

## CONCLUSIONS

1. The term person has a nuclear place in the 1978 basic norm and the whole body of decisions of the Constitutional Court.

The 1978 constitutional text includes the term person twenty-one times in 16 articles. Our exegesis of the relevant texts of the jurisprudence selected from the Constitutional Court – 584 judgments of the total of 3,724, in which 79 constitutional articles containing either the term person, or any of the remaining 27 relevant terms, are addressed – confirms the transcendence of the term, which is used throughout these court decisions more than a thousand times.

2. In the text of 1978, considered in the strict criterion of its literalness, *person* means the determined human individual, different and opposed to the group, to collectivity and to things.

Although it is not conceptualized, person denotes something substantive. It does not – in philosophical-technical language – say relationship or accident. Person says human individual in his sexed condition of male or woman. Reference that is even more explicit when it is used labelled by the terms physical or natural.

In the text, the person is affirmed as a living being with a physical and a moral dimension, who develops over time, influenced by the environment and by education. The person is a capable of knowledge and responsible for their actions. The person has dignity, with rights that are inherent to it – which protect its own attributes: integrity, self-image, honour,... – and freedom for developing its own personality – proclaimed in art. 10 of the Spanish Constitution as one of the foundation of the legal order and social peace –. As Spaniards, everyone will be equal before the law. The constitutional text does not include the substantive equality of people in any of its articles, but it does so in relation to the individuals and groups in which they are integrated. Equality and freedom must be real and effective, in order to this aim all the obstacles that impede or hinder their fulfillment should be removed by Government.

Every person is integrated into various natural institutions: marriage, family and community – or collectivity –. Men and women can get married under equal conditions. Its regulation will be exclusive of the State. Children born in

and out of wedlock will have the same rights. The family is integrated by people with obligations to each other.

*Person* also refers to the legal person. *Everyone*, *nobody* and *citizen* are also employed as rights holders. The relationship between these terms and *person* is not clearly established in the articles of the basic norm.

3. In the jurisprudence, *person* is referred both to each individual human being born in his uniqueness entity –ontological suppositum–, and to the holder of rights –*sui iuris*–.

The absence of conceptualization of the term relegates the answer to the question around its nature to the juxtaposition of the diverse attributes sustained in the normative foundation of the sentences of the Constitutional Court. Through all of them it stands out, for its reiteration, the affirmation of person as an expression of dignity. Dignity, understood as an inherent spiritual and moral value manifested in the self-determination of one's life, that enables the person to guide its own action, without external influences, in the areas of freedom guaranteed by the fundamental rights. Freedom that throughout the jurisprudence, ceases to be affirmed as trait to be affirmed as the being of the subject; to the point, that it is freedom that expresses the subject. This freedom is bonded indissolubly throughout the jurisprudence to material or effective equality. *Person* expresses equality (read levelling) identity in their indeterminacy.

The *person* is affirmed as a living being. Life that constitutionally has to be understood as a path that begins with gestation and ends with death, in which qualitative changes of a somatic and psychic nature take place, due to the physical and a moral –or psychological– dimension that composed the person in “psychosomatic unity”. The person is sexed. Depending on their sex, their biological reality, it can be one of two genders of the human species: male or female. In addition to biological sex, the sexual orientation and sexual identity are considered in the decisions of the High Court.

The life of the person is integrated by different acts –dressing, moving ... –, as well as, by other personal circumstances that manifest the deepest core of their intimacy: ideologies, religious beliefs, personal affinities, information about health, sexual orientation... When these acts are carried out at home, they make up the private life. On the other hand, the acts that take place in the public sphere will integrate the social life. Which the person can organize freely without threats or disturbances anywhere within the national territory according to their own options and convictions within the limits established by the legal system. Among these relationships, the community in which the person has inserted, family and the marriage are especially important for the Law.

The Spanish national community was established in 1978 as a social and democratic State, subject to the rule of law (Article 1.1 CE). State configuration result of an historical process initiated with the French Declarations of 1789 and 1793 and the Constitution of Cádiz of 1812 – first normative expressions and substantive configurations of liberties and fundamental rights as subjective and individual – . Configuration of the community that transcends all legal order by blurring the dichotomy State-Society: citizens participate in the organization of the State, through the elections of the different organs of representation; and the State in society, through the organization of social entities and the promotion of those conducts that imply a social change for the guarantee of the dignity of the person, the areas of freedom protected by the fundamental rights and real equality. The State organize the society through the law that change the individual consciences through altering the social consciousness by the change of traditions.

