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RESTITUTION OF FUNDS CONFISCATED BY THE FRANCOIST GOVERNMENT, AND THE COMPULSORY NATURE OF RECOMMENDATIONS MADE BY INTERNATIONAL HUMAN RIGHTS COMMITTEES. A POSSIBLE PATH TO COMPENSATION*

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Abstract

This article discusses the use of Francoist monetary policy as a weapon in the Spanish Civil War, and the unlawful confiscation of Republican funds by the Francoist state. The confiscation must be understood as damage suffered by private persons. This real damage has never been compensated by the Spanish democratic state in the framework of Spain's transitional justice. As evidence of this non-compensation, we will examine Supreme Court Judgement no. 1470/2017, which dismissed the judicial claim for damages. One of the grounds of the judgement is the lack of financial liability by the State qua legislature for the omission of legislation that would regulate such reparations. This article puts forth a possible channel for claims; specifically, the arguments contained in the Report by the UN Special Rapporteur on Transitional Justice, supported by the new stance of the Supreme Court regarding the mandatory nature of international committee recommendations, found in Supreme Court Judgement no. 1263/2018, which is the first acknowledgement of the binding nature of such recommendations for the Spanish State.

Key words: Francoism; confiscation; international committees; transitional justice.

EL RETORN DELS DINERS CONFISCATS PEL GOVERN FRANQUISTA I L'OBLIGATORIETAT DE LES RECOMANACIONS DELS COMITÈS INTERNACIONALS DE DRETS HUMANS. UNA POSSIBLE VIA DE RESCABALAMENT

Resum

Aquest treball vol recordar l'ús de la política monetària franquista com a arma a la Guerra Civil Espanyola i la confiscació il·legítima dels diners republicans per part de l'Estat franquista. Aquesta confiscació cal entendre-la com un dany patit per ciutadans particulars, dany efectiu que no ha estat reparat per l'Estat democràtic espanyol dins la justícia transicional espanyola. Dins d'aquesta manca de reparació, comentem la Sentència del Tribunal Suprem núm. 1470/2017, que desestima la reclamació judicial d'aquest dany; un dels fonaments de la Sentència és la manca de responsabilitat patrimonial de l'Estat legislador per l'omissió legislativa que reguli aquella reparació. En aquest treball plantegem una possible via de reclamació, que seria basar-nos en l'Informe del relator especial de l'ONU sobre justícia transicional, a l'empara del nou posicionament del Tribunal Suprem sobre l'obligatorietat de les recomanacions dels comitès internacionals, sobre la base de la Sentència del Tribunal Suprem núm. 1263/2018, que per primera vegada en reconeix la vinculatorietat per a l'Estat espanyol.

Paraules clau: franquisme; confiscació; comitès internacionals; justícia transicional.

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Summary

The history of law is a fascinating subject that lets us reconnect past and present, enabling a better understanding of the current legal system. At the same time, it also helps identify cases of injustice, specific situations in which individuals' rights were damaged, and have yet to be compensated. Solidifying and trivialising past rights violations, or ignoring them under the pretence that such an attitude will have no impact in current times, is hazardous to democracy, now and in the future. Attacks on rights must be identified and, at the least, an attempt must be made to resolve them through the legal system. If not, the legal system loses legitimacy, and those who violate rights receive a message of impunity and a clear incentive for future attacks. As a society, we cannot allow such incentives to be given.

That is what this article intends to discuss. We will pinpoint a violation of rights, and in light of the fact that the legal system—though it has recognised it— has not provided compensation, we propose a possible path to a solution. Additionally, we will open debate on the recent Spanish Supreme Court judgements with which we frame our hypothesis. Yet, as with all things, there are no definitive or magic solutions, even less so when it comes to law.

1 Confiscation of Republican banknotes by the Francoist state

The Bank of Spain was divided in two on 14 September 1936, soon after the outbreak of the Spanish Civil War.[1] The separation of the Spanish *peseta* in two was accompanied by the Decree-law of 12 November 1936,[2] by which the bills put in circulation by the Republic as of 18 July of that same year were declared null and void. Further, *estampillado*[3] was implemented. This was the imprinting of bills issued prior to that date with a rubber stamp for them to be considered valid.

