Editorial

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This special issue contains the updated and amended keynotes presented at the research conference held in January 2016 at Centro de Estudios Politicos y Constitucionales in Madrid under the title 'Public space complexity, democracy and regulation of fundamental rights exercise', one of the activities planned within the Research Grant MINECO-13-DER2013-40719-R, funded by the Spanish Ministry of Economy and Competitiveness.

In this special issue, the contributors intend to study some aspects of the transformations currently experiencing the concept of public space and moreover, its diverse impact over the regulation of the exercise of fundamental rights, especially in the multicultural and globalised European societies of the 21st century. Although the analysis focuses mainly on the implications for the Spanish legal system, it adopts often a wider theoretical and comparative law perspective, which makes it also generally useful.

The assessment of those transformations of public space and the exercise therein of fundamental rights implies, first, a necessary and urgent review and redefinition of what is meant by public space, taking into account that it is primarily a space for the exercise of fundamental rights and democratic coexistence. To the analysis of all this, in theoretical and historical perspective, is dedicated the first article by Francisco J. Bastida Freijedo. His underlying thesis is that, in democracy, fundamental rights require a public space in which they can be expressed, since exercising them creates a public sphere in whose absence the democratic system would not be recognisable. The public space of fundamental rights is therefore not only a physical space, but also – and especially in the public sphere – the bundle of communications created by the exercise of fundamental rights within the community. Delimiting physical and virtual public spaces is not an administrative but a constitutional matter, something that also applies to the regulation of what can and cannot be done in it.

The democratic coexistence in the public space becomes more complex, because the classic and more or less homogeneous state-societies, with a community of language, race, religion and national identity, have become much more multicultural in the second half of the 20th century, especially as a consequence of the growing migration phenomena that break the relative social homogeneity and risk the appearance of the so called 'clash of cultures'. The public manifestation of social multiculturalism involves a challenge for democracy and for its core content, fundamental rights, to whose analysis is dedicated the second article by Benito Aláez Corral. It is argued that democratic citizenship plays a role as a promoter of and at the same time as a source of limitations on the development of multiculturalism. On the one hand, the democratisation of citizenship

makes it the proper constitutional tool for enhancing multiculturalism through its culturally open safeguarding of fundamental rights. On the other hand, however, the need to preserve the democratic (but still mostly national) character of citizenship implies a certain limitation of the scope of multiculturalism in four different ways: the liberal-democratic understanding of fundamental rights that flows from constitutional texts; the provision of compulsory civic-democratic education in schools; the political and cultural requirements established for naturalisation; and, finally, the definition of the fundamental rights agenda by the cultural majority that is embodied in a democratic framework of government.

A concretion of the above-mentioned issue is represented by the clash between the Islamic culture and the Western culture, reproduced in conflicts such as the Islamic full veil bans introduced in some European countries. Regarding this, José Ramón Polo analyses in the third article, from a critical perspective, the content of the Judgement of the European Court of Human Rights, Case S.A.S. against France, especially the controversial use by the court of the concept of minimum requirements of living together (vivre ensemble) as an acceptable limit on the freedom of religion and belief with regard to the convention. This is compared with the intemperate use that the ECtHR has been making in this area of the doctrine of national margin of appreciation. The author reaches the conclusion that in this decision, as in others, political constraints have had a significant weight, over and above strictly legal arguments, leading to very poor protection of those fundamental rights involved.

Last but not least, a comprehensive approach to the exercise of fundamental rights in the public space also involves a study of whom and to what extent can regulate the limits thereof. The fourth article, by Paloma Requejo Rodríguez, deals with this issue regarding the Spanish jurisdictions empowered to legislate on the exercise of fundamental rights in public spaces. Beyond the concept of public property designated for public use or for the provision of a public service, public space is, above all, a place for exercising fundamental rights. The planning of that space, which is the territorial dimension of democracy, is a responsibility – within their respective competences – of the central government, the autonomous communities and also the municipalities through municipal bylaws that, even though they are not regulations pursuant to an act, are subject to the principle of legal reservation if they aim to ensure social coexistence, guaranteeing the possibility for all citizens to enjoy public space while they exercise their rights in a respectful way towards the rights of the others.

In sum, the issue aims to contribute to the debate on the challenges facing the exercise of fundamental rights in public spaces through the analysis of some of the most abstract transformations affecting its background and legal framework.