

# ***EU 2020: DEMANDING ON DEMOCRACY***

*Country & Trend Reports on Democratic  
Records by Civil Liberties Organisations  
Across the European Union*

## ***SPAIN***



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# Spain // Rights International Spain (RIS)



defendiendo los derechos y libertades civiles

## Key concerns

- Longstanding issues continue to affect the justice system, including as regards the appointment of judges and the legal aid framework
- The abuse of criminalisation of speech and SLAPPs against journalists, activists and artists are common, while awareness is growing that existing provisions are not in line with international standards
- While rules preventing journalists from documenting police brutality are declared unconstitutional, attacks and harassment on journalists and media activists continue to be reported alongside episodes of police violence, including when policing assemblies
- Newly proposed rules may restrict freedom of expression and information online

- Racism and racial profiling expose structural failure to provide adequate protection against discriminatory practices
- COVID-19 exacerbates existing issues including as regards poor quality law making, the situation of vulnerable groups, the respect of fair trial rights in criminal proceedings, corruption and challenges to the exercise of freedom of expression and the right to information

## Justice system

### Judicial independence

#### Appointment of judges

The acting Judiciary Council (Consejo General del Poder Judicial) has continued appointing judges to the highest levels of the judiciary system (see below).<sup>1</sup>

1 See for example: Público. El CGPJ en funciones pacta los nombramientos del Supremo, en contra de la opinión del Gobierno. (30 September 2020). Available here: <https://www.publico.es/politica/cgpj-funciones-pacta-nombramientos-supremo-opinion-gobierno.html> and; El Mundo. El CGPJ efectúa siete nuevos nombramientos discrecionales por amplísima mayoría de 18 votos. Available here: <https://www.elmundo.es/espana/2021/01/28/6012a47efdddfab7a8b4636.html>

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### *Independence and powers of the Council of the Judiciary*

The Spanish Council of the Judiciary expired its mandate in 2018. The renewal of this body requires a qualified majority of 3/5 in both Congress and Senate, which implies the need for dialogue and to reach agreements between political parties. It has never been easy to reach agreements in this regard and extensions in the mandates of the Council have not been uncommon in the past. However, the current situation is exceptional.

The Spanish right-wing Popular Party has been blocking the renewal of the General Council of the Judiciary since 2018 when its mandate expired. One of the critical problems is that this acting Council – with a majority of members appointed by the Popular Party – has continued making appointments to the highest Spanish courts, particularly in the Supreme Court and more precisely to its Criminal Chamber. It is the Criminal Chamber of the Supreme Court that has jurisdiction to try any

offence committed (for example, corruption cases) by the members of the Government, as well as deputies and senators, among others. And it is also the last appeals tribunal.

During the term of the acting Council, the highest positions in the Spanish judiciary have been decided by a majority of magistrates who are labelled by the media as conservative. This conservative majority in the Council also explains why the Popular Party is reluctant to renew the body. Considering the corruption cases that affect the political parties in Spain, the capacity to appoint the key judges of the Spanish judiciary is undoubtedly a very effective tool, that could have an impact in these corruption proceedings.<sup>2</sup>

In October 2020, the Spanish Government presented a draft bill to reform the system of appointment of the Judiciary Council with one main objective: to reduce the parliamentary majorities currently required to appoint the members of the General Council of the Judiciary<sup>3</sup>. Its purpose is to overcome the

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2 Senator Ignacio Cosidó, member of the Popular Party, sent a whatsapp to his colleagues in the parliamentary group in November 2018 that was leaked to the press. In this whatsapp he talked of ending up “controlling the Second Chamber from behind” – the Criminal Chamber of the Supreme Court –, and added: “[W]e were risking the future renewals of 2/3 of the Supreme Court and hundreds of appointments in the judiciary, vital for the Popular Party and for the future of Spain.”. See for example: El Español. “Controlando la Sala Segunda desde detrás”: el ‘whatsapp’ de Cosidó justificando el pacto con el PSOE en el CGPJ (15 November 2018). Available here: [https://www.elespanol.com/espana/politica/20181119/controlaremos-sala-segunda-cosido-justificando-psoe-cgpj/354214577\\_0.html](https://www.elespanol.com/espana/politica/20181119/controlaremos-sala-segunda-cosido-justificando-psoe-cgpj/354214577_0.html)

3 See for example: El Independiente. PSOE y Podemos quieren rebajar la mayoría parlamentaria para elegir a los vocales del CGPJ. (13 October 2020). Available here: <https://www.elindependiente.com/espana/2020/10/13/psoe-y-podemos-quieren-rebajar-la-mayoria-parlamentaria-para-elegir-a-los-vocales-del-cgpj/>

political blockage in the renewal of its members, which has already lasted two years.

The Group of States against Corruption (GRECO) of the Council of Europe (CoE) sent a letter to the Spanish government regarding the reform draft bill. According to GRECO, replacing the qualified vote of 3/5 in Congress by a simple majority would go against the Council of Europe standards relating to the composition and appointment of members of judicial councils. GRECO reminded the government that judicial councils must be independent to safeguard judicial independence, as well as independence of individual judges, which is an indispensable condition in the fight against corruption. According to CoE standards, at least half of the members of judicial councils must be appointed by judges, without interference or the intervention of political authorities. According to the 2020 report of the Legal Aid Observatory, the number of free legal aid cases increased by 5,6% with respect to the previous year. 63% of all free legal aid cases refer to assistance provided by court appointed lawyers (*turno de oficio*), a figure by 5,4% higher than the previous year;

while 34% of cases related to legal assistance provided to persons in custody.<sup>4</sup>

The General Council of Bar Associations in Spain published a manifesto in July 2020, highlighting, among other issues, the need to dignify the role of court appointed lawyers (*turno de oficio*), who defend the most disadvantaged persons in society, and demand a decent remuneration, paid without delays. According to the General Council manifesto it is urgent to reform the regulatory framework concerning Court appointed lawyers and Free Legal Assistance (*asistencia jurídica gratuita*) to consolidate the quality and improve the efficiency of the services provided.<sup>5</sup>

In fact, the Council of Europe European Commission for the efficiency of Justice (CEPEJ) 2020 evaluation report of judicial systems refers to the fact that Spain is among those countries having a higher number of legal aid cases but with a lower amount allocated per case.<sup>6</sup>

The General Council also recalled the importance of updating the criteria regulating citizen access to free legal aid. They said that

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4 Abogacía Española. XIV Informe del Observatorio de Justicia Gratuita. (2020). Available here: <https://www.abogacia.es/wp-content/uploads/2020/07/XIV-Informe-del-Observatorio-de-Justicia-Gratuita-def.pdf>

5 Abogacía Española. 12-J Manifiesto En Defensa De La Justicia Gratuita Y Del Turno De Oficio 2020. (July 2020). Available here: <https://www.abogacia.es/actualidad/noticias/12-j-manifiesto-en-defensa-de-la-justicia-gratuita-y-del-turno-de-oficio-2020/>

6 Council of Europe. European judicial systems CEPEJ Evaluation Report (2020 Evaluation cycle). (2020). P.41. Available here: <https://rm.coe.int/rapport-evaluation-partie-1-francais/16809fc058>

the increase in the interprofessional minimum wage without modifying the parameters established in Law 1/1996 on Free Legal Assistance has limited access to free legal aid for a growing number of families who, based on their precarious income, should be able to access it.

With respect to access to interpretation, the Fair Trials report “*Justice Under Lockdown in Europe. A survey on the impact of Covid-19 on defence rights in Europe*” highlighted the impact of remote justice on vulnerable persons and persons in need of interpretation<sup>7</sup>: “The use of masks coupled with video conferencing has made the statement [of detainees by video-conference] difficult. Even more so for foreign people speaking Spanish. In these cases, if they had a lot of accent or strange grammatical twists, communication was difficult.” In addition, “Simultaneous interpretation [on top of direct speech] makes it difficult to grasp what is being said for an accused who does not speak the official language. If each sentence is interpreted consecutively, it makes the process significantly longer and the court does not accept that.”

### *Fairness and efficiency of the justice system*

The state of Alarm and the strict lockdown measures put in place in Spain from March to June 2020 to fight the Covid-19 crisis has had an important effect on the efficiency of the justice system. Courts were paralysed during the lockdown and only urgent matters were addressed<sup>8</sup>. In fact, the Covid-19 crisis tested the limits of a judicial system with urgent needs of modernization and adaptation to new technologies. The result has been an increase in the delay of many proceedings, although not all justice areas have been equally affected by the pandemic. Labour Courts are severely overloaded due to the economic crisis that resulted from lockdown measures<sup>9</sup>: cases of unlawful lay-off have increased, wrongful application of temporary lay-off measures (ERTE), etc. Civil and Commercial Courts have also experienced an important increase in the number of proceedings and, to a smaller extent, Family Courts.

The Government enacted a set of procedural and organizational measures to face the

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7 Fair Trials International. *Justice Under Lockdown in Europe. A survey on the impact of Covid-19 on defence rights in Europe*. (2020). P.12.

8 See for example: [elDiario.es](https://www.eldiario.es/politica/justicia-asoma-colapso-precedentes-abandono_1_5916877.html). La pandemia empuja a la Justicia a un colapso sin precedentes tras años de abandono sin inversiones ni consensos. (25 April 2020). Available here: [https://www.eldiario.es/politica/justicia-asoma-colapso-precedentes-abandono\\_1\\_5916877.html](https://www.eldiario.es/politica/justicia-asoma-colapso-precedentes-abandono_1_5916877.html)

9 See for example the measures taken in Madrid to face this unprecedented situation. Available here: <https://www.comunidad.madrid/noticias/2020/09/04/reforzamos-juzgados-lo-social-enfrentar-mayor-litigiosidad-derivada-covid-19>

situation during the lockdown period<sup>10</sup> and new technologies are getting more common in judicial daily activities; enabling remote access to proceedings, more fluid email communication between parties and a wider range of consultations enabled by digital means, prior appointment system, remote declarations in proceedings (through videoconference), or online court deliberations. However, the introduction/use of these digital tools in the justice administration in the current context and without a progressive transition and adaptation has generated several problems. The modernisation of the judicial administration cannot be the result of an improvised exercise. Second, the introduction of remote hearings (*juicios telemáticos*) in the mentioned context can have pervasive effects on fundamental rights, especially on the judicial guarantees of the defendants<sup>11</sup>.

In this regard, the above-mentioned report *Justice Under Lockdown in Europe. A survey on the impact of Covid-19 on defence rights in*

*Europe* expressed concern over the poor quality or unreliability of the available technology, affecting participation in trial: according to a respondent “[The suspect] is isolated, in a room with policemen, who refuse to remove his handcuffs for security reasons, and everything is through a video conference that he does not know how to use. The situation of helplessness is very great. Greater if he belongs to a vulnerable group.” Concerns were also raised as “Remote hearings could in some cases generate a certain insecurity for the accused persons, as they do not have the lawyer physically next to them and they are held in an environment that may be unfamiliar to them. Therefore, the accused persons or their lawyer should have the right to request, if they consider it necessary for their defence, the physical presence of the lawyer next to the accused, unless there is some risk of contagion.”<sup>12</sup>

Difficulties to challenge evidence in Spain were also reported, for instance, one lawyer noted that “they were unable to correctly

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10 Real Decreto-ley 16/2020, de 28 de abril, de medidas procesales y organizativas para hacer frente al COVID-19 en el ámbito de la Administración de Justicia. Available here: [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-4705](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-4705)

11 See For example: Jimeno Bulnes, M. Emergencia judicial ante la crisis sanitaria originada por el Covid-19. (2020). Available here: <http://www.rightsinternationalspain.org/en/blog/165/emergencia-judicial-ante-la-cri-sis-sanitaria-originada-por-el-covid-19>; and Jimeno Bulnes, M. Commentary: iProcess – Judicial emergency in Spain during the COVID-19 crisis. (2020). Available here: <https://www.fairtrials.org/news/commentary-iprocess-%E2%80%93-judicial-emergency-spain-during-covid-19-crisis>

12 Fair Trials International. *Justice Under Lockdown in Europe. A survey on the impact of Covid-19 on defence rights in Europe*. (2020), p. 11.

witness the evidence through video-conference.”<sup>13</sup>. According to some respondents the quality of legal assistance at the very early stages of the proceedings can also be undermined: “Telephone assistance speeds up the process but undoubtedly reduces guarantees”<sup>14</sup>.

