
Editorial

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Biographical notes: Benito Aláez Corral is a Professor of Constitutional Law at the University of Oviedo, Spain (LL.M. Ruhr-Universität Bochum, Germany). He has researched at the Universities of Rome, Coimbra, Bochum, Freiburg (sponsored by the Alexander von Humboldt Foundation) and Georgetown. His publications have dealt with the constitutional theory and constitutional amendment, states' sovereignty and European integration, freedom of expression, freedom of religion, children's fundamental rights, right to education, the relationship between nationality, citizenship, democracy and multiculturalism, and more recently the exercise of fundamental rights in public spaces, constitutionalising of secession and legal globalisation and constitutional law.

This special issue contains the updated and amended keynotes presented at the research conference held in November 2016 at the University of Oviedo (Spain) under the title 'Fundamental Rights Conflicts In Public Spaces', one of the activities planned within the Research Grant MINECO-13-DER2013-40719-R, funded by the Spanish Ministry of Economy and Competitiveness.

The contributors seek to bring some clarity regarding some of the fundamental rights conflicts that arise as a result of their exercise in the public space. Although the conflicts this issue deals with do not exhaust the imaginable conflicts, the selected ones are doubtless of great importance nowadays.

In this sense, the first contribution, entitled 'Public spaces and the exercise of fundamental rights in Spain following the approval of the organic law for the protection of public safety', is concerned with the limitations of civic and political rights, such as free speech or the right of assembly and demonstration, when they are exercised in the public space. The contributor, Presno Linera, focuses in the analysis of Spain Organic Law 4/2015, 30 March, for the protection of public safety as a paradigm of the stigmatisation of public disorder and political, cultural and social life on the streets, in the face of which it aims to achieve a kind of civic 'tranquility'. In the new 'public space 2.0' those who take their grievances and protests to the streets and public infrastructure, those who publish images 'without prior police authorisation', and even those homeless who are simply trying to find a way to survive on the streets, are considered enemies of that 'tranquility'. Despite the undoubted improvement of the law's wording compared to the shameful draft, which came in for especially harsh criticism from the prosecutorial advisory board and the general council of the judiciary, this rule represents the translation of the premises of the most recent reforms of the criminal code to punishment under

administrative law: the criminalisation of public spaces to impede the rise of ‘the dangerous classes’.

As a counterpart to this mentioned first article, De La Iglesia Chamarro in her contribution ‘Video surveillance, public space and fundamental rights’, focuses in the growing interference that video surveillance is causing in the exercise in the public space of the more ‘private’ fundamental rights, such as privacy, own image or data protection. The contributor believes that the massive presence of cameras in the public space is not neutral in terms of rights and freedoms. Insofar as we are addressing an increasingly panoptic public space, it is necessary to reconsider whether the guarantees of rights are sufficient, given that technological development means that today video cameras can obtain, track, process and disseminate information in a manner that, without the necessary guarantees, may become dehumanising. This paper contextualises video surveillance and the latest technological developments within the framework of the society of liquid surveillance and details the rights and freedoms that may be affected when the latter is employed in the public space. Finally there is analysis of Spain’s legal treatment of video surveillance in the public space and the space that is accessible but with private security, as well as the shortcomings of legal system.

The solution to the conflicts derived from the exercise of fundamental rights in public spaces depends to some extent on how much education can contribute to bring up children as citizens aware of their rights and duties in a democratic society. Álvarez Álvarez in his work ‘The democratic function of education: how to solve some conflicts in the educational public space’, combines theoretical with case-law analysis in order to define the educative public space according to the democratic function of education and for solving some of the rights conflicts that take place in it. He states that the function of the educational public space is to incorporate pluralism and diversity existing at schools and other public spaces, in order to democratically reorient the exercise of fundamental rights back towards the public space. His paper endeavours to analyse some of the conflicts that have arisen within the educational field, both in Spain and in Europe, and tries to provide solutions to these conflicts from the basis of the democratic function fulfilled by education in the public space.

Linked to the above mentioned article and to the legal efficacy of equal treatment is the more philosophical and political contribution of Valvidares Suárez, entitled ‘(In)equality on grounds of sex/gender in the (welfare state’s) public space’. Her work explores the relationship between inequality on grounds of sex and the public space. Gender studies have devoted particular attention to the separation between public and private spheres, which has *naturalised* the functions of men and women, thus justifying the exclusion of women from the public sphere and the subordination of the private domestic sphere. But the private sphere may also be understood as personal autonomy for the exercise of fundamental rights. On the basis of this reading, there is a call for the incorporation of the gender perspective into the construction of the public space par excellence – the city – , as a driving force for equality in the enjoyment of rights. Finally, there is a reflection upon the conflicts provoked by the exercise of various freedoms in the public or semi *public* space and their impact upon equality between men and women.

Back to the concrete limitations that a single fundamental right, such as free speech, can experience in the public space in case of conflict is the contribution of Arias Castaño entitled ‘Hate speech in public space: a view from the North American doctrine of clear and present danger’. His contribution addresses the debate about the constitutionality of legislation outlawing so-called hate crimes starting from an analysis of some of the most

significant decisions in United States Supreme Court case-law, rulings which follow a famously different doctrinal model than the European guidelines and case-law in this area (which is that currently followed by the Spanish Criminal Code). The study also identifies the possibilities and difficulties of application that exist within US case-law around the use of the doctrine of Clear and Present Danger in this matter. It is an analysis that shows us a theory which, on the constitutionality of such expressive behaviours, can, with seemingly impossible duality, work as an (inadequate) applied instrument of the doctrine of hate speech, and at the same time function as a construction with the opposite theoretical approach. This is a paradox that can only be resolved by identifying and differentiating the various models within the theory of Clear and Present Danger, which is frequently and erroneously conceived of and explained as a single model.

Finally, Hrabovsky's contribution, entitled 'Rethinking emergencies and constitutional rights in a time of terror threat in the Czech Republic: a need for recalibration of emergency law?', addresses the several security issues endangering State's security, individual freedoms, one of which is terrorism, that governments are facing nowadays. Accordingly, he states that terrorism endangers not only national security but also a paradigm of modern constitutionality by pushing governments to meet the terrorist threat on its own playground. Ensuring security and ability to defend state and citizens is one of the essential functions of modern democratic state based on the rule of law and it is also presupposition of every state's sovereignty. One of the instruments serving to ensure and preserve security of State and individuals is emergency law. When facing terrorist threat, governments usually stand before a difficult question: should constitutional safeguards be ignored, suspend or even removed in time of terrorist threat? He wonders if we should activate 'emergency powers' which enable governments to overcome crisis and restore state of normalcy. More recently, another interesting question closely linked with relationship between terrorism and emergency follows the surface: should governments adopt special state of emergency law to combat terrorism or can they operate sufficiently with existing regimes of emergency? He addresses all those dilemmas in the context of Czech legal order.

In sum, a special issue that includes varied contributions trying to bring some light to the difficult task of resolving the conflicts that arise as a consequence of the exercise of fundamental rights in increasingly diverse public spaces.