



FUNDAMENTAL RIGHTS  
AND THE RULE OF LAW

## **Authorities' observations on the report on the visit to Spain**

14-15 October 2021



European Economic  
and Social Committee

**Comments by the Spanish authorities on the report of the Fundamental Rights and Rule of Law Group (FFRL) of the European Economic and Social Committee (EESC) following the visit of an FRRL mission to Spain on 14 and 15 October.**

**Opening remarks:**

Spain would like to highlight from the outset that the report by the Fundamental Rights and Rule of Law Group (FFRL) of the European Economic and Social Committee (EESC) following the visit of a FRRL mission to Spain on 14 and 15 October does not reflect in any form an analysis of the situation of fundamental rights and rule of law in Spain. It simply reflects the opinions of the selected representatives of civil society that the FRRL mission identified as its interlocutors for the visit. Spain notes that a rigorous methodology for drafting reports on these issues is key to enhancing their credibility, thereby benefitting the exercise's objectives.

**Comments by the Spanish authorities:**

The report cites several statements by the participants regarding **Organic Law 4/2015, of 30 March, on the protection of citizen security** (*Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana*) which require clarification.

The Organic Law on Citizen Security did not modify the Criminal Code, nor create any new category of offences. This law only establishes administrative sanctions. Article 36(6) refers to serious infringements, punishable by a fine of between EUR 600 euros and EUR 30 000 euros and Article 37(4) refers to minor infringements, punishable by a fine of up to EUR 600. Penalties of up to EUR 600 000 can only be imposed in the case of very serious infringement.

Participants cited in the report also indicate that police officers "could interpret these two articles broadly in order to impose fines, which affected the balance of power at the expense of the judiciary". This is incorrect, as law enforcement authorities do not impose fines, but only propose them by means of a police report<sup>1</sup>. The Organic Law on the protection of citizen security stipulates that sanctions are imposed, where appropriate, by the administrative authority according to a regulated procedure, which can be appealed in court. Any sanction is subject to judicial review and judges have absolute power not only to judge the legality of the sanction but also to modify its amount, taking into account the specific circumstances of the case.

The decision in the "**Laguna Guzman v. Spain**" case cited in the report cannot be taken as evidence of the widespread practice of excessive use of force against demonstrators by the Spanish police, as the report seems to suggest, but rather as a decision that concerns a specific case. Proof of this is that the "Laguna Guzmán v. Spain" case is the only violation by Spain of Article 11 of the European Convention on Human Rights since 1979<sup>2</sup> and that there has not been another decision declaring a breach of the Convention in this area since this judgment. Furthermore, this case is not related to Organic Law 4/2015 on the protection of citizen security because the events described in the Laguna case took place more than a year before its last reform in 2015.

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<sup>1</sup> Police procedures related to Organic Law 4/2015 have been further regulated in Instruction 13/2018, of 17 October, of the Secretary of State for Security, on the practice of external body searches, the interpretation of certain offences and procedural issues in relation to Organic Law 4/2015, of 30 March, on the protection of citizen security.

<sup>2</sup> [https://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2021\\_ENG.pdf](https://www.echr.coe.int/Documents/Stats_violation_1959_2021_ENG.pdf)

The report also refers to difficulties in **identifying police officers**. In this regard, it must be noted that it has been compulsory for national police officers, both from the *Cuerpo Nacional de Policía* and the *Guardia Civil*, to clearly display their personal identification number on their uniforms since 2007, as established in the Instruction 13/2007 of the Secretary of State for Security. The relevant regulations also include citizens' right to request police officers to identify themselves during police operations. The best practices of one Autonomous Community that are referred to in the document were adopted subsequent to national legislation.

It is also important to note that Organic Law 4/2015 on the protection of citizen security has been the subject of two rulings by the Constitutional Court (case 172/2020, of 19 November 2020 and case 13/2021, of 28 January 2021). These decisions upheld the text of the Organic Law, apart from one reference in its text. Decision 13/2021 of 28 January 2021 of the Constitutional Court found that the reference to the "unauthorised" use of images or personal or professional data of authorities or members of law enforcement agencies of Article 36(23) was contrary to the Spanish Constitution, and as a result, this specific provision was declared null and void.

Regarding the protection of human rights, it is important to note the establishment of the National Human Rights Guarantee Office (*Oficina Nacional de Garantía de los Derechos Humanos*) under the Secretary of State for Security. This initiative highlights the commitment of the Spanish Police forces to upholding human rights and improving procedures to ensure their protection<sup>3</sup>.