## Corruption

### General transparency of public decision-making

The coalition government of *PSOE* and *Unidas Podemos (UP)* has increased the number of advisors placed in the ministries. On 30 June 2020, the government lead by Pedro Sánchez counted with 777 advisors. The precedent cabinet lead by Sánchez had 100 less advisors (673) and that of Mariano Rajoy 566. It must be noted that this increase in figures does not

have any apparent correlation with the Covid-19 crisis, as the Ministry of Health has not registered any addition to its existing team<sup>15</sup>.

The lack of transparency concerning this topic is persistent with the coalition government of *PSOE* and *UP*. In 2019, only 5 out of the 17 ministries has provided information. The Transparency Council (*Consejo de Transparencia*) has also changed its criterion regarding this matter increasing the levels of opacity<sup>16</sup>.

### Whistleblowers protection

The Spanish Ministry of Justice announced in June the creation of a working group to transpose the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law<sup>17</sup>.

13 Ibid. pp. 12-13.

14 Ibid. P. 6

15 See: CIVIO. El Gobierno de coalición cuenta con 100 asesores más que el anterior de Sánchez y 200 que Rajoy en la misma época (2020) Available here: <https://civio.es/quien-manda/2020/07/22/el-gobierno-de-coalicion-cuenta-con-100-asesores-mas-que-en-el-anterior-de-sanchez-y-200-que-rajoy-en-la-misma-epoca/>

16 See: CIVIO. Solo cinco de los 17 ministerios de Pedro Sánchez identifican a todos sus asesores. (2019). Available here: <https://civio.es/quien-manda/2019/03/21/solo-cinco-de-los-17-ministerios-Pedro-Sanchez-identifican-a-todos-sus-asesores/>

17 See: <https://www.mjusticia.gob.es/gl/ministerio/gabinete-comunicacion/noticias-ministerio/justicia-avanza-trasposicion>

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## **Media environment and freedom of expression and of information**

### **Framework for the protection of journalists and other media activists**

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As mentioned above, the Spanish Ministry of Justice announced in June 2020 the creation of a working group to transpose the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law<sup>18</sup>.

## **Attacks and harassment of journalists and other media activists**

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In 2019, far-right political party *Vox* prevented certain journalists from covering the Spanish general elections from attending their rallies during the campaign<sup>19</sup>. This authoritarian drift and trend has continued during 2020, with continuous attacks to journalists from different media outlets<sup>20</sup>. During a demonstration convened by *Vox* in May to protest against the government's management of the Covid-19 crisis, journalists from two national media outlets (*El País* and *La Razón*) suffered harassment and aggressions while carrying the coverage of the event<sup>21</sup>.

During 2020 cameramen and photojournalists were denied access to hospitals, morgues and retirement homes to cover the Covid-19 crisis.

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18 Ministry of Justice. Official Press Release (6 June 2020). Available here: <https://www.mjusticia.gob.es/gl/ministerio/gabinete-comunicacion/noticias-ministerio/justicia-avanza-trasposicion>

19 See for example: El País. Vox impide el acceso de los periodistas de PRISA a pesar de la resolución de la Junta Electoral.

(10 November 2019). Available here: [https://elpais.com/politica/2019/11/10/actualidad/1573407921\\_913145.html](https://elpais.com/politica/2019/11/10/actualidad/1573407921_913145.html); [https://www.elplural.com/politica/espana/vox-veta-a-un-periodista-de-el-pais-son-activistas-comunistas\\_216130102](https://www.elplural.com/politica/espana/vox-veta-a-un-periodista-de-el-pais-son-activistas-comunistas_216130102)

20 See for example: El Plural. Vox veta a un periodista de 'El País': "Son activistas comunistas". (10 May 2019). Available here: [https://www.elplural.com/politica/espana/vox-veta-a-un-periodista-de-el-pais-son-activistas-comunistas\\_216130102](https://www.elplural.com/politica/espana/vox-veta-a-un-periodista-de-el-pais-son-activistas-comunistas_216130102)

21 See for example: Público. RTVE y 'La Razón' denuncian ataques a sus periodistas cuando cubrían la protesta de Vox en Madrid. (24 May 2020). Available here: <https://www.publico.es/politica/tve-y-razon-denuncian-ataques-periodistas-cubrian-protesta-vox-madrid.html>

In the cases where they were allowed access as the field hospital in *Ifema*, journalists claimed there was too much control as for example guideline of the spots and angles from where to shoot photos<sup>22</sup>.

The Canary Islands have seen an increase of migrants arriving by boat, more than 2000 people than in 2019. The Ministry of Interior is struggling to manage the flux, leaving migrants in precarious camps near the harbour<sup>23</sup>. The government does not allow the moving of people to mainland Spain, arguing that migrants' relocation to other countries is impossible due to limits imposed on international border crossing to prevent the spreading of Covid-19. In this context, journalists were

also denied information and access by the authorities to key locations in the coverage of the arrival of migrants to the Canary Islands in August<sup>24</sup>. The photo-journalist Javier Bauluz was even sanctioned<sup>25</sup>.

Police forces have also impeded journalists from carrying out their work while covering protests. In the case of a journalist from *Noticias Navarra*, Mikel Urbaien, who was covering the protests against the Monarchy last summer when the *Guardia Civil* took away his cellphone and stopped the recording<sup>26</sup>. Another journalist covering a house forced eviction, Mireia Comas, was arrested while covering the event and faces charges

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22 See for example: Vozpópuli. España pone un veto a la tragedia y restringe el acceso de los fotoperiodistas a morgues y hospitales. (4 April 2020). Available here: [https://www.vozpopuli.com/espana/Espana-restringe-fotoperiodistas-hospitales-morgues-coronavirus\\_0\\_1342666982.html](https://www.vozpopuli.com/espana/Espana-restringe-fotoperiodistas-hospitales-morgues-coronavirus_0_1342666982.html)

23 See for example: RTVE. La llegada de migrantes a Canarias por mar crece un 1.019% en lo que va de año y supera al resto de España. (17 November 2020). Available here: <https://www.rtve.es/noticias/20201117/crisis-migratoria-canarias-datos/2056893.shtml>

24 See for example: RSF. Reporteros Sin Fronteras exige que los periodistas gráficos puedan cubrir la llegada de migrantes y pide al Gobierno máxima transparencia. (3 September 2020). Available here: <https://www.rsf-es.org/espana-reporteros-sin-fronteras-exige-que-los-periodistas-graficos-puedan-cubrir-la-llegada-de-migrantes-y-pide-al-gobierno-maxima-transparencia/>

25 See for example: Huffington Post. El fotógrafo Javier Bauluz denuncia en Twitter las trabas policiales para retratar la migración. (3 December 2020). Available here: [https://www.huffingtonpost.es/entry/el-fotografo-javier-bauluz-denuncia-en-twitter-el-trato-de-la-policia-al-cubrir-la-migracion-en-canarias\\_es\\_5fc8db4bc5b61bea-2b15ae19](https://www.huffingtonpost.es/entry/el-fotografo-javier-bauluz-denuncia-en-twitter-el-trato-de-la-policia-al-cubrir-la-migracion-en-canarias_es_5fc8db4bc5b61bea-2b15ae19)

26 See for example: Diario de Navarra. Cuando se intenta silenciar el periodismo. (28 September 2020). Available here: <https://www.noticiasdenavarra.com/actualidad/politica/2020/07/28/silenciar-periodismo/1066157.html>

for assaulting police officers (*atentado contra la autoridad*)<sup>27</sup>.

In a context of strong police and military presence in the streets under the state of alarm (March-June 2020), there have been numerous complaints and statements made by different organisations for arbitrary actions and excessive use of force.<sup>28</sup> The complaints generally are based on footage and recordings taken by citizens, which contained images of slaps, shoves, blows and kicks by police agents. A number of individuals have been fined for recording and disseminating these types of videos of police brutality, whereas the recording of police action should be covered by the right to freedom of information and expression. The Spanish Constitutional Court reviewed in December 2020 Organic Law 4/2015, of 30 March, of the protection of public security. The Court considered that

the sanction provided in article 36.23 that prohibited precisely “the unauthorized use of images or data of authorities or members of the Security Forces of the State” was in breach of article 20.2 of the Spanish Constitution (freedom of expression and information)<sup>29</sup>. This would allow the recording of police activity as described above.

In November 2020, a case of police brutality against an African American citizen was filed with several UN special procedures<sup>30</sup>. The applicant was in his house (June 2020) and recorded from the balcony an inappropriate police action involving four agents and a black man. One of the agents looked up and realized someone was recording them. Hours later, the same agents stopped and searched the young African American, for no reason, when he was leaving the house. They asked for his ID and

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27 See for example: El Periódico. Juzgan la fotoperiodista Mireia Comas por presunta agresión a una agente de los Mossos en un desahucio en Terrassa. (3 December 2020). Available here: <https://www.elperiodico.com/es/terrassa/20201203/juzgan-fotoperiodista-mireia-comas-presunta-10101382>

28 Equipo de Implementación del Decenio Afrodescendiente en España and Rights International Spain. Crisis sanitaria COVID-19: Racismo y Xenofobia durante el Estado de Alarma en España. (2020). p. 26, Available here <http://www.rightsinternationalspain.org/uploads/publicacion/d0b782ac0452e9052241b17a646df19ad4ed-f12c.pdf>

29 Decision available here: <https://www.boe.es/boe/dias/2020/12/22/pdfs/BOE-A-2020-16819.pdf>

30 The case was filled before the UN Committee Against Torture, UN Special Rapporteur on Racism, Racial Discrimination, Xenophobia and Related Intolerance, UN Special Rapporteur on the Human Rights of Migrants and the Working Group of Experts on People of African Descent.

went up to the house with him to get it. It was then that the police violence took place.<sup>31</sup>

The Spanish Constitutional Court reviewed in 2020 Organic Law 4/2015, of 30 March, of the protection of public security by virtue of an unconstitutional challenge filed by more than 50 MPs from different progressive parliamentary groups: *Socialista*, *La Izquierda Plural*, *Unión Progreso y Democracia* and *Mixto* against the law. The Constitutional Court considered that Law 4/2015 complied with all the constitutional standards with only one exception: the sanction provided in article 36.23 that prohibited “the unauthorized use of images or data of authorities or members of the Security Forces of the State”, which was considered in breach of article 20.2 of the Spanish Constitution (freedom of expression and information)<sup>32</sup>. This would allow journalists to use graphic material recorded, for example, during demonstrations or forced evictions involving excessive use of police force.

### ***Abusive lawsuits (including SLAPPs) and prosecutions against journalists, activists and artists***

Abusive proceedings (SLAPPs) for slander and defamation have been brought against media outlets and journalists. The majority are dismissed. Examples of relevant cases can be found in the Media Law Database of the International Press Institute<sup>33</sup>. In many cases, criminal charges and civil claims are filed at the same time, exposing SLAPP targets to particularly lengthy proceedings. This has a clear chilling effect on press freedom, in an environment where journalists are reportedly subject to increasing pressure.

