but the events during the armed conflict and the dictatorship were not investigated and no-one was held accountable. Repeated breach of Spain’s duties arising from international conventions and treaties (searching for disappeared persons, historical research on crimes against humanity, determining criminal responsibility and, all in all, other forms of upholding the rights of the relatives of those people and the general public) has been criticised by various international bodies. Notably by the United Nations in the reports of the Working Group on Enforced or Involuntary Disappearances of 2 July 2014 and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence of 22 July 2014.

The deficits attributed to the Spanish state (lack of institutional coordination, underfunding, distance from associations’ demands, etc.) have led to a reconsideration of the scope of the memory laws passed in Spain and assessment of the policies implemented, mainly in the autonomous communities that have committed themselves to it.² Not to mention ineffectual handling by the courts. What are the approaches and objectives of the Spanish, Catalan, Balearic and Valencian memory laws? What problems and gaps have been detected?

Law 52/2007 of 26 December (on “historical memory”) is a turning point in the regulation of a matter that had been given unfocused and insufficient legal treatment. It establishes measures to extend the rights of different groups (medical and pharmaceutical care and social assistance for the widows, children and other relatives of Spaniards killed in the Civil War; orphan’s pensions, compensation, etc.). However, it does not fully commit the public authorities to the task (historical research and archaeological and anthropological analysis to locate and identify human remains), only stipulating that the authorities will collaborate with individuals through grants to fund their activities. These grants ceased when the Spanish People’s Party (PP) came into power and de facto repealed the law in question. Moreover, the aforementioned law does not clearly grant a full pardon for those convicted of legal offences, as has been evidenced in recent years with the discussions on the emblematic case of President Companys (Cruanyes Tor, 2015; Digón Martín, 2015). Likewise, the removal of antidemocratic symbolism from public spaces (art. 15) has often been neglected by public authorities that have an obligation to do so, while the recent addition of paragraph 3 to art. 16 of the Law on the Valley of the Fallen³ has made it possible to finally remove the dictator’s remains, although this is still far from the recommendations for comprehensive resignification in the report by the Commission of Experts on the Valley of the Fallen (2011). These and other needs (withdrawal of decorations and pensions from torturers; return of confiscated money to thousands of people; solemn tribute to the deportees to the Nazi camps,⁴ banning of foundations that extol fascism, etc.) are behind the imminent presentation of the (new) memory draft bill by the Cabinet.

1 This article refers jointly to “historical” memory, as an even more general expression, and “democratic” memory, which has a more substantive and precise denotation, since they are the terms most used (as alternatives or complements) in the legislation in question, notwithstanding the particular meanings of “historical”, “social”, “democratic” or “collective” memory (Aguilar, 2008: 43-52).

2 The ineffectual handling of these problems by the courts (interlocutory proceedings in Examining Magistrates Court 5 of the National High Court) is not the subject of this paper (Digón & Dueñas, 2013). We also do not deal with the criminal suit filed in the National Court no. 1 for Federal Criminal and Correctional Matters for Buenos Aires on 14/4/2010 under the principle of universal justice.

3 Royal Decree-Law 10/2018 of 24 August, amending Law 52/2007 of 26 December, has had paragraph (3) added to art. 16, which reads: “Only the remains of people who died as a result of the Spanish Civil War may be laid to rest in the Valley of the Fallen, as a place of commemoration, remembrance and homage to the victims of the conflict.” This rule, and the procedure established for compliance with it by incorporating additional provision 6a bis in the same law, constitutes the legal basis for the exhumation of the remains of the dictator from the Valley of the Fallen.

4 Official publication of the list of Spaniards killed in the Mauthausen and Gusen concentration camps, following analysis of the

2 Other memory laws: Catalonia, the Balearic Islands and the Valencian Country

All around Spain, regional memory laws have been passed that have filled gaps in the Spanish common legislation and have directed public bodies and policies. The Catalan Countries area, within Spain, has passed six laws (three Catalan, two Balearic and one Valencian) to reconsider and compare. This is covered by the respective statutes of autonomy in the three regions in the precepts concerning human rights, as expressly stipulated in the Statute of Autonomy of Catalonia (art. 54).⁵

2.1 The Catalan case: from precursor regulation to possible legislative consolidation

In accordance with its Statute (arts. 4.1 and 54) and with precedents in the policy to compensate those deprived of their liberty for political reasons during Franco's regime⁶ and the actions arising from Parliamentary Motion 217/VI (2003) on the Recovery of Historical Memory, and various parliamentary pronouncements (Botella Crespo, 2007; Digón Martín, 2016 a, 2016 b), Catalonia has passed Law 13/2007 of 31 October on the Democratic Memorial and Law 10/2009 of 30 June on the Location and Identification of People who Disappeared during the Civil War and the Franco Dictatorship, and the Dignification of Mass Graves. These were pioneering steps within Spain. Catalonia later passed Law 11/2017 of 4 July concerning Legal Redress for the Victims of Franco's Regime.

The preamble of Law 13/2007 of 31 October, as a "declaration of intent to put an end to forgetting", questions the democratic deficits of the transition (Jimeno Aranguren, 2018: 190). It argues that Catalan society has a duty to its past and that, in view of Article 54 of the Statute of Autonomy, the Government of Catalonia must put a public policy in place to release the plurality of memories and recognition of people, relatives and institutions with explicit condemnation of Francoism. It asserts that democracy is capable of recognising all victims of political violence with justice; and notes that the states with the longest-standing democratic traditions have pursued memory policies with education for future generations. We can consider that the background to the law is the high price that achieving a pluralistic democracy has meant for many diverse and even opposing people.

The preamble highlights Catalonia's history of fighting for freedoms and defending the institutions "snatched away from it in 1714". It places the roots of democratic culture and the struggle for freedoms, social justice and self-government in various heterogeneous currents since the mid-nineteenth century (the Catalanist tradition, the labour movement, the liberals, and federal republicanism). It identifies the two Spanish republics and anti-Francoism as the forerunners of the current democratic system, in contrast to the dictatorships of Primo de Rivera and Franco, which were regimes of socio-political, cultural, linguistic and national repression. It states that the era on which the Democratic Memorial's work focuses is the period from 1931 (proclamation of the Second Republic) to 1980 (formation of the first democratically-elected Government of Catalonia since the war), but does not exclude treatment of earlier or later democratic traditions in the institution's programming.

The arguments in the preamble's text describe the nexus between memory and public policies as a foundation of democratic culture for citizenship. Hence the importance of the Democratic Memorial as a tool for implementing these policies. It is intended to belong to an international network of bodies spreading anti-fascist democratic values; to open up an opportunity for historical research; and to spread knowledge of the foundations of the system of human rights and freedoms.

Law 13/2007 of 31 October stipulates that the institution must coordinate with other bodies of the Government of Catalonia that carry out specific tasks of study, dissemination and commemoration in the performance of its functions: setting up a centre, commemoration, paying tribute to the victims, informing about heritage and memory spaces (documentary information service, portal, audiovisual bank, exhibitions); training

books in the Central Civil Registry, is a first step in this duty of recognition.

⁵ Arts. 4.1 and 15 of the Statute of Autonomy of Catalonia; arts. 8 and 62.3 of the Statute of Autonomy of the Valencian Community, and arts. 12, 13 and 105 of the Statute of Autonomy of the Balearic Islands.