With regard to the allegations on the difficulties in the area of access to **social housing**, it should be noted that access to decent housing is a right established in Article 47 of the Constitution. The right to decent housing is protected by the Ombudsman, and its recognition, respect and protection are at the core of secondary legislation, judicial practice and the actions of the public authorities. In this regard, it is worth noting that:

- Royal Decree 42/2022, of 18 January, which regulates the youth rental voucher and the State Plan for access to housing 2022-2025 (*Real Decreto 42/2022, de 18 de enero, por el que se regula el Bono Alquiler Joven y el Plan Estatal para el acceso a la vivienda 2022-2025*)<sup>4</sup>, has recently been approved.
- Royal Decree-Law 2/2022 of 22 February extended a series of measures, including the suspension of evictions and repossessions of primary residences until 30 September 2022 for vulnerable individuals and families in the cases provided for in Royal Decree-Law 11/2020 of 31 March and Royal Decree-Law 37/2020 of 22 December.
- Currently, the Draft Law on the Right to Housing is proceeding through parliament under the urgency procedure. This is the first legal provision at the central level with the status of law to regulate this matter. It aims to establish, for the whole of the Spanish territory, the basic conditions that guarantee equality in the exercise of rights and the fulfilment of constitutional duties related to housing.

The report also refers to **transparency and access to public information**. The right to access public information is guaranteed by the Spanish Constitution itself, specifically in Article 105 b): "citizens' access to administrative archives and records shall be regulated by law, except in

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<sup>3</sup> Instrucción 1/2022 de la Secretaría de Estado de Seguridad

<sup>4</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2022-802>

matters affecting the security and defence of the State, the investigation of crimes and the privacy of individuals".

This right was reinforced by Law 19/2013, of 9 December, on Transparency, Access to Public Information and Good Governance, which recognises the right of every person to access public information and is rigorously applied by the Spanish administration. Law 19/2013 establishes a procedure under which citizens can request information held by public administrations. According to the official statistics provided by the Transparency and Good Governance Council, which oversees and controls the application of Law 19/2013, 46% of requests for information were upheld in first instance, giving access to the requested documentation<sup>5</sup>, so it was not necessary to claim the information in court.

Law 19/2013 was largely inspired by the Council of Europe Convention on Access to Public Documents (the "Tromsø Convention"), which was signed by Spain in November 2021. Spain has an institutional and legal framework that includes all the rules required by European law, supplemented by rules that go beyond those required by the EU, making Spain an example in terms of transparency, prevention of corruption and good governance.

In this regard, the Revision Mechanism of the Open Government Alliance has highlighted in its evaluation report that the implementation of the Third Spanish Open Government Plan has "strengthened the governance of the OGP process through the creation of the Open Government Forum, which provided spaces for dialogue and involvement of civil society. The high level of compliance achieved during this cycle allowed for significant advances in government openness, especially in the areas of access to information and citizen participation<sup>6</sup>".

According to Law 19/2013, of 9 December, information subject to transparency obligations must be published on the relevant websites in a manner that is clear, structured and understandable to all stakeholders. In addition, the General State Administration has a **Transparency Portal**<sup>7</sup>, which has an active disclosure section and which is intended to facilitate citizens' access to all information (Article 10). The *Consejo General del Poder Judicial* (General Council for the Judiciary, CGPJ), Congress and Senate also have their respective transparency portals. The law also provides for the creation of Transparency Portals for the Autonomous Regions and local authorities. All public institutions, as well as political parties, trade union organisations, business organisations and private entities that receive public aid or subsidies exceeding certain economic thresholds during a period of one year are also subject to active disclosure obligations.

The Transparency Portal of the General State Administration proactively publishes the remuneration received annually by senior officials and heads of the bodies covered by the scope of the Law, as well as the compensation received, if applicable, when those persons leave office (Article 8(1)(f) Law 19/2013, of 9 December)<sup>8</sup>.