The digital media *Contexto* was convicted in 2020 for attacking the honor of a Spanish actor. The sentence recognizes the veracity of the information contained in the original article published in 2016 by the digital media outlet -and that was subsequently rectified after the actor object of the press article expressed his disconformity with the wording-, but considers the writing insidious and thus, discrediting the plaintiff<sup>34</sup>. The sentence

31 See: RIS. Press Release. (10 December 2020). Available here: <http://rightsinternationalspain.org/uploads/prensa/c446eb54edc59ecc154b38f284e5d01bc07056d0.pdf>

32 Decision available here: <https://www.boe.es/boe/dias/2020/12/22/pdfs/BOE-A-2020-16819.pdf>

33 International Press Institute: <http://legaldb.freemedia.at/legal-database/spain/?target=criminal-defamation>

34 See for example, Contexto, Una jueza condena a CTXT por vulnerar el honor del famoso actor XXXXXXXX XXXXXXXX, (13 January 2021), Available here: <https://ctxt.es/es/20210101/Politica/34704/sentencia-actor-censura-libertad-de-informacion-ana-mercedes-merino-melara.htm>

concludes forbidding the publication of any further articles or information on the topic which, according to the *Plataforma en Defensa de la Libertad de Información* (PDLI), constitutes a form of previous censorship regarding this subject matter<sup>35</sup>.

On the other hand, in January 2021 the Investigative Court nº 29 (*Juzgado de Instrucción*) of Madrid has stayed the criminal case against the director and the chief editor of the digital media [elDiario.es](http://eldiario.es)<sup>36</sup> for publishing an exclusive on a corruption case involving the former President of Madrid region Cristina Cifuentes<sup>37</sup>. The journalists were accused of obtaining academic and personal documents illegally, an accusation that was not confirmed by the investigating judge.

Several criminal proceedings were also brought against activists and artists.

In early 2020, the adult cartoon drawer Toni Galmes was accused of defamation by four National Police unions for the publication of his book “*On és l’Estel.la?*”, on the incidents of the 1-O referendum in Catalunya<sup>38</sup>.

In June, the Supreme Court confirmed the sentence convicting the twelve members of the rap group *La Insurgencia* to 6 months of prison for an offence of glorification of terrorism (*enaltecimiento del terrorismo*)<sup>39</sup>.

In November, the Constitutional Court denied the existence of ground for the revision of the sentence of Pablo Frago, a unionist

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35 PDLI. La PDLI considera un peligro para la libertad de información la sentencia contra ‘CTXT’. (2021). Available here: <http://libertadinformacion.cc/la-pdli-considera-un-peligro-para-la-libertad-de-informacion-la-sentencia-contractxt/>

36 See for example: [elDiario.es](http://eldiario.es). La Justicia archiva la querrela de Cifuentes contra Ignacio Escolar y Raquel Ejerique por el caso Máster. (21 January 2021). Available here: [https://www.eldiario.es/politica/justicia-archiva-querrela-cifuentes-ignacio-escolar-raquel-ejerique-caso-master\\_1\\_6979690.html](https://www.eldiario.es/politica/justicia-archiva-querrela-cifuentes-ignacio-escolar-raquel-ejerique-caso-master_1_6979690.html)

37 See for example: [elDiario.es](http://eldiario.es). Cifuentes pide hasta cinco años de cárcel para Raquel Ejerique e Ignacio Escolar. (28 June 2018). Available here: [https://www.eldiario.es/politica/cifuentes-falsificada-rey-juan-carlos\\_1\\_2048581.html](https://www.eldiario.es/politica/cifuentes-falsificada-rey-juan-carlos_1_2048581.html)

38 See for example: El Diario de Mallorca. Imputan al dibujante Galmés por calumnias a la Policía. (15 January 2020). Available here: <https://www.diariodemallorca.es/mallorca/2020/01/15/imputan-dibujante-galmes-calumnias-policia-2813112.html>

39 See for example: Público. El Supremo confirma la condena de seis meses de cárcel para los raperos de ‘La Insurgencia’. (24 June 2020). Available here: <https://www.publico.es/sociedad/supremo-confirma-condena-seis-meses-carcel-raperos-insurgencia.html>

convicted for an offence of institutional insult (*ultraje a la nación*) for burning a Spanish flag during labor protest<sup>40</sup>.

The Constitutional Court also announced the inadmissibility of the appeal in the case of the rap singer Pablo Hasel, convicted for glorification of terrorism (*enaltecimiento del terrorismo*), insulting the Crown and insulting state institutions (*injurias y calumnias a la Monarquía y a las Fuerzas y Cuerpos de Seguridad del Estado*)<sup>41</sup>. Hasel was arrested by the police on February 16, 2021 to begin his prison term<sup>42</sup>. Recently, the government has announced a possible reform of the Criminal Code in this sense<sup>43</sup>.

A woman was also convicted for an offence against religious feelings (*delito contra los sentimiento religiosos*) for participating in a protest called “Great procession of the sacred rebel pussy” (*Gran Procesión del Santo Chumino Rebelde*). The sentencing judge considered that protest was not protected under freedom of expression as it profoundly offended Christian religious feelings<sup>44</sup>.

On 3 November 2020, twelve Galician independentists belonging to the organisations *Causa Galicia* and *Ceivar* faced trial at the National Court (*Audiencia Nacional*) for “belonging to a criminal organization for the commission of crimes of glorifying a terrorist

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40 See for example: Público. El Constitucional considera delito de ultraje a la nación quemar la bandera de España. (19 November 2020). Available here: <https://www.publico.es/politica/bandera-espana-constitucional-considera-delito-ultraje-acto-sindicalista-incitar-quemar-bandera-espana.html>

41 See for example: Público. Pablo Hásel: “Esto no es una democracia porque no se respeta la libertad de expresión”. (25 June 2020). Available here: <https://www.publico.es/entrevistas/pablo-hasel-esto-no-democracia-no-respetta-libertad-expresion.html>

42 See for example: El País. El rapero Pablo Hasél ingresa en prisión tras ser detenido por los Mossos en la Universidad de Lleida. (16 February 2021). Available here: <https://elpais.com/espana/2021-02-16/los-mossos-entran-en-la-universidad-de-lleida-para-detener-a-pablo-hasel-que-no-se-presento-en-prision-pasado-el-plazo.html>

43 See: [elDiario.es](https://www.eldiario.es). El Gobierno eliminará las penas de cárcel en los delitos de expresión. (8 February 2021). Available here: [https://www.eldiario.es/politica/gobierno-eliminara-penas-carcel-delitos-expresion\\_1\\_7203896.html](https://www.eldiario.es/politica/gobierno-eliminara-penas-carcel-delitos-expresion_1_7203896.html)

44 See for example: RTVE. Condenada por la procesión del ‘santo chumino rebelde’ por un delito contra los sentimientos religiosos. (23 November 2020). Available here: <https://www.rtve.es/noticias/20201123/condenan-mujer-juzgada-procesion-del-santo-chumino-rebelde-delito-contra-sentimientos-religiosos/2058286.shtml>

organization and its members”<sup>45</sup>. In December, the National Court acquitted the defendants and concluded that the organizations’ values were the promotion of cultural activities and the support of convicted persons and denied any links with the glorification of terrorism.<sup>46</sup>

In December, the Supreme Court confirmed the sentence against the satirical magazine *Mongolia* for the publication of a photomontage of the ex-bull fighter Ortega Cano<sup>47</sup>.

On 17 December 2020, the Spanish Constitutional Court convicted a man who,

in 2017, disrupted a religious ceremony and shouted pro-abortion slogans- to six months in prison<sup>48</sup>. The Court ruled the aforementioned action was not protected by freedom of expression.

There was also some good news in 2020 for freedom of expression. The Constitutional Court annulled the sentence against the rapper and front man of the rap-metal group *Def con Dos*, César Strawberry<sup>49</sup>. The actor Willy Toledo was also absolved from the charges for his Facebook publication where he used the expression “I shit on God” (“*me cago en Dios*”)<sup>50</sup>.

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45 See for example: El Salto Diario. Radiografía de un despropósito judicial: las inconsistencias de la Operación Jaro. (6 November 2020). Available here: <https://www.elsaltodiario.com/operacion-jaro/radiografia-desproposito-judicial-inconsistencias>

46 See for example: La Voz de Galicia. Absueltos los 12 encausados de Causa Galiza y Ceivar juzgados por la Audiencia Nacional. (22 December 2020). Available here: <https://www.lavozdegalicia.es/noticia/galicia/2020/12/22/absueltos-12-encausados-causa-galiza-ceivar-juzgados-audiencia-nacional/00031608637386931863453.htm>

47 See for example: [elDiario.es](http://eldiario.es). El Supremo confirma la condena a la revista Mongolia por un fotomontaje sobre el extorero Ortega Cano. (22 December 2020). Available here: [https://www.eldiario.es/politica/supremo-confirma-condena-revista-mongolia-fotomontaje-extorero-ortega-cano\\_1\\_6540149.html](https://www.eldiario.es/politica/supremo-confirma-condena-revista-mongolia-fotomontaje-extorero-ortega-cano_1_6540149.html)

48 See for example: [elDiario.es](http://eldiario.es). El Constitucional decide que la libertad de expresión no ampara las protestas que perturben una ceremonia religiosa. (17 December 2020). Available here: [https://www.eldiario.es/catalunya/tc-dice-perturbar-ceremonia-religiosa-no-libertad-expresion\\_1\\_6513137.html](https://www.eldiario.es/catalunya/tc-dice-perturbar-ceremonia-religiosa-no-libertad-expresion_1_6513137.html)

49 See for example: Público. El Tribunal Constitucional anula la condena que el Supremo impuso a César Strawberry. (25 February 2020). Available here: <https://www.publico.es/politica/tribunal-constitucional-anula-condena-supremo-impuso-cesar-strawberry.html>

50 See for example: Público. Willy Toledo, absuelto del delito contra los sentimientos religiosos por cagarse en Dios y en la Virgen. (29 February 2020). Available here: <https://www.publico.es/sociedad/willy-toledo-absuelto>

There has been a decrease in the period 2019-2020 in prosecutions for glorification of terrorism, compared to previous years. This is due, in part, because of raising awareness that the provision in the Criminal Code (Article 578, which was amended in 2015 to encompass online “glorification or justification” of terrorism), is not in line with international legal standards (it makes no mention of intent or causation of any danger of violence)<sup>51</sup>. A recently published report which analysis jurisprudence of Spanish courts concerning the offence of glorification, from a human rights perspective, finds that an important number of Spanish court decisions are inconsistent with international human rights law governing the right to free expression<sup>52</sup>. The decisions analyzed vary widely in the interpretation of the elements of the offence of glorification. This is not surprising given the overly broad and vague language and nature of Article 578. Spanish courts, contrary to standards set by the European Court of Human Rights (ECtHR),

which are based on the consideration of a real, concrete and imminent danger, opt for the application of an “abstract” risk concept that disturbingly exacerbates criminalization of speech. This seriously affects, as seen in some cases such as those mentioned above, the right to freedom of expression.

### ***Freedom of expression and of information online***

The reform of the Telecommunications Law (*Ley General de Telecomunicaciones*)<sup>53</sup> that started in 2019 and continued during 2020 could have some important effects on the right to freedom of expression and information if its current wording is finally approved. Namely, it would allow the government to suspend, under public order criteria, access to the web or to some parts of the web (websites, applications, protocols, etc.); and would provide for the intervention

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- 51 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. Article 5.
- 52 Rights International Spain. Legal Standards on Glorification. Case law analysis of the offence of glorification of terrorism in Spain (2021). Available here: <http://www.rightsinternationalspain.org/uploads/publicacion/6b06a5a8ad6c2f7c9b408091b87d0b3c7dff219.pdf>
- 53 Anteproyecto de la Ley General de Telecomunicaciones. Available here: [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&ccd=&ved=2ahUKEwis2peXsP3uAhVIUBUIHe7NBI8QFjAAegQIAxA-D&url=https%3A%2F%2Favancedigital.gob.es%2F\\_layouts%2F15%2FHhttpHandlerParticipacionPublicaAnexos.ashx%3Fk%3D16842&usg=AOvVaw0yVbt-xjPb8\\_HdDSR6a-64](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&ccd=&ved=2ahUKEwis2peXsP3uAhVIUBUIHe7NBI8QFjAAegQIAxA-D&url=https%3A%2F%2Favancedigital.gob.es%2F_layouts%2F15%2FHhttpHandlerParticipacionPublicaAnexos.ashx%3Fk%3D16842&usg=AOvVaw0yVbt-xjPb8_HdDSR6a-64)

of the Internet and communications without judicial oversight<sup>54</sup>.