⁶ The regulations of this public policy, which has given rise to 39,497 applications and 22,458 compensations granted (source: <http://justicia.gencat.cat/ca/ambits/memoria/Reconeixement-i-reparacio/indemnitzacions/estadistiques>), are made up of Decree 288/2000 of 31 August and Decree 330/2002 of 3 December.

activities (conferences, courses, seminars, talks), promoting the participation of memorial organisations and informing about the role of women. In order to perform these functions, the Democratic Memorial may enter into contracts and agreements; set up or participate in consortia, foundations and other bodies; and award scholarships, grants and prizes.⁷

The institution's organisational framework, regulated in the law and in Decree 145/2008 of 15 July (Statute), comprises the Governing Board, which coordinates the Democratic Memorial's activity and approves its annual accounts; the Chair, reserved for the Catalan Minister who heads the department to which the Democratic Memorial is attached; the Directorship; the Advisory Board (prominent legal professionals) and the Participation Board (a consultative body made up of leading individuals and memorial organisations).

In spite of several budget cuts, the Democratic Memorial has promoted numerous memory initiatives, from the most modest exhibitions or publications to the organisation of and participation in scientific conferences of international scope. It promotes research and has promoted the Memory Spaces Network, the Francoist Symbolism Census and the Information and Documentation Centre. It is the part of the Catalan institutional framework for memory policies that deals mainly with the field of guaranteeing non-repetition, although the limits of this concept (and those of truth, justice and reparations) are relative.

Law 10/2009 of 30 June on the Location and Identification of People who Disappeared during the Civil War and the Franco Dictatorship, and the Dignification of Mass Graves (Law on Mass Graves), is the central regulation in the Catalan legal framework of this other aspect of memory policies (disappeared persons and mass graves).⁸ This is a concise law that sets operational criteria and provides legal coverage for the public authorities' actions, with differences to the Spanish Law, which is omitted in the articles and preamble of the Law on Mass Graves. It refers to Parliamentary Motion 217/VI and articles 4.1 and 54⁹ in the Statute of Autonomy,⁹ and is expressly set within the framework of the Universal Declaration of Human Rights and supplements Law 13/2007 of 31 October.

Historical considerations are equally relevant in the preamble's text. Apart from an initial rhetorical declaration ("The people of Catalonia have historically based their group identity on values such as freedom, justice and equality, and also respect for people's dignity"), it denounces unequal treatment in the terms of recovery of the remains of victims of violence following the Spanish coup (1936) and later, contrasting the work of the Court of Cassation of Catalonia in 1937, which made it possible to recover, identify and dignify the remains of most victims of extrajudicial executions and clandestine burials, with the action performed by the Francoist powers, which consisted of searching only for the victims of Republican repression in 1936 and the post-war period.

This difference in treatment continues to compound the suffering of the relatives of those victims and contradicts the principle of equality (art. 14 of the Constitution). The remains of the victims of reprisals by Franco's regime, who have been condemned to oblivion, are buried in graves of imprecise or unknown location, such as those of soldiers, near the front and in field or military hospitals.¹⁰ Therefore, the purpose of the Law on Mass Graves is to locate, recover and identify the remains of disappeared persons; dignify and put signs on the graves, and fulfil society's right to know the events unleashed by the Spanish coup: tens of thousands killed in the war; arbitrary detentions, torture, executions and extrajudicial burials by the rear-guard, and institutionalised repression through councils of war, without no procedural guarantees, in the extensive post-war period. One can therefore see that the public authorities have a duty to correct the injustice suffered by the relatives of many disappeared persons. One should note that the duty to investigate the enforced disappearances of all victims has its legal basis in international provisions such as the Convention

7 In accordance with Paragraph (d), added to art. 4 of Law 13/2007 by art. 188.1 of [Law 5/2017 of 28 March](#), the Democratic Memorial "may award scholarships, grants and prizes to fulfil the purposes for which it was created".

8 Decree 111/2010 of 31 August and Resolution IRP/4072/2010 of 15 December supplement Law 10/2009 of 30 June.

9 In accordance with Art. 4.1 of the Statute of Autonomy of Catalonia, on rights and guiding principles: "The public powers of Catalonia must promote the full exercise of the freedoms and rights recognised in this Statute, the Constitution, the European Union, the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and other international treaties and conventions signed by Spain that recognise and guarantee fundamental rights and freedoms."

10 A notable part of contemporary Catalan historiography concerning the Civil War has provided clarifications regarding the types of mass graves in Catalonia and the initial treatment given to them (Solé Barjau, 2008; Solé Barjau; Dueñas Iturbe, 2012).

for the Protection of All Persons from Enforced Disappearance, which is an integral part of domestic law (art. 96 Spanish Constitution)¹¹ and places an obligation on Spain to investigate disappearances and implies a right to material and moral reparations as part of the legal statute of democratic citizenship (López Anguita, 2019: 118).

Law 10/2009 of 30 June, which is also succinct, provides the Catalan Government Administration with key tools (the Census of Disappeared Persons¹² and the Mass Grave Location Map: (<http://fossesirepressio.cat>)).¹³ Interdisciplinary advice is provided by the Technical Commission for the Recovery and Identification of People who Disappeared during the Civil War and the Franco Dictatorship. Since 2009, this has brought together specialists in law, history, physical anthropology, forensic medicine and archaeology, representatives of memory associations and municipal bodies.

The focus on mass graves work must follow the criteria for land access stipulated in art. 11. This requires the Government of Catalonia to notify the judicial authorities if remains are found (art. 7.6)¹⁴ and may involve technical and economic collaboration through agreements and accords with academia and local authorities. Unlike the Spanish Law model, the Law on Mass Graves directly entrusts the Catalan Government Administration with performing the work to recover and identify human remains with the available budget, using its own or third-party resources. Tasks performed by private individuals are not funded; they are performed by the government administration.¹⁵ Therefore, the Catalan model more strictly complies with the stipulations in international humanitarian law and anticipates the approach that the new Spanish memory law is likely to take.

Since the action performed prior to the Law on Mass Graves, with exhumations in Prats de Lluçanès in 2004 and Gurb in 2008 (Solé Barjau, 2012), the Government of Catalonia's work on mass graves and disappeared persons has continued in Catalonia. Its importance in the political agenda of the Government of Catalonia has varied and there have been drastic budget cuts (the substantial decrease in funding between 2011 and 2016 reduced exhumations to an absolute minimum). In recent years, in spite of the budget remaining unmodified, there has been something of a relaunch with projects such as the Genetic Identification Programme and the Mass Graves Plan, which has generated dozens of interdisciplinary interventions led by the Government of Catalonia and the identification of people's remains, which have been returned to their families. Dozens of collections of human bone remains found on the surface, belonging to hundreds of unidentified people, have been performed.¹⁶ The effort towards justice, truth and reparations that underlies the plan is too little and too late to respond to the demands that civil society has been making for many years. Over a long period of time (June 1999 - February 2020), the Government of Catalonia has directed and/or coordinated the excavation of about fifty mass graves and the remains of 343 individuals have been recovered, fifteen of which have been identified.¹⁷

11 The Convention, approved by the United Nations General Assembly in New York on 20 December 2006, was ratified by Spain on 14 July 2009.

