

**CATALONIA BACKGROUND INFORMATION**  
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## **THE SPANISH CONSTITUTIONAL COURT AND THE MEANING OF PUBLIC DIPLOMACY**

The well-known ruling of the Spanish Constitutional Court in 2010 against the Catalan Statute of Autonomy- which had been passed with a clear majority in both the Catalan and Spanish parliaments back in 2006 – did not affect all the fields of work of the Catalan government in the same way. The field of foreign affairs, for example, was not affected at all by this ruling.

Given this, the Catalan Parliament developed the Law of Foreign Action and Relations with the European Union, following the mandate of the Statute to further the promotion of Catalonia in the rest of the world. However, this law was challenged by the Spanish government and in December 2016 the Constitutional Court published a sentence suppressing several articles of this law.

Surprisingly, the sentence denies Catalonia's right to exercise public diplomacy. Thus, as the Public Diplomacy Council of Catalonia, we believe we should explain clearly the reasons why our principal mission and our activities are not only legitimate but are also completely legal under current Spanish and Catalan law.

### **Is Catalan public diplomacy unconstitutional?**

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Sentence 228/20161 of the Spanish Constitutional Court on 22 December 2016 regarding the Law of Foreign Action 16/2014 states that the exercising of public diplomacy by the Catalan government or actors linked to the government is unconstitutional. This declaration is based on an incorrect and unjustified definition of what public diplomacy actually is. In fact, the concept of public diplomacy is clearly included within the powers of Catalonia according to its Statute of Autonomy and the Spanish Constitution. However, by changing the meaning of the term – without explaining why – the Constitutional Court declared the exercising of public diplomacy to be unconstitutional with this ruling. To explain this situation, first we shall look at what the sentence says and what it refers to, before explaining where the error is in this ruling with reference to public diplomacy.

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<sup>1</sup>[http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/25212#complete\\_resolucion](http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/25212#complete_resolucion)

In its preamble, the text of the sentence mentions an earlier sentence which differentiates between those foreign actions which autonomous communities can carry out and those which are exclusive to the Spanish state:<sup>2</sup>

**Autonomous Communities**, as part of the exercising of their powers, **can carry out activities of international projection**, except those which the Constitution states are reserved for the State and, in particular, those in article 149.1.3 CE which give the State exclusive powers over questions of international relations.

For more context, this is the article of the Spanish Constitution which the sentence refers to:

Article 149

*The State shall have exclusive competence over the following matters:*

[...]

3. *International relations*

The sentence then describes what international relations are according to the Constitutional Court:

*Without aiming to provide an exhaustive description of the competences reserved for the State under article 149.1.3 CE, this Court has identified some of the key elements of these competences as those related to: the **drawing up of treaties** (*ius contrahendi*); the **international representation of the State** (*ius legationis*); and the **creation of international obligations** and the **international responsibility of the State**.*

This is in agreement with the powers awarded to the Catalan government (Generalitat) in the Statute of Autonomy – which says in article 193:

1. **The Generalitat shall foster the external projection of Catalonia** and promote its interests in this area, while respecting the powers of the State in foreign affairs. 2. **The Generalitat has the capacity to carry out actions with external projection** that derive directly from its powers, either directly or through the bodies of the General Administration of the State.<sup>3</sup>

Thus, it is established that autonomous communities can carry out international activities which do not involve those considered to be “international relations”. Having said that, sentence 228/2016 states the following:

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<sup>2</sup> Unless the contrary is indicated, any emphasis – bold type – was not in the original text.

<sup>3</sup> To justify its decision, the Constitutional Court ruling refers to article 200 in the Statute which obliges the Generalitat to foster social, cultural, and sporting Catalan organizations abroad. However, this article does not have a direct relevance for the definition of public diplomacy.

*[...] what is called “**public diplomacy**” in Law 16/2014 consists of a group of activities with external impact, but not linked to the exercising of autonomous competences which are directed and coordinated by the Generalitat and whose **targets can be States** and international organizations as subjects of International Law in accordance with the objectives they follow.*

*Thus, the definitions of “diplomacy” in sections i), j), k) and l) of article 2 and the regulations contained in article 38 of Law 16/2014 are unconstitutional and null as they consist of international activities by the Generalitat which are not linked to its competences, **assuming subjects of International Law as targets**, and directed and coordinated by the Generalitat itself, without respecting the exclusive powers of the State in questions of international relations as stated in article 149.1.3 CE, or the function of directing politics of foreign affairs which, according to article 97 CE, corresponds to the State.*

This refers to subjects of International Law – a classification which, according to the sentence, only corresponds to the Spanish State and, by extension, to other internationally recognized states. However, all the provisions referred to derive from section i) of article 2 which defines public diplomacy as follows:

*i) **Public diplomacy** of Catalonia: any activity by a public or private agent with an effective and positive impact on **international public opinion**, with the aim of promoting the image, influence and prestige of Catalonia abroad.*

As can be seen, the conflict originates from the fact that the Law of Foreign Action defines public diplomacy as that aimed at a foreign public, while the Constitutional Court rejects this definition, and substitutes it with a new one which says that public diplomacy is aimed at states. Surprisingly the court sentence offers no justification for this new definition even though it is a term which is not defined in the dictionary of the Spanish Royal Academy or in any other legal document which the Spanish state has signed.

