



# FUNDAMENTAL RIGHTS AND THE RULE OF LAW

## **Report on the visit to Spain**

14-15 October 2021



European Economic  
and Social Committee



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Six EESC members took part in the country visit to Spain. The delegation met with representatives of civil society, namely civil society organisations (CSOs), social partners and the media on the one hand, and several governmental and judicial authorities on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society. The authorities' views will be reflected in their reply to the report.

### 1. Fundamental rights related to the social partners

Participants described **social dialogue** as functioning quite well in Spain. In contrast with the economic and financial crisis of 2008, employers' associations, trade unions and the government concluded agreements which made it possible to preserve jobs during the COVID-19 pandemic. One particular example was the agreement on the increase of the minimum wage.

Participants felt that **transparency and the right to information** still needed to be improved. The social partners said that the law on transparency was not properly implemented and that certain pieces of public information were not publically disclosed (e.g. expenditure for the purchase of health equipment during the pandemic). Very often, going to court was the only recourse for individuals and organisations wanting to obtain information. However, court proceedings were often lengthy, and the requested piece of information could be communicated years after it was requested, when it was no longer relevant. Therefore, in order to overcome difficulties in accessing information, participants considered that transparency legislation needed to be promoted more efficiently and should be accompanied by institutional support for verification and monitoring.

One of the main improvements needed identified by participants concerned **Organic Law 4/2015 of 30 March on the protection of citizens' security** (also referred to by participants as the "gag law"). They considered that it violated freedom of expression, the right to protest and the right to strike, and that under certain circumstances it criminalised the right to strike and protest and those who defend these rights. The law made it possible to penalise demonstrators: participants mentioned cases of trade unionists being fined, prosecuted or sentenced after taking part in protests. Whilst participants considered that the provisions of the law leaned towards a criminalisation of certain types of behaviour, the public authorities said that Organic Law 4/2015 did not criminalise any behaviour since it only established administrative sanctions. They also said that a proposal was being discussed by the Parliament regarding potential modifications to the law.

Participants also mentioned other obstacles faced by workers in their daily life. On the one hand, **access to social housing** was considered to be very difficult. The social partners called for a national consolidated policy on social rents, which would build on the good practices of regional policies in the Basque country and Catalonia.

On the other hand, participants regretted that some workers, particularly young ones, did not earn high enough salaries to cover their needs. They also indicated a strong **gender pay gap**, with average annual salaries for women being around 16% lower than average salaries for men, particularly in SMEs where trade union presence is weaker and collective bargaining agreements are rare. Moreover, they also pointed out that despite the noticeable extension of paternity and maternity leave, women were still largely responsible for supporting the family. The lack of public services such as crèches also complicated the combination of work and childcare.

Another area of concern was **migrant workers' access to health**, particularly in the area of hospitality, which participants considered to be lower than for other workers. A July 2018 decree granting universal access to health was however presented as a positive effort in that area.

## 2. **Freedom of association and assembly**

Participants explained that in Spain, freedom of association and freedom of assembly were enshrined in the Constitution. However, participants shared concerns regarding the actual implementation of these freedoms.

The main concern shared by participants was linked to the implementation of the **Law on citizens' security**, which they believed led to a **reduction of civic space**. Participants described the content of the law as violating international standards and as excessively ambiguous, meaning that it could be interpreted as required, stressing that hundreds of thousands of fines had been imposed under the law.

They said that the law permitted the sanctioning of a wide range of behaviour usually linked with the **right to protest and the right to strike**.

For instance, participants said that the law made it possible to fine demonstrators in a disproportionate manner (fines up to EUR 600 000 for very serious offences according to Article 39 of the law).

In addition, two particular articles were highlighted by participants in that regard: Article 36(6) on severe disobedience to authority and Article 37(4) on disrespecting security agents.

Participants said that the police force had considerable discretion when it came to interpreting these two articles in order to impose fines. According to participants, giving the police considerable discretion regarding the application of a law regulating individual behaviour affected the balance of power at the expense of the judiciary.

Participants were also concerned about **the way demonstrations were broken up by the police**, which in some cases was done with excessive use of force. They illustrated this phenomenon by referring to the judgment of the European Court of Human Rights in the case "Laguna Guzman v. Spain", which concerned a protester who had been injured as a result of the violent dispersal of a demonstration by the police.

Related to this issue was the difficulty, according to participants, **of clearly identifying police officers** on several places of their uniform in the event of alleged excessive use of force. Participants

highlighted a good practice from Catalonia, where police officers' uniforms now clearly display their identification number on their back, chest and helmet. They were also concerned about the apparently rare sentencing of police officers appearing in court for excessive use of force.

Participants also referred to the limitations on **freedom of assembly during the COVID-19 pandemic**. They reported excessive and disproportionate use of force by the police to ensure compliance with lockdown rules during the "state of alarm". Public authorities stressed at all times that the actions of the police complied strictly with the law and contested claims regarding excessive and disproportionate use of force.

