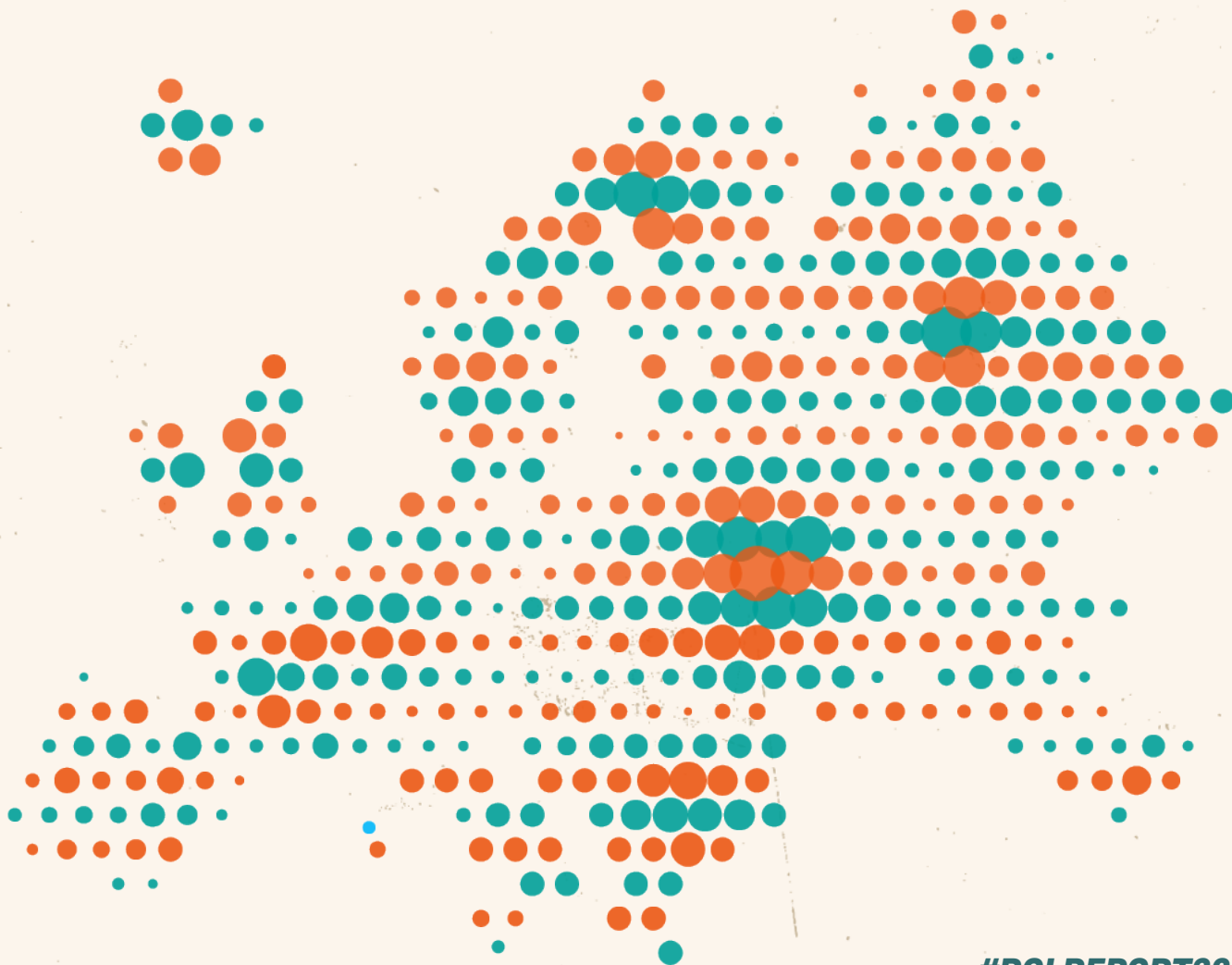


LIBERTIES

RULE OF LAW REPORT

2023

SPAIN



#ROLREPORT2023

FOREWORD

This country report is part of the Liberties Rule of Law Report 2023, which is the fourth annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and gathers public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2023 Report was drafted by Liberties and its member and partner organisations, it and covers the situation during 2022. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports, and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2023 Report includes 18 country reports that follow a common structure, mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Forty-five member and partner organisations across the EU contributed to the compilation of these country reports.

