

VI. ANALYTIC SUMMARY

Agirreazkuenaga Zigorraga, Iñaki (Universidad del País Vasco / Euskal Herriko Unibertsitatea): **¿Puede encauzarse en el ordenamiento jurídico español el Derecho a decidir?** (Can the right to decide be channelled in the Spanish legal order?). (Orig. es).

In *Iura Vasconiae*, 12, 299-337.

Abstract: In this paper, we reflect on the plurinational nature of Spain, and the supposed existence of the right to decide, or how this is put in practice. For example, through citizen consultation, and even through regional elections which have become quasi-referendums which, if not legally channelled within the domestic legal framework, along the lines of the doctrine set forth by the Canadian Supreme Court, can lead to a Unilateral Declaration of Independence, which has no domestic legal validity. However, internationally, its significance depends on the strength of the democratic support behind it. As things stand, peaceful coexistence, negotiation and agreement can lead to a prudent legal solution, meaning that a procedural regulation of self-determination or the right to decide is approved for the various nations of Spain without any hysterics, not creating further problems but, on the contrary, resolving existing ones.

Key words: Spain. Catalonia. Euskadi. Can the right to decide. Self-determination. Independence.

Alli Aranguren, Juan Cruz (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): **El desarrollo inicial del Amejoramiento del Fuero de Navarra.** (The initial implementation of the Improvement of the Charter of Navarra). (Orig. es).

In *Iura Vasconiae*, 12, 37-92.

Abstract: After Reintegration and Improvement of the Chartered Regime Act 13/1982 (*Ley Orgánica 13/1982, de Reintegración y Amejoramiento del Régimen Foral*) came into force, its identificatory, institutional and jurisdictional content was implemented, to establish the Autonomous Community outlined therein. Since then, some minor amendments have been made, and an attempt to make more far-reaching reforms.

Key words: Navarra. Act 13/1982. Improvement. Identity. Institutions. Powers. Reforms.

Álvarez Rubio, Juan José (Universidad del País Vasco / Euskal Herriko Unibertsitatea): **Fuentes del Autogobierno vasco y Derecho a decidir: mito o realidad en el marco europeo.** (Sources of Basque self-government and the right to decide: myth or reality in the European context). (Orig. es).

In *Iura Vasconiae*, 12, 363-392.

Abstract: The future of the Basque Country as a territorial entity within the context of a globalised world poses an interdisciplinary intellectual challenge, to which an important legal dimension is attached, but not solely and exclusively, because the Law should provide a means of solving problems, building bridges for coexistence, and it should not cause problems because of its imperative and inflexible nature. We are compelled to examine Europe and analyse comparable international practices, to try to make the case that the solution is cannot be reached through what is always harmful simplification. We must move away from Manichaeism and examine all of the alternatives that could possibly be accommodated within our self-government, within the international context of «realpolitik», both from an internal and external perspective.

Key words: Basque country. Europe. Right to decide. Self-government. Crimea. Kosovo.

Ayerbe Iríbar, María Rosa (Universidad del País Vasco / Euskal Herriko Unibertsitatea): **Las Ordenanzas ilustradas de la villa de Elgoibar (1751).** (The enlightened Ordinances of the town of Elgoibar (1751)). (Orig. es).

In *Iura Vasconiae*, 12, 501-572.

Abstract: We examine the Municipal Ordinances approved in 1751 by the town of Elgoibar in Gipuzkoa and ratified by the King a year later, a vivid reflection of a society and a historic moment of great institutional and social change, driven by the new Bourbon dynasty and the enlightened ideas introduced by it.

Key words: Municipal Ordinances. Elgoibar. Gipuzkoa. 18th century.

Bengoetxea Caballero, Joxerramon (Universidad del País Vasco / Euskal Herriko Unibertsitatea): **El derecho a decidir. Su planteamiento en el Derecho Internacional.** (The Right to Decide. An Analysis from the Theory of International Law). (Orig. es).

In *Iura Vasconiae*, 12, 339-361.

Abstract: The right to decide is here analysed from a double perspective. First, by starting off from the analysis of the major instruments of public international law, we see that there no legal institute of the right to decide from a legal positivist point of view. If we analyse the legal foundation for the institute of pu-

blic international law that is most closely related to the right to decide, the right of peoples to self-determination then we can indeed detect a similarity between the two rights. This proximity takes us to the second perspective, the democratic foundation of the right to decide as a political discourse and of the right to self-determination as a positive legal right. Following Neil MacCormick, the paper calls for a new approach to understanding law that gives theoretical primacy to the norm users. Norm users constitute themselves in autonomous normative communities, political demos, which exercise and claim self-government, decision-making power and subsidiarity with a view to pursuing their idea of the «common wealth» and creating solidarity networks where they can share their popular sovereignty with other demoi. Having reached this point, the right to decide becomes an expression of participatory democracy and empowered citizens who aspire to share decision-making spheres of justice and citizen participation following those spheres to all levels of governance where the relevant decisions are being made.