12 According to the Directorate General of Democratic Memory, the Census of Disappeared Persons has recorded the details of more than 5,500 people being searched for by their relatives.

13 In the time of Catalan Minister Saura and Spanish Minister Caamaño, who headed the Ministry of Justice from 2009 to 2011, the Government of Catalonia and the General State Administration signed an agreement to participate in the integrated state map of mass graves.

14 Art. 10 stipulates: "In the event that, by chance, someone discovers remains that may be those of the disappeared persons referred to in article 2.1, they must inform the Catalan Government Administration or the relevant town council within 48 hours. They must report this to the department responsible for democratic memory within 48 hours".

15 Thus, in contrast to art. 11.2 of Law 52/2007 of 26 December ("The General State Administration must draw up work plans and provide funding to cover the expenses arising from the activities"), art. 7.1 of Law 10/2009 of 30 June stipulates that "It shall be the responsibility of the Administration of the Generalitat to carry out the activities necessary to recover and identify the remains of the people [...] The cost of such activities shall be met by the Administration of the Generalitat, as far as the sums allocated for that purpose in its budget allow".

16 For figures concerning the work and results see: <http://justicia.gencat.cat/ca/ambits/memoria/Fosses/Actuacions-en-fosses> (also: Domènech & Casadevall; Mesalles Godoy; Rueda Martí, 2019).

17 Source: Directorate General of Democratic Memory.

The Directorate General of Democratic Memory (Department of Justice) is the Government of Catalonia's administrative unit responsible for policies concerning disappeared persons and mass graves, compensation and recognition of former political prisoners, advice for those who suffered reprisals (and their relatives) and other related activities, such as the promotion of recovery and memory education projects with funding and prizes. However, the departmental attachment of this unit (or equivalent units) has varied from time to time. This requires critical reflection by the Government of Catalonia, as well as improvement in coordination between that unit, the Democratic Memorial and other related bodies.

The last law that consolidates the legislative corpus of memory policies in Catalonia is Law 11/2017 of 4 July concerning Legal Redress for the Victims of Franco's Regime. It is extremely concise and was unanimously approved by the Catalan Chamber in spite of the polarized context in which it was drafted. In response to the aforementioned deficits in the Spanish Law, Law 11/2017 of 4 July, considers that Parliament must undertake the historical responsibility of approving this law on reparations for those who suffered reprisals from that illegitimate and illegal regime. This is condensed in a single article:

“In accordance with the legal system as a whole, which includes both international and national law, Franco's Judge Advocates' courts, subsequently called the Judge Advocates' Court of the IV Military Region, which were active in Catalonia from April, 1938 to December, 1978, are hereby declared illegal for acting contrary to the law and for violating the most basic demand concerning the right to a fair trial. And, consequently, the invalidity of the full right, then or thereafter, is derived from all judgements and resolutions relating to the war causes and war councils, for political causes in Catalonia, as dictated by Franco's regime.”

The final provisions authorise the National Archive of Catalonia to draw up, publish and update a list of the proceedings heard and the judgments handed down in accordance with various Francoist regulations,¹⁸ with the case number, the natural or legal person prosecuted and the sentence. The list (as of 1 January 2020) shows the details of courts-martial cases against 66,644 individuals and fifteen legal entities,¹⁹ with case numbers, dates of the judgments or other resolutions, the sentences imposed and archival references. An individualised document may be requested in which the Catalan Minister of Justice states that the case, judgment or resolution is null and void. This is given to the victims and/or relatives with a letter from the President of the Government of Catalonia.²⁰

It could be argued that declaring these null and void would require a nationwide law or specific court rulings, and that the possible compensatory effects should be determined, given the applicable Spanish and European regulations. However, it constitutes declaratory and symbolic progress towards truth, justice and, especially, reparations. Meanwhile, the tasks assigned to the National Archive of Catalonia reveal the plurality of Catalan institutions and bodies from all over the territory with responsibilities for memory (the Democratic Memorial, the Directorate General of Democratic Memory, the Memorial Consortium for the Spaces of the Battle of the Ebro, the Exile Remembrance Museum, the Directorate General of Cultural Heritage and the Centre for the Contemporary History of Catalonia, which coordinates the “Human Cost of the Civil War” documentary project.²¹

Improving coordination between these institutions and units and updating their legal framework, systematically rearticulating and unifying the three Catalan memory laws, and regulating unresolved issues (removal of Francoist symbols, coordination of access to archives, investigation of stolen babies, etc.) underpin the Draft Bill on the Democratic Memory of Catalonia of 5 July 2018 and the Catalan Government Resolution of 12 September 2018, approving the preliminary report on the Draft Bill on the Democratic Memory of Catalonia. The resulting comprehensive law on memory in Catalonia, which seeks a broad process of participation²² by

18 The Edict of 28 July 1936, the Decree of 31 August 1936, the Decree number 55 of 1 November 1936, the Law of 2 March 1943, the Law of 18 April 1947, the Decree 1794/1960 of 21 September, and the Decree-Law 10/1975 of 26 August.

19 See: <https://anc.gencat.cat/ca/detall/noticia/La-llista-de-reparacio-juridica-de-victimes-del-franquisme-en-dades-obertes>.

20 Further information: <http://anc.gencat.cat/ca/detall/noticia/La-llista-de-reparacio-juridica-de-victimes-del-franquisme-en-dades-obertes>.

21 <http://memoria.gencat.cat/ca/que-fem/cost-huma-de-la-guerra-civil>.

22 See the link: https://participa.gencat.cat/uploads/decidim/attachment/file/334/180912_AG_diligencia_mem_prel_avantproj_law_memoria_democratica.pdf.

memorial and expert bodies, should better regulate institutional collaboration between administrations, in order to have a coherent and global work strategy.

The need for collaboration between the Government of Catalonia and other administrations, such as local bodies and the General State Administration, also and particularly includes regular cooperation with other autonomous communities in appropriate sectoral and/or bilateral forums. In particular, given the causes and types of the various mass graves, and in accordance with article 174.2 of the Statute of Autonomy, it is appropriate to establish agreements and other formulas for collaboration on common policies concerning intervention projects in mass graves and identification of human remains, as is already the case in technical cooperation with academia. The Government of Catalonia's institutional collaboration concerning this matter with other autonomous communities, some as nearby as Aragon, should be open to all, but with the principal focus on relations with the other communities in the Catalan Countries, in view of their common cultural ties and shared historical events involving violence and repression during the Civil War and the Franco dictatorship, in accordance with some prior work projects concerning the Islands and the Valencian Country.²³ Below we examine the memory legislation in both communities.

2.2 The Balearic case: legislative duality and common public policy

The Autonomous Community of the Balearic Islands has passed two complementary laws to regulate memory policies. Firstly, Law 10/2016 of 13 June on the Recovery of People who Disappeared during the Civil War and Franco's regime. This Balearic law, with contents equivalent to the Catalan Law on Mass Graves, describes Law 52/2007 of 26 December as a significant legislative progress, but reports that in this community there has been no regulatory implementation of the mentioned law and that regional and local institutions have not generally undertaken their obligations as public authorities. It mentions that the Working Group on Enforced Disappearances and the Special Rapporteur on Transitional Justice, as noted above, has considered that the measures in the Spanish Law do not provide adequate reparations. Therefore, Law 10/2016 of 13 June emphasises the responsibilities to be undertaken by all public powers:

“... it is the State (taken as a whole, including central and regional governments, town councils, the court service and public authorities as a whole) that should investigate and clarify these crimes and, as part of the investigation, proceed with exhuming the remains found in mass graves. This takes account of the observations of international bodies that have found that a state cannot delegate this task to families or associations.”

