



INSTITUT DE DRET PÚBLIC

Institute of Public Law

Annual Report

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Centre universitari de recerca jurídica

IDP

INSTITUT DE DRET PÚBLIC



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Institute of Public Law

Baldiri I Reixac 4-6.

08028 Barcelona

Tel 93403 45 35

Fax 93 403 45 36

ipl@pcb.ub.es

www.idpbarcelona.net

Presentation

The Barcelona Institute of Public Law (IPL) is a centre of investigation that gathers university professors of constitutional, administrative, international law and other legal specialities to develop studies and produce reports on existing legal problems of public law and to produce better legislation or improve present regulations.

IPL Activities in 2005 have especially centred on the following areas:

1. Autonomous Communities.
2. Government and Local Administration.
3. Immigrants Rights.
4. Observatory for the Evolution of Political and Constitutional Institutions of Morocco.

This report also gathers conclusions on aspects of the IPL's general organization.

1. AUTONOMOUS COMMUNITIES

Autonomous Communities Report 2004

Published since 1989, "*The Autonomous Communities Report*" constitutes a complete and rigorous annual analysis of all the institutional activities that affect the autonomous communities. It includes a detailed study of each Autonomous Community produced by individual teachers working there. The analysis is completed with a compilation summary and systemization of the rulings and statements dealing with autonomic matters from the European Community, the State and the Autonomous Communities. The report currently accounts for fifteen Autonomous Communities and a team consisting of more than forty professors participating from different Spanish universities corresponding to the CCAA and various European Regions which have been used for comparative reasons, (Germany, Austria, Belgium, Italy and the United Kingdom).

This year's general evaluation emphasizes the results of the general elections in March 2004, the autonomous elections in Andalusia, the remission of the so-called *Ibarretxe Plan* to the Congress and also emphasises the elections in the European Parliament and the Treaty instituting the European Constitution.

The authors of the different CCAA studies are:

ANDALUCÍA: Francisco López Menudo, Sevilla University.

ARAGÓN: Fernando López Ramón, Zaragoza University.

ASTURIAS: Francisco J. Bastida Freijedo, Oviedo University.

CANARY ISLANDS: José Suay Rincón, Las Palmas University, Gran Canaria.

CANTABRIA: Luis Martín Rebollo, Cantabria University.

CASTILLA AND LEÓN: Tomás Quintana López, León University.

CASTILLA-LA MANCHA: Francisco J. Díaz Revorio, Castilla-La Manch University.

CATALONIA: Joan Vintró Castells, Barcelona University.

VALENCIA: Lluís Aguiló Lúcia, Valencia University.

EXTREMADURA: José Antonio Montilla Martos, Extremadura University.

GALICIA: Roberto L. Blanco Valdés, Santiago de Compostela University.

BALEARIC ISLANDS: Joana M. Socias Camacho, Balearic Isles University.

MADRID: Germán Fernández Farreres, Complutense of Madrid University.

MURCIA: Ángel Garrorena Morales, Murcia University.

NAVARRA: Martín M^a Razquin Lizarraga, Pública de Navarra University.

BASQUE COUNTRY: José Manuel Castells Arteché, País Vasco University.

Those responsible for the general analysis are:

Joaquín Tornos, IPL, "*General Evaluation*".

Tomás Font i Llovet, IPL, "*Administrative Organization and Local Law*".

Marc Carrillo, Pompeu Fabra University of Barcelona, "*Jurisprudence of the Constitutional Court and the Supreme Courts of the Autonomic Communities*".

Jesús Ruiz- Huerta, Complutense University of Madrid, "*Financial Aspects of Autonomy*".

Eliseo Aja, IPL, "*State Legislation*".

Francesc Pallarés, Pompeu Fabra University Barcelona, "*Electoral Analysis*".

David Tornos, LLM in Community Law, "*EC Legislation*".

María Jesús García Morales, Autónoma University Barcelona "*Collaboration in the Autonomic State*".

