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The Problems of Tolerance in Spain (2017)

Introduction

Spain is a sovereign state located on the Iberian Peninsula, in the South West of the European continent. Since the enactment of the Constitution in 1978, Spain is a constitutional monarchy with a parliamentary system.

The 1978 Constitution put an end to a 36-years dictatorship under the rule of General Francisco Franco, who died still in power in 1975. Since its return to democracy, Spain has done little effort to come to terms with its past, particularly regarding the legacy of the Spanish Civil War of 1936-39, and its subsequent repression. Around 114.000 victims of the War and the Francoist repression are still missing.

Spain is a unitary country, but its 17 regions have their own directly elected authorities and enjoy a high degree of autonomy. Indeed, during the dictatorship, Spanish nationalism was imposed throughout the country and regional nationalisms were repressed. In response to such developments, the 1978 Constitution paved the way for the so-called “State of the autonomies” (*Estado de las autonomías*), qualifying Spain as an indissoluble “nation” composed of “nationalities and regions”. Nonetheless, the Constitution does not provide a definition of these concepts. This has caused confusion and fuelled in regional nationalism. Consequently, regions such as the Basque country and Catalonia have repeatedly demanded greater autonomy. In recent years, the Catalan region has begun a process towards independence, which has drawn a strong response from the central government.

1. Legislation

The general legal framework relating to the protection of minorities and the principle of equality lies in the Spanish Constitution of 1978.¹ However, it should be noted that the Spanish Constitution itself recognizes the participation of Spain in international and regional organizations.

At the **international level**, Spain has contracted many obligations and recognised the authority of international supervisory bodies.² It is a party to the most important multilateral treaties and conventions dealing with human rights. In this regard, it is

¹ Section 14, Chapter II: “Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.”

² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/110/68/PDF/G1011068.pdf?OpenElement>.

worth mentioning that the Spanish Constitution enshrines the primacy of international law over domestic law³, although this primacy does not apply to constitutional norms.⁴

Spain is also a Member State of the EU and of the Council of Europe (CoE), as the legislation and case-law developed under these frameworks are especially relevant to minorities. It should be noted that EU law benefits from the principles of primacy and direct effect in the Spanish legal order. Therefore, in all matters falling under the remit of the EU, the EU legal provisions dealing with non-discrimination shall apply and prevail over national legislation.

At **internal level**, as mentioned before, Spain is a highly decentralised or regionalised State, composed of 17 autonomous communities (Andalusia, Aragon, Asturias, Balearic Islands, Basque Country, Canary Islands, Cantabria, Castile and Leon, Castilla-La Mancha, Catalonia, Community of Madrid, Extremadura, Galicia, La Rioja Navarre, Region of Murcia, and Valencian Community) and two autonomous cities (Ceuta and Melilla). Consequently, while an exhaustive analysis of the legal framework at regional level would go beyond the scope of the present report, it should be borne in mind that the regional legislative and institutional developments must be taken into account in order to appropriately reflect the situation in Spain.

The Spanish legal and policy framework affecting the interests of minorities therefore derives from international, European, national, and subnational norms.

a) Legal and policy framework - General

At the international level, with regard to the rights of minorities and vulnerable groups, Spain has ratified/acceded to, *inter alia*:

- the *International Convention on the Elimination of All Forms of Racial Discrimination*,
- the *Universal Declaration of Human Rights*,
- the *International Covenant on civil and political rights*,
- the *Convention on the elimination of all forms of discrimination against women*,
- the *Convention on the Rights of Persons with Disabilities*,
- the *International Labour Organization Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*,
- the *1948 Convention on the prevention and punishment of the crime of genocide*,
- the *UNESCO Convention against discrimination in education*, and
- the *Rome Statute on the International Criminal Court*.

Furthermore, at policy level, Spain adopted the Durban declaration and programme of action on the occasion of the 2001 World Conference against Racism, racial discrimination, xenophobia and related intolerance.

³ Spanish Constitution, article 96(1).

⁴ Act n°25/2014 of 27 November 2014, article 31.

However, it is not a party to the 1973 *International Convention on the Suppression and Punishment of the Crime of Apartheid* and to the 1985 *International Convention against apartheid in sports*.

At the regional level, Spain is a party to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (hereafter, the ‘ECHR’) – and is therefore subject to the European Court of Human Rights’ jurisdiction – and its Protocol no. 12. The latter greatly expanded the possibilities of article 14 of the ECHR (non-discrimination). Both the ECHR and its protocol are directly applicable in Spain. In addition, Spain has also ratified the *European Charter for Regional or Minority Languages* and the *Framework Convention for the Protection of National Minorities*.

At EU level, non-discrimination is regulated both in EU primary law – the EU founding treaties and EU Charter on fundamental rights – and secondary law – the legislation produced by the EU institutions. In this respect, it is especially worth mentioning the following legislative acts:

- *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, which prohibits discrimination on the ground of racial or ethnic origin in a broad range of fields, including employment, social protection and social advantages, education, and goods and services available to the public, including housing;
- *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*, which covers the grounds of religion or belief, disability, age and sexual orientation in the field of employment and occupation; and
- *Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law*.

At the national level, the Constitution of 1978 expressly recognizes the principle of equality as a higher value of the legal order.⁵ Under article 9.2, “it is incumbent upon the public authorities to promote the conditions which ensure that the freedom and equality of individuals and of the groups to which they belong may be real and effective, to remove the obstacles which prevent or hinder their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life”.

In addition, under article 14 of the Constitution “Spanish citizens are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance”. Therefore, the Constitution recognizes both formal and substantive equality. Furthermore, not only it enumerates different grounds of discrimination but it also leaves room for further evolution and interpretation (“or any other personal or social condition or circumstance”).