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<sup>5</sup> [https://www.conseiodetransparencia.es/ct\\_Home/Actividad/Datos-actividades/Estadisticas2021.html](https://www.conseiodetransparencia.es/ct_Home/Actividad/Datos-actividades/Estadisticas2021.html)

<sup>6</sup> The report is available on the Transparency Portal at the following link: [https://transparencia.gob.es/transparencia/dam/jcr:2fb5b3e9-d444-4ec7-8472-464fa3c61927/Spain\\_ImplementationReport\\_2017-2019.pdf](https://transparencia.gob.es/transparencia/dam/jcr:2fb5b3e9-d444-4ec7-8472-464fa3c61927/Spain_ImplementationReport_2017-2019.pdf)

<sup>7</sup> <https://transparencia.gob.es/>

<sup>8</sup> [https://transparencia.gob.es/transparencia/transparencia\\_Home/index/PublicidadActiva/AltosCargos/Retribuciones-de-altos-cargos.html](https://transparencia.gob.es/transparencia/transparencia_Home/index/PublicidadActiva/AltosCargos/Retribuciones-de-altos-cargos.html).

Regarding access to public procurement information, the Transparency Portal publishes all the relevant information regarding a contract, including the contractor's data. This information is coordinated by a centralised source within the General State Administration (the Public Sector Procurement Platform of the Ministry of Finance and the Civil Service).

With regard to COVID-19, it should be noted that, during the state of emergency, the Transparency Portal of the General State Administration operated normally in terms of active disclosure, and it continued offering relevant and updated public information in compliance with the provisions of Law 19/2013. All purchases of health material during the pandemic are covered by the obligation to publish public procurement contracts, including those of less economic value<sup>9</sup>.

The Royal Decree 463/2020 of 14 March, which declared a state of emergency for the management of the health crisis caused by COVID-19, introduced a general suspension of all administrative deadlines, including those of existing requests for access to public information. During this period, all ministerial departments gave priority to requests for information related to the state of emergency, in order to avoid a backlog of requests and to be able to conclude all requests by means of the corresponding resolution as soon as the state of emergency was over. After the end of the state of emergency on 1 June 2020, the deadlines for procedures related to the right of access to public information were fully re-established.

On the issue of the **protection of journalists**, it should be noted that Spain has not in any recent time been found to be in breach of the provisions of the European Convention on Human Rights that regulate interactions between the State and journalists or that protect their independence against threats from the government.

In addition to the protection that the Spanish Constitution gives to the effective exercise of the fundamental rights to freedom of expression and information (Article 20 EC), the relevant cooperation agreements and operational instructions of the Ministry of the Interior, which regulate the way in which police officers must act in order to protect the work of professional journalists, are worth highlighting:

- the renewal in December 2020 of the collaboration agreement between the Ministry of the Interior and the *Federación de Asociaciones de Periodistas de España* (Federation of Spanish Journalists' Associations), which also involves the *Federación de Asociaciones de Periodistas de España* (Federation of Spanish Journalists' Associations) and the *Asociación Nacional de Informadores Gráficos de Prensa y Televisión* (National Association of Press and Television Graphic Reporters) for the identification and protection of information professionals in events requiring police intervention. The purpose of this agreement is to improve cooperation between police officers and journalists, with the main aim of facilitating the work of information professionals so that they can carry out their activity in a safe environment, even when they are reporting from places and events where situations of risk or violence may occur.
- The Ministry of the Interior is constantly monitoring the situation of victims, and, in particular, those who may be more likely to suffer any illegal act aimed at infringing their freedoms and fundamental rights (for instance, due to their vulnerability, age,

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<sup>9</sup> All information regarding the contracting of health material supplies and the amounts involved is available on the Transparency Portal at the following link: <https://transparencia.gob.es/servicios-buscador/buscar.htm?pag=1&categoria=licitaciones&categoriasPadre=conconvsub&ente=E04921901,E05025001,E05070101&historico=false&lang=es>

social situation or occupation). In this sense, a reform of the *Sistema Estadístico de Criminalidad* (Crime Statistics System) is currently being undertaken. This system will take into account the data that is included in the National Classification of Occupations, which allows for the classification and registration of the profession of all crime victims who disclose it. The National Classification of Occupations will include a special category for journalists.

With regard to **pluralism of information**, it is necessary to make some clarifications to the text of the document:

Institutional advertising is regulated in Spain both by State and regional regulations. The General State Administration, Law 29/2005, of 29 December, on Institutional Advertising and Communication, and Royal Decree 947/2006, which regulates the Commission on Institutional Advertising, establish certain provisions aimed at guaranteeing the publication of expenditure forecasts and their execution in relation to institutional advertising campaigns.