## **Enabling framework for civil society**

### **Freedom of assembly**

Feminist and ecologist movements were in the spotlight during 2019. During the protests held during the climate summit in Madrid or during March 8th marches a great number of incidents with the police were registered: numerous fines, stop and searches, police violence and arbitrary detentions<sup>55</sup>. Protests against evictions and regarding basic housing rights also registered a great number of incidents. Incidents during anti-fascists protests

against the far right-party *Vox* also increased during 2019<sup>56</sup>.

Protests and reactions to Supreme Court sentence convicting Catalan political leaders for the 1-O events were also especially targeted by the police. *Som Defensores* identified 122 cases of excessive use of force by the police, especially in the metropolitan area of Barcelona. 60% of them were related to actions carried out by the *Mossos d'Esquadra* and 40% by the National Police<sup>57</sup>.

Journalists covering demonstrations and other forms of protest have also faced similar incidents with the police (see above).

During great part of 2020 due to restrictions relate to the Covid-19 crisis, freedom of assembly was severely restricted (see below).

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54 See for example: El País. El Gobierno podrá intervenir redes y servicios de telecomunicación por motivos de orden público. (6 November 2019). Available here: [https://elpais.com/politica/2019/11/05/actualidad/1572978141\\_937893.html](https://elpais.com/politica/2019/11/05/actualidad/1572978141_937893.html)

55 Red Malla. Informe 2019. (2020). Available here: [http://defenderaquiendefiende.org/wp-content/uploads/2021/01/INFORME2019\\_v3.pdf](http://defenderaquiendefiende.org/wp-content/uploads/2021/01/INFORME2019_v3.pdf)

56 Idem.

57 See for example: La Vanguardia. 'Som Defensores' investiga 122 casos de "violencia policial" en protestas por la sentencia. (23 October 2019). Available here: <https://www.lavanguardia.com/local/barcelona/20191023/471158626812/catalunya-som-defensores-investiga-122-casos-de-violencia-policial-en-protestas-por-la-sentencia.html>

In February 2021, a case of police brutality has gathered special attention as real fire was opened<sup>58</sup> against the people participating in the protest against the brutal aggression of a man and his daughter (underaged) by two off-duty police officers<sup>59</sup>.

In 2020, numerous protests around Spain turned violent after rapper Pablo Hassel was imprisoned to serve a 9-month prison sentence for glorification of terrorism (*enaltecimiento del terrorismo*), insulting the Crown and insulting state institutions (*injurias y calumnias a la Monarquía y a las Fuerzas y Cuerpos de Seguridad del Estado*)<sup>60</sup> (see above as regards freedom of expression).

### ***Abusive lawsuits (including SLAPPs) and prosecutions against civil society activists***

A number of abusive defamation lawsuits targeting environmental activists and civil society organisations have been reported in Spain. Among recent prominent cases, the 1 million euro criminal defamation claim brought against environmental activist Manuel García by intensive livestock business *Coren*<sup>61</sup> and the lawsuit filed against Greenpeace Spain inhouse lawyer Lorena Ruiz-Huerta.<sup>62</sup>

The anti-eviction movement in Spain also faces a similar situation. Protest actions at the headquarters of property investment funds or real-state agencies have resulted in lawsuits for coercion (*coacción*) and disobedience to

58 See for example: Público. Denuncian que la Policía usó “fuego real” contra los ciudadanos en las protestas de Linares. (15 February 2021). Available here: <https://www.publico.es/sociedad/denuncian-policia-fuego-real-ciudadanos.html>

59 See for example: El País. Detenidos dos policías nacionales en Linares por la agresión a una niña de 14 años y a su padre. (13 February 2021). Available here: <https://elpais.com/espana/2021-02-13/detenidos-dos-policias-nacionales-en-linares-por-la-agresion-a-una-nina-de-14-anos-y-su-padre.html>

60 See for example: New York Times. ‘You Are Not Alone’: Spanish Rapper’s Arrest Sparks Free Speech Protests. (18 February 2021). Available here: <https://www.nytimes.com/2021/02/18/world/europe/pablo-hassel-protest-spain.html>

61 See: Greenpeace Spain. Coren contra Manuel - Un caso de SLAPP en la campaña gallega. (2020). Available here: <https://es.greenpeace.org/es/sala-de-prensa/informes/coren-contra-manuel/>

62 See: European Democratic Lawyers. Criminalization of jurists for their public denunciation of torture and mistreatment (2020). Available here: <http://www.aeud.org/2020/02/criminalization-of-jurists-for-their-public-condemnation-of-torture-and-mistreatment/>

authority (*desobediencia a la autoridad*). A recent prominent case is that of Jaime Palomera, spokesperson of the *Sindicat de Llogateres de Catalunya*, and two more activists, who are accused of coercion by property owner<sup>63</sup>.

One of the last cases recorded has been the lawsuit against the historian Fernando Mikelarena in an attempt to stop the investigations on White Terror (franquist repression)<sup>64</sup>.

## Surveillance

Catalan independence campaigners are suspected to have been targeted by government services using spyware, which is allegedly only sold to governments to monitor criminals and terrorists<sup>65</sup>.

It is believed that in the spring of 2019, a total of 1,400 users were targeted on WhatsApp by a surveillance software called “Pegasus”, sold by the Israeli NSO Group Technologies to government agencies. The messaging app suspects that over 100 individuals associated with the civil sector have been affected. WhatsApp has launched a lawsuit against NSO Group in the US, whose clients have included the governments of Saudi Arabia and Mexico. However, it was only discovered recently that the spyware was also used by a European state.

At least five members of the Catalan independence movement, including the speaker of the Catalan regional parliament, Roger Torrent, were targeted by what is a “possible case of domestic political espionage”<sup>66</sup>.

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63 See for example: elDiario.es. Una jueza imputa a dos inquilinos y al portavoz de su sindicato en Barcelona por coacciones a una propietaria. (2 December 2019). Available here: [https://www.eldiario.es/catalunya/sociedad/sindicato-inquilinos-barcelona-coacciones-propietaria\\_1\\_1208467.html](https://www.eldiario.es/catalunya/sociedad/sindicato-inquilinos-barcelona-coacciones-propietaria_1_1208467.html)

64 See for example: elDiario.es. La guerra contra la memoria: demandas contra investigadores e impunidad para crímenes franquistas. (20 February 2021). Available here: [https://www.eldiario.es/sociedad/guerra-memoria-demandas-investigadores-e-impunidad-crimenes-franquistas\\_1\\_7233036.html](https://www.eldiario.es/sociedad/guerra-memoria-demandas-investigadores-e-impunidad-crimenes-franquistas_1_7233036.html)

65 The Guardian. Phone of top Catalan politician ‘targeted by government-grade spyware’. (13 July 2020). Available here: <https://www.theguardian.com/world/2020/jul/13/phone-of-top-catalan-politician-targeted-by-government-grade-spyware>

66 See for example: El País. El ataque a los móviles de Torrent y Maragall con un programa espía israelí desata una tormenta política. (15 July 2020) Available here: <https://elpais.com/espana/2020-07-14/el-ataque-a-los-moviles-de-torrent-y-maragall-con-un-programa-espia-israeli-desata-una-tormenta-politica.html>

The Spanish government has denied all allegations of spying on its citizens<sup>67</sup>. Nevertheless, there have been calls for a parliamentary investigation, as well as two of the alleged victims announcing that they will be taking legal action against Félix Sanz Roldán, the Director of Spain's National Intelligence Centre (CNI) at the time of the assumed hackings<sup>68</sup>.

### **Other systemic issues affecting rule of law and human rights protection**

#### **Widespread human rights violations and persistent protection failures**

In a context of strong police presence due to the Covid-19 crisis, there have been numerous complaints about the use of racial profiling. Data collected by civil society in the report

*“Covid-19: Racism and xenophobia during the state of alarm in Spain”* shows numerous examples of police racially profiling people who were on their way to buy basic goods<sup>69</sup>. This control provoked fear amongst those affected, leading them to self-isolate further, and preventing them from going out to provide themselves with basic goods. About 70% of the respondents of the online survey carried out by *RIS* and the *Implementation Team of the IDPAD* in Spain reported racial profiling before being subject of police brutality<sup>70</sup>.

In November 2020, the United Nations Working Group of Experts on People of African Descent released the report *“Covid-19, systemic racism and global protests”*. The document includes the findings of UN experts on police violence during the pandemic and reveals, among other things, the lack of official data disaggregated by race and ethnicity, and the “inhumane” detention conditions migrants and asylum seekers are subjected to. The Group concludes that “neglecting race

67 See for example: The Guardian. Spanish government denies spying on Catalan leaders. (19 July 2020). Available here: <https://www.theguardian.com/world/2020/jul/19/spanish-government-denies-spying-on-catalan-leaders>

68 See for example: The Guardian. Two Catalan politicians to take legal action over targeting by spyware. (16 July 2020). Available here: <https://www.theguardian.com/world/2020/jul/16/two-catalan-politicians-to-take-legal-action-targeting-spyware>

69 Equipo de Implementación del Decenio Afrodescendiente en España and Rights International Spain. Crisis sanitaria COVID-19: Racismo y Xenofobia durante el Estado de Alarma en España. (2020). Available here <http://www.rightsinternationalspain.org/uploads/publicacion/d0b782ac0452e9052241b17a646df19ad4edf12c.pdf>

70 Idem.

has led to critical failures” in the response to Covid-19.<sup>71</sup> Spain is among the most cited countries by the United Nations for violence against people of African descent, behind only the United States.

The Council for the Elimination of Ethnic and Racial Discrimination under the Ministry of Equality launched a campaign in December 2020 to raise awareness and denounce ethnic profiling. The poster shared through social media featured a young person of African descent saying, “I have been identified due to the color of my skin or other physical traits without a reasonable suspicion”. We advise you on how to report this, providing a free number. Several police unions published a counter poster saying “Outrage against the national police” stamped over the picture of the youth and the text of the tweet reading:

that the Ministry of Equality headed by Irene Montero wants to discredit the work of the police with posters that suggest that the law enforcement forces use stop and search powers in a discriminatory manner is outrageous. The trade unions will ensure the honor of the police force.<sup>72</sup>

In a public statement, a number of police unions requested the withdrawal of the campaign as they considered it incited to hatred towards the police force.<sup>73</sup>

Beyond profiling and racial policing, during January and February 2021 three cases of police brutality during protest have been reported in national media outlets. The first case was regarding an aggression of two off-duty police officers against a man and his daughter (14-year-old minor) in Linares<sup>74</sup>.

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71 See: UN Human Rights Council. Covid-19, systemic racism and global protests. (2020). Available here: <https://undocs.org/en/A/HRC/45/44>

72 See tweets here: [https://twitter.com/Sup\\_Policia/status/1340643444390309891](https://twitter.com/Sup_Policia/status/1340643444390309891) ; <https://twitter.com/JupolNacional/status/1340623763851898882?s=20>

73 See for example: Europa Press. JUPOL y JUCIL piden la dimisión de Irene Montero y retirar la campaña sobre identificaciones por criterios raciales. (22 diciembre 2020). Available here: <https://www.europapress.es/nacional/noticia-jupol-jucil-piden-dimision-irene-montero-retirar-campana-identificaciones-criterios-raciales-20201222121158.html>

74 See for example: elDiario.es. Un roce en la puerta del bar: la chispa que desató la brutal agresión de dos policías en un polvorín llamado Linares. (14 February 2021). Available here: [https://www.eldiario.es/andalucia/roce-puerta-bar-chispa-desato-brutal-paliza-policias-polvorin-llamado-linares\\_1\\_7219111.html](https://www.eldiario.es/andalucia/roce-puerta-bar-chispa-desato-brutal-paliza-policias-polvorin-llamado-linares_1_7219111.html)

This incident led to important protests that were repressed by police forces with real fire<sup>75</sup>. The last major incident registered was the use of foam balls in Barcelona to repress the protests against the imprisonment of Pablo Hasel who caused the loss of an eye of one of the protesters<sup>76</sup>.