Nonetheless, it is regrettable that the right to equality before the law for *non-citizens* is not expressly recognized by the Constitution. This actually contradicts article 14 of the

⁵ <http://www.lamoncloa.gob.es/consejodeministros/Paginas/enlaces/170317-racial.aspx>

ECHR and article 1 of Protocol 12, which provide for a general prohibition of discrimination, regardless of nationality. This gap has been highlighted on different occasions, at least by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance⁶ and the CoE European Commission against Racism and Intolerance (hereafter, ‘ECRI’).⁷ In spite of that, the amendments made to the Constitution in 2011 did not take into consideration this aspect.⁸

Furthermore, there are no official data on the ethnic composition of the population, as the Constitution is understood as prohibiting the collection of ethnically disaggregated data by public authorities, although this interpretation is criticized by several NGOs, which consider that this position is based on a restrictive interpretation of the Constitution.⁹

Anti-discrimination legislation

Against this background, the Spanish legislature has adopted a certain number of legislative acts that relate to the fight against discrimination.¹⁰ However, as mentioned before, there is no comprehensive legislation in the field of discrimination, racism, xenophobia and related intolerance. While a comprehensive draft bill on equal treatment and non-discrimination was proposed in the past, it was rejected by the Congress of Deputies in September 2012¹¹ and has not succeeded ever since.

The existing legal framework on this matter is therefore fragmented. It includes, in the field of civil and administrative law, articles 27 to 43 of *Act 62/2003 of 30 December 2003, on tax, administrative and social order measures*, which transposed the EU equality directives 2000/43 and 2000/78 in the Spanish legal order.¹² In addition, some legal provisions are included in other laws regulating specific spheres of social activity, such as in the *Act 19/2007 on the fight against violence, racism, xenophobia and intolerance in sports*.

Pursuant to article 28(1) of Act 62/2003, the concepts of equality, direct and indirect discrimination, and harassment are defined and prohibited, in accordance with international standards. Nonetheless, as evidenced by ECRI, “while, according to

⁶ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf

⁷ www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf

⁸ Ibid.

⁹ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf

¹⁰ Law 62/2003 of 30 December 2003, on tax, administrative and social order measures; Act No. 27/2005 on the promotion of education and a culture of peace; Organization Act No. 2/2006 on education; General Law 7/2010 on audio-visual communication; General Act No. 33/2011 on public health; Royal Legislative Decree 1/1995 of 24 March 1995 on the statute of workers; Royal Legislative Decree 5/2000 of 4 August 2000 on social infractions and their sanctions; and Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration.

See: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf

¹¹ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf

¹² www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf.

Article 14 of the Constitution and the case law of the Constitutional Court, discrimination based on all personal or social circumstances and conditions is prohibited, the grounds of race, colour, language, citizenship, national origin and gender identity are however missing from this and other legal provisions.”¹³

It is also worth noticing that articles 30, 35, and 42 of the same Act provide for the “general possibility of positive action on the grounds of racial and ethnic origin.”¹⁴ For example, this possibility is recognized in the field of education, as article 80 of Organic Act 2/2006 requires the authorities to develop compensatory actions aimed at persons, groups and territorial regions with unfavourable situations, and to provide the necessary economic resources to do so.¹⁵

Furthermore, article 29 provides for the scope of the equality and non-discrimination measures on the grounds of race or ethnicity. It includes education, health, social welfare, housing, and in general, offering access to any kind of property or services. However, it does not cover all areas of the public and private sector and does not explicitly refer to areas such as policing and racial profiling by law enforcement authorities.¹⁶

In addition, in the field of labour law, the *Workers’ Statute* provides for a non-discrimination clause in article 17. In accordance with this provision, discriminatory provisions – direct or indirect – in individual or collective contracts, agreements, or regulations should be declared null and void.¹⁷ Nonetheless, the legislation is not fully in line with § 14 of ECRI General Policy Recommendation No. 7 insofar as “no similar provision seems to exist outside this area.”¹⁸

Victim rights

On a positive note, in April 2015, Spain approved *Law 4/2015 on the Statute of the victim*, which transposes the *Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime*. This law is aimed at protecting the rights of victims before, during, and after criminal proceedings, and it also comprises the consideration of the special needs of the victims of crimes committed on racist grounds (art. 23.7). Moreover, it includes improving public awareness on the rights and available victim support services.

Criminalization of racism and racial discrimination

The Spanish Criminal Code, adopted in 1995 and last amended in 2015, contains several provisions that criminalize racism and racial discrimination¹⁹. For example, article 314 makes it a criminal offence to seriously discriminate someone in employment on the grounds of their ideology, religion, beliefs, ethnicity, race, or nationality. Similarly, articles 511 and 512 regulate the denial of a benefit to which the

¹³ Ibid.

¹⁴ Ibid.

¹⁵ <https://boe.es/buscar/act.php?id=BOE-A-2006-7899>.

¹⁶ www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf.

¹⁷ <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430>.

¹⁸ www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf

¹⁹ See below, the question on hate crime.

victim is entitled, on the grounds of their ideology, religion or beliefs, ethnicity or race, nationality, sex, sexual orientation, family situation, gender, illness or disability. Nonetheless, these provisions do not regulate the kinds of unjustified differentiation other than benefits, such as racial profiling by the police.²⁰ It is on the basis of these provisions that the Supreme Court convicted a car dealer in 1998, as he refused to sell a car saying, “I don’t sell to dark-skinned people like you, nor to gypsies or Arabs.”²¹

Latest developments

While the year 2017 has not seen specific legislative changes in this matter, it should be noted that two draft bills are currently on the table:

- the draft bill amending the above-mentioned Act 19/2007 on violence, racism, xenophobia and intolerance in sports, on the eradication of homophobia, biphobia and transphobia, and
- the draft bill on the fight against discrimination on the grounds of sexual orientation, identity or gender expression and sexual characteristics, and on the social equality of lesbians, gays, bisexuals, transsexuals, transgender and intersex people.