This triggered a surge of people in the banks in Francoist territory, as members of the public came in to have their banknotes stamped.[4] At the same time, a large number of banknotes surfaced in these territories, which were then deposited in current accounts, restoring part of the banking system's liquidity. The non-validity of Republican banknotes meant the impoverishment of the population, and the use of currency as a weapon of war. The advance of Francoist forces brought about the confiscation of Republican coins and banknotes. These were put on international markets, swelling the supply and resulting in the currency's devaluation. This weakened the purchasing power of Republican institutions outside Spain,[5] and also in Republican areas still resisting, which caused marked inflation. In fact, the Decree of 27 August 1938[6] made it compulsory, as Franco's army progressively took towns and cities, to exchange[7] only those Republican banknotes issued prior to 18 July 1936, not afterwards, as such banknotes were already null and void.

As a complement to it, the Burgos government handed down the Decree of 27 August 1938[8] instating the prohibition of holding Republican paper currency printed after 18 July 1936. Furthermore, citizens were required to surrender it in exchange for a receipt confirming that the money had been surrendered to the competent authorities, and which featured, among other information, the name of the person handing over the money and the amount. The amounts turned over by virtue of this regulation would eventually make up the *Fondo de papel moneda puesto en curso por el enemigo* (Fund of paper currency put in circulation by the enemy) in the Bank of Spain.[9]

1 Decree no. 104, of 8 September 1936, on the Notice of Extraordinary Meeting of the Board of Directors of the Bank of Spain in Burgos (Official Gazette of the Government of Spain (BOE) no. 20, of 12 September 1936) (Velarde, 2000: 97ff.).

2 BOE no. 29 of 13 November 1936.

3 On *estampillado* prior to the Francoist regime, see De Francisco Olmos (2004). On page 78, note 31, it quotes a 1936 report from the Bank of Spain's Research Department which states that some 2.5 billion pesetas' worth of banknotes were stamped.

4 Order of the Presidency of the Junta Técnica del Estado (State Technical Committee - first form of Francoist government) of 28 November 1936, ratifying an extension of the *estampillado* (BOE no. 44 of 29 November 1936), as stated in the preamble.

5 Linares, 2006: 354ff.; Sánchez Asiaín, 2012: 429.

6 BOE no. 79 of 17 September 1938.

7 In fact, the Decree of 27 August 1938 (BOE no. 79 of 17 September 1938), contiguous to the aforementioned, created the Tribunal de Canje Extraordinario de Billetes (Special Tribunal for Banknote Exchange), located at the Bank of Spain's central offices.

8 BOE no. 79 of 17 September 1938.

9 Sánchez Asiaín, 2012: 439ff.

Additionally, the Law of 13 October 1938[10] blocked cash withdrawals from accounts opened as of 18 July, and if they were opened prior to that time, blocked the withdrawal of the part of the balance deposited as of that date from accounts located in the towns and cities that fell to Francoist forces. The decree even empowered banking institutions to completely block withdrawals from accounts "if the account holder is the Treasury of the enemy, a Marxist or anarchist trade union, or a political party of the Popular Front," or "whose account holder was notoriously characterised as a co-participant in the public administration of the enemy."[11]

Once the Civil War was over,[12] the Law of 7 December 1939 was passed[13] on "unblocking current accounts and bank deposits" the preamble of which literally recognised that "the categorical division of banknotes in legitimate and null constituted an extremely effective weapon of war that forced, with all its consequences, prices and velocity of money in the enemy territory." By virtue of this law, withdrawals of balances from bank accounts were unblocked, taking into consideration the difference of the balance as at the date of the Francoist army's arrival, and that on record at 18 July 1936. But the balances of completely frozen accounts were transferred into an account under the title "Unblocking of Unprotectables" in the State's favour.[14]

It is very interesting to read the "Evolution of the Public Treasury from 18 July 1936 to the Present, Provisional Summary", published in BOE no. 217 of 4 August 1940, presumably drafted by the Minister of the Treasury, José Larraz, in which the monetary transactions conducted during the War are listed and described. With regard to the blocking and unblocking of accounts, this document sets the figure at 9.0 billion "red" pesetas in balances of frozen current accounts, of which 3.0 billion are attributable to "unprotectable" account holders[15] and the remaining 6.0 billion are from embargoes levied by the banks themselves over their account holders, "among which there are also 'unprotectables' in large numbers".

Last, the Law of 13 March, 1942[16] stipulated that the balances remaining in the accounts of "unprotectables" would be credited to the Bank of Spain. It also made it legal for the Bank of Spain to write off the liability represented by the banknotes issued by the Republican government, the validity of which was annulled as of the previously mentioned Decree of 12 November 1936. In other words, Francoist authorities simply made the banknotes disappear.