### 3. **Freedom of expression and freedom of the media**

Participants explained that freedom of expression was a constitutional right in Spain. However, they also considered that this right had been violated in the past years as a result of the entry into force of the **Law on citizens' security** in 2015.

This law was considered by participants as violating international standards in the area of **freedom of expression and freedom of the media**. According to participants, since its entry into force, the administrative authorities have relied on that law to impose fines on journalists, in particular photographers and cameramen who recorded images of the police.

Participants also criticised the vagueness of some articles of the Criminal Code concerning freedom of the media and freedom of speech, which allowed for too wide an interpretation and an abusive use of the provisions by the police. Participants reported cases of journalists being fined for "lack of respect and obstruction" or for "disobeying authority" during their work.

Participants also criticised the Law on citizens' security, which they felt criminalised certain forms of expression considered as an offence to religion, the royal family or the Spanish flag. They reported that a comedian had been tried in court for blowing his nose into the Spanish flag during a sketch and that rap singers had been jailed for song lyrics allegedly promoting terrorism.

Participants explained that in Spain, the **right to access information** is enshrined in the Spanish Constitution as an administrative right rather than a fundamental right, with a resulting lower level of protection. Concerning access to information, participants regretted that the Law on transparency (intended to allow journalists or individuals to request information from the government or the public administration) was not properly implemented. Participants said that journalists have had difficulty accessing information on salaries of public officials. Moreover, according to the participants, the Law on transparency was put on hold during the COVID-19 pandemic, preventing access to information on health measures.

Participants reported that **violence against journalists** was on the rise, mostly from police officers but sometimes also from demonstrators themselves. Participants also highlighted the alleged difficulty in clearly identifying police officers in the event of attacks or excessive use of force against journalists. Public authorities said that Spain had not been found in breach of the provisions of the European Convention on Human Rights regulating interactions between the State and journalists or protecting their independence against threats from the government since 1979. Public authorities also provided information about the range of agreements between the Ministry of the Interior and journalist associations in order to protect journalists from threats and situations of vulnerability.

Participants also expressed concerns regarding **pluralism of information**. They underlined the difficulty in getting information on the distribution of public funds for institutional advertising. They also regretted that Spain did not have an audiovisual council to guarantee the independence of the public media.

Participants said that some journalists had been **prevented from participating in press conferences with government representatives**, as well as with some political parties. They highlighted that certain local authorities had not accepted questions from some journalists at some press conferences. Participants also said that during the pandemic, the government prevented health professionals from giving statements to the media.

Participants explained that Spain did not have specific legislation on **fake news**, and that fact checking was done by journalists and media companies using a professional mechanism. As regards **disinformation**, participants said that progress was ongoing and that the Spanish Department of National Security had created working groups to draft a white paper on how to tackle disinformation campaigns.

Participants expressed their concerns regarding Spain's failure to transpose the EU Directive on the **defence of whistle-blowers**.

Another concern expressed by participants related to the **regulation of the internet**. Participants considered that Royal Decree-Law 14/2019 of October 31, adopting urgent measures for reasons of public security in matters of digital administration, public sector contracting and telecommunications, allowed the government to take control of the broadcasting network. According to participants, the decree-law stipulated that the network was increasingly administered by the State, with no obligation for a judicial ruling to limit access.

#### 4. **The right to non-discrimination**

According to participants, Spain's legal framework lacked an umbrella law to protect and sanction discrimination on all grounds. Civil society organisations agreed on the need for a **comprehensive law on equality** at national level to address all types of discrimination. They also said that Catalonia had a law on equality. A law on equal treatment was currently being discussed by the Congress of Deputies. Public authorities also said that they were setting up training groups to raise awareness about equality in the public administration and provided information on initiatives to ensure effective equality of women and men in Spain (the Organic Law 3/2007 of 22 March 2007 on the effective equality of women and men in force since 2007, the proposed comprehensive law on equal treatment and non-discrimination, policies on conciliation, the Draft Bill on Family Diversity and Support for Families or the institutional response to gender violence).

Participants reported progress in several areas. They underlined the ratification by Spain of the Council of Europe's Revised European Social Charter in May 2021. Similarly, in March 2021, the Action Plan to Combat Hate Crimes was established to fight hate speech in general and online. This protocol was presented by the Spanish government with the involvement of civil society, legal professionals and internet companies. Participants also appreciated the large social diversity of police officers. Public authorities said that the fight against discrimination by the Ministry of the Interior focused on combating hate crimes based on race, national or ethnic origin, language, colour, religion, sex, age, intellectual or physical disability, sexual orientation or other similar factors. The 2019 -2021

Action Plan had recently been evaluated, and that evaluation would inform the Second Action Plan against Hate Crimes.

**Roma people** were still considered the most discriminated against minority group in Spain, facing generalised discrimination in all areas of daily life, particularly communication, social media, access to employment and housing. Ethnic profiling of Roma people by the police was considered to be very frequent, with Roma people being stopped by police ten times more than the rest of the population. Participants called for equality bodies such as the Council for the Elimination of Racial or Ethnic Discrimination to be more involved in fighting anti-Gypsyism. In this regard, public authorities provided information about the Strategic Plan for Inclusion, the Inter-institutional Plan for the fight against racism, xenophobia, LGBTI phobia and other forms of intolerance, and the National Strategy for Roma Equality, Inclusion and Participation 2021-2030. Some progress was also reported, such as the creation within the Congress of Deputies of a committee to fight anti-Gypsyism, involving civil society.