Finally, while the Spanish legislature has not tackled this issue yet, many civil society organizations have repeatedly called for a comprehensive legislation on equality and non-discrimination.²²

b) Legal and policy framework - Migrants and refugees

Since the 1990’s, Spain has become a major destination country, with 15% of the population born abroad. However, the international financial crisis, followed by the austerity crisis, has affected migratory flows in Spain, thus decreasing and shifting from “non-EU labour to family reunion of children and spouses of former labour and regularised migrants settling long-term in [Spain] or moving on to work elsewhere in the EU.”²³

The legal framework affecting migrants has seen different tendencies in recent years: many integration policies have remained untouched, such as the right to family reunification, but there have been also important drawbacks, especially in the health sector. Not to mention that the recent so-called refugee crisis has also triggered a strict response from the public authorities.

At the international level, Spain is a party to the following international treaties and conventions:

- the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*,

²⁰<https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

²¹

<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=3172017&links=gitanos&optimize=20030830&publicinterface=true>.

²² See, for example: <https://sosracismo.eu/informe-2017/>.

²³ <http://www.mipex.eu/spain>.

- the 1951 *Refugee Convention* and related *Protocol*,
- the 1954 *Convention relating to the Status of Stateless Persons*,
- the 2000 *United Nations Convention against Transnational Organized Crime*,
- *the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention*, and
- the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention of 2000*.

Nonetheless, it has not ratified the 1990 *International Convention on the protection of the rights of all migrant workers*, the 1961 *Convention on the reduction of statelessness*, nor the *International Labour Organization Migrant Workers (Supplementary Provisions) Convention of 1975 (No. 143)*.

At national level, non-citizens' rights are regulated by *Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration* (popularly known as the Spanish Aliens Act), as amended by *Public General Act 2/2009 of 11 December 2009*. The Government also adopted policies to promote the integration of migrants, including the 2011–2014 *Strategic Plan for Citizenship and Integration*.

In accordance with its preamble, the Organic Law 4/2000 was amended in 2009 in order to incorporate the Constitutional Court's jurisprudence, but also to implement the EU immigration directives and to respond to the "new migration situation in Spain". According to this law, the objectives of the reform were, *inter alia*, to guarantee the full exercise of migrant's fundamental rights, to fight against organized crime and illegal immigration, and to strengthen integration "as one of the cornerstones of immigration policy."²⁴

Concretely, articles 2bis and 2ter provide for an obligation on all authorities to mainstream the integration of migrants as a transversal objective in all their policies as well as to promote the economic, social, cultural and political participation of migrants, in accordance with the Constitution, the Statutes of autonomy and other laws. In this regard, they shall ensure training on the knowledge and respect for the values enshrined in the Constitution and Statutes of autonomy, guarantee the obligatory schooling of migrant children, the learning of official languages, the and access to the labour market as essential integration factors.²⁵

It is also important to note that the Organic Law provides for an obligation of cooperation on the central authorities with the Autonomous Communities and municipalities under the framework of a multi-year strategic plan designed to reach these objectives.²⁶ In addition, the Government and the Autonomous Communities should agree on biennial action programmes to strengthen integration, which should be financed from the State budget on an annual basis.²⁷

²⁴ <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544>.

²⁵ <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544>.

²⁶ *Ibid.*

²⁷ *Ibid.*

With regard to naturalisation through residence, the procedure was reformed by means of Act 19/2015, “which enshrines the relationship between integration and naturalisation and further specifies the requirement of proving a sufficient degree of integration in Spanish society.”²⁸ The procedure is based on a language test (A2, pursuant to the Common European Framework of reference for language) followed by a test of knowledge of the Constitution and Spanish social and cultural reality.²⁹ It is worth noticing that citizens of countries that have a special relationship with Spain benefit from a specific and accelerated procedure, as they may apply for citizenship within two years only; in total, the process may take about 5 years, thus facilitating integration into Spanish society.³⁰

Nonetheless, there are discrepancies between the legislation and practice. Indeed, the legislation only partially attains its objectives, especially in the field of education³¹. For example, according to ECRI, “half of Spain’s immigrants have no or only low level qualifications and 40% have only the most basic literacy skills, 44.2% of third-country nationals leave school early (EU28 average is 25.7%), while only 17.7% complete tertiary education (EU28 average 30.2%).”³² According to the information provided by the authorities to ECRI, the central authorities are planning to develop an action plan on education of migrant children, together with the Autonomous Communities.³³

Moreover, the 2011–2014 Strategic Plan for Citizenship and Integration has not yet been updated so as to take into account the present and future years. While it is true that the National Action Plan for Social Inclusion of the Kingdom of Spain 2013-2016 (NAPSI) covers all vulnerable groups, including migrants, it ended in 2016. Furthermore, civil society organisations are concerned that there is no longer any national funding for important integration measures such as language courses.³⁴ In addition, ECRI points out the lack of integration indicators in place in order to effectively assess the situation of migrants and the results of integration policies.³⁵

Another area of criticism are the obstacles that the Aliens Act imposes on undocumented migrants willing to regularize their administrative situation. According to article 31.5), in order to obtain a residence and work permit, undocumented migrants should have a spotless criminal record. This, together with the criminalization in 2015 of the selling of counterfeit goods by street-vendors – a means of survival for many undocumented migrants – is having severe consequences for many migrants, who find no legal avenues for regularization.³⁶ Therefore, it seems that Spain is increasingly using the Criminal Code to punish undocumented migrants.³⁷

²⁸ www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf.

²⁹ http://noticias.juridicas.com/base_datos/Admin/556533-1-19-2015-de-13-jul-medidas-de-reforma-administrativa-en-el-ambito-de-la.html#df7.

³⁰ www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf.

³¹ <http://www.mipex.eu/spain>.

³² www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf.