At the beginning of each year, the regulations provide for the approval by the Council of Ministers of an Advertising and Communication Plan that includes all institutional campaigns that the General State Administration plans to carry out. Pursuant to Article 12 of Law 29/2005, of 29 December, "the plan shall specify, at least, the necessary indications on the objective of each campaign, the foreseeable cost, the period of execution, the communication tools used, the meaning of the messages, their recipients and the bodies and entities affected". Once the annual plan has been carried out, a report on its implementation must be submitted to Parliament and be made available to all professional organisations in the sector.

Consequently, information on the distribution of public funds for institutional advertising in the General State Administration is available through the Annual Plan, which provides information on the budget planned for the campaigns planned by each ministerial department, and the corresponding Annual Report, which includes the total amount that was spent<sup>10</sup>. The relevant departments are also subject to the information requests provided for in Law 19/2013, of 9 December, on transparency, access to public information and good governance.

In relation to the report's allusion to the non-existence of a media council, it should be noted that Spain has an **independent audio-visual supervisory authority**: the National Commission for Markets and Competition (CNMC). Law 3/2013 of 4 June 2013, establishes that this body shall supervise and monitor the smooth operation of the audio-visual communications market, including the compliance of audio-visual content with current legislation and self-regulation codes, as well as the fulfilment of the public service mission entrusted to public service providers.

Regarding the allegation that some **journalists were not allowed to participate in press conferences** with members of the government, it should be noted that despite the measures to reduce seating capacity during events due to COVID-19, there is no record of any duly accredited media not being able to attend press conferences organised by the government. Furthermore, the accreditation procedure for media outlets for events organised by the

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<sup>10</sup> Since the entry into force of the regulations in 2006, all annual plans and reports have been published in general and can be consulted by all interested parties on the website of the Presidency of the Government (<https://www.lamoncloa.gob.es/serviciosdeprensa/cpci/paginas/PlanesElInformes.aspx>) and the Transparency Portal website (<https://transparencia.gob.es/>)

President of the Government's office is public and open to all professionals interested in attending<sup>11</sup>.

The draft report notes the participants' concern at Spain's failure to transpose the directive for the **protection of whistleblowers**. The Ministry of Justice is currently coordinating the transposition of 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 ("whistleblowers"). The text of the draft bill is being finalised and is expected to be submitted to the Council of Ministers for a second reading soon.

In the **fight against discrimination**, the report omits to mention the large number of measures taken by the Spanish authorities (and presented during the meeting with public authorities on 15 October) to combat hate crimes based on race, national or ethnic origin, language, colour, religion, sex, age, intellectual or physical disability, sexual orientation or any other similar factor.

It is worth highlighting, first of all, that any citizen may seek protection of the freedoms and rights recognised in Article 14 (the principle of equality) and Section One of Chapter Two (Fundamental Rights and Public Liberties) of Title I (Fundamental Rights and Duties) of the Constitution before the ordinary Courts, through a procedure based on the principles of preference and summary proceedings and, where appropriate, through an appeal for protection before the Constitutional Court.

In this regard, and in addition to the Bill on Equal Treatment - which is currently being discussed in Parliament and is referred to in the report - it is essential to note that the Organic Law against Racism, Racial Discrimination and Related Forms of Intolerance has been included in the Annual Regulatory Plan for 2022. On 22 March 2022, a public consultation procedure was launched to gather the opinions of citizens, organisations and associations.

Non-discrimination in the audio-visual field is established in Article 4(2) of Law 7/2010, of 31 March, which provides that "audio-visual communication should never incite hatred or discrimination based on gender or any personal or social circumstance and must be respectful of human dignity and constitutional values, with special attention to the eradication of conduct that favours situations of inequality for women".

Likewise, in the **Draft General Law on Audio-visual Communication**, which is currently proceeding through parliament, the principles contained in Law 7/2010, of 31 March have been expanded and strengthened. To this end, Article 4(2) of the draft states that "Audio-visual communication shall not incite violence, hatred or discrimination against a group or members of a group on grounds of age, sex, disability, sexual orientation, gender identity, gender expression, race, colour, ethnic or social origin, sexual or genetic characteristics, language, religion or beliefs, political or any other opinions, nationality, heritage or birth."