The 2004 monographic reports were:

- “The Constitution - State Myth and Statute Reforms” by Santiago Muñoz Manchado, Professor of Administrative Law at Complutense University of Madrid.
- “The Role of Foreign Population on the Financial Deficit of Social Services in Catalonia, Valencia Community and Murcia” by Alexandria Stoyanova, Professor of Economics at the Pompeu Fabra University of Barcelona and researcher at the CREB.
- “Research on the Regional Dimension of State Responsibility for Non-fulfilment of European Community Law” by Marcos Gómez Puente, Head Teacher of Administrative Rights, Cantabria University.
- “Some Considerations Regarding Housing Competences and Current Trends on their Fulfilment” by Juli Ponce, Professor of Administrative Law at the University of Barcelona.

As usual, during 2005 work has also been carried out on the 2005 edition of the report. In October took place the kick-off meeting with the representatives from the Autonomous Communities aimed at establishing the research program and calendar of the study.

The report is distributed by Marcial Pons (San Sotero, 6, 28037 Madrid, tel. 91 304 33 03).

2. GOVERNMENT AND LOCAL ADMINISTRATION

Local Government Annual Report

Since 1995, the IPL has produced the Local Government Annual Report under the direction of Tomàs Font and with the collaboration of the Barcelona Provincial Council (*Diputació de Barcelona*). Since the 2002 edition it has counted with the effective participation in the Foundation for Democracy and Local Government, constituted by a group of Province and Island Councils. The annual report contains a general evaluation of the evolution of local autonomous systems, study papers, jurisprudence analysis, follow-up of the reforms of neighbour countries, documentation and bibliographies. Thus, the report becomes a useful instrument of analysis and evaluation of the degree of consolidation and development of local autonomies.

The Local Government Annual Report 2004

The studies begin with a “*General Evaluation*” under the charge of Tomás Font Llovet, the title of which is “The Local Government Reform of Autonomous States”.

The “Studies” are organized around some topics that are listed below.

The reform of the basic law of local organization.

- “Legal Reform Enquiry about the Legal Regime of the so-called “municipios de población”” by Miguel Sánchez Morón, Alcalá University
- “A Vision of the Local Government” by Luciano Parejo, Carlos III University, Madrid

The Local Government and the Reform of the Statutes.

- “Local Autonomy and Subsidiarity in the Reform of the Autonomy Statutes” by Francisco Valasco Caballero, Autónoma University Madrid
- “Territorial Organization and the Reforms of the Autonomy Statutes” by Gerardo Ruiz-Rico, Jaén University
- “Collaboration between State and Autonomies: The Italian case” by Luciano Vandelli, Bologna University
- “Local Organization and the Reform of the Autonomy Statute of Catalonia” by Albert Pereira, Catalan Government.

The reform of the local electoral system: direct election of the major.

- “The Local Electoral System in Spain: Enquiry to bring the Future in Comparative Perspective” by Francesc Pallarés, of Pompeu Fabra University

In the Chapter “European Projection of the Local Government” we found:

- “The Direct Election of the German Major” by Silvia Díez, Autonomía University, Madrid.
- “The Long Transition of Local Autonomies” by Lucian Vandelli, Bologna University.

For the part dedicated to the jurisprudence on local administration, as in previous years, it continues offering an analysis of the jurisprudence of the Constitutional Court (Luis Pomed), the Supreme Court (R. Fernández Montalvo) and that of the Supreme Courts of Justice at the Autonomous Communities (J.J. Ortiz Blasco). Diverse legislative documentation and bibliography completes the volume which is coordinated by Vicenç Aguado.

Studies of Local Administration, Territorial Organization and Public Services

Contributing to the promotion and development of local legislation and the renewal of its resources, the Institute has undertaken the elaboration of reports and opinions on different questions regarding the promotion of the position of the town council, its autonomy and efficiency.

Opinions

- *The impact of the new participation system of local organizations of the town councils state taxes of the metropolitan area of Barcelona, with an inferior population of 75.000 habitants and its possible unconstitutionality.* (Tomás Font, Markus González and M. Luisa Esteve).
- *The interpretation of article 10 and the Additional Clause 1ª of the Royal Decree 127/2003 of 10th October of Food Complements* (Tomás Font and Oriol Mir).
- *The constitution of article 35 of the financial year blueprint of professional titles and professional associations* (Tomás Font and Germán Fernández Farreres).
- *The competences of the Catalan Government in the system of public security* (Tomás Font, Vincenç Aguado, Tomás Cano and Alfredo Galán).
- *Draft project of the Programme-Statute of Catalanian waters* (Tomás Font and Joan Perdigó).
- *Plans of Commercial dynamization* (Alfredo Galán and M. Luisa Esteve).
- *Study on the Plan of the Coast System (PDUSC)* (Tomás Font, Teresa Vadrí and Margarida Camós).