[Download the full Liberties Rule of Law Report 2023 here](#)

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SPAIN

About the authors



Rights International Spain (RIS) is an independent, not-for-profit NGO working to hold the Spanish state accountable for its obligation to protect and respect human rights and civil liberties through a more effective use of international law principles and mechanisms. RIS's mission is to strengthen human rights accountability in Spain by monitoring government activity, with a particular focus on rule of law and access to justice, as well as raising civil society's awareness and mobilising support to demand justice. To accomplish its mission, RIS develops timely and rigorous policy and legal analyses, produces other advocacy and communications resources and tools for the general public, and supports strategic litigation activities.

Key concerns

The situation of the justice system has seen no overall progress in 2022. There have been no changes in relation to the independence of the judiciary and the government failed to implement the 2022 EU Commission recommendations: no measures were taken to address the independence of the State General Prosecutor, the General Council of the Judiciary (CGPJ) has not been renewed, and there has been no progress on the efficiency in handling high-level corruption cases. On the contrary, penalties for misappropriation of public funds have been reduced in particular situations.

Measures taken to improve the anti-corruption framework have not been successful and the recommendations of the EU Commission were not addressed. A new audiovisual law¹ was approved, however, the new legislation does not include the 2022 EU Commission report recommendation to create an independent national audiovisual authority.² Similarly, the new legislative proposal on Official Secrets has been highly criticised by media associations as it limits freedom of expression.³ According to the Journalist Federation Union, the new

1 [Ley General de Comunicación Audiovisual, Ley 13/2022 7 July.](#)

2 [La nueva Ley General Audiovisual, un peligroso paso atrás - FeSP - Federación de Sindicatos de Periodistas \(fesperiodistas.org\)](#)

3 [La FAPE rechaza el Anteproyecto de Ley de Información Clasificada al limitar los derechos de libertad de expresión e información](#)

audiovisual law does not create an independent audiovisual authority and delegates the control of the fulfilment of the law to the National Commission for Markets and Competition, an agency that has proven its lack of efficiency in this regard. In relation to the new legislative proposal on Official Secrets,⁴ the biggest federal journalists' association has reported that the new legislation reintroduces censorship and limits freedom of expression as well as the right to information.⁵ In August 2022, the Platform for Freedom of Information published a report that highlights these allegations in opposition to the proposed legislation, specifically that the proposal should respect the recommendations of the Organization for Security and Cooperation in Europe (OSCE), of which Spain is a member – that is, to reduce the length of time it takes to declassify official secrets and clarify which materials cannot be classified.⁶

The lack of investigation into the June 2022 incidents that occurred on the Spanish-Moroccan border shows an absence of interest by Spanish authorities in enforcing human rights in cases concerning migrants. There are still concerns in relation to specific systemic issues identified by human rights groups, including RIS in 2022. This includes the lack of exhaustive investigation of ill-treatment allegations and insufficient reparation for the victims of the Civil War and the dictatorship.

State of play

- Justice system
- N/A Anti-corruption framework
- Media environment and freedom of expression and of information
- N/A Checks and balances
- N/A Enabling framework for civil society
- ↓ Systemic human rights issues

Legend (versus 2022)

- ↓ Regression
- No progress
- ↑ Progress

Justice system –

Key recommendations

- Strengthen the statute governing the State General Prosecutor, bringing it in line with European standards.
- Renew the General Council of the Judiciary and immediately thereafter modify the legislation incorporating European standards in the way judges are selected.
- Take measures to address the long duration of investigations and pros-

4 <https://www.mpr.gob.es/servicios/participacion/Documents/APL%20Informacio%CC%81n%20Clasificada.pdf>

5 <https://elpais.com/espana/2022-08-11/la-principal-organizacion-de-periodistas-de-espana-denuncia-que-la-nueva-ley-de-secretos-resucita-la-censura.html>

6 [ALEGACIONES-ANTEPROYECTO-LIC-AGOSTO-2022-anonimizado.pdf \(libertadinformacion.cc\)](#)

ecution of offences to increase efficiency in high-level corruption cases.