In conclusion, the Francoist regime declared Republican currency null and void. It was either exchanged for a receipt that was never honoured to cash in for Francoist currency, or the current account balances in this currency held by politically prominent left-wing persons or political organisations, political parties and trade unions were simply confiscated.

10 BOE no. 112 of 20 October 1938.

11 Order of 18 June 1941 (BOE no. 170 of 19 June 1941) described as "notoriously characterised as co-participants" those persons who "as of 31 July 1936 had exercised in Marxist territory the offices of President of the Republic, Head of the Government, Ministers, Deputy Secretaries, Speaker of the House, Members of the Parliament of the Popular Front, Heads and Members of Autonomous Governments, Civil Governors, Ambassadors and Generals of the Army, as well as Directors General and Mayors appointed as of said date, or that, having been previously appointed, continued to exercise their office as of 1 January, 1937" . Until that time, the banking institutions had used their own criteria to freeze private persons' accounts. Problems ensued handling claims to unblock the accounts of private persons not considered "notorious co-participants". In Spain, BOE no. 240 of 28 August 1942 features a provisional list of these notoriously co-participant persons, and BOE no. 241 of 29 August and no. 242 of 30 August 1943 contain lists of these "unprotectable" persons.

12 Consideration must also be given to the Law of 1 April, 1939 (BOE no. 92 of 2 April 1939), which suspends the handing over of money for payment of "agreements formalised under the enemy's power", as well as the suspension of "the repayable nature of balances of current accounts used in business traffic that had movements under the enemy's power."

13 BOE no. 354 – 20 December 1939.

14 According to Sánchez Asiaín (2012: 1032) the number of "unprotectables" (individuals and organisations) totalled 11,549, with a total value of 782 million pesetas, which after claims amounted to 723 million.

15 Long lists of "unprotectables" were published in the BOE. For example, in BOE no. 390, of 26 October 1940, and in BOE no. 146 of 26 May, 1941, which list the "unprotectable" trade unions or left-wing political organisations.

16 BOE no. 83, of 24 March, 1942, the law "which regulates the Bank of Spain's balance of the financial period from 1936 to 1941, and other aspects of its relations with the State."

2 Lack of reparations for monetary confiscation from private persons

Political parties of the Popular Front and the trade unions associated with them were compensated[17] for this monetary confiscation thanks to Law 43/1998, of 15 December,[18] later amended by Law 52/2007, of 26 December,[19] referred to as the *Law of Historical Memory*.

However, private persons have never benefited from an *ad hoc* regulation to return funds seized by the Francoist regime. On the contrary, the Supreme Court Judgement of 5 April 2006, Chamber 3, Administrative Proceedings, interpreted that Law 43/1998 did not recognise the active legitimisation of private individuals to claim for any possibly confiscated property, and furthermore [author's underlining]:

> "faced with the mission of overcoming, decades later, the consequences of the civil war, Lawmakers have chosen not to undertake a general process of universal restitution of properties and rights which in that conflict, [...] were the object [...] of seizure, but rather to keep (the restitution process) within certain limits, and in favour of certain collective subjects (not all of them), [...] without attempting in doing so an all-encompassing restitution, in the favour of any and all legal subjects, of previous legal situations. As there is no legal obligation per se, nor is it a requisite immediately derived from the Constitution, the regulatory configuration of the reparation process will have the scope deemed appropriate by the Lawmaker at any given time. We furthermore insist that Lawmakers' restricting it in favour of a certain type of political associations characterised by their public relevance and described in general terms, cannot be objectionable from the Constitutional principle of equality".

In conclusion, the Supreme Court acknowledged Lawmakers' capacity to not repair the damages suffered by a certain type of victims during the Francoist regime (in this case, the individuals who suffered the confiscation of their money), without violating the principle of equality, as there is no legal obligation to universally compensate. Herein lies the crux of the problem to which we will propose a possible solution.

3 Supreme Court Judgement no. 1470/2017, of 29 September

On 11 January 2016, four citizens lodged an individual financial liability claim against the Spanish state qua legislature, under Article 106.2 of the Spanish Constitution, and Articles 139[20] to 146 of the repealed Law 30/1992, of 26 November, on the Legal Regime of Public Administrations and Common Administrative Procedure (LRJPAC).