³³ www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ http://www.eldiario.es/desalambre/persona-puede-anos-Espana-papeles_0_752075669.html

³⁷ <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2015/01/using-criminal>

Finally, the data show that while the overall integration of non-citizens in the labour market is improving in correlation with the economic situation, certain groups of migrants, especially those with mother tongues other than Spanish, and women, face additional obstacles.³⁸

c) Legal and policy framework - The Roma

The Spanish Roma (or *gitanos*, gypsy people in Spanish) have been living in the country since the XVth century. Nowadays, it is estimated that between 725.000 and 750.000 Roma live in Spain (about 1,5% of the Spanish population) and that about 40% of them are concentrated in Andalusia. Furthermore, since 2002, the Roma population has increased with the arrival of Roma people from Romania and Bulgaria, although it is difficult to assess the exact figure due to the absence of collection of data on ethnicity in Spain.³⁹ As underlined by the Ministry of Health and Social Welfare, the Roma constitute one of the most disadvantaged social groups, heavily suffering from social exclusion and discrimination.⁴⁰

Against this background, Spain has developed a policy and institutional framework aimed at combatting the discrimination against the Roma and improving their living conditions, namely with the creation of the Roma Development Program Unit in 1989 – attached to the Ministry of Health, Social Welfare and Equality – and the State Council of the Roma People in 2005.⁴¹

The Spanish Roma social inclusion policies are conducted through a partnership between State authorities, regional authorities and civil society.⁴²

At central level, the current policy framework lies principally in the *National Strategy for Roma Social Inclusion 2012-2020*,⁴³ adopted in March 2012 by the Spanish government and stemming from the European Commission's Commission A *European Framework of National Strategies for the inclusion of Roma until 2020*. The Strategy is complemented by an operational plan; however, there was no functioning operational plan in 2017. Conversely, an operational plan was set up for the years 2014 to 2016, and then for the 2018-2020 period.⁴⁴

The National Strategy sets specific objectives, indicators, and target values in the field of education, employment, housing, and health. Its implementation combines general and targeted measures in all these fields, which are monitored through reporting

³⁸ Ibid.

³⁹ <https://www.msssi.gob.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/docs/EstrategiaNacionalEs.pdf>.

⁴⁰ <https://www.msssi.gob.es/ssi/familiasInfancia/PoblacionGitana/home.htm>.

⁴¹ <https://www.msssi.gob.es/ssi/familiasInfancia/PoblacionGitana/home.htm>.

⁴² Ibid.

⁴³ Available in Spanish at: <https://www.msssi.gob.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/docs/EstrategiaNacionalEs.pdf>.

⁴⁴ Available in Spanish at: https://www.msssi.gob.es/ssi/familiasInfancia/PoblacionGitana/docs/PlanOperativo2018_20PG.pdf.

procedures and reviews. The last one to date is a mid-term review of the Strategy, covering the years 2012 to 2016.⁴⁵

Moreover, some regional governments have adopted their own action plans and/or have enshrined the recognition of the gypsy community. For example, the Statute of autonomy of Andalusia establishes the promotion of the necessary conditions for the full integration of minorities, especially for the gypsy community's full social inclusion, as one of Andalusia's objectives.⁴⁶ In the same way, ten autonomous communities have a strategy/plan or are in the process of preparation.⁴⁷ In addition, as the data collection system has improved in recent years, it has become easier to evaluate the targeted measures to promote Roma social inclusion at regional level.⁴⁸

In general terms, according to official data, during the years 2014 to 2016, some positive outcomes have been reached: the educational level of adult Roma has improved; the percentage of Roma pupils attending secondary school has increased; they have better access to and maintenance of housing; the health of Roma women and girls has improved; and the number of Roma accessing the labour market has increased.⁴⁹ For the 2014-2016 period, 84% of the planned actions had been conducted, either in full or partially.⁵⁰

Nonetheless, there is room for improvement, especially in the field of employment, as access to the labour market remains well below the average of the general population for the Roma population⁵¹. This statement also holds true in some other fields, such as attending secondary school. Furthermore, updated data are lacking in relation to some of the indicators set out in the Strategy. Finally, according to different stakeholders, the economic crisis has negatively impacted the Roma social inclusion policy in terms of implementation and financial resources available.⁵²

Consequently, the 'Alternative Report on the Observance of the International Covenant on Economic, Social and Cultural Rights in Spain', published by a platform of Spanish NGOs in 2018, highlighted the urgent necessity of guaranteeing the right to education of Roma students, the right to decent housing and the right to non-discrimination.⁵³ Regarding the latter, this report specifically calls for expanding the regulatory framework with an Integral Law of Equality of Treatment and Non-Discrimination.

⁴⁵ https://www.msssi.gob.es/ssi/familiasInfancia/PoblacionGitana/docs/Evaluacion_I_E_G_2012-2020_vf2.pdf.

⁴⁶ Organic Law 2/2007 of 19 March 2007, article 10.3.21.

⁴⁷ <https://www.msssi.gob.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/docs/EstrategiaNacionaLEs.pdf>.

⁴⁸ https://www.msssi.gob.es/ssi/familiasInfancia/PoblacionGitana/docs/summary_evaluation_NRIS_vf.pdf.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² <https://www.coe.int/t/dghi/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

⁵³ https://docs.wixstatic.com/ugd/10c749_b8b47d858b7f43f19e6dde4f43d0d10a.pdf

d) Legislation aimed at combating hate crime (criminal cases and convictions related to hate crime).

The years 2014-2015 have seen important changes in the legislation relating to hate speech and hate crime. At international level, Spain ratified in 2014 the *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*, which entered into force in 2015.

Furthermore, at domestic level, the Spanish criminal criminalizes some forms of hate crime.

Firstly, article 22(4) provides for a **generic aggravating circumstance** applicable to those cases where an offence is committed on the grounds of racism, antisemitism, or any other type of discrimination relating to the ideology, the religion or beliefs of the victim, or the ethnicity, race or citizenship of the victim, their sex, gender, sexual orientation or identity, illness or disability. This article applies to all the offences contained in the Criminal Code, but it is especially relevant when read in conjunction with the provisions regulating threats, defamation, and insults (articles 169, 205 to 207, and 208 to 210 of the Criminal Code respectively).