Judicial independence

Independence

The reform of the General Council of the Judiciary (CGPJ), due to take place in 2018, is still on hold.

EU Justice Commissioner Didier Reynders's visit to Spain at the end of September 2022 made the government and the leader of the main opposition party revive conversations about the reform of the General Council of the Judiciary.⁷ However, on 27 October 2022, the leader of the main opposition party announced that they would not come to an agreement on this reform.⁸

Legislation passed in 2021 removed the ability of the General Council of the Judiciary to cover judicial vacancies. On 9 October 2022, the President of the General Council of the Judiciary and of the Supreme Court announced

his resignation. He stated that the lack of reform of the General Judiciary Council had caused serious problems in the quality of the Spanish justice system in general and specifically of the Spanish Supreme Court.⁹

The situation has become even more critical in recent months. The Constitutional Court must be renewed as judges' mandates expire. The General Council of the Judiciary has a mandate to select two of the members of the Constitutional Court, however, some conservative members of the General Council of the Judiciary decided that they would not propose any candidates for the Constitutional Court as a protest against their situation.¹⁰ The government considered this attitude from the conservative members unacceptable as it blocks the renewal of the Constitutional Court.

To prevent further delays in the renewal of the Constitutional Court, the government made an urgent legislative proposal to amend the way Constitutional Court judges are to be selected by enabling the General Judiciary Council to reduce the number of votes required to nominate.¹¹ The main conservative opposition party

7 <https://confilegal.com/20220926-el-comisario-de-justicia-reynders-visita-esta-semana-espana-con-la-renovacion-del-cgpj-en-mente-y-los-fondos-europeos-como-palanc>

8 <https://confilegal.com/20221101-69-vacantes-sin-cubrir-la-ruptura-del-acuerdo-entre-pp-y-psoe-para-elegir-un-nuevo-cgpj-ahonda-la-crisis-en-la-justicia/>; [Frustrada la negociación para renovar el CGPJ: el PP acusa al al PSOE de ocultarle su intención de modificar el delito de sedición - Confilegal](#)

9 <https://www.europapress.es/nacional/noticia-carlos-lesmes-formalizara-manana-renuncia-presidente-cgpj-supremo-20221009203220.html>

10 <https://elpais.com/espana/2022-09-14/los-ocho-vocales-rebeldes-del-poder-judicial-dilatan-un-acuerdo-para-el-constitucional-que-no-garantizan.html>

11 <https://www.elindependiente.com/espana/2022/12/10/la-reforma-para-asegurar-la-renovacion-del-tc-rompe-con-el-modelo-constitucional-de-nombramiento-por-tercios/>

opposed the way the proposed legislation was going to be pushed through the Spanish Parliament and presented an appeal before the Constitutional Court requesting that the court stop the voting on the proposed legislation by the Senate, where it was awaiting approval. The Constitutional Court accepted the arguments of the conservative majority opposition and ordered the Senate to cease voting on the specific amendment. The situation has created very strong criticisms of the Constitutional Court and very serious accusations between the government, the progressive parliamentary groups and the conservative party.¹²

Finally, the General Council of the Judiciary came to an agreement to propose two nominees to the Constitutional Court.¹³

The Civic Platform for Judicial Independence (Plataforma Cívica por la Independencia Judicial) has continued in 2022 to address the European Parliament and other European institutions for assistance regarding monitoring the Spanish legal reforms that affect the judiciary and its independence and the separation of powers. This primarily concerns the

applicable legal regime of the CGPJ and the election procedure of its spokesperson.¹⁴

In October 2022, on the European Day of Justice, the Civic Platform for Judicial Independence issued a communication recognising that European pressure is an important element in the fight to obtain a real independent judiciary in Spain.¹⁵

Autonomy of the prosecution service

On 19 July 2022, the Association of Professional and Independent Prosecutors issued a statement criticising the appointment of the new State General Prosecutor, highlighting that he was very close to the former State General Prosecutor and co-responsible for the damages she caused to the institution.¹⁶

Quality of justice

Resources of the judiciary (human/financial/material)

There are two legislative proposals in the works. One is to improve the efficiency of the justice services, presented in Parliament on

12 [DIRECTO | El Constitucional decide impedir la votación del Senado sobre su renovación: todas las reacciones \(eldiario.es\)](https://www.eldiario.es)