According to the judgement cited, the grounds for their claim were "the damage caused by the application of law which deprived of their value the banknotes and other monetary instruments issued by the Bank of Spain, Republican Government, after 18 July 1936," in the understanding that "a true singular deprivation" came about with the application of these rules.

At the root of the claim was the passing of laws that allowed the use of the monetary policy as a weapon of war, and that stood for a clear discrimination in favour of the part of the territory that supported Franco's coup d'état and against the side that opposed it.

According to the judgement, the claim lodged explained that Francoist law established the legal obligation to surrender all banknotes issued by the Bank of Spain after 18 July 1936. In exchange for this mandatory surrender, and as proof of it, citizens were given a receipt, as explained above.

The claimants alleged the imprescriptibility of constitutional discriminations and the maximum retroactivity by virtue of civil law doctrine of the so-called "odious laws" or those contrary to *ius cogens*.

17In this regard, see Vallès (2019: 226ff.) and Vallès (2015).

18 BOE no. 300, of 16 December 1998.

19 BOE no. 310, of 27 December 2007.

20 Art. 139.3 LRJPAC: "Public Administrations shall indemnify private individuals for the application of legislative acts which by nature do not expropriate rights, and that said individuals do not have the legal obligation to bear, when so established in the legislative acts and the terms specified in said acts." As will be discussed later, the current liability of the legislative State can be found in Article 32.3 of Law 40/2015, of 1 October.

The claim was dismissed by agreement of the Council of Ministers of 1 July 2016, against which the claimants filed for the relevant judicial review, which was ruled on with the aforementioned Judgement. The view of the Council of Ministers was that the action was time-barred, in the understanding that the term for admitting the claim is one year, pursuant to the former Article 142.5 of the LRJPAC, and its *dies a quo* is the day on which the Spanish Constitution of 1978 was published; 29 December 1978, pursuant to the Supreme Court Judgement, Chamber 1, of 23 October 2010.

The Council of Ministers also deemed inapplicable the doctrine of liability of the State qua legislature[21] as this does not cover any alleged damage derived from "the absence of legislative regulation." This will be the option taken to propose our hypothetical solution.

The claimants filed for judicial review against the agreement of the Council of Ministers of 1 July 2016. In their claim, the claimant parties sought:

> declaration of full annulment of the confiscation regulations, as well as the confiscations themselves, for their violation of Article 14 of the Spanish Constitution;
>
> the declaration of non-subjection to limitation of this annulment and the retroactive application in the maximum degree of the Constitution, as these are severely discriminatory, odious rules and of non-time-barred *crimina laesa humanitatis*;
>
> the declaration confirming that the financial responsibility derived from this annulment is not time-barred, either;
>
> and that the liability action emerges from this declaration of annulment and consequently, declares the financial liability of the State qua legislature and its obligation to indemnify the claimants for the confiscated amount updated to the current value of the money.

The State's representative requested confirmation of the agreement being challenged. The defence somewhat questionably alleged that "measures of a monetary nature adopted during the Civil War had the purpose of averting a catastrophic monetary crisis [...] without affecting their legal tender in the other part of the territory, nor impeding their trading on the international currency markets, such as that of Paris."

Supreme Court Judgement no. 1470/2017 dismissed the claim. First, the Supreme Court denied the allegation of supervening unconstitutionality, since at the time of ratification of the Constitution, the rules on confiscation of Republican currency were no longer in force. This was specifically the case by virtue of the aforementioned Law of 13 March 1942, which wrote off from the balance of the Bank of Spain the account entitled "Fund of Paper Currency Put in Circulation by the Enemy", and brought about the accompanying destruction of the confiscated cash.

Next, it dismissed the allegations that the use of currency as a weapon of war was a crime against humanity, because if the appellants believed there to be crimes against humanity, and claimed reparations derived from these crimes, such a case cannot be tried in a administrative proceedings court, nor through the invocation of the State qua legislature's liability. Rather, it should have been brought before courts with criminal jurisdiction, if relevant.

It then dismissed the allegation of liability on the part of the State qua legislature, which will be discussed in the following section.

21 Without a doubt, one of the main reference works on the liability of the State qua legislature is that of García de Enterría (2007). Also an excellent introduction to this concept is García de Enterría (2002). See also González Alonso (2016). This jurisprudentially created figure, progressively limited over time by case law, consists basically of the State's obligation to repair the damage caused to private persons by the application of legal rules which have later been repealed or found unlawful. Any damage caused by such regulations would therefore also be unlawful and private persons would not have the obligation to bear them. The most accurate, easily understood and well-written study is that of Doménech Pascual (2018) which displays the most well-structured criticisms against the financial liability of the State qua legislature, as the attack it represents against legal security. Additionally, as stated hereafter, it is likely that the Court of Justice of the European Union will force the modification of the current Spanish regulations on the financial liability of the State qua legislature following a claim lodged by the European Commission.