The family is a natural and fundamental element of society, as a basic and essential unit of coexistence where a framework of solidarities and dependencies is developed. Dependencies limited by the State between parents and children, when necessary for the exercise of personality rights by minors. Due to the will of the constitutional fathers, the natural and the juridical family cannot be identified, so, modified the origin of it throughout the years of decisions, at the present time it constitution depends on the free will of the individuals. Will that is expressed both in a *more uxorio* union and in a marriage union. Marriage is understood as the bond of a man or a woman in the exercise of their *ius connubii*, in a public and formal act in accordance with the requirements established by the State.

The development of the affirmations around the person is not coherent. The purpose of the resources raised before the TC determines the attention to the various articles and, therefore, the delimitation of the terms contained therein. The result is an extensive doctrine that leaves open some essential questions.

The lack of conceptualization and the equivocality in the use of the terms of close significance makes it difficult to clearly determine the reference to the person by any of them. It has to be taken into consideration that, although generally speaking *human being* means *person*, due to the present legislation, only born *human beings* are *persons* and only viable *individuals* are *human beings*. The term *individual* might refer both to the *person* or to the *citizen*. *Citizen* generally refer to the individual physical person, although sometimes it include legal persons. Finally, while the term *nobody* might refer to person, the term *all* would not refer to every person but to every human being, including the *nasciturus* - although this express indication is not applied by the TC in the interpretation of the entire article.

Every person under the authority of the Spanish Government is holder of those fundamental rights essential for the guarantee of their dignity – legal persons only of those that by their nature may be exercised by them – . Rights and freedoms that due to the form of State in which Spain is established – Social and

Democratic State of Law —, are a limit — self-imposed — of the action of the State, direct link between the individuals and the State and a positive obligation for it, as it must promote the social changes necessary for its full effectiveness. The determination of these fundamental rights is carried out in accordance with the constitutional text, the international treaties signed by Spain, the case law of the Constitutional Court and the legislative development.

4. The different affirmations around the person are based on a multiplicity of interpretative criteria.

Since the term person has been constitutionalized, it necessarily becomes the subject of constitutional interpretation — the Constitution, after all, does not say anything more or less than what the Constitutional Court says it says —. The multiplicity of interpretative criteria and the absence of justification in their election entails a constitutional voluntarism, a breach of the principle of legal security. Insecurity that is aggravated by the denial of any unavailable elements. There is nothing, not even the concept of person, that cannot be changed. It is not the human person in his dignity who binds the criterion for the High Court, but, on the contrary, the High Court determines what the human person is, as well as, what is required by reason of its dignity.

5. The specific study and science elaborations around the concept of person of those who are Constitutional Law professors and magistrates of the Constitutional Court allows us to understand, in an inductive process, the development in the decisions interpreting the fundamental text.

The doctrine around the concept of person is scarce, as for the most part the authors focus on the study of the case law of the Constitutional court, the constitutional text and its organic development. Person as a constitutional category refers recognition that is assigned to the human being with certain characteristics. Person, as an abstract concept originated in the Enlightenment, says freedom and substantial equality — self-determination (as self-assignment) and substantial identity —. Attributes by which man, as a person, is worthy.

Self-proclaimed as part of the natural law school, the studied doctrine configures the achievement of the freedom and equality (read levelling) of the person as the end of the Social and Democratic State of law and criteria of political and social legitimation. The State, the order and the Constitution, especially the fundamental rights, are proclaimed as mechanisms of change of the human and social conscience by rationalizing them according to general, a priori, and rational principles.

The mutability of the constitutional norm becomes the foundation of its binding. The Constitution is mere form, voluble. The concepts are opened to the

social consideration of them for a specific historical stage, or at least, to the idea of the elites, who have discovered the Reason that should be achieved in History for the attainment of the ultimate goal: the radical affirmation of the person as freedom.

6. It appears necessary, after our investigation, to continue with the study of *person* in the decisions of the Constitutional Court up to the present moment, as well as to undertake a historical study of the concept of person as freedom. Study that entails, as a *sine qua non* requirement, the attention to the nuclear concept of Social and Democratic State of Law, on pain of lacking meaning.