13 [El Poder Judicial elige por unanimidad a los magistrados propuestos por el sector conservador para el Constitucional | España | EL PAÍS \(elpais.com\)](https://www.elpais.com)

14 [Llamando a las puertas de Europa - Plataforma Cívica Independencia Judicial \(plataformaindependenciajudicial.es\)](https://www.plataformaindependenciajudicial.es)

15 [DÍA EUROPEO DE LA JUSTICIA \(Comunicado Plataforma\) - Plataforma Cívica Independencia Judicial \(plataformaindependenciajudicial.es\)](https://www.plataformaindependenciajudicial.es)

16 [AF y APIF observan una tendencia “continuista” en el nombramiento de Álvaro García como fiscal general \(europapress.es\)](https://www.europapress.es); [ULTIMO COMUNICADO \(apifiscales.es\)](https://www.apifiscales.es)

13 April 2022. The second is to improve the digitalisation of the judicial services, presented on 21 July 2022. Both legislative proposals are on track.

Media environment and freedom of expression and of information 🟡

Key recommendations

- Eliminate those elements of Law 4/2015 on the Protection of Citizens' Security that limit the right to information and the right to protest.
- In relation to the pending legislation on Official Secrets, the Spanish government should pay attention to the allegations presented by civil society groups to avoid limitations of freedom of information and expression rights.
- Incorporate anti-SLAPP measures to guarantee a balance between access to justice, privacy and protection of freedom of expression and information.
- Maintain the recommendation to incorporate an independent audiovisual national authority.

Public trust in media

In its Annual Report on the Journalistic Profession,¹⁷ the Madrid Press Association found no improvement to the level of independence of the media and the precariousness of employment that exists in the sector. It highlights the increase of journalists that work in digital newspapers and the relevance of social media in journalism. It also points out the increase of women in the profession.

The report states that journalists believe the high level of political polarisation is a risk to their work. The score for media independence dropped one-tenth, from 4.6 to 4.5 (on a scale of 1 to 10). Fifty percent of journalists state that their sources for news stories are increasingly public officials and not professionals. On many occasions, they feel increased pressure from private interests and managers of media to amend their news pieces. The report indicates confidence in the information remains at 5.4 on the same scale.

On International Women's Day, several journalists' associations expressed concerns about the situation of women journalists in Spain, such as lower salaries, higher rates of unemployment and an underrepresentation of women in managerial positions.¹⁸

17 [Madrid Press Association 2021 Annual Report of the Journalist Profession Informe-anual-Profesion-Periodistica-2021_web_lite.pdf \(apmadrid.es\)](#)

18 [La Asociación de la Prensa denuncia la brecha salarial y la ausencia de mujeres directivas en los medios \(horasur.com\)](#) [La Asociación de la Prensa de Madrid señala las desigualdades a las que se siguen enfrentando las mujeres](#)

Safety and protection of journalists and other media activists

Smear campaigns

As reported by Reporters Without Borders in their 2022 report on Spain, “the level of violence against journalists has fallen considerably thanks to a decline in the tension over Catalan independence demands, although political polarisation and patchy legislation threaten the right to information”. Spain has fallen from 29th to 32nd in the World Free Press ranking of Reporters Without Borders.¹⁹

In a seminar organised on 22 October, the Federation of Journalists Association concluded that cyberattacks against journalists are mainly directed at women journalists. These attacks have the purpose of limiting the voices that cover certain information.²⁰

The Madrid Press association expressed its rejection of the discrediting campaign initiated by the Russian Embassy in Spain against ABC newspaper. The accusation was that the newspaper censored a supposed interview with

the Speaker of the Russian Foreign Ministry. The interview was in fact never granted, and instead the Russian authorities submitted a written statement by the Speaker of the Russian Foreign Ministry. The newspaper then refused to publish that written statement.²¹

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

In spite of the 2021 government compromise to amend Organic Law 4/2015 on the Protection of Citizens’ Security (commonly known as “gag law”), article 36.23 of this law, covering the “diffusion of images” of police officials in the exercise of their functions, still remains in effect, which is a limitation on journalists’ ability to perform their job. In May 2022, the Platform for Freedom of Information reported that human rights organisations such as Amnesty International have protested against the block on modifying the law.²²

The following instances are examples of judicial proceedings initiated against journalists where right to freedom of information has been and can be potentially limited.