Shortly thereafter, Supreme Court Judgement no. 512/2018, of 23 March, resolved the appeal against the agreement of the Council of Ministers of 13 November 2015[22] dismissing the claim for liability of the State qua legislature for the withdrawal of Republican currency after 18 July 1936. It did so by literally transcribing most of the legal grounds of previous Judgement no. 1470, therefore dismissing the administrative appeal.

In identical terms, Supreme Court Judgement no. 513/2018 of 23 March, resolved the appeal against the agreement of the Council of Ministers of 1 April 2016, on the same grounds as previous judgements, and also transcribed the previous Judgement no. 1470 to rule along the same lines.

Therefore, Supreme Court Judgement no. 1470 and other two judgements that reiterate it, have created case law on this topic. Notwithstanding this, the claimants appealed Judgement no. 1470 before the Constitutional Court, which rejected the appeal. Later, they did so before the European Court of Human Rights (ECHR).[23] At the time of writing, we know that the ECHR has not admitted two of the three claims, and it is like that they will do the same with the third. This would, therefore, cut off one of the paths by which a judgement could be handed down against Spain, in this case by ECHR Ruling, for the lack of reparations for victims of the Francoist monetary confiscations.

4 Liability of the State qua legislature

Continuing with this analysis, Supreme Court Judgement no. 1470 focuses the "legal title on which the party bases its claims" on the concept of liability of the State qua legislature, added to the Spanish legal system following the case law doctrine of the Constitutional Court and of the Supreme Court, which the judgement partially reproduces.

It also reiterates that the *dies a quo* of the term for claims should be begun as of the day the Constitution came into force. Additionally, it specifies that the right to be compensated for a singular deprivation by expropriation is a legally configured right, which has never enjoyed retroactive effects. But it does make an interesting qualification: considering that the figure of the State qua legislature's liability was added to the Spanish legal system following precedents of the Constitutional Court[24] and Supreme Court case law, in truth, the *dies a quo* should be the day of definitive incorporation of the State qua legislature's liability into the legal system, as of the entry into force of Article 139.3 of the LRJPAC of 1992. This notwithstanding, the statute of limitations of one year had passed, and therefore, the claim would likewise have to be dismissed.

Additionally, it adopted as its own the argument of the Supreme Court Judgement of 5 April 2006 (Chamber 3), discussed above, which holds that the configuration of the right to reparations is competency of the lawmaker, and it must be the lawmaker who decides the scope of the reparations at any given time. Therefore, a victim remaining outside the scope of the reparation process would not be questionable from the standpoint of equality.

We will outline our working hypothesis as of this point: another possible path to compensation. It bears mentioning that in the challenged agreement of the Council of Ministers, the possibility was examined (and later denied) of the existence of liability of the State qua legislature, "due to the absence of legislative regulations" that established reparations for the claimants of the monies confiscated from them. As shown, the Supreme Court Judgement no. 1470/2017 resolves it by arguing in favour of the freedom of lawmakers when regulating reparation measures.

22 Apparently, one of the reasons for the delay in the proceedings of this case, compared to Judgement no. 1470/2017, which resolved the appeal against the previous Council of Ministers agreement (of 1 July 2016) was the recusal of the magistrate designated as reporting judge at the outset. The same situation came about in the proceedings that led up to Judgement no. 513/2018.

23 *El País*, edition of 12 April, 2019, and *elDiario.es*, of 16 June, 2019. Further information on the website of Asociación de Perjudicados por la Incautación del Gobierno Franquista.

24In Judgement no. 1470/2017 of the Court, mention is made of Constitutional Court Judgements no. 108/1986, of 29 July; no. 99/1987, of 11 June, and no. 70/1988 of 19 April, in addition to the Supreme Court Judgements of 15 July and 25 September 1987, and 30 November 1992.

As is well known, currently the liability of the State qua legislature is found in Article 32.3 of Law 40/2015, of 1 October, on the legal system of the public sector,[25] and makes no reference to the case of legislative omission.