Research Project I+D of territorial organization and social rights

During 2005 the project, "Territorial organization and social rights: between equality and difference", (BJU 2003-09694-C02.01) continued, coordinated by Tomás Font. In the framework of this project the CUIMPB course titled, *The Local Government in the State Reform of Autonomies* (November 2005) was celebrated, and as already mentioned in this paper, a new edition of the local government annual report was published. The three-year project will be finalized in December 2006.

Some members of this project also contributed to different publications: Font, T. "Administrative Organization of Autonomous Communities", in Tornos, J. (Coordinator), *Autonomous Communities Report 2004*; Tornos, J. "25 Years of Constitution and Administrative Law", and Galán A. "Challenges for the Administration and the Administrative Law" in Castellá, J.M. (Coordinator) *The Constitution and Legal System*.

Or contributed with papers sent to Congresses and Journals:

- Tomás Font “The relations of Local Organizations with the State and Autonomous Communities, subsidiary guarantees”, *Conference on the transformations in Local Law*, Sevilla.
- Tomás Font “The configuration of local organization in the reform of autonomous statutes” in the Congress titled *Local entities in the reform of the autonomous statutes*, Zaragoza.
- Joan Perdigó “The Hydraulic plan of the River Basins of Catalonia”, in the *II National Congress of Water Law*, Murcia.

Research Project I+D about the role of town planning law and housing rights in urban politics and social and territorial cohesion

A team of Spanish and foreign teachers has been formed to carry out an investigative project (I+D) founded by the Sector Programme for the promotion of general knowledge promotion (Ministry of Science and Technology for the period 2004-2006), with the title of “Town planning law and social exclusion: The legal fight against urban ghettos”, (BJU2003-09694-C02-02). Chaired by Dr Juli Ponce Solé, Head Teacher of Administrative Law of the University of Barcelona, the research will analyse the legal instruments involved in town planning and housing rights from the perspective of combating social exclusion and urban ghettos.

In October 2005 a meeting was carried out on town planning and agriculture where the research group worked on related topics like social cohesion and territory from the perspective of rural development. Due attention was paid to European standards and the comparison of different autonomic regulations with special attention to the regulation paper on greenbelt town planning. The meeting was held in the Faculty of Law at the University of Barcelona, jointly organized by the IPL and the Department of Agriculture, Ganadería and Pesca of the Catalan Government. The papers are to be published in the Journal *Cuadernos de Derecho Local* during 2006.

Course “The Local Government before the Statute Reform”

On the 23rd and 24th November 2005, the course “The local government before the statute reform” took place during the autumn course of the International University Consorci Menéndez Pelayo of Barcelona (CUIMPB), under the direction of Tomás Font and Ferran Torres and the coordination of Alfredo Galán.

The object of the course was to analyse the effects on local governments of the several processes of reform of the Statutes of the Autonomous Communities. With this common objective distinct interventions took place on the reform of basic local law legislation (Manuel Zafra), the law regulation in the proposal of the new statute of Catalan Autonomy (Ferran Torres) and the participation of local organizations in the Autonomous Communities' procedures of decision-making (Francesco Merloni and Tomás Font), the articulation of the plurality of sources influencing this matter (Francisco Velasco) and, ultimately, the local finance embodied in the statute reforms (Maite Vilalta). Complementing these interventions were the reports on the local authority of the city of Barcelona to implement civic coexistence (Rafael Jiménez Asensio) and the comparable reference of local entities position in the German federal system (José Luis Carro). The reform process and the local government course concluded in council chambers, composed of representatives from political groups and implicated administrations.

Seminar about the local government reform

Under the coordination of Tomàs Font, the IPL organized a seminar on 15th April on "Draft White Book for Local Governmental Reform", drawn up by the Ministry of Public Administration. The general director of local cooperation, Manuel Zafra, commented on the contents of the draft white book after which a debate about this theme took place with the participation of different members of the IPL and other experts, among them the General Assistant Director of Legal Regime and Local Data Bases, José Miguel Carbonero.