[periodistas | APM. Asociación de la Prensa de Madrid \(apmadrid.es\)](#)

19 [Spain | RSF](#)

20 [El ciberacoso a periodistas tiene sexo femenino \(fape.es\)](#)

21 [La APM rechaza la campaña de desprestigio de la Embajada rusa contra ‘ABC’ | APM. Asociación de la Prensa de Madrid \(apmadrid.es\)](#)

22 [Organizaciones en defensa de los derechos humanos denuncian seis años de bloqueo parlamentario de la reforma de la Ley Mordaza y exigen a los partidos políticos avanzar hacia la libertad de expresión - Plataforma por la libertad de información \(libertadinformacion.cc\)](#)

Iberdrola, a big Spanish hydroelectric corporation, initiated a lawsuit against the Spanish digital newspaper *El Confidencial* for “offences against its honour”. The Federation of Associations of Journalists of Spain and the Madrid Press Association supported *El Confidencial* and the right to freedom of information.²³

Ignacio Cembrero, a journalist specialising in the Maghreb and working for the digital newspaper *El Confidencial*, has been sued by the Moroccan government for publishing his suspicion that his telephone had been subject to Pegasus spyware while in Morocco.²⁴ The Madrid Press Association issued a statement in support of Cembrero and expressed the belief that this new legal complaint has no other intention than to intimidate journalists like Cembrero and to prevent them from continuing to publish any irregularities observed in the course of their work.²⁵

Pilar de la Fuente, a journalist for the public outlet Valencia TV, has been cited for disturbing public order and refusing to identify herself while she was covering a housing eviction

in Valencia. Police suggested they would issue a fine to the journalist. Journalists’ associations and other media have strongly criticised the police for their attitude against the right to information.²⁶

Confidentiality and protection of journalistic sources (including whistleblower protection)

The Directive 2019/1937 of the European Parliament and Council,²⁷ which refers to the protection of persons who report on violations of EU law in the fight against corruption, has not been transposed yet. The Spanish government presented a proposal in March 2022, but it is still pending approval.

Access to information and public documents

The Madrid Press Association has condemned the treatment of TV6 reporter Andrea Roperó, who tried to approach the President of the Madrid Autonomous Region in a public act. The President’s Chief of Staff pushed

23 [La FAPE y la APIE defienden la libertad de información de ‘El Confidencial’ | APM. Asociación de la Prensa de Madrid \(apmadrid.es\)](#)

24 [Marruecos denuncia al periodista Ignacio Cembrero por vincularle con Pegasus \(elconfidencial.com\)](#)

25 [Marruecos denuncia al periodista Ignacio Cembrero por vincularle con Pegasus \(elconfidencial.com\); La APM respalda a Ignacio Cembrero ante la demanda de Marruecos | APM. Asociación de la Prensa de Madrid \(apmadrid.es\)](#)

26 [La Policía denuncia por desobediencia a una periodista de la televisión pública valenciana que cubría un desahucio \(eldiario.es\)](#)

27 Directive 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report infringements of Union law.. Seen in the Official Journal of the European Union: <https://www.boe.es/doue/2019/305/L00017-00056.pdf>

the reporter when she was trying to ask a question.²⁸

The Madrid Press Association denounced the fact that when the leader of the government makes public appearances, as well as during press conferences, journalists are given little opportunities to ask questions. On 29 December, journalists complained when the President appeared to submit his accountability report and only representatives from six media outlets were able to ask questions, and that they had to be approved before the beginning of the press conference.²⁹

The Madrid Press Association also denounced the attitude of the president of the Popular Party (the main opposition party), Alberto Nuñez Feijó. After convening the press to present his plan as president of the party, Feijó refused to take any questions. The Madrid Press Association laments that increasingly often those with institutional responsibilities act as if journalists were only transmitters of their words.³⁰