It is worth noticing that the victim does not need to suffer directly from the discrimination for the offence to be constituted; for example, if a journalist is harmed on the grounds that (s)he defended a minority, then the aggravating circumstance can be applied.⁵⁴ Similarly, the legislation places the onus on the subjectivity of the perpetrator. Hence, the victim does not need to actually belong to the discriminated group; conversely, the fact that the perpetrator thinks that the victim belongs to the group is sufficient.⁵⁵

One of the most important cases in this context is the Stroika case of 4 May 2015,⁵⁶ where the Supreme Court convicted ten people for a series of serious crimes, including two attempted murders, resulting from a coordinated plan committed by a group of people sharing a neo-Nazi ideology and aiming at people deemed to belong to a different ideology. Article 22(4) was applicable insofar as the perpetrators took action in order to vindicate their ideology, and the victims were selected solely on the basis of their symbols and aesthetics.⁵⁷

Moreover, article 170(1) provides for increased penalties in the context of **threats aimed at collective groups**, whose objective is to frighten the members of a population, ethnic, cultural or religious group, or social or professional group, or any other group of people. Pursuant to the Supreme Court,⁵⁸ three elements must be identified for the offence to be constituted: it requires a special *mens rea*, that to wilfully frighten the

⁵⁴ http://cejfe.gencat.cat/web/.content/home/publicacions/manual_investigacion_delitos_odio.pdf.

⁵⁵ http://cejfe.gencat.cat/web/.content/home/publicacions/manual_investigacion_delitos_odio.pdf.

⁵⁶

<http://www.poderjudicial.es/search/doAction?action=contentpdf&datasematch=TS&reference=7408937&links=caso%20stroika&optimize=20150617&publicinterface=true>.

⁵⁷ http://cejfe.gencat.cat/web/.content/home/publicacions/manual_investigacion_delitos_odio.pdf.

⁵⁸ Supreme Court, Case of 26 February 2007.

group in whole or in part; the threat must correspond to a harm that amounts to a criminal offence; and the threats must be sufficiently serious and capable of actually frightening the group.⁵⁹

Secondly, besides these aggravating circumstances, the Criminal Code was amended in 2015⁶⁰ so as to better take into consideration the growing challenges in the field of hate crime and hate speech. The articles 510 to 512 are of special relevance in this regard.

Hate speech is made punishable under article 510. Article 510.1.a explicitly criminalizes public incitement to violence, hatred or discrimination. Similarly, the production, storage and distribution of racist materials is a criminal offence under article 510.1.b. Article 510.2 regulates the infringement on human dignity through actions involving humiliation, contempt, or disparagement on the grounds of their ethnicity, race, nationality, national origin, or sexual orientation. Moreover, the penalties are increased if the acts are committed on the Internet or are likely to disturb public peace, or to create a serious sense of insecurity or fear among the members of a vulnerable group (articles 510.3 and 510.4). Lastly, it is possible to destroy racist material and to block racist content on the Internet (article 510.6). It should also be noted that legal persons may be held criminally liable for such offences under some circumstances (article 510 bis).

Additionally, the organisations encouraging, promoting, or inciting directly or indirectly to hatred, as well as their founders, leaders and presidents are regulated by articles 515 and 517. It should nonetheless be noted that these articles do not penalize support for racist organizations and do not include the ground of gender identity.⁶¹

It is possible to mention two Supreme Court judgements of 2011 in this respect: the Hammerskin case⁶² and the Blood & Honour case,⁶³ in which the Court convicted several persons as they illegally associated in order to incite to hatred, violence or discrimination and dissolved the associations.

Furthermore, a special mention should be made to the regulation of the **public denial and justification of genocide**. Indeed, prior to the 2015 reform of the Criminal Code, article 607(2) enshrined the prohibition of the denial and justification of genocide. However, the Constitutional Court held in the *Librería Europa* case of 7 November 2007⁶⁴ that the prohibition under criminal law of the mere denial of genocide, that is, without inciting to genocide, was contrary to the freedom of expression. In response to this case-law, a new article 510.1.c was adopted, which criminalizes the public denial, trivialisation and glorification of crimes of genocide, crimes against humanity or against

⁵⁹ http://cejfe.gencat.cat/web/.content/home/publicacions/manual_investigacion_delitos_odio.pdf.

⁶⁰ Organic Law 1/2015 of 30 March 2015

⁶¹ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

⁶²

<http://www.poderjudicial.es/search/doAction?action=contentpdf&datasematch=TS&reference=6284274&links=hammerskin%2028%20de%20diciembre%20de%202011&optimize=20120227&publicinterface=true>.

⁶³

[http://www.poderjudicial.es/stfls/PODERJUDICIAL/JURISPRUDENCIA/FICHERO/10.05.11%20TSPenal%20\(2033-10\)_1.0.0.pdf](http://www.poderjudicial.es/stfls/PODERJUDICIAL/JURISPRUDENCIA/FICHERO/10.05.11%20TSPenal%20(2033-10)_1.0.0.pdf).

⁶⁴ https://www.boe.es/diario_boe/txt.php?id=BOE-T-2007-21161.

persons protected in armed conflicts, provided that the acts promote or encourage a climate of violence, hostility, hatred or discrimination. While this new wording allows conciliating the Constitutional Court's jurisprudence, it might prove to be problematic in practice, insofar as the standard required (promoting or encouraging a climate of violence, hostility, hatred or discrimination) is difficult to demonstrate.⁶⁵

e) Discriminatory legislation affecting minorities⁶⁶

In addition to the gaps deriving from the general legislation highlighted above, there are some specific legal provisions that discriminate against minorities.

In particular, in accordance with the above-mentioned Organic Act 4/2000, undocumented migrants are held in detention centres for foreign nationals (hereafter, 'CIEs') pending their expulsion or deportation. Theoretically, these detention centres should not be of a penitentiary nature.

Deportation procedures may be initiated on the following grounds:⁶⁷

- being undocumented on the Spanish territory,
- working without permit, even with a valid residence permit,
- being involved in certain types of criminal activity,
- being convicted, in Spain or abroad, with a custodial sentence of at least one year,
- lacking from a lawful activity, begging or being involved in illegal activities.