The widespread use of sanctions and fines by police forces in Spain is also a persistent and periodically reported issue. In 2020, during the first 75 days of lockdown, the Interior Ministry issued nearly 1.1 million sanctions, up 42% from the amount handed down between 2015 and 2018<sup>77</sup>. Out of the nearly 1.1 million proposed sanctions, over half were made by the National Police and the *Guardia Civil*, followed by regional and local law enforcement. Andalusia and Madrid account for the highest number. In Catalonia and the Basque Country, the majority of sanctions were issued by the regional police forces, the *Mossos d'Esquadra* and the *Ertzaintza* respectively<sup>78</sup>.

States have a positive obligation under Article 3 of the Convention to put safeguards in place to protect people from torture and ill-treatment. The Court has said that this “requires by implication” that there should be an effective investigation, capable of leading to the identification and, if appropriate, the punishment of those responsible. In Spain, there is a systematic failure to carry out thorough, adequate and efficient investigations into allegations of torture and ill-treatment. The latest ECHR judgment on this matter was issued in January 2021 in the case of Gonzalez Etayo: violation of article 3 in its procedural limb, due to the lack of an effective and exhaustive investigation of the plaintiff’s allegations of ill-treatment during incommunicado detention.

If States are required to carry out official effective investigations, this implies a correlative obligation to ensure law enforcement officials are clearly and visibly identified in all circumstances when performing their duties. Obstacles to effective investigations, such as

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75 See for example: Público. Denuncian que la Policía usó “fuego real” contra los ciudadanos en las protestas de Linares. (18 February 2021). Available here: <https://www.publico.es/sociedad/denuncian-policia-fuego-real-ciudadanos.html>

76 See for example: El Salto. Pierde el ojo la mujer que recibió el impacto de una bala de foam durante la protesta por Hasel en Barcelona. (17 February 2021). Available here: <https://www.elsaltodiario.com/cataluna/pierde-ojo-mujer-bala-foam-durante-protesta-pablo-hasel-barcelona>

77 See for example: El País. Spain resorted to ‘gag law’ more than ever before during coronavirus lockdown. (30 June 2020). Available here: <https://english.elpais.com/politics/2020-06-30/spain-resorted-to-gag-law-more-than-ever-during-coronavirus-lockdown.html?rel=lom>

78 Idem.

inadequate or deficient identification systems of members of law enforcement agencies, “have the same practical effect as formal legal obstacles”. They “create a situation of impunity” and are therefore impermissible under Article 3. The identification of law enforcement agents is an essential safeguard to adequately prevent torture and ill-treatment and a culture of impunity. Hence, it is a fundamental element of the procedural protection afforded by Article 3. This requirement is linked to the principles of transparency and accountability of police forces before the law for their actions or omissions.

In Spain, impossibility to identify police officers continues to be a problem<sup>79</sup>.

### ***Follow-up to recommendations of international and regional monitoring bodies***

In 2018, the UN’s Working Group of Experts on People of African Descent issued a public statement following its official visit to Spain<sup>80</sup> and the European Commission against Racism and Intolerance (ECRI) published its fifth periodic report on Spain<sup>81</sup>. Both reports express concern over the use of racial profiling by police forces (i.e. identity checks in a discriminatory and arbitrary manner, based on people’s skin color or ethnic origin instead of on objective criteria related to a reasonable suspicion of involvement in a crime). In 2019, the Special Rapporteur on Minority Issues issued a public statement following his official visit to Spain and also voiced concern regarding the lack of progress in combating racial discrimination in Spain<sup>82</sup>.

79 See for example: Público. La ONU insta a España a informar sobre la “adecuada identificación” de la Policía. (14 February 2020). Available here: <https://www.publico.es/politica/represion-policial-onu-insta-espana-informar-adecuada-identificacion-policia.html>

80 See: Statement to the media by the United Nations Working Group of Experts on People of African Descent, on the conclusion of its official visit to Spain, 19-26 February 2018. (2018). Available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22705&LangID=E>

81 See: ECRI. Spain: Council of Europe’s anti-racism commission regrets little progress in implementing priority recommendations. (2021). Available here: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/-/spain-council-of-europe-s-anti-racism-commission-regrets-little-progress-in-implementing-priority-recommendatio-1>

82 See: Statement of the United Nations Special Rapporteur on minority issues, Fernand de Varennes, on the conclusion of his official visit to Spain, 14-25 January 2019. (2019). Available here: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=24112&LangID=S>

In mid-April 2020, the United Nations published the results of the third Universal Periodic Review (UPR) of Spain before the January 2020 Human Rights Council. A total of 275 recommendations were issued. The final report of the Working Group on the Universal Periodic Review included at least 82 recommendations on the need to adopt measures to combat racism, racial discrimination, xenophobia and related intolerance, with special attention to minority groups (migrants, refugees, Roma and people of African descent, among others); with a special attention on ending ethnic profiling<sup>83</sup>.

During his visit to Spain in February 2020, the UN Special Rapporteur on Extreme Poverty and Human Rights concluded that Spain is failing to address inequality. He described a “deep, widespread poverty and high unemployment, a housing crisis of stunning proportions, a completely inadequate social-protection system that leaves large numbers of people in poverty a segregated and increasingly anachronistic education system, a fiscal system that provides far more benefits to the wealthy than the poor, and an entrenched bureaucratic mentality in many parts of the

government that values formalistic procedures over the well-being of people.”

### ***Implementation of decisions by the Court of Justice of the EU and the European Court of Human Rights***

During 2020 the European Court of Human Rights found Spain in breach of the Convention in nine occasions. The majority of cases concerned article 6 of the Convention (right to a fair trial)<sup>84</sup>. A recurring problem refers to the failure to ensure individuals are informed of foreclosure proceedings against them and thus are not given an opportunity to be heard in court despite the fact that they have not waived the right to a fair trial.

One case involved the disproportionate use of force by the police to dissolve a spontaneous protest, thus amounting to a violation of the right to freedom of assembly (art. 11 ECHR)

The Court of Justice of the European Union has also taken important decisions regarding

83 Report of the Working Group on the Universal Periodic Review to Spain (UN Doc. A/HRC/44/7). Available here: <https://undocs.org/en/A/HRC/44/7>

84 Six decisions referred to article 6 ECHR: Gil Sanjuan. (Case 48297/15). 26 May 2020. (art. 6.1 CEDH); Pardo Campoy y Lozano Rodríguez. (Case 53421/15, 53427/15). 14 January 2020. (art. 6.1 CEDH); Romero García (Case 31615/16). 8 de September 2018. (art. 6 CEDH); Gracia González. (Case 65 107/16). 6 October 2020. (art. 6.1 CEDH); Martínez Ahedo. (Cases 39434/17, 41066/17, 43600/17, 4752/18). 20 October 2020 (art. 6.1 CEDH); Karesvaara y Njie. (Case 60750/15). 15 December 2020 (art. 6.1 CEDH).

Spain in 2020, especially regarding unfair terms in mortgages<sup>85</sup>.

Regarding the implementation of decisions, the case of Arnaldo Otegi and others<sup>86</sup> before the ECtHR; the European court in its decision of 2018 concluded that the trial of Otegi and four other defendants did not comply with Article 6 ECHR standards. In order to implement the ECtHR judgement, the Supreme Court in July 2020 annulled the ruling<sup>87</sup> and then in December took the decision to repeat the trial<sup>88</sup>. Otegi and the other applicants had already served their sentence: between 6 and 6 and a half years of prison and a special disqualification, that Otegi was still serving until the Supreme Court decided to annul the ruling.

## **Impact of COVID-19**

### ***Emergency regime***

The first state of alarm<sup>89</sup> declared in Spain during the Covid-19 outbreak from March to June 2020 (through the Royal Decree (RD) 463/2020, of 14 March 2020) allowed for the limitation (not suspension) of certain fundamental rights: freedom of movement, temporary requisition of goods and properties as industries, workshops or venues with the exception of private residences, limit or ration first need goods or services, or make all necessary arrangements to guarantee market supply (during the state of alarm, Spain did not issue any declaration of derogation of rights)<sup>90</sup>.

85 Decisions of the European Court of Justice: Case Gómez del Moral Guasch/Bankia (C-125/18), 3 March 2020; Case XZ e Ibercaja Banco, S.A (C-452/18), 9 July 2020; Case Caixabank, SA y LG, PK/BBVA, SA (C-224/19 y C-259/19), 16 July 2020

86 Otegi Mondragon and Others (Cases 4184/15 and four others). 6 November 2018

87 See for example: Infolibre. El Supremo anula la sentencia a Otegi por pertenencia a organización terrorista en el 'caso Bateragune' (31 July 2020). Available here: [https://www.infolibre.es/noticias/politica/2020/07/31/el\\_supremo\\_anula\\_sentencia\\_otegi\\_por\\_pertenencia\\_organizacion\\_terrorista\\_caso\\_bateragune\\_109549\\_1012.html](https://www.infolibre.es/noticias/politica/2020/07/31/el_supremo_anula_sentencia_otegi_por_pertenencia_organizacion_terrorista_caso_bateragune_109549_1012.html)

88 See for example: elDiario.es. El Supremo ordena repetir el juicio a Otegi por intentar refundar Batasuna. (14 December 2020). Available here: [https://www.eldiario.es/politica/supremo-insta-audiencia-nacional-repetir-juicio-otegi-refundar-batasuna\\_1\\_6502766.html](https://www.eldiario.es/politica/supremo-insta-audiencia-nacional-repetir-juicio-otegi-refundar-batasuna_1_6502766.html)

89 The legal figure of the State of Alarm is regulated by article 11 of Organic Law 4/1981.

90 Some concerns were raised regarding the “necessity” and “proportionality” of the measure. See for example: Lopez Garrido. Un estado de excepción sería inconstitucional. elDiario.es (opinión). (11 April 2020). Available here: [https://www.eldiario.es/opinion/tribuna-abierta/excepcion-inconstitucional\\_129\\_2262738.html](https://www.eldiario.es/opinion/tribuna-abierta/excepcion-inconstitucional_129_2262738.html)

Furthermore, from the 31 March to 9 April, the confinement became stricter and all economic non-essential activity was suspended. Confinement measures were particularly restrictive in Spain.

During what the Government called “de-escalation phases” (0 to 3), that took place from the beginning of May until late June 2020 (when the state of alarm was put to an end), restrictions were softened<sup>91</sup> although there continued to be restrictions of freedoms of assembly and movement. Sanitary ministerial decrees were issued to detail the measures adopted:

- Movement was authorized from phase 0 although restricted to time slots divided by age to minimize contact (phase 0 and 1).
- Implementation of rules on physical distancing (1,5-2 meters) and mandatory use of masks<sup>92</sup>

- Restrictions on meetings (phase 0: max. 10 persons, phase 1: max 15 persons, phase 2: max 20 persons)
- Travel between territories was banned until phase 3.
- Borders remained closed to tourists (until the end of the state of alarm).

Some experts have argued that this was not a suitable legal instrument to achieve the aim as they regulated aspects that should be determined by norms of higher hierarchical level<sup>93</sup>.