The Spanish digital newspaper *elDiario.es* reported an incident that took place on 9 July 2022, on the public outlet Catalan TV3. After

an interview in the programme's Frequent Questions to Laura Borrás (a Catalan politician and former President of the Catalan Parliament), Catalan parliamentarian Fransec de Dalmases grabbed the journalist who interviewed Borrás by her wrist and locked her in a room as she was leaving the studio. He scolded this journalist for the content of the interview, which he considered uncomfortable, and which had apparently breached a previous pact "not to make a public trial" of Borrás. The newspaper confirmed the information from four different sources.³¹

RSF and the Committee for the Protection of Journalists (CPJ) have requested the immediate release of Spanish journalist Pablo Gonzales, who was arrested in February 2022 in Poland and charged with spying for Russia while using his credentials as a journalist.³²

On 3 November 2022, the Spanish Constitutional Court ordered the reopening of a case of police violence against photojournalist Sira Esclasans for lack of a proper investigation because there had been a violation of her right to a fair trial and her right to information. According to the Court, her claim that a foam ball from the Catalan Police hit

28 [El empujón de Miguel Ángel Rodríguez a Andrea Roperó: "No puede tratar así a la prensa" \(lasexta.com\)](#)

29 [La APM reclama al Gobierno mayor pluralidad en la participación de medios en las ruedas de prensa | APM. Asociación de la Prensa de Madrid \(apmadrid.es\)](#)

30 [La APM denuncia que Feijó no aceptara preguntas tras hacer balance de su gestión | APM. Asociación de la Prensa de Madrid \(apmadrid.es\)](#)

31 [Un diputado de Junts abroncó a una periodista de TV3 por las preguntas de una entrevista a Laura Borràs \(eldiario.es\)](#)

32 [Polonia acusa de espionaje al periodista español detenido \(rtve.es\)](#)

her leg when covering a protest in Barcelona in 2019 was not properly investigated.³³

The Madrid Town Hall prevented access of photojournalists to the terrace in November 2022, to cover a demonstration against the situation of the Health System in Madrid. The Municipal Police received orders to stop anyone with professional equipment.³⁴

The Council of Europe published an alert following the arrest of a journalist and a photojournalist of El Salto digital newspaper, who had covered a protest act by climate activists in El Prado Museum in November 2022. Both have been investigated for an alleged offence against historic patrimony.³⁵

Disregard of human rights obligations and other systemic issues affecting the rule of law framework ⬇️

Key recommendations

- The Spanish government must incorporate effective and real measures

to guarantee the accountability and transparency of law enforcement officers.

- Incorporate measures to combat racial profiling in policing.

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

In October 2021, the association Foreigners Online (“Extranjeristas en Red”) reported to the Ombudsman that the National Police broke into a B2-level Spanish exam (required to acquire Spanish nationality) to demand the identification of those migrants taking the exam. The lawyer that presented the complaint informed the newspaper *Público* that from a legal standpoint this action did not have any justification.³⁶

In November 2022, *SOS Racism Catalunya* published a report on how racial profiling – a practice widely denounced by different human rights organisations – is used and the extent to which it is used. The NGO states that for every one Spanish national who was identified

33 [El Constitucional ordena reobrir un cas d'agressió policial a una fotoperiodista perquè no es va investigar - directa.cat](#); [El TC ampara a una fotógrafa y ordena investigar el impacto que recibió de una pelota de foam de los Mossos \(elperiodico.com\)](#)

34 [El Ayuntamiento de Madrid impide el acceso de periodistas a la azotea para cubrir la manifestación \(eldiario.es\)](#)

35 [El Consejo de Europa publica una alerta sobre la detención de periodistas de El Salto por cubrir la protesta del Prado \(eldiario.es\)](#)

36 [Público: https://www.publico.es/sociedad/policia-irrumpe-examen-nacionalidad-e-identifica-participantes.html](https://www.publico.es/sociedad/policia-irrumpe-examen-nacionalidad-e-identifica-participantes.html)

by the police in 2021, 3.48 foreigners were identified.³⁷

Follow-up to recommendations of international and regional human rights monitoring bodies

The Committee on Equality of the Parliamentary Assembly of the Council of Europe (PACE), the EU Agency for Fundamental Rights (FRA), the European Commission against Racism and Intolerance (ECRI) and the Committee for the Elimination of Racial Discrimination (CERD) of the UN have been recommending that Spanish authorities:

- Clearly and expressly condemn and prohibit by law the use of racial profiling.
- Establish independent police oversight and reporting mechanisms, ensuring they are sufficiently staffed and resources.
- Systematise the use of identification forms and ensure that police officers can be clearly identified when performing stop-and-search operations. This measure is also supported by the Ombudsman, since 2013.³⁸

Other systemic issues

There are still concerns in relation to specific systemic issues identified by human rights groups, including RIS in 2022.³⁹

1. Lack of exhaustive investigation of ill-treatment allegations

There has not been any modification in the way ill-treatment allegations are handled by law enforcement authorities in Spain.