There are currently eight CIEs in Spain. CIEs depend on the Ministry of the Interior and are run by the national police force. In 2017, 65,5% of those confined in CIEs were not deported, thus meaning that they were eventually released.⁶⁸ According to the UN Special Rapporteur, "the detention of undocumented migrants, including women, in Detention Centres for Foreign Nationals (*Centros de Internamiento de Extranjeros* or CIEs) poses a number of human rights challenges that need to be addressed".⁶⁹

In 2013, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance pointed out the lack of regulations governing the way in which migrant detention centres operate, as required by law, and by the negative impact of the lack of such regulations on the human rights of undocumented migrants within the CIEs. This gap was partially addressed in 2014 with the adoption of *Royal Decree establishing the Regulation on the functioning and internal rules of procedure of the CIEs*.⁷⁰ This Regulation was however criticized by stakeholders as it allegedly reinforces the idea that the living conditions in CIEs are

⁶⁵<https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

⁶⁶ Only general non-discrimination legislation and legislations affecting the Gypsy population and persons of African descent.

⁶⁷ <http://www.boe.es/boe/dias/1985/07/03/pdfs/A20824-20829.pdf>.

⁶⁸ <https://www.elperiodico.com/es/sociedad/20180416/seis-de-cada-diez-inmigrantes-que-pasan-por-cie-no-son-expulsados-6761284>.

⁶⁹ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf

⁷⁰ <https://www.boe.es/buscar/doc.php?id=BOE-A-2014-2749>.

actually worse than in prison. The Supreme Court struck down some of its provisions, deemed contrary to EU Law, the Spanish Aliens Act and the Constitutional Court's case-law.⁷¹

The Special Rapporteur was also particularly concerned at the reported cases of mistreatment, torture and deaths of undocumented migrants. It was reported that in the CIEs in Madrid (Aluche) in December 2011 and in Barcelona (Zona Franca) in May 2011, respectively, a woman and a young man died. A case of alleged torture of a Moroccan detainee in May 2012 in the CIE in Madrid was also reported to the Special Rapporteur (A/HRC/WGAD/2012/37). Another worrisome element is that criminals are detained together with the other foreigners in CIEs, thus posing a threat to non-criminals held in detention.⁷²

Furthermore, despite the closure of the CIE in Malaga in 2012, the immigrants who arrive by boat on the shores of Malaga may now be held in custody in a penitentiary establishment in Archidona (Malaga), a situation questioned by the Ombudsperson.⁷³

Civil society organizations have importantly advocated for the closure of the CIEs on the grounds that they violate human rights, are not efficient, and should at least be used in a proportionate manner,⁷⁴ without success. Additionally, it is worth mentioning that the Barcelona city council ordered the closure of the CIE in Barcelona in 2016 on the grounds that it lacked an appropriate licence and did not comply with safety standards. Nonetheless, the CIE reopened on the following day. Consequently, the Barcelona city council decided to overcome this obstacle by issuing some sort of documentation to the adult immigrants who could demonstrate having resided in Spain for a period of 12 months, being registered in Barcelona for at least 6 months prior to the request, and being undocumented.⁷⁵

Another matter of concern is the 2012 health reform (*Royal decree-laws 16/3023 and 1192/2013*), which excluded non-nationals without a valid residence permit from the public health system. The application of this legislation has been heterogeneous, as the Autonomous Communities are responsible for the implementation of this legislation. Indeed, some limited the exclusion of migrants from the public health system by interpreting broadly the exceptions; conversely, others have applied the legislation very strictly and even in violation of the new law in some cases.⁷⁶

ECRI notes that the reform has not only affected non-nationals without a valid residence permit, but also the migrants with residence permits, "as some have experienced discouragement, insecurity and rejection in seeking health care".⁷⁷ By way of example, the share of migrants in the Community of Madrid indicating that they experience

⁷¹ <https://www.abogacia.es/2015/03/16/el-supremo-anula-varios-articulos-el-reglamento-de-los-cies/>.

⁷² Ibid.

⁷³ https://politica.elpais.com/politica/2017/12/01/actualidad/1512121347_302423.html?rel=str_articulo#1528355192120.

⁷⁴ See, for example: <https://www.cear.es/cear-pide-el-cierre-y-desmantelamiento-inmediato-de-los-cie/>.

⁷⁵ https://elpais.com/ccaa/2017/11/16/catalunya/1510861147_357048.html.

⁷⁶ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

⁷⁷ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

greater issues in the access to health services increased from 35.9% in 2012 to 49.8% in 2016.⁷⁸

f) Institutional framework

The CERED: the Spanish equality body

Pursuant to article 13 of Directive 2000/43/EC, all EU Member States must designate “a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.”⁷⁹ Under this framework, the Spanish equality body, the Council for the Elimination of Racial and Ethnic Discrimination (CERED) – formerly named Council for the Promotion of Equal Treatment and Non-Discrimination on the Grounds of Racial or Ethnic Origin – was established in 2009. It is attached to the Ministry of Health, Social Services and Equality.

In accordance with article 33 of Act 62/2003, the Council aims to fulfil three main objectives: (i) to provide independent assistance to victims, (ii) to conduct analyses and studies and publish independent reports, and (iii) to promote equal treatment and to issue recommendations and proposals regarding equality and non-discrimination. In 2016, the CERED assisted victims in 631 cases through its Network for Assistance to Victims of Racial or Ethnic Discrimination, composed of eight specialised NGOs with 87 offices throughout the country.⁸⁰

However, the CERED lacks investigation powers and the right to initiate and participate in court proceedings. This limited power and lack of independence remain a challenge, as underlined by the UN Special Rapporteur⁸¹ and ECRI.⁸² Quite importantly, it seems that the CERED is not fully operational. Indeed, it has not published any annual reports within the meaning of article 3.b.2 of Royal Decree 1262/2007 since 2012⁸³ and its website is not updated.⁸⁴ According to ECRI, the president resigned in mid-2014, no new president has been appointed ever since, and it suffers from budget cuts. In the words of ECRI, “the CERED has almost ceased to exist”.⁸⁵ This is a very worrying trend, which should be tackled by the Spanish authorities by either creating a new institution or by providing the financial capacities to the existing CERED so as to make it useful and efficient, in accordance with Directive 2000/43/EC and ECRI’s General Policy Recommendations No. 2 and 7.