## What is public diplomacy?

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To see whether the Constitutional Court is justified in their definition of public diplomacy, we should look at how the term has been defined by the very actors most involved in this activity –academics, diplomats, and international organizations. Two things stand out when we look at the different definitions and descriptions they offer. Firstly, there is no one single document with an absolute authority over the others when offering definitions of public diplomacy. Secondly, having said that, there is a certain degree of consensus among the different definitions and it is closer to that of the Law of Foreign Action 16/2014 than to that of the Constitutional Court.

To begin with, we have the opinion of one of the first people to use the term – the journalist and diplomat Edward J. Murrow, who was the director of the United States Information Agency (USIA), a pioneering institution in the field of public diplomacy.

*Public diplomacy differs from traditional diplomacy in that it involves interaction **not only with government but primarily with non-governmental individuals and organizations**. Furthermore, public diplomacy activities often present many differing views represented by private individuals and organizations in addition to official government views.*

**(Edward Murrow, 1963, speaking as director of the USIA)<sup>4</sup>**

This concept became very important within the field of foreign affairs of the USA. In 1987 the US government defined the term as follows:

*Public diplomacy refers to government-sponsored programmes **intended to inform or influence public opinion in other countries**; its chief instruments are publications, motion pictures, cultural exchanges, radio and television.*

**(US Department of State, Dictionary of International Relations Terms, 1987, p. 85)<sup>5</sup>**

In 1965, Fletcher University opened a centre for public diplomacy – the Edward J. Murrow Center for Public Diplomacy – dedicated to the creator of this concept. In one of its first information brochures, it refers to public diplomacy as follows:

*Public diplomacy [. . .] deals with the influence of public attitudes on the formation and execution of foreign policies. It encompasses dimensions of international relations beyond traditional diplomacy; **the cultivation by governments of public opinion in other countries**; the interaction of private groups and interests in one country with those of another; the reporting of foreign affairs and its impact on policy; communication between those whose job is communication, as between diplomats and foreign correspondents; and the processes of inter-cultural communications*

[...]

*Central to public diplomacy is the transnational flow of information and ideas.<sup>6</sup>*

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<sup>4</sup><http://fpc.org.uk/fsblob/35.pdf> (Pag. 1)

<sup>5</sup>[http://pdaa.publicdiplomacy.org/?page\\_id=6](http://pdaa.publicdiplomacy.org/?page_id=6)

<sup>6</sup>[http://pdaa.publicdiplomacy.org/?page\\_id=6](http://pdaa.publicdiplomacy.org/?page_id=6)

More recently, Crocker Snow Jr., the then acting director of the centre, offered an additional point of view:

**Public diplomacy** that traditionally represents actions of governments to influence overseas publics within the foreign policy process **has expanded today** — by accident and design — **beyond the realm of governments to include the media, multinational corporations, NGOs and faith-based organizations as active participants in the field.**

**(Crocker Snow Jr., Acting Director of the Edward J. Murrow Center, May 2005)<sup>7</sup>**

Other academic institutions and researchers have offered their point of view regarding the concept of public diplomacy too. For example, the Center on Public Diplomacy (CPD) of the University of South Carolina offers the following definition on their web page:

*The study of public diplomacy is a new and expanding field. CPD defines it as the public, interactive dimension of diplomacy which is not only global in nature, but also **involves a multitude of actors and networks**. It is a key mechanism through which nations foster mutual trust and productive relationships and has become crucial to building a secure global environment. There is no single agreed-upon definition of the term; this lack of definitional consensus may well prove to be a good thing.*

**(USC Center on Public Diplomacy)<sup>8</sup>**

The expert in diplomacy, Jan Melissen, is another researcher who has written on the subject. He defines public diplomacy as “*the relationship between diplomats and the foreign publics with whom they work*”. Academics such as Bruce Gregory, Joseph Nye, Hans Tuch, and Ellen Huijgh have also given their definitions or descriptions of this concept:

*Today, public diplomacy has come to mean an instrument used by states, associations of states, and some sub-state and non-state actors **to understand cultures, attitudes and behaviour; to build and manage relationships; and to influence thoughts and mobilize actions to advance their interests and values.***

**(Bruce Gregory, former director of the Public Diplomacy Institute of George Washington University, 2011)<sup>9</sup>**

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<sup>7</sup><http://www.publicdiplomacymagazine.com/operationalizing-the-responsibility-to-protect-the-potential-for-transnational-public-diplomacy-to-advance-effective-domestic-responsibility/> (reference v)

<sup>8</sup><https://uscpublicdiplomacy.org/page/what-pd>

<sup>9</sup>[https://smpa.gwu.edu/sites/smpa.gwu.edu/files/downloads/BGregory\\_HJD\\_AmericanPD.pdf](https://smpa.gwu.edu/sites/smpa.gwu.edu/files/downloads/BGregory_HJD_AmericanPD.pdf)