Nevertheless, case law has actually included such a case. For example, the recent contentious administrative Supreme Court Judgement no. 904/2018 of 1 June, states that in order for a regulatory omission to generate liability, "aside from causing repairable, unlawful damage, it must constitute the violation of a rule, especially of higher rank, from which the mandatory nature of a regulation is derived."[26] Even so, as was established, for example, by contentious administrative Supreme Court Judgement no. 1391/2019, of 17 October 2019, the liability of the State qua legislature for omissions must be restrictively interpreted.

At this time, we must ask ourselves if there is a law of superior rank that obliges the State to compensate the victims of Republican currency confiscation by the Francoist regime. The answer can only be "no".

In fact, a number of bills have come before the Spanish Parliament to regulate these reparations. The most recent is the bill presented in the Spanish Parliament by the Catalan Parliament,[27] incorporating Article 4.A to Law 52/2007 (the so-called *historical memory* law) that stipulates compensation of private parties for money confiscated from deposits in accounts of the Bank of Spain entitled "Bills Denied Exchange" or "Fund of Paper Currency Put in Circulation by the Enemy" and its implementing rules. At the time of writing, this bill was being deliberated.

However, another relevant regulatory proposal was the bill[28] presented by the Socialist parliamentary group in December 2017, which the opposition parties did not even take into consideration. This bill was of more general scope, and established the creation of a truth commission, the search for stolen children, the creation of a national census of victims, etc. But it also proposed (Art. 26), "monetary compensation" of seized property for its market value at the time the enabling provision came into force. As stated, this initiative was not passed, and at the time of writing neither the government in which the Socialist party participates, nor its parliamentary group have presented any other similar legislative initiatives. In mid-September 2020, the Socialist government presented a draft law for democratic memory that, in principle, does not include compensation of private parties who suffered the confiscation of their money. When this article was written, this draft bill had not yet begun its parliamentary processing.

Having concluded that at the time of writing, there is no rule of higher rank that obliges the State to compensate the victims of confiscation, although this answer is true and valid, we may still ask ourselves if there is any other possibility.

5 Supreme Court Judgement no. 1263/2018, of 17 July

The first step in our reasoning is administrative Supreme Court Judgement no. 1263/2018, of 17 July.[29] This judgement makes binding and compulsory the findings of the CEDAW Committee,[30] which, in fact, establish

25 BOE no. 236 of 2 October 2015. On 27 November 2019, the European Commission decided to refer Spain to the Court of Justice for adopting legislation contrary to Union law regarding liability of the State qua legislature, as it finds that the aforementioned Article 32 includes requisites that make excessively difficult any appeals for damages derived from Spanish laws in breach of Union law. Press release of the European Commission. See Doménech Pascual (2018: 421-425).

26 Almost identically, administrative Supreme Court Judgements no. 1676/2017, of 7 November, no. 1538/2017, of 11 October, and no. 477/2017, of 21 March.

27 Reference of Congress 125/000003. This initiative stemmed from a bill of the Parliament of Catalonia to the Spanish Parliament with reference 125/000010, of March 2017.

28 Reference of Congress 122/000157.

29 The case behind the judgement is tragic. Mrs Ángela González Carreño separated from her husband, with whom she had had a daughter, due to gender violence, but neither she nor her daughter received protection as victims of gender violence. On 24 April, 2003, during one of the seven-year-old daughter's unsupervised visits with her father, he murdered her, and then committed suicide. Mrs González Carreño sued the State for irregular operation of the Justice Administration, because, among other reasons, a number of court orders allowed the daughter's unsupervised visits, despite her being at a clear risk of gender violence, and for violating the State's obligation to prevent, investigate, judge and punish the violence levied upon Mrs González Carreño and her daughter.

30 Convention on the Elimination of All Forms of Discrimination against Women, ratified by Spain, BOE no. 69, 21 March, 1984.

recommendations, as the judgement itself acknowledges. By means of a somewhat unusual interpretation,[31] the Supreme Court concluded that, notwithstanding this, the findings of the CEDAW were of a binding and compulsory nature for the State, which legally recognised the Convention and its Optional Protocol. [32]

The judgement also states that the findings of the CEDAW originate, in fact, from a body that is within the framework of international law that, in accordance with Article 96 of the Spanish Constitution, forms part of the Spanish legal system, as of the time the convention creating it is ratified and published in the BOE.