A second nationwide state of alarm was declared on October 25 and will remain in place until May 9, 2021<sup>94</sup>. Its aim is to give Spain’s regional governments the legal framework they need to limit mobility – in particular nighttime socializing – in a bid to combat the second –and subsequent– wave(s) of the coronavirus.

91 Measures for Phase: 0 SND/386/2020, of 3 May 2020 <https://www.boe.es/boe/dias/2020/05/03/pdfs/BOE-A-2020-4791.pdf>; Phase 1: SND/399/2020, of 9 May 2020: <https://www.boe.es/boe/dias/2020/05/09/pdfs/BOE-A-2020-4911.pdf>; Phase 2 SND/414/2020, of 16 May: <https://www.boe.es/buscar/pdf/2020/BOE-A-2020-5088-consolidado.pdf>; Phase 3: SND/458/2020, of 30 May 2020: <https://boe.es/buscar/act.php?id=BOE-A-2020-5469>

92 Orden SND/422/2020, of 19 May 2020: <https://boe.es/buscar/pdf/2020/BOE-A-2020-5142-consolidado.pdf>; RD-Ley 21/2020, of 9 June 2020: <https://www.boe.es/boe/dias/2020/06/10/pdfs/BOE-A-2020-5895.pdf>

93 See: El País. El Estado de Alarma: Un bosque de 209 normas excepcionales. (17 May 2020). Available here: <https://elpais.com/espana/2020-05-16/el-estado-de-alarma-un-bosque-de-209-normas-excepcionales.html>

94 Real Decreto 926/2020, of 25 October: 2020 <https://www.boe.es/buscar/act.php?id=BOE-A-2020-12898> ; Real Decreto 956/2020, of 3 November 2020: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-13494>

Within this legal framework the government is introducing an obligatory curfew for the entire country from 11pm to 6am, although regional governments have a margin of one hour to bring forward or anticipate the curfew times. Regions also have the possibility of restricting the entrance to and exit from their territories unless this is for essential reasons, such as going to work or to the doctor. This allows regions to close their borders if they have a neighboring territory that is particularly hard hit by the virus. The text also limits social meetings between citizens to six people for the entire country. The decree does not provide for the closure of Spain's borders, as was the case during the first state of alarm.

Governmental regulatory activity – from the State and regional governments – has spiked in such a way that some jurists are talking about a situation of legal liquidity, in which the legal order has been diluted in a series of technical legal prescriptions many times complex and inaccessible to the public<sup>95</sup>. Constitutional experts alert of the possible legal insecurity derived from open ended and vague wording as well as the risk of normative overlapping<sup>96</sup>. In fact, 337 regulations have been passed since the beginning of the Covid-19 crisis, including

executive orders (*Decretos-Ley*), orders, resolutions and executive agreements<sup>97</sup>.

### ***Impact on the justice system***

The above-mentioned report *Justice Under Lockdown in Europe. A survey on the impact of Covid-19 on defence rights in Europe* points to the following issues concerning the impact of the pandemic and of the measures taken to address it on the right to a fair trial in criminal proceedings in Spain:

- Lack of health and safety measures: Spanish respondents explained that many lawyers requested remote assistance due to the complete lack of protective measures in police stations, including masks and gloves. A Spanish lawyer noted that lawyers would provide assistance over the phone if their client wished to exercise their right to remain silent, but in other instances, they would go in-person to the police to attend the client and ensure effective legal assistance, despite the health risks involved.
- Disregard for confidentiality: A respondent expressed that when calls were facilitated by police officers these last remained present and could therefore overhear the

95 Jiménez Segado, C. Excepción normalizada en derecho penal y Covid19. *Jueces para la Democracia*. (December 2020). Pp. 79 -

96 See: <https://elpais.com/espana/2020-05-16/el-estado-de-alarma-un-bosque-de-209-normas-excepcionales.html>

97 BOE, Derecho Europeo, Estatal y Autonómico (Last update 11 February 2021), [https://www.boe.es/biblioteca\\_juridica/codigos/codigo.php?id=355](https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=355)

conversation between a suspect and their lawyer. Respondents in Spain noted that remote communication with detained clients was recorded and police agents were attending the call next to the detained person – one lawyer concluded that such interviews were therefore useless: “[Lawyer-client conversations in police stations] are not conducted in private. Both due to the fact that they are recorded and because the officer usually stands with the detainee with the loudspeaker on.”<sup>98</sup>

- Restriction on access to paper files: Respondents noted that, “court closures and limited access to police stations caused delays in gaining access to case files, where kept on paper – notably in (...) and Spain”.<sup>99</sup>

## Corruption

Several political leaders breached the vaccination protocols in Spain to get the Covid-19 vaccine before their turn. They made use of their privileged position to access the vaccines before other citizens in worse or similar health conditions<sup>100</sup>.

Spain has also witnessed an increase in irregular contracts during the pandemic crisis, especially handpicked adjudications of sanitary services<sup>101</sup>.

Access Info Europe, ePaństwo Foundation, Funky Citizens, K-Monitor and the Spanish organization Civio, under the EU-funded “*RECORD, Reducing Corruption Risks with Data project*”, in collaboration with the Open Contracting Partnership, stressed the benefits of transparency in emergency contexts. They

98 Ibid., p.8

99 Ibid., p.9

100 See for example: El Mundo. Transparencia Internacional advierte de que la vacunación de políticos incumpliendo los protocolos es corrupción. (28 January 2021). Available here: <https://www.elmundo.es/espana/2021/01/28/60129e9c21efa084328b45b0.html>

101 See for example: El País. La pandemia multiplica los contratos a dedo: 4.200 solo en Madrid. Available here: <https://elpais.com/espana/madrid/2021-02-02/la-pandemia-tumba-los-controles-4200-contratos-a-dedo-solo-en-madrid.html>; El Mundo. Los contratos por la Covid-19 cuestionan la gestión de Iñigo Urkullu en la campaña electoral. (26 May 2020). Available here: <https://www.elmundo.es/pais-vasco/2020/05/26/5ecc111521efa0db3a8b45cf.html>

issued a list of recommendations for Ensuring Transparency in Emergency Procurement<sup>102</sup>:

- The use of emergency procurement must be justified, recorded, and made public.
- Emergency procurement is the exception, not the rule, and should be judged on a case-by-case basis.
- Emergency procurement data should be centralised on national e-procurement portals.
- Full publication to maintain trust.
- Open Data on emergency procurement. E-procurement portals should be updated in the shortest possible time.
- Transparency to prevent price gouging.
- Open data to strengthen due diligence on suppliers and prevent fraud.
- Publicise sanctions for fraudulent activity and bid cartels.

- Cooperation with civil society, investigative journalists and whistleblowers.

### ***Freedom of assembly***

Several judicial resolutions on freedom of assembly regarding May 1st demonstrations showed different forms of interpreting the limitation of this right under the state of alarm.<sup>103</sup> While a “caravan-demonstration” took place in Zaragoza<sup>104</sup>, a similar demonstration was forbidden in Vigo<sup>105</sup>.

The matter was brought before the Constitutional Court (CC) who argued that the right to life is above freedom of assembly<sup>106</sup>. The court argued that although the state of alarm does not allow the complete suspension of any fundamental right it permits limitations

102 See: CIVIO. Ten Recommendations on Transparency in Covid-19 Emergency Procurement (2020). Available here: <https://civio.app.box.com/s/nzootungmqog929km5ouk1tl7hxjn1wy>

103 It is important to bear in mind that in Spain demonstrations only require a prior notice to the authorities, however this administrative requirement allows the competent authority to propose substantial modifications of the demonstration, such as its schedule or route, or even forbid it. The fact that authorities can impose fines on organizers of protests who have not complied with the previous notice requirement has somehow turned this administrative proceeding in a de facto authorisation proceeding in some cases.

104 The demonstration was authorised with severe restrictions: only 60 citizens, in covered vehicles, with only one passenger per car. For more information see: <https://www.publico.es/sociedad/1-mayo-manifestacion-coches-unica-protesta-calle-mayo.html>

105 See: <https://www.lavozdegalicia.es/noticia/vigo/vigo/2020/04/28/tribunal-superior-deniega-manifestacion-coches-primero-mayo-vigo/00031588088262488995956.htm>

106 See: [https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP\\_2020\\_047/2020-2056ATC.pdf](https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2020_047/2020-2056ATC.pdf)

and restrictions. The CC's case law determines the possibility of restricting the right of freedom of assembly to guarantee physical integrity (art. 15 Spanish Constitution) or the fundamental right to health (art. 43) when objective data demonstrating the possible pervasive effects of the right to assembly in each case is provided.

On the same issue, a statement of the Prosecutor General's Office (PGO)<sup>107</sup> considered that the Decree establishing the state of alarm in Spain or any of its subsequent extensions have restricted or limited the fundamental right to assembly embodied in article 21 of the Spanish Constitution. Thus, the PGO argues that the state of alarm does not constitute in itself a sufficient legal justification to prohibit or modify an assembly or demonstration. However, the PGO clarifies that this does not mean that the current sanitary situation, that

precisely prompted the declaration of the state of alarm, can be ignored.

Overall, a lack of uniformity regarding the jurisdictional position on the possible limitations to freedom of assembly was evident during the lockdown under the first state of alarm<sup>108</sup>.

In July 2020, the Catalan government granted the "Grade 3" prison regime to several jailed Catalonia's pro-independence leaders<sup>109</sup>. It is a less strict regime which allows prisoners to leave prison for several hours *per* day and spend weekends at home. However, such a decision was revoked by the Spanish Supreme Court in December 2020<sup>110</sup>. On 14 January 2021, the Catalan prisons of Lledoners, Puig de les Basses and Wad-Ras, put forward a proposal to grant back the "Grade 3" prison regime to the jailed pro-independence leaders<sup>111</sup>. However,

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107 See: <https://www.europapress.es/nacional/noticia-fiscalia-dice-alarma-no-basta-prohibir-manifestaciones-pandemia-insta-ponderar-cada-caso-20200521115600.html>

108 Greenpeace and Civil Liberties Union for Europe. Locking down critical voices. (2020). Available here: <http://www.rightsinternationalspain.org/uploads/publicacion/648dc0722c17b64486dcada16b3570eed60eae62.pdf>

109 See for example: ElNacional.cat. Open prison regime approved for the Catalan pro-independence prisoners. (2 July 2020) Available here: [https://www.elnacional.cat/en/politics/catalan-political-prisoners-open-prison-regime\\_519318\\_102.html](https://www.elnacional.cat/en/politics/catalan-political-prisoners-open-prison-regime_519318_102.html)

110 See for example: El País. Supreme Court revokes open prison regime granted to jailed Catalan separatist leaders. (4 December 2020). Available here: [https://english.elpais.com/spanish\\_news/2020-12-04/supreme-court-revokes-open-prison-regime-granted-to-jailed-catalan-separatist-leaders.html](https://english.elpais.com/spanish_news/2020-12-04/supreme-court-revokes-open-prison-regime-granted-to-jailed-catalan-separatist-leaders.html)

111 See for example: ABC. Las cárceles catalanas desafían al Supremo y vuelven a proponer la semilibertad de los presos. (14 January 2021). <https://www.abc.es/espana/catalunya/politica/abci-carceles-catalanas-pro->

for this proposal to be effective, the Catalan Government's Justice Department must ratify it within a period of two months.

On 12 January 2021, 4.000 people protested in La Palma (the largest city of the Balearic Islands) against the Covid-19 restrictions<sup>112</sup>. The large majority of the demonstrators were workers from the hospitality and food service sectors, who have been strongly impacted by the measures adopted to curb the pandemic. Although there have been no reports of detentions or police brutality against the protesters, the assembly's organizers will be fined for breaching the rules, since the demonstration had been prohibited by the Government of the Balearic Islands due to public health concerns<sup>113</sup>.