Article 71 of Organic Law 4/2000, of 11 January on the rights and freedoms of foreigners in Spain and their social integration provides for the establishment of the **Spanish Observatory on Racism and Xenophobia** (OBERAXE). This institution deals with the fight against racism, xenophobia and other forms of intolerance, the promotion of equal treatment and non-

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<sup>11</sup> It can be consulted on the Moncloa website, and only deals with the organisational and security needs of official events (<https://www.lamoncloa.gob.es/serviciosdeprensa/acredita/Paginas/index.aspx>)

discrimination, awareness-raising and training, and collaboration with national and international institutions and stakeholders in the prevention, reporting and protection of victims.

In 2020, the "Strategic Framework for citizenship and inclusion against racism and xenophobia, 2021-2027" updated the "Integral Strategy against racism, racial discrimination and xenophobia, 2021-2027" and the Strategic Plans for Citizenship and Integration (PECI I and PECI II). The aim of this review is to adapt the relevant strategies to the new migratory situation and to incorporate the recommendations made to Spain by the main international and European organisations in the areas of prevention of racism, racial discrimination, xenophobia and other forms of intolerance.

The existence of the **Inter-institutional Agreement against racism, xenophobia, LGBTIphobia** and other forms of intolerance has led to the adoption of the Protocol to Combat Illegal Hate Speech Online. This protocol is a key instrument that sets the ground for effective cooperation between the actors involved in the fight against illegal hate speech online in Spain and includes public authorities, civil society organisations, companies and data-hosting service providers.

It should also be noted that in 2018, the Ministry of the Interior established the **National Office for the Fight against Hate Crimes (ONDOD)**<sup>12</sup>, whose main task is to advise the Secretary of State for Security on hate crimes and to provide the appropriate strategic and technical information for the adoption of public policies in relation to these crimes. ONDOD is also responsible for training public servants to assist victims of hate crimes and acts as an observatory, gathering information and originating strategic analysis for the adoption of new initiatives to tackle this problem. ONDOD is also the national point of contact with other international organisations working in this area.

International and European organisations such as the European Union Agency for Fundamental Rights (FRA) and the Office for Democratic Institutions and Human Rights (ODHIR) of the Organisation for Security and Cooperation in Europe (OSCE) have been very appreciative of these initiatives and have flagged up Spain as an example of good practice in the fight against hate crimes.

Also related to the fight against hate crimes, it is worth noting that the evaluation of the 2019-2021 Action Plan has recently concluded. This exercise was essential in the process of designing the Second Action Plan against Hate Crimes<sup>13</sup>.

The report states that **Roma people** are frequently ethnically profiled by the police. The report does not, however, provide any data to support this statement regarding a behaviour that, in any case, is in contradiction with all existing legislation. In this regard, Article 16 of Organic Law 4/2015, of 30 March, on the protection of citizen security requires that "*in the practice of identification, the principles of proportionality, equal treatment and non-discrimination on grounds of birth, nationality, racial or ethnic origin, sex, religion or beliefs, age, disability, sexual orientation or identity, opinion or any other personal or social condition or circumstance shall be strictly respected*". These guidelines are also covered by all police operational and

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<sup>12</sup> Additional Information can be found at the following link: <http://www.interior.gob.es/web/servicios-al-ciudadano/delitos-de-odio>.

<sup>13</sup> [https://www.lamoncloa.gob.es/consejodeministros/resumenes/Documents/2022/120422\\_II\\_Plan\\_Accion\\_contra\\_delitos\\_odio.pdf](https://www.lamoncloa.gob.es/consejodeministros/resumenes/Documents/2022/120422_II_Plan_Accion_contra_delitos_odio.pdf)

ethics regulations, and failure to comply with all these principles leads to the intervention of the control mechanisms in place for this purpose and the corresponding sanctions. The claim that Roma people are being stopped by the police ten times more than the rest of the population is also presented without any data to support it. In this regard, it is essential to note that law enforcement agencies do not register the racial data of detainees in Spain.

Other initiatives of the Spanish government regarding combating discrimination against the Roma people are worth highlighting, such as the National Strategy for Roma Equality, Inclusion and Participation 2021-2030<sup>14</sup>, or the role of the Council for the Elimination of Racial or Ethnic Discrimination, whose aim is to provide assistance to victims of discrimination on the basis of racial or ethnic origin. Regarding this Council, it is important to note that the budget for victim assistance was increased last year. As a result, during this year, the number of offices that deal with these issues will increase to a minimum of 21 locations across Spain.

Regarding statements about the Spanish legislative framework on **people with a disability**, Spain would like to state that the principle of mainstreaming is included as one of the principles that must guide government policies in this area in Article 3(m) of Royal Legislative Decree 1/2013 of 29 November on the Rights of Persons with Disabilities and their social inclusion.