3. IMMIGRANTS RIGHTS

Permanent seminar GESDI (Group of Studies about Immigrants Rights)

The permanent seminar constitutes a privileged bench mark for discussion between professors, civil servants and specialist lawyers in immigration matters. They met monthly with an average of fifteen participants (of which more than half are scholars) and constitutes the main place for the exchange of ideas and information on the evolution of legal norms and jurisprudence on immigration matters; it also facilitates the preparation of public activities of its members (conferences and articles etc.). The seminar sessions included their own workshop member speakers and on occasions an invited specialist. The assistants that attended the Seminar this year were:

Academic Staff Institutional Lawyers

Andreu Olesti (IPL)
Advocats, Ángeles de Palma (IPL)
Eduard Roig (IPL)
de Greuges)
David Moya (IPL)
SAIER)
Eliseo Aja (IPL)
M. Jesús Larios (IPL)
Laura Díez (IPL)
Ignacio Camós (IPL)
Markus González (IPL)
Vincenç Aguado (IPL)
Moónica Arbelá (IPL)
Elia Marzal (ESADE)
Silvia Morgades (U: Pompeu Fabra)

Civil Servants and

Maria Rieradevall (Col.
Girona)
Alexandra Solá (Síndic)
Mónica Torres (SOJ-
Eva Querol (Cáritas)
Imma Mata (Cáritas)

This year's seminar, coordinated by M. Jesús Larios, has had the following sessions:

- "The politics of the General Government in Immigration Matters", Mrs Adela Ros, General Secretary to the Secretary of the Immigration Department of Family and Welfare of the Catalan Government, on 24th February 2005.
- "Outlining Trends and Impact of Immigration in Spain", Mr. Joaquin Arango, Director of the Studies Centre of Citizenship and Migrations of the Ortega and Gasset University Institute, on 29th June 2005.
- "Immigration Politics, Current Main Problems", Mr Eduard Planells, Assistant Delegate of the Government in Barcelona, on 24th November 2005.
- "Access for Immigrants to Occupation Public Services", Mr Ignasi Camós, Professor of Labour and Social Security Law of Girona University, on 14th December 2005.

Annual report of immigration in Catalonia

Consolidating the structure of earlier editions the *Annual Report of Immigration in Catalonia* continues to be promoted by the Jaume Bofill Foundation, which has published the report for six consecutive years. The legal section, coordinated by Maria Jesús Larios, maintained the lines of earlier years. The annual report was published by Mediterrània publishers with the title "Immigration in Catalonia Today, Annual Report 2004". Some of the articles that appeared were:

- "General Evaluation", M. Jesús Larios and Mónica Nadal.
- "New Foreign Regulations; The Fight Against Irregularity, regularization and procedures of regular entrance", Eduard Roig.
- "The Educational Rights of Immigrants, Some Outstanding Rulings and Laws", M. Jesús Larios.
- "Places of Worship and Town Planning", Juli Ponce.
- "The Administrative Management on Foreign Matters during 2004 in Catalonia: Personal Court Summons before the Foreign Administration", Imma Mata.
- "Application Measures to Begin Equality of Treatment and Non Discrimination Approval for Spanish Legislation", Markus González.
- "The evolution of Immigration Law through the jurisprudence in 2004", David Moya.
- "Some comments on the proposals of reform of the Autonomous Statute regarding immigration", Laura Díez.

The report also includes a chronological list of the most outstanding facts, regulations and jurisprudence of 2004.

Publication: The regulation of immigration in Europe.

This publication edited by “La Caixa” Foundation into the collection “Social Studies” and coordinated by Dr Eliseo Aja and Dra. Laura Díez is centered on the current immigration regulation in Europe and Spain, analysing the most relevant aspects of its legal regime, that is to say the arrival, permission of work and residence, infringements, sanctions and rights of foreign citizens. The book studies the laws and other general rules about immigration that exist in the main states of Europe: Germany, Belgium, France, Italy, the United Kingdom, Switzerland and Spain as well as the regulations of the European Union.

The following members and collaborators of the IPL worked together on the publication: Eduard Roig, Marco Aparicio, Miguel Ángel Cabellos, Vincenç Aguado, David Moya and Andreu Olesti, as well as Professor of Constitutional Law of Extremadura University, José A. Montilla, and the Professor of Constitutional Law at Alcalá de Henares University, Pablo Santolaya.