The Balearic legislature considers that these tasks should not be borne by relatives or associations, in view of the discrimination between citizens implied by unequal treatment of the issue by different autonomous communities. The preamble specifically recognises the work of the “*Memòria de Mallorca*” (Memory of Majorca) and “*Fòrum per la Memòria d'Eivissa i Formentera*” (Forum for the Memory of Ibiza and Formentera) associations in searching for the remains of the 2,000 people they estimate disappeared on the islands. The high standard of the research, the collaboration with the families and the cases brought in the Spanish and Argentinian courts are highlighted, as well as the agreements signed in 2010 and 2011 with the autonomous government to draw up maps of the mass graves on the corresponding islands, which were presented in 2011.

It is estimated that there are 56 mass graves (in cemeteries and surrounding areas, wells and sinkholes) in Majorca, Ibiza and Formentera, and it is necessary to investigate whether there are any outside of cemeteries in Menorca. It notes that, in accordance with the Geneva Conventions of 1906 and 1929, combatants killed in military action should have been searched for, identified and buried or cremated. Their burial sites should have been protected by the Spanish state, as in other European countries after World War II. As for the

²³ See the Protocol between the Department for Culture, Participation and Sport of the Government of the Balearic Islands and the Department for Justice of the Government of Catalonia on Democratic Memory, signed in Palma on 28 September 2018, which stipulates that the governments of Catalonia and the Balearic Islands must collaborate on programmes to exhume and identify human remains found in the mass graves on Sa Coma beach and those in El Riuet and on Portocristo beach, Coves Blanques and Son Coletes; or the more specific work performed by the Government of Catalonia concerning archaeological work, exhumation and genetic identification of the bones of Mr. Vicente Santolaria, buried in the Tremp mass grave in 1948. The work made it possible, at the relatives' request, to move the remains of Mr Santolaria (who was a member of the CNT, a Front Popular mayor in 1936 and subsequently accused of collaborating with the resistance) to his birthplace, Cirat (Castelló), to be finally laid to rest.

bodies of civilians who suffered reprisals, they were exhumed from graves in Republican areas, but not in rebel areas. As a whole, there were disappearances all over each island and almost all of the municipalities have disappeared residents buried in graves all around the islands (a person might have been killed in one place and buried there, or moved to another burial place). Therefore, the preamble of the Balearic Law on Disappeared Persons provides specific figures on the graves and people who disappeared there. In some cases, these graves have been the subject of excavation and exhumation work.²⁴

In the face of this problem, it proclaims that urgent and coordinated government action is needed, in collaboration with associations and other administrations, despite the fact that it is very late (many direct testimonies have already been lost). It notes that the mass graves' conditions make it advisable to have an interdisciplinary protocol, coordinated with the Spanish state, which provides psychological assistance to relatives, although it states that exhumations should be performed in accordance with the judicial procedure. It stipulates that if human remains with signs of violence are found, the Balearic Government must contact the Public Prosecutor's Office to report these crimes against humanity. One should note that the provision of psychological support for relatives is missing in other similar laws, as is the explicit reference to judicial procedure and, especially, the government's obligation to contact the Public Prosecutor's Office.

In short, Law 10/2016 of 13 June is intended to contribute to recognition and remembrance of the victims of the Civil War and Franco's regime, to progress towards reconciliation, harmony, justice, respect for pluralism and peaceful defence of ideas. It specifically regulates the activities involved in locating and marking mass graves, and exhuming and identifying human remains. It has a simple structure, based on operational definitions (disappeared persons, enforced disappearance, mass grave), and establishes the necessary tools (the Census of Disappeared Persons, the Mass Grave Map, the (interdisciplinary) Technical Commission for Disappeared Persons and Mass Graves, the annual plan and the specific protocol for work in mass graves) and the conditions for access to the affected spaces.

The law refers to the Spanish Law and Law 12/1998 of 21 December on the historical heritage of the Balearic Islands, as subsidiary regulations. Moreover, it stipulates that the Balearic Government must collaborate, through agreements, with other autonomous communities, the central government and public and private bodies, to locate and identify the remains of people from the islands who disappeared outside of Balearic territory. Consequently, unlike the Catalan legislation examined, it emphasises the connection with the Spanish Law and the need for cooperation between governments and administrations.

Alongside the law dealt with above, Law 2/2018 of 13 April on Democratic Memory and Recognition in Balearic Islands completes the Balearic legislation on memory policies. As a background consideration, the preamble states that the restoration of democracy was one of the great successes of the transition and that the transformation of institutions and civil society, 30 years after the adoption of the Statute of Autonomy, makes it possible to tackle the relationship with the history of democracy so as not to repeat past mistakes. The purpose is to ensure peace, freedom and coexistence, and institutionally and socially recognise the memory of the people and groups who, at great human cost, fought for democracy during the Second Republic, the Civil War, the Franco dictatorship and the transition, to whom an outstanding debt is owed.

The text condemns the Franco dictatorship and presents, as historical examples of the repression during the war and Franco's regime in the Balearic Islands, the Republican landing in Majorca and the Pityuses (August-September 1936), the occupation of Menorca (February 1939) and reprisals against the rebels on both sides (Majorca, Ibiza and Formentera were under Francoist control, while the Republicans controlled Menorca and, briefly, the Pityuses). Beatings, torture, mass arrests and summary executions are reported, which in the Francoist zone were prolonged with executions, as well as military justice by councils of war, with no procedural guarantees. These issued death sentences until the 1940s.

²⁴ In accordance with the First Balearic Government Plan for Action in Mass Graves (2018), work was carried out in 10 mass graves in Majorca and Ibiza and the remains of 24 bodies were recovered. Currently, a total of 21 people have been recorded, identified from among the 70 bodies exhumed by Balearic Government (14 identifications in Porreres in 2016, and 4 in the 2018 plan) or by the previous work by the *Memòria de Mallorca* Association, the University of the Balearic Islands and Sant Joan Town Council (3 identifications). On 13/1/2020, the Mass Graves Plan 2019-2020 was announced. It focuses on 9 locations in Majorca and Ibiza. See: <http://www.caib.es/govern/sac/fitxa.do?codi=4048913&lang=ca&coduo=1>.

It also highlights the suffering of certain groups: those deported to the Nazi camps; teachers, victims of purges; those targeted with reprisals due to their sexual orientation or gender identity (also at the beginning of the transition) and, as a whole, the clandestine democratic opposition (political, trade union, student, neighbourhood, feminist, military, cultural and linguistic). From a gender perspective, violence against and humiliation and punishment of women for their active role in the Second Republic are condemned. It states that the dictatorship, in a context of winners and losers, discriminated against the victims of Franco's regime, whose rights to justice, truth and reparations have been the subject of recent legislation.