With regard to the comment "Participants were particularly concerned about forceful medical treatments for people with mental disability and the impossibility for them to obtain information on their medical treatment", it is noted that, in accordance with Article 763(1)(1) of Law 1/2000, of 7 January, on Civil Procedure, the internment, on grounds of mental disorder, of a person who is unable to decide for themselves requires prior judicial authorisation, except for reasons of urgency which, in any case, must be ratified by a judge within a maximum period of 72 hours. Furthermore, Spain's position with regard to the additional protocol on involuntary hospitalisation and treatment to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine remains one of abstention.

The report also mentions the **obstacles that women still face**. Spain would like to qualify some of the statements that can be found in it and to correct some interpretations of the data that is provided.

In Spain, Organic Law 3/2007, of 22 March 2007, on the **effective equality of women and men**, has been in force since 2007. This is a regulation of great relevance, which establishes various policies and initiatives to fight against discrimination and inequality based on gender and establishes the right to equal treatment and opportunities. Currently, and with the aim of complementing this regulatory framework, the Proposed Comprehensive Law for Equal Treatment and Non-Discrimination, referred to in the report, is currently being discussed in Parliament.

The report also refers to the **gender pay gap** in Spain. In this regard, it is important to note that in order to move towards real and effective equality and close the wage gap, in 2020, the regulatory development provided for in Royal Decree-Law 6/2019, of 1 March, on urgent measures to guarantee equal treatment and opportunities between women and men in

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<sup>14</sup> [https://www.mdsocialesa2030.gob.es/derechos-sociales/poblacion-gitana/docs/estrategia\\_nacional/Estrategia\\_nacional\\_21\\_30/Estrategia\\_aprob\\_cm\\_2\\_nov\\_ENGLISH.pdf](https://www.mdsocialesa2030.gob.es/derechos-sociales/poblacion-gitana/docs/estrategia_nacional/Estrategia_nacional_21_30/Estrategia_aprob_cm_2_nov_ENGLISH.pdf)

employment and occupation<sup>15</sup>, took place through Royal Decrees 901/2020, of 13 October, regulating equality plans and 902/2020, of 13 October, on equal pay for men and women. These measures have already contributed to decreasing the gender pay gap to 16.2%, which is a reduction of 4.8 points since 2018.

With regard to **policies on conciliation**, it is worth expanding on the information given in the report. As was reported during the visit, the government has implemented different policies in the area of family care. In 2021, the Ministry of Equality launched the "*Plan Corresponsables (Joint Carers Plan)*" in partnership with the Autonomous Communities. The aim of the Plan is to guarantee care as a right in Spain from the perspective of equality between women and men. It is designed to be a seed policy with a view to developing a State Care System. It seeks to design comprehensive care systems from a gender, intersectional and human rights perspective that promote co-responsibility between women and men, the State, the market, families and the community.

Furthermore, the Ministry of Social Rights and Agenda 2030 are working on the **Draft Bill on Family Diversity and Support for Families**, which aims to include, among other measures, seven days of paid leave, a universal child-rearing income for all Spanish households and an extension of parental leave to 24 months for both parents.

As part of a comprehensive review process and of strengthening the **institutional response to gender violence**, the Council of Ministers adopted the "Agreement Approving the Catalogue of Urgent Measures of the Plan for Improvement and Modernisation against Gender-Based Violence" at the initiative of the Ministers of Equality, Justice, Interior, Health, and Social Rights and Agenda 2030. This Catalogue of Urgent Measures includes 15 measures in six different areas. In addition to this, the Government Delegation against Gender Violence ran a number of communication campaigns in 2021 with the aim of promoting awareness throughout the year, as provided for in the Catalogue of Urgent Measures approved in July 2021 and in the State Pact itself.

It is equally important to note that on 24 November 2021, the Interterritorial Council of the National Health System approved the **Standardised Instrument for the early detection of Gender Violence in the National Health System** which complements the Common Protocol for Healthcare Action against Gender Violence in the National Health System (2012) in the achievement of standardised and homogeneous action guidelines.