*In international politics, the resources that produce soft power arise from the values an organization or country expresses in its culture, in the examples it sets by its internal practices and policies, and in the way it handles its relations with others. **Cultural diplomacy is one of the public diplomacy instruments that governments use to mobilize these resources to produce attraction by communicating with the publics** rather than merely the governments of other countries. Public diplomacy aims to attract by directing attention to these potential resources via broadcasting, financing cultural exports, organizing exchanges, etc.*

*(Joseph Nye, US political scientist and cofounder of the concept of neoliberalism in international relations, 2008)<sup>10</sup>*

***Public diplomacy is a government's process of communicating with foreign publics** in an attempt to bring about understanding for its nation's ideas and ideals, its institutions and culture, as well as its national goals and current policies.*

*(Hans Tuch, US diplomat and former deputy director of "Voice of America", 1990)<sup>11</sup>*

Outside of a purely academic field, public diplomacy has spread around the world, becoming an instrument for international activity for both countries and non-state actors. For example, NATO has a commission dedicated to public diplomacy and the European Union says the following when referring to its public diplomacy work:

***Public diplomacy deals with the influence of public attitudes.** It seeks to promote EU interests by understanding, informing and influencing. It means clearly explaining the EU's goals, policies, and activities, and fostering understanding of these goals through dialogue with individual citizens, groups, institutions, and the media.*

*(European Commission, A glance at EU public diplomacy at work, The EU's 50th anniversary celebrations around the world, 2007)<sup>12</sup>*

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<sup>10</sup><http://www.publicdiplomacymagazine.com/soft-power-and-cultural-diplomacy/>

<sup>11</sup><http://dosfan.lib.uic.edu/usia/usiahome/USIA-S-1/PUBLIC.HTM>

<sup>12</sup>[http://europa.eu/50/around\\_world/images/2007\\_50th\\_anniv\\_broch\\_en.pdf](http://europa.eu/50/around_world/images/2007_50th_anniv_broch_en.pdf)

Even the Spanish state devotes a section to public diplomacy within its text on Foreign Action strategy:

*During these first years of the 21st century we are experiencing a phenomenon already seen in previous sections of this Strategy – the new capacity individuals have to exercise influence due to the possibility of transmitting their actions and opinions to an audience of hundreds of millions of citizens who may react and change national or international political agendas.*

*[This development is closely linked] to public diplomacy.*

**(AECID, Foreign Action Strategy, 2014)<sup>13</sup>**

## Sub-state public diplomacy around the world

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The phenomenon of public diplomacy has taken hold too in sub-state regions such as Quebec, Flanders, Greenland and Scotland. In 2012 Ellen Huijgh, a researcher at the Netherlands *think tank* Clingendael and expert in public diplomacy, wrote a very clear summary of the state of public diplomacy in Catalonia and these regions.

For example, Quebec developed a public diplomacy strategy in 2007. This proposed creating “a specific way of working abroad” by identifying and integrating already existing public diplomacy elements within Quebec’s foreign actions. These elements would complement the other diplomacy activities of Quebec and would form part of the corresponding field of international politics, such as the field of environmental matters for example.

Another case is that of Flanders which, inspired in part by Quebec, has developed its public diplomacy through different means including programmes of international visits, contacts with Flemish people living abroad, agreements with education centres, and efforts to increase support at home for their foreign policy and actions.

Greenland achieved self-government via a referendum in 2009, although international relations continued to come under the powers of the Danish government. For this reason, Greenland has worked through public diplomacy to find its role in the field of foreign actions with a strong domestic emphasis. Scotland is another region which has combined home and foreign projection through public diplomacy. This country has built its public diplomacy around a strategy of “*nation branding*”, with a considerably intense activity before and after the September 2014 independence referendum.

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<sup>13</sup>[http://intercoonecta.aecid.es/Documentos%20de%20la%20comunidad/Estrategia\\_Acci%C3%B3n%20Exterior-2014.pdf](http://intercoonecta.aecid.es/Documentos%20de%20la%20comunidad/Estrategia_Acci%C3%B3n%20Exterior-2014.pdf) (Pag. 128)

We can draw three conclusions from all these contributions. Firstly, there is not one specific agreed-upon definition of public diplomacy made by a body with the authority to make one. For this reason, any person or organization referring to public diplomacy usually includes an introduction explaining just what they are referring to when they use this term. Secondly, despite their differences, there are points in common among the different definitions people and institutions have made. The principal point is that public diplomacy is aimed at foreign citizens rather than state institutions and actors. Thirdly, we can see that Catalonia is neither the first nor the only non-state actor to develop public diplomacy activities. These activities are carried out by multinational organizations such as NATO and the EU, and sub-state regions such as Quebec, Flanders, Greenland and Scotland. Given all this, it is not possible to invalidate the definition of public diplomacy included in the Law of Foreign Action as it would firstly be necessary to make clear exactly what this term refers to and, secondly, the description in the Law is a definition which is, in fact, in line with other definitions used by the other organizations, institutions and specialists who work in the field of public diplomacy.