### ***Inequality, discrimination and impact on vulnerable groups***

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Manifestations of racial discrimination and xenophobia by police forces were reported by national human rights organisations. RIS and the Implementation Team of the IDPAD in Spain compiled in a report from cases of ethnic profiling, harassment or threats of deportation, to police brutality against racialised groups, homeless and people with mental disorders<sup>114</sup>.

The economic impact of the pandemic has also increased inequality among minority groups.

Restrictions were imposed to aliens interned in detention centers for migrants (*centros de internamiento de extranjeros*). Different organisations reported unhealthy conditions of the centers and situations of overcrowding, lack of access to basic needs, proper phyco-social

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[ponen-otra-semilibertad-presos-pese-veto-supremo-202101141145\\_noticia.html](https://www.abc.es/sociedad/abci-millar-restauradores-piden-dimision-armengol-calles-palma-protesta-no-autorizada-202101121501_noticia.html)

112 See for example: El Mundo. Revolución de los bares contra el Govern de Francina Armengol al grito de “la presidenta es una borracha” (12 January 2021). Available here: <https://www.elmundo.es/baleares/2021/01/12/5ffd897bfc6c836f2f8b4617.html>

113 See for example: ABC. Unas 4.000 personas piden la dimisión de Armengol por las calles de Palma en una protesta no autorizada. (13 January 2021). Available here: [https://www.abc.es/sociedad/abci-millar-restauradores-piden-dimision-armengol-calles-palma-protesta-no-autorizada-202101121501\\_noticia.html](https://www.abc.es/sociedad/abci-millar-restauradores-piden-dimision-armengol-calles-palma-protesta-no-autorizada-202101121501_noticia.html)

114 Equipo de Implementación del Decenio Afrodescendiente en España and Rights International Spain. (2020). Crisis sanitaria COVID-19: Racismo y Xenofobia durante el Estado de Alarma en España, p. 26, available online: <http://www.rightsinternationalspain.org/uploads/publicacion/d0b782ac0452e9052241b17a646df19ad4ed-f12c.pdf>

assistance, legal advice or access to an interpreter.<sup>115</sup>

The impact in access to the economic and social rights of migrants in an irregular administrative situation has become evident with the closure of the administrations that register their stay in the districts where they reside during the lockdown period. The closure of town halls prevented undocumented migrants from registering in the municipal residency census and, therefore, lacking access to the public health system except for emergencies. They also could not access the exceptional social aids to mitigate the effects of the confinement since they were not registered or did not have a bank account. Some autonomous communities like the Balearic Islands and the Canary Islands extended exceptionally the access to a social subsidy consisting of minimum income (*Renta*

*Social Garantizada*) to persons in an irregular administrative situation.

Roma population whose first occupation is at flea or street markets<sup>116</sup> has seen their incomes drastically reduced due to the strict measures applied during the first state of alarm. This only hardens the hardship endured by this minority group whose poverty index rises to 91.9%, according to the AROPE indicator<sup>117</sup>. 90% of participants in a study carried out by the Universidad de Alicante claimed that none of the people living in their household were able to adapt their work activity to telework format<sup>118</sup>.

During the lockdown, the *Asociación Pro Derechos Humanos de Andalucía* (APDHA) underlined the impossibility of the groups that reside in slum dwellings and makeshift camps- where women and children also live- to

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115 Equipo de Implementación del Decenio Afrodescendiente en España and Rights International Spain. (2020). Crisis sanitaria COVID-19: Racismo y Xenofobia durante el Estado de Alarma en España, p. 26, available online: <http://www.rightsinternationalspain.org/uploads/publicacion/d0b782ac0452e9052241b17a646df19ad4ed-f12c.pdf>

116 A comparative study by the Fundación del Secretariado Gitano concluded that one in three Roma people work in street markets. See: Fundación Secretariado Gitano (2016) Estudio-mapa sobre vivienda y población gitana - 2015, Madrid: Ministry of Health, Social Services and Equality, Available online, [http://www.mscbs.gob.es/ssi/familiasInfancia/PoblacionGitana/docs/INFORMECompleto\\_STUDIO-MAPA-VIVIE-Y\\_P\\_G.pdf](http://www.mscbs.gob.es/ssi/familiasInfancia/PoblacionGitana/docs/INFORMECompleto_STUDIO-MAPA-VIVIE-Y_P_G.pdf)

117 compared with 29.3% of the general population. See: <https://ctxt.es/es/20200401/Politica/31848/gitanos-pobreza-confinamiento-coronavirus-meritxell-rigol.htm>;

118 Universidad de Alicante (2020). Encuesta de Impacto COVID-19 Población Gitana: [https://www.mscbs.gob.es/profesionales/saludPublica/prevPromocion/promocion/desigualdadSalud/docs/COVID-19\\_Impacto\\_PoblacionGitana.pdf](https://www.mscbs.gob.es/profesionales/saludPublica/prevPromocion/promocion/desigualdadSalud/docs/COVID-19_Impacto_PoblacionGitana.pdf)

comply with the sanitary measures imposed by the Health Ministry. These measures include the reinforcement of sanitation and/or maintenance of social distancing (since they cannot access hygienic or cleaning products), waste collection, adequate housing to quarantine themselves in the case of contagion and getting medical assistance<sup>119</sup>. Without control and oversight measures for the compliance of labour rights, these people work in inhuman conditions and without protection measures to prevent infections. *Caritas* Spain also expressed concern over the government's urgent measures in the field of agricultural employment<sup>120</sup>, as they considered them insufficient and not responding to the needs or social reality of immigrant agricultural seasonal workers who live in settlements<sup>121</sup>.

The crisis prompted an increase in the demand for shelters that are already overcrowded or reducing their capacities to apply distance

rules. The Ombudsperson reported numerous complaints about insufficient safe spaces and scarcity of means of protection for homeless people<sup>122</sup>.

The measures taken to address the pandemic particularly impacted on certain groups.

With regard to strict confinement measures in Spain, the Spanish Ombudsperson expressed concern about the physical and mental health of children who could not leave their homes. It recommended to allow children to leave the house in accordance with physical distancing rules<sup>123</sup>. Following this recommendation, the government amended legislation to permit children under 14 years to go outside from 26 April, after 43 days of confinement.

The Active Domestic Service (*Servicio Doméstico Activo* or SEDOAC) reported the lack of specific actions to support and protect

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119 See: APDHA. Press Release. (17 April 2020). Available here: <https://www.apdha.org/apdha-huelva-construccion-viviendas-ayudas-junta-acabar-asantamientos/>

120 Royal Decree 13/202

121 FRA. (2020). Coronavirus pandemic in the EU - fundamental rights implications: with a focus on contact-tracing apps. Available here: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-coronavirus-pandemic-eu-bulletin-may\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin-may_en.pdf)

122 See: Defensor del Pueblo. Press Release. (3 April 2020). Available here: <https://www.defensordelpueblo.es/noticias/mas-millar-quejas-covid-19/>

123 Defensor del Pueblo (17 Abril 2020) El Defensor Plantea la posibilidad de que niños y niñas puedan salir a la calle de manera limitada y tomando las debidas precauciones; <https://www.defensordelpueblo.es/noticias/defensor-crisis-covid/>

women domestic and care workers, who in their majority, work in the informal economy and could not provide the evidence required by police controls to demonstrate the need to travel to their workplace during the state of alarm. Without a contract or a working permit, nearly 30% of these women are unable to prove the need to go to and from the workplace, thus exposing themselves to a potential fine<sup>124</sup>.

A survey carried out by Malen Etxea (an organization based in Basque Country) to map the situation of women domestic workers found that out of the total women who responded, 56.4% were in an irregular administrative situation. Regarding their employment status, after the declaration of the state of alarm, 46.9% were unemployed. Those who continued to work when the state of alarm was declared (35.6%) were requested by their employers to stay at home without payment, 21.3% were fired, 18.1% were not allowed to take breaks from work, 16.3% suffered a reduction in their working hours and 8% remained at home with their salary intact<sup>125</sup>.

In addition to the measures adopted at the end of April 2020, the government approved the Royal Decree 11/2020 (*Real Decreto-ley 11/2020*), of 31st of March, to adopt additional urgent social and economic measures (*Ingreso Mínimo Vital*)<sup>126</sup>. In Article 30, it establishes an exceptional unemployment benefit for all individuals included in the Special System for Domestic Workers of the General Regime of Social Security. In that sense, various organisations claim that the benefits ignore undocumented migrant women (approximately 30% of the collective) and their technological barriers to submit online applications. Furthermore, the collaboration of the employer is essential to access the benefits. However, some employers do not facilitate the required declaration of total or partial interruption of the service nor the dismissal letter.

The Government Delegation for Gender Violence, a unit under the Secretariat of State for Equality, approved on the 17th of March 2020 a Contingency Plan to combat gender violence during the lockdown. The Plan was later extended to women victims of trafficking for sexual exploitation and other women

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124 See for example: El País. ¿Quién cuida a las que cuidan? (20 March 2020). Available here: [https://elpais.com/elpais/2020/03/19/3500\\_millones/1584610961\\_994547.html](https://elpais.com/elpais/2020/03/19/3500_millones/1584610961_994547.html); El País. Un tercio del colectivo de las trabajadoras del hogar no podrá recibir el subsidio del Gobierno. (10 April 2020). Available here: <https://elpais.com/espana/madrid/2020-03-30/un-tercio-del-colectivo-de-las-trabajadoras-del-hogar-no-podra-recibir-el-subsidio-del-gobierno.html>

125 See: Malen Etxea. Press Release. Available here: <https://malenetxea.org/la-pandemia-estaba-antes-del-covid-19>

126 Real Decreto-ley 11/2020, de 31 de marzo, por el que se adoptan medidas urgentes complementarias en el ámbito social y económico para hacer frente al COVID-19.

in the context of sex work. According to the Plan, accredited NGOs are responsible for identifying and selecting potential victims of trafficking, to receive comprehensive support that includes temporary housing and/or a basic subsidy for persons in a situation of severe poverty (*Ingreso Mínimo Vital*).

The measures of the Plan included the strengthening of the dissemination of the 24-hour telephone lines and the email addresses of specialized entities, National Police and Guardia Civil. However, collectives of sex workers are warned about the fear of many victims or potential victims of trafficking to contact public institutions. In the case, for example, of women of African descent because they often remove the children out of the custody of mothers<sup>127</sup>.

Human rights organizations have pointed out to the fact that the economic and social

measures adopted by the government to face the Covid-19 pandemic have lacked a gender and racial perspective and thus have discriminated against already vulnerable groups.<sup>128</sup>

### ***Control and surveillance***

The contact-tracing *Radar Covid* app developed in Spain raised concerns about the possibility to geolocate the user and collect personal data such as mobile phone numbers<sup>129</sup>, although the National Data Protection Authority underlined that the Covid-19 crisis should not lead to the suspension of data protection rights. There have been a number of complaints involving the *Radar Covid* app and its compatibility with EU data protection laws; in particular, the lack of data protection impact assessment carried out and published prior to the launch of the app.<sup>130</sup>

127 See: Report of the Working Group of Experts on People of African Descent on its mission to Spain (2018), UN Doc A/HRC/39/69/Add.2, para.48, <https://undocs.org/en/A/HRC/39/69/Add.2>

128 See: Equipo de Implementación del Decenio Afrodescendiente en España and Rights International Spain. (2020). Crisis sanitaria COVID-19: Racismo y Xenofobia durante el Estado de Alarma en España, p. 28. Available here: <http://www.rightsinternationalspain.org/uploads/publicacion/d0b782ac0452e9052241b17a646d-f19ad4edf12c.pdf>

129 Order SND/297/2020, of 27 March: <https://www.boe.es/boe/dias/2020/03/28/pdfs/BOE-A-2020-4162.pdf> ; See: FRA. (2020). Coronavirus pandemic in the EU - fundamental rights implications: with a focus on contact-tracing apps, pp. 52 y ss. Available online: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-coronavirus-pandemic-eu-bulletin-may\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin-may_en.pdf)

130 Reclamadatos association filed a complaint before the Spanish DPA (Agencia Española de Protección de Datos), see: <https://www.diariojuridico.com/denuncian-a-la-secretaria-general-de-administracion-digital-an>

## **Freedom of expression and of information**

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### *Restrictions on access to information*

Twenty-seven organizations united in the coalition *Pro Acceso* asked the central government to guarantee the right of access to information after the suspension of administrative deadlines due to the declaration of the state of alarm, including the mechanisms to request public information<sup>131</sup>. Some regional governments took the same position as the central government and paralyzed all the requests as, Andalucía, Canarias or Murcia. On the other hand, the regional governments of Castilla y León, Asturias, Castilla-La Mancha or La Rioja have continued to process all the request during the state of alarm. Madrid, Cataluña and Valencia have only processed and resolved the requests for information partially<sup>132</sup>.