Investigation project of immigrants’ rights and their legal status

In June the research project *The Rights of Immigrants in Spain: The Function of Distinct Political Administrations* (BJU 2001-2881), by The Ministry of Science and Technology, reached its end after a research work dating back to year 2002. During these years different activities (meetings and seminars) have taken place and have consolidated the Institute intranet as a useful network tool. During this time a total of 21 articles, 49 papers and different book chapters have been published by the group members. During the course of this project the team members Mónica Arbeláez and David Moya have written their doctorate theses.

In December the core of its members obtained again finance from the Ministry of Science and Technology for a new research project with the title *Legal Status and Rights of Immigrants*, (SEJ2005-05368/JURE). The new project’s central study is to offer a global vision of immigrant’s status, of their different rights and limitations. Apart from a constitutional approach it pretends to analyse the position of immigrants’ constitutional levels in Spain and Europe and its effects in the different administrative levels of the State, the Autonomies and Local. The project accounts for 24 investigations from 14 Spanish Universities and obtained a 94/100 grade in the evaluation process.

The new members of the project are:

Eliseo Aja UB
Montilla U. Granada
Laura Díez UB
Solá U. Jaén
Eduard Roig UB
La Laguna
David Moya UB.
A Coruña
Markus González UB
Carlos III
M^a Jesús Larios UB
U.Valencia
Mónica Arbeláez UB
Burgos
Andreu Olesti UB
U. Catabria
Francisco Javier Donaire U. Carlos III
U. Basque Country
Mariona Illamola UdG
Carlos III
Francina Esteve UdG
U. Carlos III
Elia Marzal URL- ESADE
U. La Laguna

José Antonio
Nicolás Pérez
Asunción Asín U.
Sonia García U.
Itziar Gómez U.
Ángeles Solanes
Camino Vidal U.
Nayra Espinosa
Juana Goizueta
Diego Boza U.
Miguel Revenga
Margarita Ramos

Reports

A study and proposal of protocol and proceedings to improve the supervision, education and training of young immigrants in the framework of the “Teenage Plan of Barcelona City Council” was produced.

Additionally, the first of the three groups of legislation summaries and guidelines was rendered to the Barcelona Province Council on topics related to the management of immigration by local organizations. The objective of the summaries was to offer synthetic but specialized information in the local administrations about the immigration legal framework.

The Congress of Young Researchers on Immigration and Asylum Law

In Girona on November 2005, various institutional collaborations were held, amongst which the IPL stood out as a founding institution, in order to organize the “III Congress of Young Researchers on Immigration and Asylum Law”. This year more than 20 researchers specialized in the study of immigration and asylum matters gathered. The III Congress lasted 3 days and included the comparative law contributions of a number of invited foreign scholars from different European countries. From the meeting some proposals were made to ensure the future of the network of researchers. The papers submitted dealt with many daily problems and are to be published in book format in 2006, thus symbolizing the consolidation of the present initiative.

4. EVOLUTION OF POLITICAL INSTITUTIONS AND CONSTITUTIONS OF MORROCO.

The activity during 2005 has fundamentally centred on the realization of various meetings around the presentation of the book, coordinated by Amina El Messaoudi and Joan Vintó *“Elections, Parties and Government in Morocco”* and published by Tirant lo Blanch at the end of 2004.

The first meeting took place in Rabat on 25th February 2005 at the Head Office of the Superior Institute of Administration (ISA). It consisted of a morning seminar, which counted with the participation of some 80 high ranking Moroccan Civil Servants enrolled at the ISA, with the following supervisors: Bernabé López García, (Professor of Islamic History from Autónoma University Madrid), “The Hispanic – Moroccan Relations Today”; Kalid Naciri (Director of the ISA, Rabat), “A New Bilateral Dynamic”; Joan Vintó (Professor of Constitutional Rights of Barcelona University), “The Formation of the Government in Morocco and Spain: Constitutional Framework and Political Transition”. The presentation of the book, *“Election, Parties and Government in Morocco”*, with the supervision of the director of the ISA took place in the afternoon, with a representative from the Spanish Embassy and some of the books authors, Amina El Messaoudi, Mohamed El Aayadi, Bernabé López García and Joan Vintó.