**Women** still faced burdens in the area of family care, which complicated their access to the political, economic and employment spheres. The participants explained that more women than men occupied precarious or temporary jobs and that women faced higher unemployment rates and lower salaries than men. Participants also highlighted gender violence, with murders of women rising considerably during the pandemic. Sexual violence was also considered to be on the rise. Public authorities said that they were taking measures to improve work-life balance and care facilities to address gender equality.

The **LGBTIQ community** reported concerns regarding an increase in hate speech on social media, particularly against trans people. Participants also considered that hate speech against the LGBTIQ community mainly stemmed from certain political groups. Participants also explained that reporting on situations of discrimination or hate crimes to the police was difficult. Moreover, they considered that the Spanish legislation on hate crime was not efficient. Lastly, participants expressed dissatisfaction with the interpretation of the law by the judiciary, which had at times limited the freedom of the community.

All participants demanded a reform of Spanish **immigration legislation**, which they felt was obsolete and inappropriate for the needs of migrants. According to participants, migrants were particularly subject to precariousness and human rights violations, and had limited access to public services (such as health and education). Participants signalled their concerns as regards the management of migrants arriving in Spain within the Spanish internment centres (*Centros de Internamiento de Extranjeros*). Participants explained that some people were held up to 60 days without access to a lawyer or the possibility of obtaining legal advice. They said that most of them were deported by plane to their country of origin.

Another problem presented by the participants was the fact that one "racialised" person or migrant was around seven times more likely to be arrested than the rest of the population. Participants reported that the Law on citizens' security included a set of provisions allowing for *refoulement* of migrants crossing the border, without checking their situation or their being able to ask for asylum.

**People with disabilities** still faced discrimination in several areas such as health, employment, housing and education. Therefore, representatives called for a cross-cutting approach covering all these areas. Participants were particularly concerned about forceful medical treatments for people with mental disabilities and the impossibility for them to obtain information on their medical treatment. Participants complained about other difficulties linked to disability. The EESC delegation regretted that one of those

difficulties was reflected by the experience of one of its members during the country visit. Upon arrival at Madrid airport, EESC member Pietro Vittorio Barbieri's wheelchair was misplaced. Police officers removed him from the plane, after Mr Barbieri had been waiting for his wheelchair for over an hour. Participants also discussed the legal capacity of people with a disability as referred to in Article 12 of the UN Convention on the Rights of Persons with Disabilities. They noted that public authorities had taken steps to implement legal capacity. For instance, progress had been observed as a result of a reform of the civil code providing better legal support for people with disabilities.

Lastly, participants highlighted the difficult situation of the **elderly** during the COVID-19 pandemic, who suffered some human rights violations in retirement homes and centres.

## 5. Rule of law

Despite a few challenges, participants said that the rule of law was solid. They underlined that the Spanish system was rights-based, offering guarantees to citizens.

The main challenge in this area related to the **delay in the renewal of the governing body of the judiciary (the General Council of Judicial Power, GCJP)**. Due to difficulties in reaching an agreement between political parties, the GCJP had not been renewed for three years. Public authorities confirmed that no political agreement had been reached regarding the renewal of the GCJP. Participants considered that the non-renewal of the GCJP was a threat to the independence of the judiciary, and that the election of the members of the GCJP was too politicised.

Participants suggested that the GCJP election process should change to ensure that its members were directly elected by judges instead of the legislative chambers. However, participants considered that beyond the issue of the nomination process of the GCJP, the judiciary was independent overall. They considered that Spanish judges could carry out their daily work in an independent way, unimpeded by political pressure.

Participants felt that the judiciary laboured under a shortage of resources. According to participants, the **number of judges per inhabitant** was insufficient, leading to overly lengthy proceedings, especially in upper courts and the Supreme Court. However, public authorities pointed out that the number of judges per 100 000 inhabitants in Spain was similar to that of other nearby countries with a similar population like France or Italy.

Participants considered that **corruption** was quite strong in Spain, particularly in the area of public procurement. Progress had been achieved in the prosecution and sanctioning of corruption, but improvements were still needed. For instance, participants suggested reinforcing the monitoring power of the Court of Auditors, responsible for monitoring the spending of public money. The Spanish authorities considered that they had made **progress on the prosecution and sanctioning of corruption**, describing an additional framework for the fight against corruption in Spain which also **strengthened the National Anti-Fraud Strategy**.

Regarding the **prosecuting of police officers** for violent crimes and hate crimes, the participants did not have the impression that police officers benefitted from any special protection from the judiciary to the detriment of the general public.

Lastly, participants did not feel that the **COVID-19 pandemic** had had a particular impact on the situation of the rule of law in Spain.



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