Additionally, and relevantly, it specifies that the rules on fundamental rights will be interpreted pursuant to the UDHR and international treaties and agreements on the same subject matters that are ratified by Spain. This argument is particularly relevant, because the claim settled by the judgement on the administration's liability due to the poor operation of the justice administration, "is based on a declaration by an international body recognised by Spain, and that has stated that the Spanish state has breached specific rights of the claimant that were protected by the Convention, establishing measures for reparation or compensation in the plaintiff's favour, and action measures for Spain."

It also takes into account that "the declaration of the international body has taken place within an expressly regulated procedure, with guarantees and Spain's full participation"; to conclude by stating that, "international obligations relative to the enforcement of international bodies' supervisory decisions, competency for which Spain has accepted, form part of our internal legal code, once received in the terms of Article 96 of the Constitution, and they benefit from the hierarchy that this article—of supralegal rank— and Article 95—infraconstitutional rank— confer on them."

The Supreme Court, pursuant to Constitutional Court Judgements no. 245/1991 and no. 91/2000, held that the declaration of injury featured in a finding of the CEDAW [author's underlining] "can and must be a determinant element to accredit the possible violation of the relevant fundamental rights of the claimant, as their content (convention rights) also constitutes part of these (fundamental rights), forming a minimum, basic standard of fundamental rights for any and all persons in the Spanish legal system". In other words, the Supreme Court holds that the content of the CEDAW's findings may create positive obligations for the states (e.g. obligations to act, prevent, investigate, etc.) that make up the "minimum, basic standard of fundamental rights". Therefore, breach of the obligations featured in the findings would make for a breach of positive obligations with regard to preserving fundamental rights, and not in a merely negative sense of non-breach.[33]

This article is interested in recognition of the binding nature of the recommendations issued by international bodies responsible for supervising compliance with human rights based on international law.

The discussion on the binding nature of the findings or decisions of the international bodies in the Spanish legal system is not new. In fact, the responses given by Spanish authorities have been based on individualised solutions,[34] for every specific case and not susceptible to generalisation.

31 Escobar (2019: 245) writes that the court handed it down to serve "tangible justice". Supreme Court Judgement no. 1263/2018 is also discussed more descriptively, and its undeniable novelty highlighted (Gutiérrez, 2018). See also Macho (2019) and Borlini et al. (2020).

32 Adopted by the United Nations General Assembly in Resolution A/54/4 of 6 October 1999, and ratified by Spain, BOE no. 190 of 9 August 2001. In fact, Article 7 of this Optional Protocol refers to recommendations to the states, Article 8 to the fact that the Committee "shall invite that State Party to cooperate" in claims that are being heard and that later, if relevant, will convey to them their conclusions and recommendations.

33 González, 2019: 12.

34 For Escobar (2019: 243 and ff), the conclusion of the Supreme Court with respect to recognition of the mandatory/binding nature of the CEDAW findings is objectionable, but nonetheless, they should not be underestimated nor their legal effect denied. It must not be considered that they are merely recommendations that do not have to be heeded by public authorities. For the author, the interpretative effect of these findings is very relevant with respect to defining the scope and essential content of constitutionally recognised rights (ex Art. 10.2 of the Constitution). In fact, the author is quite critical: "the Court's shift of reasoning, towards the Finding as a 'binding/mandatory' act for public authorities distorts the nature of these findings, and opens the door to problems of interpretation that have unforeseeable consequences". She concludes by recognising the necessity for the Supreme Court to hand down more judgements on the matter to perfect its doctrine. González sees it in a similar light (2019: 19).

6 Report on Spain by the UN special rapporteur on transitional justice

The next step in our exposition is the content of the report by the special rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr Pablo de Greiff, on his mission to Spain, dated 22 July 2014.[35]

This office of rapporteur is derived from the Human Rights Council, created by Resolution 60/251 of the United Nations General Assembly[36] (of which Spain forms part) of 15 March 2006, and Resolution 18/7 of this Human Rights Council of 13 October 2011.[37]

Among other roles of this rapporteur, especially noteworthy are his visits to countries, and the making of recommendations, "concerning, *inter alia*, judicial and non-judicial measures when designing and implementing strategies, policies and measures for addressing gross violations of human rights and serious violations of international humanitarian law". Resolution 18/7 "calls upon all Governments to cooperate with and assist the Special Rapporteur".

According to his Report of 22 July 2014, the government of Spanish State invited Mr de Greiff to visit Spain, which he did from 21 January to 3 February 2014.