Key words: Right to Decide. Self-Determination. Autonomy. Sovereignty. Selfgovernment. Neil MacCormick.

De la Hucha Celador, Fernando (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): **Amejoramiento del Fuero: una valoración desde la actualidad.** (Improvement of the Charter: a present-day analysis). (Orig. es).

In *Iura Vasconiae*, 12, 93-153.

Abstract: Since Navarra became an Autonomous Community, the Constitutional Court has made a number of rulings that have seen significant re-centralisation of the State of the Autonomies and encroachment on autonomous powers. Leaving to one side doctrinal disputes about whether or not the Improvement of the Charter of Navarra is a Statute of Autonomy, we will concentrate on determining the legal status of Navarra in constitutional jurisprudence. We examine the peculiar process followed to grant Navarra the status of an Autonomous Community, the ways of reforming the Improvement and the need to democratise the chartered regime. We advocate improving the systematic framework of Navarra's institutional regulations, while choosing to accept the consequences and effects that joining the Autonomous Community of the Basque Country while preserving Navarra's key institutions would have on the chartered regime.

Key words: 1978 constitution. Improvement of the Charter. Chartered regime. Procedure of reforming the Statute of Navarra. Joining the Basque Country. Referendum and shared regional sovereignty.

Ezeizabarrena Saenz, Xabier (Universidad del País Vasco / Euskal Herriko Unibertsitatea): **Del primer Gobierno Ibarretxe a la propuesta de nuevo Estatuto presentada por el Lehendakari: ¿hacia la soberanía compartida?** (From the first Ibarretxe government to the new Basque Statute proposed: toward a reinterpretation of the concept of sovereignty). (Orig. es).

In *Iura Vasconiae*, 12, 185-216.

Abstract: within the context of the proposed reform of the Statute of Gernika. In it, we carry out a theoretical and practical reflection on the Basque Government that was led by the Lehendakari (President of the Basque Government) Ibarretxe, who put forward this proposal for statutory reform. We also examine some of the problems that persist today in the constitutional and European legal plan.

Key words: Historic rights. Shared sovereignty. Self-government. Bilaterality. Self-determination.

Francés Lecumberri, Paz (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): **El encierro y el destino de las mujeres presas en Navarra.** (The imprisonment and fate of female prisoners in Navarra). (Orig. es).

In *Iura Vasconiae*, 12, 441-498.

Abstract: In this paper, we will provide an historical overview of the different forms of female imprisonment over the course of history in Navarra, detailing the most important issues and then examining the current situation of women in Spanish prisons, particularly in Pamplona. We aim to show how women's prisons from the past and present have common features that have allowed an invisible link to be established throughout the history of female imprisonment which can still be found today, even in the equality plans of the Penal Institutions Authority.

Key words: Navarra. Imprisonment. Equality. Feminism. Punishment. Penal law. Civilizational change.

Herrero de Miñón, Miguel (Consejo de Estado): **La singularidad vasca en la actualidad.** (The idiosyncrasy of the Basque Country today). (Orig. es).

In *Iura Vasconiae*, 12, 425-437.

Abstract: The article analyses the Statute of Autonomy of the Basque Country. This shows a significant parallelism with the Statute of Navarra, because both collected various material factors of identification. The Basque uniqueness lies in a complex structure, which allows relations between communities (Euskadi and Navarra) and cross-borders (with Iparralde), for which

there are instruments and practices which are guaranteed in our Constitution and Community law. Other unique elements are own foral law, the Basque language and politics (national consciousness).

Key words: Basque Autonomous Community. Basque statute. Navarra Foral Community. Act 13/1982. Identity.

Izu Belloso, Miguel José (Tribunal Administrativo de Navarra): **Las reformas del Amejoramiento del Fuero de Navarra.** (Reforms to the Improvement of the Charter of Navarra). (Orig. es).

In *Iura Vasconiae*, 12, 255-297.

Abstract: We analyse the peculiar procedure followed to reform the Improvement of the Charter, excluding parliamentary initiative and limiting the involvement of legislative, regional and national bodies, to ratify a text that was negotiated and agreed on by governments without any possibility of amendment. We examine the two partial reforms approved in 2001 and 2010, both focusing on the issue of the early dissolution of the Parliament of Navarra and on the investiture procedure to repair the failings caused by the original draft, as well as other frustrated reform initiatives. Finally, although the reform procedure is complex, we offer some suggestions for the future regarding unresolved issues such as the area of jurisdiction, the mechanisms of direct democracy, the language policy, the Improvement reform procedure itself, the effects of the transitional provision of the Constitution etc.