Law 14/2015 on the Protection of Citizens' Security remains the legal instrument that most negatively impacts civic space and on the activities of civil society organisations in Spain. The project to amend the law presented in 2021 has not progressed in the Parliament. This legislation presents limits to freedom of expression, information, and assembly as well as some aspects of treatment of migrants.

A statement by the Council of Europe Commissioner for Human Rights following a visit to Spain in November 2022 expressed concern that the 2015 Citizens' Security Law continues to have a serious negative impact on the enjoyment of freedoms of expression and assembly, in particular for human rights defenders and journalists. Allegations of

37 SOS Racisme Catalunya (noviembre 2022): <https://sosracisme.org/pareu-de-parar-me-2021/>

38 Defensor del Pueblo. Recomendación 45/2013. (17 de abril de 2013). Anexo E.1, pp. 154-156. Disponible en: https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013_Anexo_E_1_Recomendaciones_2013.pdf

39 RIS en Twitter: "Estamos frente al @Congreso_Es exigiendo la reforma de la #LeyMordaza que respete los Derechos Humanos. #GobiernoCumpleTuPalabra Pedimos libertad de expresión e información y el fin de las identificaciones policiales por perfil racial <https://t.co/a3woOns1p0>" / Twitter

disproportionate use of force by law enforcement officials, inappropriate use of anti-riot weapons and the lack of clear and visible police identification numbers, especially during demonstrations, are also issues of concern. The Commissioner stressed that the review of the law should be used as an opportunity to bring it fully in line with European and human rights standards.⁴⁰

Amnesty International reports that the main concerns continue to be the way the law punishes “resistance, disobedience or refusal to identify oneself” to police and “disrespect for authority”; the ban on publishing images of security forces; the lack of independent supervising mechanisms; immediate and collective deportations at border; race-based police checks and raids; prostitutes and victims of trafficking being forced to move to isolated areas; and the use of rubber bullets and prohibition of spontaneous demonstrations.⁴¹

In July 2022, the “We Are Not a Crime” platform, made up of more than 100 organisations of activists, lawyers, and citizens, published a manifesto protesting that the proposal for the reform of the Citizens’ Security Law has not been processed. In addition, the reform does

not propose eliminating the most harmful elements for human rights, despite proposing some changes, such as the possible elimination of the article related to the “dissemination of images” of police actions (36.23). In the years that it has been in force, the law has been used to limit social protest and information through sanctions based fundamentally on two articles: “resistance, disobedience or refusal to identify oneself” (36.6) and “disrespect for authority” (37.4), which account for 70% of the total sanctions imposed under the law. These articles are not addressed in the reform. The proposal does not reduce the broad powers of the security forces, nor does it establish adequate control and accountability mechanisms, leaving the door open to arbitrary actions. The use of rubber bullets is also not prohibited. It does not include the express prohibition of police identifications based on racial profiling, nor does it propose to eliminate the legality of “hot returns” (pushbacks at the border).⁴²

The situation at the border with Morocco has caused many complaints of police brutality. In March 2022, international NGOs requested an investigation into alleged police brutality against migrants that attempted to enter Spain by jumping the fence in Melilla.⁴³ On 24 June

40 [Spain should advance social rights, better guarantee freedoms of expression and assembly and improve human rights of refugees, asylum seekers and migrants - Commissioner for Human Rights \(coe.int\)](#)

41 [Organizaciones denuncian seis años de bloqueo parlamentario de la reforma de la Ley Mordaza y exigen a los partidos políticos avanzar hacia la libertad de expresión \(amnesty.org\)](#)