For the purposes of this article, the rapporteur stated that Spanish reparations legislation "does not contemplate any form of reparation in the case of private persons" and expressly recommends that Spain "Extend the recognition and coverage of reparation programmes to include all the categories of victims who have been excluded from existing programmes. Take steps to deal with claims related to the restitution of seized private belongings and documents."

It is worth mentioning that Spanish representatives responded to Mr de Greiff's report, with comments,[38] on 17 September, stating "we take note of the Rapporteur's observations as regards the categories of victims he considers to be excluded from the reparation steps, with the purpose of studying their fit in the legislation in force."

But three years later, specifically on 17 May, 2017, the rapporteur Mr. Pablo de Greiff, issued a public statement[39] in which he said that Spain was ignoring his recommendations. He also recognised that the Spanish state has the obligation to honour the rights of victims and their families, and invited it to report on the measures adopted for compliance with his 2014 Report.

As a result of these breaches, certain victims have gone[40] directly to the UN Human Rights Committee to report that the Spanish State has violated their right of access to justice in equality with the rest of citizens, for refusing to investigate torture committed by the Francoist police, in application of the Amnesty Law of 1977. We are also aware of other complaints filed before this Committee for other matters relating to the lack of reparation for forced disappearances in the Civil War and during the dictatorship, in a tremendous example of strategic litigation.[41] The findings of the UN Human Rights Committee will soon be handed down, and in light of the background developed with the rapporteur Mr Pablo de Greiff, it is likely that Spain will not be left in a favourable light as a result of these complaints.

Accordingly, the final question we could ask is whether Supreme Court Judgement no. 1263/2018, of 17 July, has opened a possible pathway for individuals whose claims were dismissed under Supreme Court Judgement no. 1740. Our approach includes starting with Mr De Greiff's Report, and the reiterated breaches by Spain in regulating compensation measures for private persons, taking the case to the UN Human Rights Committee, receiving a favourable finding and again filing a claim with the Spanish state for liability of the State qua legislature, specifically for legislative omission, with which it is internationally bound to comply.

35 UN Document reference A/HRC/27/56/Add.1.

36 UN Document reference A/RES/60/251.

37 UN Document reference A/HRC/ RES/18/7.

38 UN Document reference A/HRC/27/56/Add.3.

39 UN News of May 17, 2017.

40 *Público* Newspaper, 16 October 2019.

41 Gómez, 2019: 7.

The practical impact of this strategy is difficult to predict, and to quantify. The age of the individuals who suffered the confiscation of their funds directly must be borne in mind. Additionally, there would be doubts as to whether, if the victims were no longer living, their heirs could be treated as victims of the confiscations, as well as the probable lack of evidence of many confiscations.

7 Conclusions

From the beginning of the Spanish Civil War, the Francoist regime conceived monetary policy as a weapon of war against the 2nd Republic. For that reason, it created a Bank of Spain in Francoist territory, annulled the validity of Republican currency issued after 18 July 1936 and exchanged it for receipts that were never honoured for reimbursement. In other words, the regime confiscated a great deal of money, and impoverished many persons with its monetary policy.

Although, ever since the Spanih transition, governments have approved measures for reparation and compensation for the damage derived from the Civil War and Francoism, it is true that the confiscations of money from private persons have always been excluded from these measures.

Still, the victims of the Republican currency confiscations sued the State for liability of the State qua legislature. But Supreme Court Judgement no. 1470/2017, of 29 September, dismissed their case. Two more Supreme Court judgements confirmed this doctrine in 2018.

But we propose another possible way to compensation for victims of Francoist monetary confiscation. Supreme Court Judgement no. 1263/2018, of 17 July, is innovative, in that it states that the recommendations of international committees for the monitoring of human rights may be compulsory for the Spanish state, and therefore, may be a presupposition for a possible financial claim.

Based on this new doctrine, we have referred to the report published by the UN Special Rapporteur on Transitional Justice, Mr Pablo de Greiff in 2014 on the status of Spain's transitional measures. In this report, in the preparation of which Spain participated, Mr de Greiff identified the lack of compensation for private persons, and recommended that the Spanish state take legislative measures to resolve the situation. However, at the present time, Spain has not complied with the recommendations of the special rapporteur on private persons. In fact, Supreme Court Judgement no. 1470/2017 itself confirms this.

The question we examine is whether it would be viable to resort to the UN Human Rights Committee to be given an opinion that, in light of the breaches by the Spanish State, accredited by Mr de Greiff's report and Spain's failure to act, would force Spain to compensate victims of Francoist monetary confiscation. A legacy of injustice would be thus repaired.

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