The **Draft Organic Law on the Comprehensive Guarantee of Sexual Freedom**, which aims to provide comprehensive protection of the right to sexual freedom and the eradication of all sexual violence, is currently being discussed in Parliament, following its approval by the Council of Ministers in July 2021. The Law envisages the adoption and implementation of effective, comprehensive and coordinated policies among the different competent public administrations, which guarantee the prevention and punishment of sexual violence, as well as the establishment of a specialised and comprehensive response for women, girls and boys, as the main victims of all forms of sexual violence.

In this context, it is also important to mention the "**Spain protects you against male violence**" plan. The strategy focuses on extending, improving and expanding comprehensive care services for all forms of violence against women with the aim of complying with international

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<sup>15</sup> Which, among other regulations, amended Organic Law 3/2007, of 22 March, on effective equality between women and men and the Workers' Statute (Royal Legislative Decree 2/2015 of 23 October)

standards and the current legal framework. In order to do so, it provides for the creation of 24-hour comprehensive assistance centres for victims of sexual violence in all provinces and autonomous cities of the State.

Regarding **hate speech against the LGBTQI community**, it is worth highlighting the draft bill on the real and effective equality of trans people and on guaranteeing the rights of **LGBTQI** people, which is currently being developed. This law consolidates and guarantees rights that represent a great step forward for trans and **LGBTQI** people.

The report also argues that "participants also explained that reporting on situations of discrimination or hate crimes to the police was difficult". In this regard, it is essential to note that there is a "**Law enforcement action protocol for hate crimes**". Furthermore, all police reports are forwarded to the Provincial Delegate Prosecutor for hate and anti-discrimination crimes, even when there is not a known perpetrator.

**Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration**, establishes that detention in a CIE (Centro de Internamiento de Extranjeros or Foreigner Detention Centre) can only be decided by the relevant judicial authority. In doing so, it must take into account the principle of proportionality and other applicable circumstances, such as the lack of documents, the existence of previous convictions or administrative sanctions, pending criminal or administrative sanctioning proceedings or possible risks to public health or to the foreigner's own health. Furthermore, the person will remain in detention for the time necessary for the purposes of the procedure, and for a maximum of 60 days. The reference to detention for 60 days in CIEs is not only in line with Directive 2008/115 (which establishes the possibility of detention periods of up to 18 months), but it should be noted that Spain is one of the Member States with the shortest detention periods.

In addition, it is worth highlighting the fact there is a double judicial control over the detention of migrants, since, in addition to the judge that is competent to authorise and cancel the detention, there is an additional judge in charge of monitoring the stay of foreigners in CIEs. These judges are competent to hear petitions and complaints made by inmates insofar as they affect their fundamental rights. These judges may also visit such centres when they become aware of any serious breach or when they deem it appropriate. If the detention takes place in illegal conditions, the foreigner has the right to issue a *habeas corpus* request.

Furthermore, Royal Decree 220/2022, of March 29, which approves the Regulations governing the reception system for international protection, has been approved with the aim of developing Chapter III of Title II of Law 12/2009, of October 30, 2009, which regulates the right to asylum and subsidiary protection. Among the various elements developed by the Regulation, there is a catalogue of rights for those to whom the system is addressed, as well as an assessment of the needs of persons in a vulnerable situation during the time they remain in the reception system. In order to determine the material reception conditions to which the beneficiaries will have access, the particular needs of persons in a vulnerable situation will be taken into account, among other aspects.

It is also important to note that there are two legal frameworks for adopting a return decision:

- Expulsion, applicable to those who have been found in Spanish territory in an irregular situation and which will entail an entry ban.

- Return, applicable to foreigners who, having been expelled, contravene an entry ban, and for those who have been intercepted trying to enter Spain illegally.

In both cases, which are regulated by Organic Law 4/2000, the applicable guarantees are duly taken into account, such as the rights to free legal assistance, to an interpreter, to effective judicial protection and to appeal administrative decisions. Furthermore, these are individualised procedures, which can never be carried out collectively. These procedures must respect the principle of non-refoulement and the right of access to international protection is provided for.

The European Court of Human Rights, in its decision of 13 February 2020 (N.D and N.T v. Spain), and the Spanish Constitutional Court (decisions 172/2020 and 13/2021) have validated the **border procedure** regime which is established in the Tenth Additional Provision of Organic Law 4/2000, through the First Final Provision of Organic Law 4/2015, of 30 March, on the protection of citizen security. The aim of this procedure is to fulfil, in Ceuta and Melilla, the obligation to protect Spain's external borders, as established by the Schengen Borders Code, and Article 72 of the TFEU.