⁷⁸ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

⁷⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32000L0043>.

⁸⁰ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CbC-V-2018-002-ENG.pdf>.

⁸¹ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf

⁸² <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

⁸³ <https://www.msssi.gob.es/ssi/igualdadOportunidades/noDiscriminacion/consejo.htm>.

⁸⁴ For example, the publications page does not work: <http://www.igualdadynodiscriminacion.msssi.es/recursos/publicaciones/home.htm>.

⁸⁵ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CbC-V-2018-002-ENG.pdf>.

The Observatory on Racism and Xenophobia in Spain (OBERAXE)

The Observatory on Racism and Xenophobia in Spain (OBERAXE), attached to the Ministry of Employment and Social Security, was established under article 71 of Organic Act 4/2000. Its objectives are to collect and analyse data on racism and xenophobia,⁸⁶ to promote the principle of equality and non-discrimination, as well as the fight against racism and xenophobia, and finally, to collaborate and coordinate with the different public and private entities involved in the prevention and fight against racism and xenophobia, both at national and international levels.⁸⁷

The Ombudsperson

The Ombudsperson is an independent institution benefiting from constitutional protection (article 54) and regulated by Organic Act 3/1981. It is an authority responsible for ensuring equality, thus including the fight against racism and intolerance. In this regard, it is worth mentioning that, in accordance with article 9.1 of Organic Act 3/1981, the Ombudsperson may investigate, *ex officio* or on the basis of a complaint, the activities and decisions of the public administration. As underlined by ECRI, the “the Ombudsperson has, under this mandate, intensified its activities in the field of equality, which are now documented in separate chapters of its annual reports”.⁸⁸ Furthermore, there are several ombudspersons at regional level,⁸⁹ which further contribute to the fight against racism and discrimination.

The Special Prosecutors against discrimination

Finally, Special Prosecutors against discrimination, hate crimes and cybercrime have also been appointed which, in the view of the Special Rapporteur, constitutes a good practice. During his visit, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance met with the Office of the Public Prosecutor for Hate Crimes and Discrimination in Barcelona, and considered that its work is commendable. In this context, he welcomed the creation of the posts of Public Prosecutor for Equal Treatment and Against Discrimination in the Supreme Court and the Public Prosecutors for Hate Crime and Discrimination in Madrid, Malaga, Seville and Valencia.⁹⁰

2. Law enforcement practices affecting minorities during the monitored period

a) Application of legislation, criminal cases, court rulings

Already in 2013, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance considered that “the anti-

⁸⁶ See: <http://www.empleo.gob.es/oberaxe/es/publicaciones/index.htm>.

⁸⁷ <http://www.empleo.gob.es/oberaxe/es/quienessomos/index.htm>.

⁸⁸ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

⁸⁹ See, for example, the Catalan Ombudsperson: <http://www.sindic.cat/ca/page.asp?id=1>.

⁹⁰ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf

discrimination legislation is not effective enough and that its implementation should be improved.”⁹¹ This statement still holds true.

The *Act 62/2003 of 30 December 2003, on tax, administrative and social order measures* has not generated much jurisprudence. In this respect, “serious difficulties in bringing cases to courts”⁹² have been reported for victims of discrimination, especially because of the requirement to be represented by two types of lawyers and the length of court proceedings. In addition, victims of discrimination cannot lodge a civil lawsuit with an equality body by themselves and must be committed by a public authority to make a complaint to the Ombudsperson; it is however possible for the Spanish equality body – the Council for the Promotion of Equal Treatment and Non-Discrimination on the Grounds of Racial or Ethnic Origin – that launched the Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination to mediate cases of discrimination.⁹³ Another element that may discourage victims of discrimination to go to court is the lack of general rule providing for compensation in all areas.⁹⁴

As noted by ECRI, this lack of jurisprudence has in turn a negative impact on effectiveness and awareness: “ECRI noted that practically no cases have been brought to court under these provisions, as a result of the law’s relative obscurity and a general lack of awareness about it.”⁹⁵ The same concerns were voiced by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance already in 2013, who also reported the “lack of awareness in the judiciary and law enforcement about such legislation.”⁹⁶

In addition, there are several obstacles to the good implementation of the anti-discrimination legislation in Spain, including: a lack of information about the facts due to a lack of data collection (although this is improving); double victimization, which occurs when law enforcement authorities minimize the seriousness of the case or doubt the credibility of witnesses; this element also results in underreporting and insufficient police and judicial investigations; and the necessity to increase training course among law enforcement authorities.⁹⁷

b) Discriminatory practices against minorities

The element of particular concern for present purposes is the persistence of ethnic profiling and institutional racism. Pursuant to SOS Racismo, institutional racism was

⁹¹ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf

⁹² Ibid.

⁹³ Ibid.

⁹⁴ The law contains a provision on compensation and fines in the field of employment and that applies to social legislation. See: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

⁹⁵ www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf

⁹⁶ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf.

⁹⁷ http://cejfe.gencat.cat/web/.content/home/publicacions/manual_investigacion_delitos_odio.pdf.

the first cause of discrimination in 2016 (most updated data), and increased from 23% in 2014 to 26% of the complaints filed on discriminatory grounds in 2016.⁹⁸

The case of Zeshan Muhammad, a young man of Pakistani origin who suffered from a racist stop-and-search, should be mentioned in this regard. Indeed, the national police office admitted that he stopped him “because you’re black, period.” Furthermore, the response from the Justice system has not been satisfactory, and the Constitutional Court declared the case inadmissible for its lack of constitutional relevance despite overwhelming evidence about ethnic profiling in Spain at the time.⁹⁹ A suit was filed in response before the European Court of Human Rights against Spain in 2017, which is still pending.