Other meetings took place in Sevilla on 7th April 2005, organized by the *Three Cultures Foundation* with the following programme:

- Presentation of the book *“Election, Parties and Government in Morocco”* with the supervision of the following people: José Manuel Toledo Roldán (General Coordinator Three Cultures Foundation); Tarik Louajri (General Representative of the Morocco Consulate in Sevilla); Amina El Messaoudi (Professor of Constitutional Law of Rabat University) and Joan Vintó (Professor of Constitutional Law of Barcelona University).
- Round table: “Morocco and Spain, Two Constitutional Models”, moderated by Gerardo Ruiz Rico, (Professor of Constitutional Law, Jaén University) with the following supervisors: Manuel Terol Becerra, (Professor of Constitutional Law, Pablo Olavide University, Sevilla), “Morocco and Spain Two Constitutional Models”; Amina El Messaoudi, (Professor of Constitutional Law, Rabat University), “The System of Moroccan Parties”; Joan Vintó, (Professor of Constitutional Law, Barcelona University), “The Relations between Powers of the States in Morocco” and Eva Martínez Sempere, (Professor of Constitutional Law, Sevilla University), “The New Statute of the Moroccan Woman”.

On the 31st May 2005, the Mediterranean European Institute (IEMED) organized a meeting in Barcelona with Catalan journalists to present the book that relied on the participation of Andreu Claret, Director of the IEMED, Mohamed Chaib, delegate of the PSC in the Catalan Parliament, and the authors Amina El Messaoudi and Joan Vintró.

On the 15th December 2005, Pablo Olavide University at Sevilla organized a seminar of, "The Means of Communication in Morocco and Spain" with the participation of professors: Manuel Terol Becerra, Amini El Messaoudi, Joan Vintró, Gerardo Ruiz and Dr Sidi Mohamed El Yamlaoui Ouzzani (University of Abdelmalek Essaudi) and the journalist Javier Ronda Iglesias from Canal Sur Radio.

In Barcelona for 2006 they are working on the organization of a working Seminar, similar to which have taken place in earlier years, with the participation of Moroccan and Spanish professors. The probable theme of studies will be politics decentralization.

5. GENERAL ORGANIZATION

The Institute of Public Law Annual Assembly took place Friday 13 January 2006. The director of the IPL made a positive evaluation of the production of activities during 2005 and explained future challenges, which principally centre on the conversion of the IPL into a University Institute of Investigation, it will be necessary to increase members and elaborate an internal regulation for the Institute. They made changes to the board of directors, the current new Assistant Director is Alfredo Galán and the Secretary is David Moya, who the Assembly elected by unanimous decision. The assembly also passed the accounts for 2005 and the budget for 2006.

Public Law Changes

The IPL co-edited jointly with the publisher Tirant lo Blanch a collection of books that tried to gather studies on current themes or focus on the methodology of innovators. The collection "Changes of Public Law" aspires to be a point of reference for the studies of Constitutional and Administrative Rights and other areas of Public Law. The Director is Eliseo Aja and the Advise Consultants of the collection are composed of by.

Paloma Biglino (Valladolid University)
Germán Fernández Farreres (Complutense University of Madrid)
Tomás Font i Llovet (IPL)
Luis López Guerra (U. Carlos III of Madrid)
Fernando López Ramón (Zaragoza University)
Joaquín Tornos Mas (IPL)

The published books in this collection are:

Eliseo Aja, Coordinator (IPL) “*The New Immigration Regulation in Spain*”.

Joaquín Tornos Mas, Coordinator (IPL) “*Democracy and Mass Media*”.

Marcos Vaquer Cavallería, (University Carlos III, Madrid), “*Social Action*”.

Paloma Biglino Campos, Coordinator, (University of Valladolid), “*The European Policies of Autonomous Communities and their Parliamentarian Control*”.

Ana María Redondo, University of Valladolid, “*Defence of the Constitution and Compulsory Basic Teaching*”.

Pablo Santolaya Machetti, (University of Cantabria), “*The Rights of Foreigners’ Family Life*”.

Joan Vintró and Amina el Messaoudi, Coordinator, (IPL), “*Elections, Parties and Government in Morocco*”.

Antonio López Castillo, (University Autónoma of Madrid), “*A Debate, the European Constitution*”.

Eliseo Aja, Juan Antonio Montilla and Eduard Roig (IPL), “*Autonomous Communities and Immigration*”.