Among legal considerations, the preamble notes that the Spanish Law seeks to close the unfocused chapter of reparations and recognition of victims and asks the Government of Spain to determine the institutional framework to promote memory policies. The text also echoes the laws of Catalonia, Navarre, the Basque Country and Andalusia, the inspirations behind the Balearic legislature, which through Law 2/2018 of 3 April is furthering the task of solidarity with all victims launched by Law 52/2007 of 26 December and Law 10/2016 of 13 June. The foundation is reinforced by provisions of international law, such as the Commission on Human Rights Resolution 2005/35 of 19 April (Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law) and 2004/72 of 21 April, which stipulates that states should adopt measures to combat impunity and forgetting, in favour of the right to truth and collective memory, such as preservation of archives, in the face of revisionist or negationist theories, since "a people's knowledge of the history of its oppression is part of its heritage" (principle three, R. 2004/72). Finally, the preamble emphasises that the law (art. 22)²⁵ determines and declares that judgements and resolutions that imposed death sentences, imprisonment, disqualifications and confiscations for ideological reasons, handed down by bodies and courts lacking true jurisdictional nature, in proceedings without procedural guarantees, are null and void. This measure is the same as in Law 11/2017, of 4 July, concerning Legal Redress for the Victims of Franco's Regime, previously examined in the section on Catalan legislation and, therefore, raises similar doubts.

Law 2/2018 of 13 April states that the purpose is, in accordance with the principles of truth, justice and reparation, and the constitutional values of coexistence, pluralism, defence of peace and human rights: to establish democratic memory policies (for the reparation of victims and recognition of all those who fought for democracy); to ensure knowledge of the history of the islands – from the Second Republic to the entry into force of the Statute of Autonomy (1983); to recognise the work of memorial organisations and victims' associations; to reject and prevent any act of recognition of Francoism and the military uprising, and to ensure that spaces of coexistence are used for democratic culture and harmony. The measures envisaged include: the removal of Francoist traces, symbols and mentions; the promotion and protection of democratic spaces and itineraries of Democratic Memory and Recognition, and of monuments to the victims; the promotion of study and knowledge of the aforementioned historical period; the promotion of declarations of recognition and institutional tributes; the provision of information about the enforced disappearances of children during the Civil War and the dictatorship, and the collaboration and promotion of the filing of cases in the courts concerning enforced disappearances during the war and the dictatorship that affect Balearic citizens.

Law 2/2018 of 13 April regulates the means to achieve the announced measures and objectives. It covers an extensive period of time (1931-1983), including relatives of victims and those affected by reprisals during the transition, bombardment victims, etc. A Census of the Victims of the Civil War and the ensuing Dictatorship is planned, as an official, electronic and public register. At the same time, there are initiatives to protect the documentary and bibliographic heritage of the Democratic Memory of the Islands (Second Republic, war, dictatorship, Francoist repression, resistance, exile and transition), such as the creation of thematic sections in archives, libraries and museums, and guaranteeing the right to access documents. A Catalogue of Spaces and Itineraries of Democratic Memory and Recognition is also planned. 29 October 1977 is set as a

²⁵ Art. 22. *Legal reparations for the victims of the Civil War and the Franco dictatorship*: "1. In accordance with the legal system as a whole, which includes rules of both international law and domestic law, the courts and proceedings heard in the Balearic Islands during and in relation to the Civil War and the Franco dictatorship until 1978 are declared illegal, since they were against the law and infringed the most basic requirements of the right to a fair trial. 2. As a consequence of the illegality declared in the previous paragraph, all the judgements and resolutions in criminal, civil and administrative cases handed down for political reasons in the Balearic Islands by Popular Courts and by Franco's regime, including the judgments of the Councils of War, Political Responsibility Courts, the Special Court for the Repression of Freemasonry and Communism and the Public Order Court (TOP), as well as purging of the teaching profession, are null and void, in origin or ex post facto".

day of remembrance of the pre-autonomous democratic movement in the Balearic Islands. Acts contrary to democratic memory are defined, such as displaying certain symbols or tributes that harm the dignity of the victims. The creation of a Census of Francoist Symbols, Legends and Mentions to be Removed or Eliminated is planned, as well as the withdrawal of certain distinctions, appointments, titles and institutional honours (which could conflict with the powers that the king and the Ministry of Justice hold regarding honours). It also highlights the Balearic Government's determination to promote the registration of victims' deaths in the Civil Registry (Additional Provision 2) and investigate crimes involving the enforced disappearance of children, with legal, psychological and care provision for the victims (Additional Provision 3).

In organisational terms, the Technical Commission for Democratic Memory and Recognition, representing the local, associative and academic world, must promote actions envisaged in Law 2/2018 of 13 April, such as drafting and approving the Autonomous Plan for Democratic Memory and Recognition and producing the Catalogue of Memory Spaces and Itineraries in coordination with the Technical Commission of Disappeared Persons and Mass Graves (Law 10/2016 of 13 June). Institutional collaboration with academia and associations, non-university education, island councils and the local world, and a penalty framework for infringements of the law's provisions are also envisaged.

In summary, the legal framework for memory policies in the Balearic Islands comprises two interconnected laws that include two technical commissions (one for mass graves, the other for memory and recognition) that coordinate a set of tools (censuses, catalogues, maps) aimed at carrying out the tasks (locating graves, recovering and identifying the remains of disappeared persons, court action, reparations, recognition, tribute, research, study and commemoration) for these policies. Taking account of the current Spanish and international regulations and the universally applicable principles, emphasizing inter-administrative, scientific and social collaboration, with recognition of the role of memorial organisations and victims' associations. The unit responsible for this is currently the Directorate General of Democratic Memory (Autonomous Secretariat of Democratic Memory and Good Governance at the Department for Public Administrations and Modernisation of the Government of the Balearic Islands).

2.3 The case of the Valencian Country as a model for a comprehensive law of democratic memory

Unlike the Catalan and Balearic cases, in the Valencian Community there is a broad, comprehensive law in force that regulates the different dimensions of the subject matter: Law 14/2017 of 10 November on Democratic Memory and for Coexistence in the Valencian Community. In the preamble there are ethical and political observations on the elements of a community's identity (such as solidarity with the most disadvantaged and victims or the capacity for reflection on collective and historical memory as a people). It argues that maintaining the memory of victims, in a manner that dignifies them, contributes to non-repetition of the most violent and tragic events in history, such as the Civil War and the dictatorship. The following are announced as the law's purpose: 1) Fulfilling the obligations of the Valencian Government towards victims and their relatives. 2) Deepening democratic principles and values. Therefore, the law expressly addresses the victims and society as a whole, to strengthen its democratic foundations.