### *Restrictions on media reporting*

Restrictions on media participation during government's press conferences were imposed during the lockdown (March-June 2020), consisting in the prohibition of physical presence of journalists during press conferences. The effects of these measures were not mitigated like in other countries where journalists were allowed to make their questions during live broadcast through videoconference systems or via WhatsApp. In Spain, questions were filtered by the State Secretary for Communication as journalists had to send their questions to a WhatsApp group with more than 220 participants and the State Secretary read the selected questions out loud at the end of the press conference. This aspect was much criticized by media professionals who argued that the government's system could conflict with freedom of expression.

These practices were amended by the government on 6th April 2020, allowing journalists

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[te-la-agencia-espanola-de-proteccion-de-datos-por-la-aplicacion-radar-covid/](https://www.liberties.eu/en/news/liberties-campaign-foi-request-covid19-tracking-apps/19396). Rights International Spain has sent freedom of information requests to the DPA as well as the Ministry of Digital Affairs involving the data protection impact assessment, see <https://www.liberties.eu/en/news/liberties-campaign-foi-request-covid19-tracking-apps/19396>

131 See: CIVIO. Desde la Coalición Pro Acceso pedimos al Gobierno que garantice el derecho de acceso a la información durante la crisis del Covid-19. (27 April 2020). Available here: <https://civio.es/novedades/2020/04/27/desde-la-coalicion-pro-acceso-pedimos-al-gobierno-que-garantice-el-derecho-de-acceso-a-la-informacion-durante-la-tesis-del-covid-19/>

132 See: CIVIO. ¿Qué comunidades responden las preguntas de los ciudadanos pese al estado de alarma y cuáles no? (2020). Available here: <https://civio.es/tu-derecho-a-saber/2020/05/07/que-comunidades-responden-las-preguntas-de-los-ciudadanos-pese-al-estado-de-alarma-y-cuales-no/>

to question Spanish government officials directly and without having to go through intermediaries<sup>133</sup>. The new system proposed consisted in a videoconference format with self-management of turns among participating journalists. It allowed the presence of media who traditionally covers governmental press conferences (79 media outlets according to the Secretary of State of Communications).

Cameramen and photojournalists were denied access to hospitals, morgues and retirement homes. They claimed this was a paternalistic attempt to control information from the government and other regional administrations<sup>134</sup>. In fact, during the first months of

the pandemic the lack of graphic information generated doubts among the Spanish population on the severity of the situation affecting on how to behave socially and prompted the spread of fake news<sup>135</sup>.

In the cases where they were allowed access as the field hospital in *Ifema*, journalists claimed there was too much control as for example guideline of the spots and angles from where to shoot photos<sup>136</sup>.

The lack of clear numbers of victims from regional and governmental health authorities has also been reported by journalists as a

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133 See: Coronavirus: Spanish government yields to the pressure of journalists and agrees to live press conferences <https://rsf.org/en/news/coronavirus-spanish-government-yields-pressure-journalists-and-agrees-live-press-conferences-0>

134 See for example: Infolibre. RSF denuncia que durante la pandemia los fotoperiodistas “tenían más dificultades para hacer fotos en España que en zonas de conflictos”. (14 December 2020). Available here: [https://www.infolibre.es/noticias/politica/2020/12/14/el\\_presidente\\_rsf\\_denuncia\\_que\\_espana\\_no\\_hay\\_cifras\\_oficiales\\_fidedignas\\_muertes\\_causadas\\_por\\_covid\\_19\\_114455\\_1012.html](https://www.infolibre.es/noticias/politica/2020/12/14/el_presidente_rsf_denuncia_que_espana_no_hay_cifras_oficiales_fidedignas_muertes_causadas_por_covid_19_114455_1012.html)

135 See for example: Maldita. Este vídeo con bolsas negras de cadáveres es de Guayaquil (Ecuador) no de Nueva York o Madrid. (9 April 2020). Available here: <https://maldita.es/malditobulo/20200409/video-cadaveres-guayaquil-hospital-ecuador-madrid-nueva-york/>; Maldita. Por qué no debes fiarte de los vídeos que muestran zonas de hospitales vacíos y afirman que la COVID-19 es mentira. (1 February 2021). Available here: <https://maldita.es/malditobulo/20210201/videos-hospitales-vacios-coronavirus/>

136 See for example: Vozpopuli. España pone un veto a la tragedia y restringe el acceso de los fotoperiodistas a morgues y hospitales (4 April 2020). Available here: [https://www.vozpopuli.com/espana/Espana-restringe-fotoperiodistas-hospitales-morgues-coronavirus\\_0\\_1342666982.html](https://www.vozpopuli.com/espana/Espana-restringe-fotoperiodistas-hospitales-morgues-coronavirus_0_1342666982.html)

serious problem of lack of transparency from the authorities<sup>137</sup>.

### *Hate speech, disinformation and freedom of expression*

942 fake news have been recorded by *Maldita.es* (a web based on fact-checking to expose fake news) regarding Covid-19: fake methods to prevent infection, wrong figures, fake videos and images, misinformation on the vaccines, etc.<sup>138</sup>

Racist fake news and hate speech towards persons of Asian origin have been reported in Spain since the start of the epidemic. Also, numerous anti-Roma hate messages have been disseminated through social media and WhatsApp during the state of alarm. Fake news and campaigns asking citizens, among other things, not to go to the markets where Roma families do their itinerant trade, started

before the state of alarm but were maintained several days after the adoption of the exceptional measures.

The Platform in defense of freedom of expression (PDLI) alerted in April of the risks of encouraging practices as the intense monitoring of social networks and the internet by the police (*Guardia Civil*) in order to identify fake news and hoaxes with the potential to generate social stress and “disaffection against government institutions”<sup>139</sup>.

In fact, this has resulted in a disproportionate use of force by the police. An example is the case of a man who was arrested after he posted a joke on twitter threatening to travel to Torrevieja (city in the coast) to spread the virus; or the case of another man who was also arrested after posting a message on social media claiming he was infected and was strolling through the beach in Gandia (another

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137 See for example: Newtral. Ministerio de Sanidad, MoMo, INE... los distintos datos sobre fallecimientos por COVID-19: Preguntas y respuestas. (6 June 2020). Available here: <https://www.newtral.es/datos-sanidad-ine-momo-coronavirus/20200606/>

138 See for example: Maldita.es. La COVID-19 y sus bulos: 957 mentiras, alertas falsas y desinformaciones sobre el coronavirus. (24 February 2021). Available here: <https://maldita.es/malditobulo/20210205/coronavirus-bulos-pandemia-prevenir-virus-covid-19/>

139 See for example: PDLI. La PDLI denuncia que la vigilancia selectiva de Internet para detectar “bulos” que puedan provocar “desafección a instituciones del Gobierno” vulnera la libertad de expresión. (21 April 2020). Available here: <http://libertadinformacion.cc/la-pdli-denuncia-que-la-vigilancia-selectiva-de-internet-para-detectar-bulos-que-puedan-provocar-desafeccion-a-instituciones-del-gobierno-vulnera-la-libertad-de-exp/>

coast/touristic destination)<sup>140</sup>. Both men were arrested under the premise of a possible public offence disorder and were later on released free of charges.

Social media tracking by police forces is not new in Spain. In fact, human rights bodies have repeatedly alerted on the pervasive effects of these type of practices, resulting in a criminalization of freedom of expression (through offences against religion, glorification/incitement of terrorism, insults to the crown or hate crimes) and the imposition on citizens of self-censorship attitudes regarding their use of social media<sup>141</sup>.

The PDLI also alerted in April of the risks of including in the Social Barometer (CIS) a question on the prohibition of fake news as it was seen as a strategy from the government to take advantage of the current social climate of fear to generate opinion in the population prone to regulations against fake news that in turn could reduce freedom of expression<sup>142</sup>.

Some days after the data from the barometer was released, the Attorney General announced that they were considering prosecuting fake news as they could incur in at least different criminal offences<sup>143</sup>. Eventually, the Prosecutor's Office from the Audiencia Nacional decided to set aside the case against

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140 See for example: Última Hora. Publica un vídeo diciendo que ha viajado a Torrevieja para contagiar el virus y acaba detenido. Available here: <https://www.ultimahora.es/sucesos/ultimas/2020/04/09/1156017/coronavirus-espana-detenido-por-decir-viajado-torrevieja-contagiar-virus.html>

141 See: Commissioner for Human Rights. (4th december 2018). Misuse of anti-terror legislation threatens freedom of expression. Available online: <https://www.coe.int/en/web/commissioner/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression> ; RIS. (2019). Lagunas en la protección de derechos civiles y políticos en España: aportaciones para la lista de cuestiones previas a la presentación del VII Informe Periódico al Comité de Derechos Humanos. Available online: <http://www.rightsinternationalspain.org/uploads/publicacion/70975000875e37fe0a76ab5b77e91fa260f7d27a.pdf>

142 See: PDLI. La PDLI denuncia que la vigilancia selectiva de Internet para detectar “bulos” que puedan provocar “desafección a instituciones del Gobierno” vulnera la libertad de expression. (21 April 2020). Available here: <http://libertadinformacion.cc/la-pdli-denuncia-que-la-vigilancia-selectiva-de-internet-para-detectar-bulos-que-puedan-provocar-desafeccion-a-instituciones-del-gobierno-vulnera-la-libertad-de-exp/>

143 See for example: El Confidencial. La Fiscalía considera que difundir bulos puede incurrir en una decena de delitos (17 April 2020). Available here: [https://www.elconfidencial.com/espana/2020-04-17/fiscalia-considera-difundir-bulos-incurrir-decena-delitos\\_2552591/?utm\\_source=twitter&utm\\_medium=social&utm\\_campaign=BotoneraWeb](https://www.elconfidencial.com/espana/2020-04-17/fiscalia-considera-difundir-bulos-incurrir-decena-delitos_2552591/?utm_source=twitter&utm_medium=social&utm_campaign=BotoneraWeb)

fake news during the Covid-19 crisis as they form part of freedom of speech<sup>144</sup>.

In late October 2020, the government approved an action procedure to monitor fake news. The government order is merely of organizational nature and according to the PDLI it is impossible to know which actions will be taken and the concrete extension of the measures adopted fearing the standardization of censorship techniques<sup>145</sup>.

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144 See for example: elDiario.es. La Fiscalía considera “libertad de expresión” los bulos contra el Gobierno por la Covid-19 y archiva la denuncia de Unidas Podemos. (3 September 2020). Available here: [https://www.eldiario.es/politica/fiscalia-considera-libertad-expresion-bulos-gobierno-covid-19-archiva-denuncia-unidas\\_1\\_6199695.html](https://www.eldiario.es/politica/fiscalia-considera-libertad-expresion-bulos-gobierno-covid-19-archiva-denuncia-unidas_1_6199695.html)

145 See for example: Público. El Gobierno aprueba el procedimiento de actuación contra la desinformación. (5 November 2020). Available here: <https://www.publico.es/politica/bulos-gobierno-aprueba-procedimiento-actuacion-fake-news.html>