Key words: Navarra. Reforms to the Improvement of the Charter. Parliament of Navarra.

Jáuregui Bereciartu, Gurutz (Universidad del País Vasco / Euskal Herriko Unibertsitatea): **El Estatuto de Gernika: una mirada retrospectiva.** (The Statute of Gernika: a retrospective look). (Orig. es).

In *Iura Vasconiae*, 12, 9-35.

Abstract: 35 years have passed since the Spanish Constitution and the Statute of Autonomy of the Basque Country (EAPV) were respectively approved. It is now time to calmly reassess the scope and legal effects of that momentous agreement, in terms of the relationship between the State and the Basque Country. And this reassessment has become necessary for two reasons, each of equal importance. Firstly, the need to rectify and overcome the shortcomings or problems that have been identified, both in the constitutional model of 1978 and its practical application. Secondly, the need to adapt the model to the new realities that have emerged with the arrival of the 21st century, which

have been starkly manifested in the globalisation process and, particularly in our case, in the European integration process.

Key words: Spanish constitution. Basque statute. Self-determination. Federalism. Plurinationalism.

Lasagabaster Herrarte, Iñaki (Universidad del País Vasco / Euskal Herriko Unibertsitatea): **La propuesta de reforma del Estatuto de Autonomía del País Vasco: del Parlamento Vasco al Congreso de Diputados. El final de un ciclo (2000-2006).** (The proposed reform of the Statute of Autonomy of the Basque Country: from the Basque Parliament to the Congress of Deputies. The end of a cycle (2000-2006)). (Orig. es).

In *Iura Vasconiae*, 12, 217-253.

Abstract: This paper examines two policy proposals related to changing the Basque Country's political status. The first is the so-called Ibarretxe Plan, a proposal to alter the content of the current Statute, which was approved by the Basque Parliament and submitted to the Congress of Deputies as a proposal to reform the Statue. The Congress of Deputies subsequently attempted to block the proposal process and voted against debating the plan and parliamentary procedure. The Basque Government later approved a referendum vote, which was declared unconstitutional by the Constitutional Court of Spain, whose interpretation of the law effectively shut down further opportunity for progress rather than seek an different interpretation that could submit this debate to the political sphere, an alternative that certainly existed and exists in constitutional law and which resulted in the Quebec referendum in Canada, for example. Political response in the Basque Country to the negative decision by Madrid was insignificant, unlike what subsequently happened in other similar cases, such as Catalonia.

Key words: Basque Autonomous Community. Autonomy. Ibarretxe Plan. Basque statute.

Santamaría Arinas, René Javier (Universidad de La Rioja): **Del ruido de sables a la algarabía de los mercados: la LOAPA vista desde las atípicas armonizaciones de hoy.** (From sabre-rattling to the jubilation of the Markets: the LOAPA (Autonomy Process Harmonisation Act) seen from the perspective of the extraordinary harmonisations of today). (Orig. es).

In *Iura Vasconiae*, 12, 155-183.

Abstract: This paper examines the future impact that the draft Autonomy Process Harmonisation Act (*Ley Orgánica de Armonización del Proceso Au-*

tonómico or *LOAPA*) would have on the State of the Autonomies and Constitutional Court Ruling 76/1983, which would prevent it from being approved as a law. The doctrine therein reflects the conflict between equality and diversity regulations and the harmonising laws set forth in article 105.3 of the Constitution. And it contains elements that can be compared with the subsequent praxis that led to harmonisation in other ways at a time of crisis, when the state legislator seems to have been seduced by the new de facto power of the Markets.

Key words: State of the Autonomies. LOAPA. Harmonisation laws, equality and diversity regulations. Political unity and market unity.

Tornos Mas, Joaquín (Universidad de Barcelona): **El supuesto catalán: del Estatuto de 2006 a la Sentencia 31/2010 del Tribunal Constitucional.** (The Catalan scenario: from the 2006 Statute to Constitutional Court Ruling 31/2010). (Orig. es).

In *Iura Vasconiae*, 12, 393-424.

Abstract: This paper examines what was intended to be Catalonia's statutory reform and how Constitutional Court Ruling 31/2010 closed off any possibility of meeting Catalonia's demands. As a political conflict, its solution should not be in the hands of the Constitutional Court. The political authorities should act responsibly.

Key words: Catalonia. Statutory reform. Constitutional Court Ruling 31/2010. Statutes of autonomy. Sovereignty.