As a fundamental legal framework, the text declares that the desire to reunite Spanish citizens took legal form in the Constitution, which articulated an integrative social and democratic State, while establishing fundamental rights and freedoms binding on the public powers, which must be interpreted in light of the Universal Declaration of Human Rights and international treaties. It also lists the powers in the Statute of Autonomy linked to the Law (cultural heritage, justice, education, administrative procedure, town planning and forced expropriation) and sees it as positive that Law 52/2007 of 26 December was approved in a spirit of reconciliation and harmony, respect for pluralism and a desire for integration, laying the foundations of policies concerning knowledge of history and the promotion of democratic memory, and it states that the autonomous laws passed or currently being debated are the model and inspiration for the Valencian Law. Therefore, it presents them in express continuity with the constitutional and statutory architecture and the sectoral regulations applicable throughout Spain, in a similar manner to the Balearic case and in contrast to the Catalan one. It also seeks to comply with the principles of truth, justice, reparations and memory as a guarantee of non-repetition, which are key features of the law's articles.²⁶

²⁶ Numerous international provisions are also mentioned, as its foundations, such as Resolution 2004/72 of the UN Commission on

From a historical perspective, the preamble recalls the peculiarity that Valencia was once the capital of Spain, when the Cabinet of the legitimate government of the Second Republic officially moved its capital there when the Francoist troops were advancing on Madrid. It notes that the uprising by these troops caused violence based on ideology, politics, religious belief, gender and sexual orientation; civil war with thousands of victims—people (men, women, stolen babies) and organisations and institutions that suffered reprisals—that must be recognised in their entirety: the ones caused by the uncontrolled violence in the Republican rear-guard and the ones caused by Francoism during all the years (“In its origin, nature, structure and general conduct, Franco’s regime was a fascist regime, established in large part thanks to the aid received from Hitler’s Nazi Germany and Mussolini’s fascist Italy. It was, therefore, an illegal regime by virtue of its illegitimate origin”).²⁷ However, it does not explain other relevant historical specificities, such as the nature of the mass graves in the Valencian Country, unlike the Balearic and Catalan legislation.

Law 14/2017 of 10 November refers to objectives in two periods: 1) With regard to measures for victims stipulated in the Law: from the Spanish coup to the entry into force of the Constitution (1978), in accordance with the criteria in the Spanish Law. 2) Regarding recovery of the values of Valencian democratic memory: from the proclamation of the Republic (14 April 1931) to the entry into force of the Statute of Autonomy (10 July 1982). The Law remembers and honours those who fought for the freedoms, rights and political autonomy of the Valencian people. It emphasises that the public authorities have an obligation to search for disappeared persons and regulates actions and organisations to recover the democratic memory of the Valencian community (“the memory of the past and social education for the future are factors of political identity and pride for the Valencian people, which we call the Valencian democratic memory”). The memory of the struggle for rights and freedoms thus includes defence of Valencians’ political autonomy. At the same time, the period to which this law refers is longer than that of other memory laws, which are more limited to the interval of 1936 to 1978, although specific treatment for the victims of the transition is lacking.

Technically, the Law stands out for its explanatory clarity and solid conceptual structure. It is articulated in six titles and structured in four key areas, which are explicit in four of the titles. The key areas are the rights to: truth; justice; Valencian democratic memory, and reparations and recognition. It is rather extensive: firstly, the preliminary title (general provisions) stipulates that the purpose of the law is to regulate policies to recover Valencian democratic memory and the guiding principles are those of truth, justice, reparations and ensuring non-repetition, with the democratic values of harmony, coexistence, defence of human rights, peace, pluralism and equality between men and women. It stipulates that the application of the law is in line with Spanish and Valencian legal systems and international law, “in a spirit of collaboration with Law 52/2007 of 26 December”. In article 3, it defines several fundamental concepts: Valencian democratic memory, (direct and indirect) victims, forced labour and memorial organisations,²⁸ while article 4 lists the measures addressed to victims.²⁹ The core of the law unfolds from this conceptualisation.

With regard to The right to truth, Title I establishes, in chapter I (Identification of the victims), a Census of the Victims (within the territory of the Valencian Community and Valencians who died outside of the community), which is public and subject to the data protection regulations. Chapter II (On the process of identifying disappeared victims) regulates other tools for the institutional duty to investigate the facts: maps showing the location of areas containing the remains of disappeared persons; the procedure and protocols for locating, exhuming and identifying, which must provide psychological support to relatives and collaboration between the bodies and the Department with powers concerning memory and those with powers concerning cultural heritage, justice and health, although administrative action is considered secondary to the courts. It also determines the rules for access to land and discovery of remains (notifying the courts or police, who must inform the body with powers regarding memory), as well as the transfer of remains and bioanthropological

Human Rights and United Nations Resolution 47/133 (General Assembly of 18/12/1992).

²⁷ Citation in the preamble of Law 14/2017 of 10 November, taken from United Nations General Assembly Resolution 39 (I) of 12 December 1946.

²⁸ It defines “Valencian democratic memory” as: “safeguarding, knowledge and dissemination of the history of Valencians’ struggle for their democratic rights and freedoms in the period from the proclamation of the Second Spanish Republic on 14 April 1931 to the entry into force of the Statute of Autonomy of the Valencian Community on 10 July 1982”.

²⁹ The actions (victim identification, assistance and access to justice, etc.) have a specific focus on heterogeneous people and groups (forced labourers; victims of sexual violence, torture and confinement in camps; anti-Francoist guerrilla, stolen babies, those who suffered reprisals for defending the Valencian language and culture; cultural, ethnic, linguistic and religious minorities, etc.).

and genetic tests using a DNA database system, “dependent, if applicable, on the Institute of Forensic Medicine and Forensic Sciences of Valencia”, as temporary storage for all human remains exhumed, prior to reburial. Consequently, the key tools of the Valencian Government (census, maps, protocols and DNA database) for disappeared persons and their relatives match those of the Balearic and Catalan legislation.³⁰

Against impunity, Title II—The Right to Justice—stipulates that the competent body (the Valencian Institute of Democratic Memory, Human Rights and Public Freedoms) will draw up an information protocol on evidence of crimes having been committed as a result of finds and identifications and provide it to the security forces, the Public Prosecutor’s Office and the courts. The Department with powers concerning memory may authorise the Attorney General of the Valencian Government to bring prosecutions in the courts based on evidence that crimes have been committed. The Institute will assist those concerned in exercising their rights and follow up and coordinate the reports and recommendations of the Valencian ombudsman (*Sindic de Greuges*), the Spanish ombudsman (*Defensor del Pueblo*) and international bodies (commissions, working groups, special rapporteurs, etc.). The legal action brought or advised by the Valencian Government is not as well-defined as the means provided for the right to truth, but it implies a proactive role in bringing prosecutions, similar to the Balearic case and different from the Catalan one, further distanced from the judicial route.

The regulation of *The Right to Valencian Democratic Memory* [as a guarantee of non-repetition] is the purpose of Title III, which establishes measures for the social consolidation of democratic values. Chapter I (Documentation concerning Valencian democratic memory and its preservation) provides for the protection and dissemination of relevant documents and sources concerning the subject, with the right of access guaranteed. This commitment implies cooperation with public or private archives and with the Documentary Centre of Historical Memory and the General Archive of the Civil War (art. 20 Spanish Law). Moreover, Chapter II (Places and itineraries of democratic memory) regulates emblematic locations for memory policies (spaces, buildings or places); the procedure for registration in the official Catalogue, the extensive legal framework protecting these places and their interdisciplinary cultural dissemination and interpretation. It envisages the Institute’s collaboration with the regional Departments for education, cultural heritage, tourism and territory, and with other administrations, universities and associations. Chapter III (The remembrance movement) in turn provides for the recognition, public registration and promotion of the organisations that work, as holders of legitimate interests, to raise awareness of memory and to defend victims’ rights.