As regards the **renewal of the CGPJ**, the expression "the non-renewal of the CGPJ was a threat to the Independence of the judiciary" is not considered acceptable. It is also contradictory with other statements in the report which state that the rule of law in Spain is solid and that Spanish judges are able to carry out their daily work in an independent way. The CGPJ continues to carry out its main task, which is the defence of judicial independence, after the entry into force of Organic Law 4/2021. The CGPJ is not a judicial body. Consequently, the interim situation does not prevent the proper performance of the tasks attributed to courts and tribunals, and the protection of citizens' rights is fully guaranteed.

Spain points out that the CGPJ is composed of the President of the Supreme Court, who presides over it, and twenty members appointed by the His Majesty the King for a period of five years. Of these, twelve are selected among Judges and Magistrates of all judicial categories, and eight among lawyers and other jurists. All of them must be professionals of recognised competence and with more than fifteen years of practice in their profession. Furthermore, the Congress of Deputies and the Senate elect ten members of the CGPJ respectively, four from among jurists of recognised competence with more than fifteen years of practice in their profession and six from a list of judges. The election of the members requires a three-fifths majority in each Chamber. It is not, therefore, an agreement between political parties but between parliamentary groups in the Congress and the Senate. The election of the members from the list of judges by each Chamber is made from among candidates who are presented by the members of the Judiciary, since each candidate must be endorsed by 25 judges or by a judicial association.

The report notes that participants felt there was a shortage of resources in the judiciary, citing that the "number of judges per inhabitant was insufficient, which led to lengthy procedures, especially in the High Courts and the Supreme Court". In this regard, it must be noted that the number of judges per 100 000 inhabitants in Spain (11.5%) is similar to that of other nearby countries with a similar population (France (10.9%) or Italy (11.6%). These data are taken from graph 3.4 of the 2020 CEPEJ report.

The report mentions that **judicial procedures** are often lengthy and that information can be communicated years after the request. In this respect, it should be noted that, according to

the "Justice Scoreboard 2021"<sup>16</sup>, Spain is in a reasonable comparative position in terms of the length of judicial proceedings in the contentious-administrative field.

Regarding the topic of corruption, Spain **highlights the positive developments that have been achieved in the area of the prosecution and sanctioning of behaviours related to corruption.**

The project "**Strengthening the National Anti-Fraud Strategy in Spain**", which is currently being carried out by the National Anti-Fraud Coordination Service of the IGAE, with the Technical Assistance of the OECD and with funding from the European Commission's Directorate-General for Structural Reforms Support, is particularly relevant to this topic. It includes the following measures, among others:

- A draft National Anti-Fraud Strategy, which is expected to be presented in July-August 2022.
- Extending the scope of action in the domain of fraud and corruption prevention beyond the financial interests of the European Union, providing for a more general approach in the fight against corruption as agreed at the meeting of 15 March 2022 of the Coordinating Committee of the General Services Inspectorates of the Ministries of the General State Administration.

The strategy will also take into account the risks associated with implementing the funds that are being used to alleviate the economic and social consequences of COVID-19, such as risks arising from public procurement contracts under the emergency procedure, or attempts to influence the authorities that are in charge of managing those funds.

In the **fight against fraud, corruption, embezzlement, money laundering, organised crime and other crimes affecting the financial interests of the European Union**, the National Anti-Fraud Coordination Service of the IGAE maintains operational and coordination relations with the Special Prosecutor's Office against Corruption and Organised Crime, the Spanish National Police and *Guardia Civil* Forces and the European Public Prosecutor's Office, especially with the latter, since it became operational on 1 June 2021.

Furthermore, representatives of the aforementioned Institutions are part of the Commission for drafting the National Anti-Fraud Strategy, created within the Advisory Council for the Prevention and Fight against fraud against the financial interests of the European Union, which will assist and advise the National Anti-Fraud Coordination Service of the IGAE in drafting the Strategy.

In addition to this, in 2017, the IGAE's National Anti-Fraud Coordination Service launched the **Infofraud system**. Complaints relating to the management of the Recovery and Resilience Mechanism will be channelled through this system, which deals with complaints of fraud, corruption and any other illegal actions with respect to directly managed, indirectly managed or shared management funds. In this regard, it is worth noting that complaints concerning public procurement are monitored particularly closely, but represent only 6.69% of the total number of complaints received since 2017. This channel is currently being modified to adapt it to Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting breaches of Union law.

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