42 [No somos delito \(01/07/2022\), manifiesto contra la Ley Mordaza y las devoluciones en caliente: https://nosomos-delito.net/article/2022/07/01/manifiesto-contra-la-ley-mordaza-y-por-el-fin-de-las-devoluciones-en-caliente](#)

43 [ONG internacionales exigen investigar agresiones a migrantes durante los saltos en Melilla | España | EL PAÍS \(elpais.com\)](#)

2022, the massive jumping of the fence in Melilla caused 23 deaths and 37 injuries. The deaths and injuries were the result of a massive crush of migrants. Local NGOs claimed that there were a greater number of casualties than those officially recognised and that Moroccan authorities attempted to hide the real number of deaths. They also claimed that Spanish authorities refused to provide proper assistance to the injured and that immediate deportations did not comply with current legislation. Almost 120 NGOs have requested a congressional investigation into the events. The Spanish Ombudsman opened an investigation and travelled to the area in July 2022, where he met with authorities, security forces and NGOs.⁴⁴ Human Rights Watch has also requested an independent investigation of the events.⁴⁵ The Spanish Minister of Defence claims that the events took place in Morocco.

In an interview to El País, the UN Special Rapporteur on the human rights of migrants, Felipe Gonzalez Morales, stated his concern for the lack of an investigation of the Melilla border events in June 2022.⁴⁶

In May 2022, over 30 Spanish NGOs, including RIS, signed an open letter against the use

of Pegasus spyware by governments, requesting an independent investigation into the use of the spyware to prevent violation of human rights.⁴⁷

2. Insufficient reparations for the victims of the Civil War and the dictatorship

Spain has approved new legislation to address some of the outstanding claims in relation to reparations for the victims of the Spanish Civil War through Law 20/2022, named the Law of Democratic Memory.

The new legislation addresses some of the concerns expressed: (a) it places the burden to search and exhume victims on the state; (b) it expands the definition of victims; (c) it extends the terms “recognition, reparation and restoration” and includes the creation of an index of seized property during the Civil War and the Franco era; (d) it provides for free access to all available documents, both public and private, in relation to the Civil War and Franco era; (e) it recognises the right to truth for the victims and creates an academic commission to clarify violations of human rights; (f) it states that all Spanish laws should be interpreted in accordance with international law, specifically

44 [El Defensor del Pueblo visitó Melilla para investigar las muertes por el salto a la valla | Público \(publico.es\)](#)

45 [¿Qué se sabe del salto a la valla en Melilla que ha dejado decenas de muertos? \(europapress.es\)](#); [Casi 120 ONGs piden por carta que se investigue el salto a la valla de Melilla \(elfarodemelilla.es\)](#); [HRW solicita una investigación “a fondo” de lo acontecido durante el asalto a la valla de Melilla \(europapress.es\)](#)

46 [El relator de la ONU para los derechos de los migrantes: “Es lamentable que no se haya aclarado la tragedia de Melilla cinco meses después” | Internacional | EL PAÍS \(elpais.com\)](#)

47 [La Ley de Memoria Democrática en 10 claves \(antena3.com\)](#); [Estas son las claves de la nueva Ley de Memoria Democrática \(elconfidencial.com\)](#)

international humanitarian law; (e) it creates a special prosecutor at the Supreme Court to protect victims' rights and investigate crimes in the Franco era; (f) the law maintains the validity of the 1977 Amnesty Law.⁴⁸

The UN Special Rapporteur's visit to Spain in February 2022 for the promotion of truth, justice, reparation and guarantees of non-recurrence resulted in the statement that although the new proposed legislation improved previous legislation, it was "insufficient".⁴⁹

48 [La Ley de Memoria Democrática en 10 claves \(antena3.com\)](#); [Estas son las claves de la nueva Ley de Memoria Democrática \(elconfidencial.com\)](#)

49 [Memoria Democrática: El relator de la ONU para la Verdad, la Justicia y la Reparación, en el Congreso: "La nueva Ley de Memoria es insuficiente" | Público \(publico.es\)](#)

Contacts

Rights International Spain

Rights International Spain (RIS) is a Spanish independent, non-profit, NGO working to hold the Spanish State accountable for its obligation to protect and respect human rights and civil liberties through a more effective use of international law principles and mechanisms.

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The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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