In addition, Chapter V (Research, teaching and dissemination) in Title III provides for the promotion of scientific knowledge of Valencian democratic memory with research projects promoted by the Valencian Government, open to universities and memorial organisations, with specific attention to women’s experiences. In order to strengthen democratic values, it stipulates that, based on the scientific practices of historiographical research, the contents of Valencian democratic memory should be included in the curricula of compulsory primary and secondary education, upper secondary education and lifelong adult education, teacher training plans and the relevant university studies. In addition, knowledge should be spread through public media programmes.

Consequently, the treatment of the right to memory as a guarantee of non-repetition in the Law in question brings together several complementary dimensions: protection, appropriate treatment and guaranteeing of the right to access sources and documentation on democratic memory; the Catalogue of places and itineraries of democratic memory; the recognition and promotion of memorial organisations, and the promotion of research on memory and the presence of its contents in curricula and university studies, for public knowledge and to reaffirm democratic principles. It is a policy area targeted at all citizens.

The scope of the *Right to reparations and recognition of victims* is dealt with in Title IV. Chapter I (Reparations and recognition) stipulates that the Valencian Government must promote measures for victims and the institutions and organisations that defended democracy (studies, publications, conferences, research and scientific congresses, tributes, monuments), and that it should collaborate with local organisations, universities and memorial organisations in these types of actions, and aid relatives who so request in obtaining

³⁰ For a summary of the mass grave excavation work and exhumations in the Valencian Country—work performed on 14 mass graves out the 299 that have been documented (Delegation of Historical Memory of the Provincial Council of Valencia)—prior to the Valencian Law in question see: Mezquida Fernández, 2017.

the declaration of reparations and personal recognition from the Ministry of Justice (Law 52/2007 of 26 December). It is also envisaged that the Valencian Government will promote actions to share responsibility for the aforementioned measures with the organisations that benefited from forced labour, as well as approve a protocol for dignifying mass graves.

28 March, the day of Miguel Hernández's death, is declared a day of remembrance and homage to the victims of the Civil War and the dictatorship, as institutional recognition.³¹ Moreover, Chapter II (Symbols, traces and acts contrary to democratic memory), also in Title IV, prohibits the display of symbols and acts contrary to the dignity of the victims or in homage to Francoism. It places an obligation on public authorities and individuals to remove such symbolism (coats of arms, plaques, insignia, street names, etc.) from public space. And it envisages the creation of a technical commission, dependent on the Institute, to determine what is contrary to democratic memory (extolling and commemorating the military revolt of 1936 and the dictatorial regime). It also stipulates that Valencian public authorities must not allow public acts that humiliate victims and extol Francoism. This part of the contents, which is charged with ethics and symbolism, places victims at the very core of memory policies.

Alongside the measures set out in the most substantive titles of the Law, a term of one year from its entry into force is set for the removal of elements and distinctions contrary to democratic memory. It envisages that autonomous government (*Consell*) of Valencian Community will take action with the central government, also within one year, to transfer documentary heritage; to urge it to look into declaring the convictions of Francoist criminal courts null and void; and to request the creation of a nationwide truth commission. It also provides for the creation of a regional truth commission and promotion of registration of the deaths of disappeared victims in the Civil Registry.

The provision that the Valencian Institute of Democratic Memory, Human Rights and Public Freedoms must compile a Census of stolen babies in order to clarify cases of irregular adoption and identify biological mothers, facilitating legal and psychological assistance for victims, is particularly noteworthy. It is envisaged that the DNA bank provided for in the law, in coordination with other public authorities' DNA banks,³² will be used for the collection of samples concerning the theft of babies. The Valencian Government must request the Spanish Government to adopt measures concerning this problem.

Consequently, Law 14/2017 of 10 November is characterised by the completeness and precision with which it deals with the various dimensions of memory policies. It prefigures an entire action programme for the implementation of these policies (in the areas of truth, justice, reparations and guaranteeing non-repetition). Therefore, it can be considered a legal reference for the set of autonomous rules concerning the matter; in particular, for the possible legislative consolidation of the three Catalan laws in a single regulatory text on memory for the Principality. However, it is also as an outline of basic contents for the forthcoming Spanish memory law.

However, materialising the policies set out in the Valencian Law on Democratic Memory requires the implementation of the contents of Title V on administrative action and organisation, which provides for a strategic plan and setting up of bodies such as the Valencian Institute of Democratic Memory, Human Rights and Public Freedoms and its boards (governing, advisory, participation), as well as institutional collaboration with other administrations (at national or international level) that may have powers over the matter (provincial councils and other local bodies; the General State Administration, the autonomous communities, etc.). Application of the penalty framework that title VI regulates in response to various regulatory infringements (such as excavation without authorisation, destroying mass graves or breaching the prohibition on displaying elements contrary to democratic memory) is the responsibility of the institutional framework.³³ The prohibition on extolling and publicly celebrating Francoism is controversial due to it being

31 In Catalonia, the Government of Catalonia has declared the anniversary of the execution of President Companys, 15 October, a National Day of remembrance of the victims of the Civil War and Francoism.

32 Art. 58 of Law 14/2017 of 10 November stipulates that, in relations with the General State Administration and other autonomous communities, "in particular, the interconnection of databases, including DNA databases, will be promoted in order to facilitate the objectives of this law".

33 The inclusion of a penalty framework is common to the majority of recent laws on memory, such as: Aragonese Law 14/2018 of 8 November on Democratic Memory and Extremaduran Law 1/2019 of 21 January on Historical and Democratic Memory.

difficult to square with freedom of expression and thought (given the reactions when it was proposed to make it a criminal offence in the Criminal Code). The administrative and criminal aspects of this question constitute one of the central legal problems in the debate on the scope of memory policies.

The Directorate General for Democratic Reform currently has the power to promote all measures that contribute to the recovery of democratic memory. The Institute's statute have been approved and it is expected that it will soon be based, together with its documentary centre, in the former Benalua Prison (Alicante), a place that evokes the memory of Miguel Hernández.

3 Conclusions

In accordance with various United Nations bodies and various provisions of international law and the principles of universal justice, Spain has yet to adopt a public policy endowed with resources to address citizens' rights concerning this matter, which obliges to investigate the enforced disappearances and other crimes of the Civil War and Francoism.

In view of the historical tragedy of the Civil War and the dictatorship, the laws examined share a central principle that political differences should be resolved peacefully, as well as the conviction that the right to democratic memory is an integral part of citizenship and its legal status.

The Spanish Law is the main normative reference for autonomous communities that have not passed their own legislation, but it is only of supplementary application in communities that have passed such laws with rules adjusted to the history and political idiosyncrasy of each territory and the need to address issues unresolved by the Spanish Law.

Possible reform of the legislation in question involves complex legal problems: equality of rights between victims (and their relatives), regardless of where they were and what side they were on; declaring Francoist convictions null and void (regional legislation contrasts with the silence of the national one, which raises legal issues) and the tension between establishing administrative offences (and criminalising acts that extol Francoism) and freedom of expression, among others.

The laws studied regulate similar tools (censuses, maps, protocols, etc.) that require technical interconnection, as evidenced by the reasoning behind the search for the remains of disappeared persons, through collaboration agreements between autonomous communities and bilateral agreements with the General State Administration.

The approval of a comprehensive memory law in Catalonia could relaunch its policies, although the Balearic case (two complementary laws) and the Valencian case (a single comprehensive legal text), which are equally valid, show that the problem lies not in the plurality or singularity of rules, but in the existence of a clear and funded work plan.

As a core exponent of the defence of human rights and peace, the institutionalisation of democratic memory, aimed at society as a whole, justifies the adoption of legislative initiatives and budgetary measures to move it forward.

4 APPENDIX. The legal framework of the policies of historical and democratic memory in the Catalan Countries

	Catalonia	Balearic Islands	Valencian Country
Legislation	<ul style="list-style-type: none"> – Law 13/2007 of 31 October on the Democratic Memorial. – Law 10/2009 of 30 June on the Location and Identification of People who Disappeared during the Civil War and the Franco Dictatorship, and the Dignification of Mass Graves. – Law 11/2017, of 4 July, Concerning Legal Redress for the Victims of Franco's Regime. 	<ul style="list-style-type: none"> – Law 10/2016 of 13 June on the Recovery of People who Disappeared during the Civil War and Franco's regime. – Law 2/2018 of 13 April on Democratic Memory and Recognition in Balearic Islands 	<ul style="list-style-type: none"> – Law 14/2017 of 10 November on Democratic Memory and Coexistence in the Valencian Community.
Background approach and declarations	<ul style="list-style-type: none"> – The Government of Catalonia directly undertake the tasks regarding mass graves and disappeared persons. – Condemnation of Franco's regime. – Criticism of unequal treatment in the search for the remains of some disappeared persons as opposed to others. – Democratic recognition of all victims of political violence. – Criticism of the democratic deficits of the political transition. – Asserting traditions and democratic self-government movements (federal republicanism, the labour movement, Catalan nationalism, liberalism) and the two Spanish republics. – Declaring the War Audit courts of the Fourth Military Region that operated in Catalonia between 1938 and 1978 illegal and, therefore, declaring their judgments resolutions and those of the councils of war null and void. – Declaring 15 October (the execution of President Companys) a national day of remembrance of the victims of the Civil War and the victims of the repression of the Franco dictatorship (Government Resolution 130/2016 of 11 October, among others). 	<ul style="list-style-type: none"> – Proclaiming that the State (the set of powers, governments and public administrations) must investigate the crimes of the Civil War and Francoism and not delegate the task to relatives or associations. – Condemnation of Franco's regime. – Criticism of unequal treatment in the search for the remains of some disappearing persons as opposed to others. – Mention is made of cooperation between governments and administrations at all levels, as well as social and academic cooperation. – Law 52/2007 of 26 December is referred to as a subsidiary rule. – Recognition and collaboration with memorial associations and bodies. – A stipulation that the autonomous government, if necessary through its legal services, must report the commission of crimes against humanity when human remains are found to the Public Prosecutor's Office. – The suffering of certain groups, language demands and gender perspective are highlighted. – Declaring the judgments and resolutions of Franco's regime null and void. – 29 October 1977 (demonstration in Palma for autonomy) is declared a day of remembrance of the birth of the pre-autonomous Balearic movement. 	<ul style="list-style-type: none"> – It is the public authorities that have an obligation to search for the remains of disappeared persons. – Condemnation of Franco's regime. – Collaboration between all public authorities and the Documentary Centre of Historical Memory and the General Archive of the Civil War, and universities, is highlighted. – The desire for collaboration with Law 52/2007 of 26 December is expressed. – Recognition (and registration) of memorial organizations. – It envisages legal action being promoted or advised on by the Valencian Government in the event of indications of crimes having been committed (secondary/accessory administrative action). – It calls on the central government to look into declaring Francoist condemnations null and void and envisages requesting that a nationwide truth commission be set up. – It vindicates those who fought for the rights, freedoms and political autonomy of the Valencian people. Also, gender perspective. – Valencian democratic memory: memory of the past and social education for the future as factors of political identity and pride for the Valencian people. – 28 March (the death of Míguel Hernández) is declared a day of remembrance and homage to the victims of the Civil War and the dictatorship.
Workplaces for experts and participants and other technical tools and measures	<ul style="list-style-type: none"> – (Advisory and participation) Boards of the Democratic Memorial. – Technical Commission for the Recovery and Identification of People who Disappeared during the Civil War and the Franco Dictatorship. – Census of disappeared persons. – (Mass grave) location maps. – Dignifying of mass graves. – Databases, portal and audiovisual bank (Memory Spaces Network, Francoist Symbolism Census, Information and Documentation Centre). – Genetic identification programme (not directly stipulated in current laws, but through interdepartmental agreements). – National Archive of Catalonia list of prosecutions and judgments handed down during Franco's regime (with the case number, natural or legal person prosecuted and the sentence) and individual certificates. 	<ul style="list-style-type: none"> – Technical Commission of Memory and Democratic Recognition (with representatives from the local, associative and academic worlds). – Technical Commission for Disappeared Persons and Mass Graves. – Census of disappeared persons. – Census of the Victims of the Civil War and the ensuing Dictatorship. – Investigation of crimes of enforced disappearance of children. – Map of mass graves. – Declaring mass graves assets of cultural interest. – Catalogue of Memory Spaces and Itineraries. – Removal of Francoist traces, symbols and mentions. – Census of Francoist symbols, legends and mentions. – Provision of psychological assistance to relatives during work on mass graves. – Penalty framework for acts contrary to democratic memory. – Registration of the victims' deaths in the Civil Registry. 	<ul style="list-style-type: none"> – Councils (governing, advisory and participation) of the Valencian Institute of Democratic Memory. – Regional truth commission. – Technical Commission on Symbolism. – Census of the Victims (types). – Census of stolen babies. – Location maps. – Dignifying of mass graves. – Catalogue of Places and Itineraries of Democratic Memory. – Removal of undemocratic symbolism. – DNA database. – Provision of psychological support for relatives. – Helping interested parties to obtain the declaration of reparation and recognition from the Ministry of Justice (Law 52/2007 of 26 December). – Valencian public authorities must not allow acts that humiliate victims. Ban on displaying elements contrary to democratic memory. – Penalty framework. – Registration of the victims' deaths in the Civil Registry.
Historical periods of reference for the regulated policies	<p><u>Disappeared persons and mass graves</u></p> <ul style="list-style-type: none"> – The Spanish coup (1936) to the dictatorship. <p><u>Democratic Memorial</u></p> <ul style="list-style-type: none"> – Principally from the Second Republic (1931) to the formation of the first democratically elected Government of Catalonia after the Civil War (1980). <p><u>Legal reparations</u></p> <ul style="list-style-type: none"> – April 1938 - December 1978. 	<p><u>Disappeared persons and mass graves</u></p> <ul style="list-style-type: none"> – Civil War (1936-1939) and the Francoist regime. <p><u>Democratic recognition policies</u></p> <ul style="list-style-type: none"> – From the Second Republic (1931) to the entry into force of the Statute of Autonomy (1983). 	<p><u>Measures for victims</u></p> <ul style="list-style-type: none"> – From the Spanish coup (1936) to the entry into force of the Constitution (1978). <p><u>Recovery of the values of Valencian democratic memory</u></p> <ul style="list-style-type: none"> – From the proclamation of the Second Republic (1931) to the entry into force of the Statute of Autonomy (1982).

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