This Constitutional Court’s decision is in line with its controversial decision on the Williams case (2001), where it held that “refer[ring] to the race of a person for a ‘descriptive’ manner is not per se discriminatory, as specific physical or ethnic characteristics can be taken into consideration as reasonably indicative of the national origin of the person who has them.”¹⁰⁰ Yet, this position seems to contradict the international standards on the matter. Indeed, seized of this particular issue, the UN Human Rights Committee did find that the facts amounted to unlawful discrimination.¹⁰¹ In the same way, the ECtHR held that no law enforcement actions may be based exclusively or to a decisive extent on race or ethnicity.¹⁰² In another judgment, it further considered that the statistics play a crucial role in the evidence used to assess whether ethnic profiling is proven or not.¹⁰³

On a positive note, some initiatives aim to train law enforcement authorities on these issues. For example, the FIRIR project, initiated in 2012, was developed to train the members of the law enforcement authorities at central, regional, and local levels on the identification and record of racist and xenophobic incidents. Significantly, it led to the adoption of the police training manual on identification of racist or xenophobic incidents.¹⁰⁴ Nonetheless, the lack of financial resources remains an important obstacle to the good implementation of the existing initiatives to counter ethnic and racial profiling.¹⁰⁵

⁹⁸ <https://sosracismo.eu/wp-content/uploads/2017/09/Informe-Anual-2017-SOSweb.pdf>.

⁹⁹ Including an academic report published on that same year: https://www.uv.es/garciaj/pub/2013_perfil_etnico.pdf.

¹⁰⁰ <https://www.liberties.eu/en/news/case-against-spain-ethnic-profiling-strasbourg-court/11902>.

¹⁰¹ https://www.opensocietyfoundations.org/sites/default/files/decision-en_20090812.pdf.

¹⁰² ECtHR, Gillan and Quinton v. the UK, Application nos. 55762/00 and 55974/00, Judgment of 13 December 2005. Available at: <http://hudoc.echr.coe.int/eng?i=001-96585>.

¹⁰³ ECtHR, Timishev v. Russia, Application no. 4158/05, Judgment of 12 January 2010. Available at: <http://hudoc.echr.coe.int/eng?i=001-71627>.

¹⁰⁴ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf

¹⁰⁵ https://www.defensordelpueblo.es/wp-content/uploads/2018/03/Informe_anual_2017_vol.I.1_Gestion.pdf.

Finally, in a positive development, the incidents related with police services and private security staff have decreased from 22% in 2014 to 15% of the cases of discrimination in 2016.¹⁰⁶

3. Manifestations of Xenophobia and hate speech among the executive and legislative powers

Spanish political parties do not commonly resort to hate speech in their mainstream discourse, and there have not been any explicit manifestations of xenophobia or other kinds of hate speech among the executive and legislative powers during the monitored period. In Spain, there is no parliamentary representation of any openly xenophobic party.¹⁰⁷ However, some politicians belonging to the then-ruling party, the conservative Popular Party (hereafter, ‘PP’), have expressed discourses of exclusion.

Indeed, while open hate speech is not publicly admissible, “anti-immigrant and anti-Roma discourse nourishes fears and fuels xenophobic and racist sentiments.”¹⁰⁸ In particular, some PP members holding public offices resorted to a language of dehumanization of immigrants and refugees, using the “us against them” rhetoric.

For example, Javier Maroto, who was mayor of Vitoria (Basque Country), publicly said on the radio that “Algerians and Moroccans register as residents in the city for the sole purpose of claiming social benefits.”¹⁰⁹ In the same way, the former mayor of the PP in Badalona, a city close to Barcelona, “openly associated Romanian and Roma migrants with criminality. He also linked poverty, unemployment and lack of security with the arrival of migrants and Islamic terrorism.”¹¹⁰ During the 2015 electoral campaign, his party also promised to “clean” the municipalities,¹¹¹ meaning to clean them from immigrants, particularly Muslims. According to *Plataforma Ciudadana contra la Islamofobia*, this Islamophobic rhetoric from politicians has created a climate where people would post messages on gassing Muslims and referring to the showers of Nazi death camps.¹¹²

4. Statements against Xenophobia and Radical nationalism among government representatives and prominent political activists

Among government representatives, it is quite typical to issue statements against xenophobia and radical nationalism on the occasion of special events, remembrance days, and international discourses. The most relevant one in this regard for the year

¹⁰⁶ <https://sosracismo.eu/wp-content/uploads/2017/09/Informe-Anual-2017-SOSweb.pdf>.

¹⁰⁷ <http://www.congreso.es/consti/elecciones/generales/resultados.jsp?fecha=26/06/2016>

¹⁰⁸ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

¹⁰⁹ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

¹¹⁰ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

¹¹¹ <https://plataformaciudadanacontralaislamofobia.files.wordpress.com/2016/04/informe-islamofobia-en-espac3b1a-2015-pcci-informe-anual-20164.pdf>.

¹¹² <https://plataformaciudadanacontralaislamofobia.files.wordpress.com/2016/04/informe-islamofobia-en-espac3b1a-2015-pcci-informe-anual-20164.pdf>.

2017 is the Institutional declaration issued on 17 March 2017 on the occasion of the International Day for the elimination of racial discrimination.¹¹³ In this declaration, the Government expresses that the fight against racial or ethnic discrimination is a priority both at internal and international levels; it recalls the existing legal framework, with a special emphasis on the most recent legislative reforms; and details its position on the matter in international and regional fora. The declaration ends with a reaffirmation of Spain's commitment to the fight against racial or ethnic discrimination, as a necessary condition for the full exercise of human rights and fundamental freedoms.

As for the prominent political activists, there have been numerous statements. However, it is especially relevant to mention the response of the Barcelona city council to the terrorist attacks that took place on 17 August 2017 in Barcelona and Cambrils. Indeed, Ada Colau, the mayor of the city, expressed in an institutional declaration that same day her clear intention of not allowing "hate or racism to take root among us."¹¹⁴ Following this, on the 21st of August, 30 religious-based organizations signed a common manifesto condemning the attacks and expressing their common endeavour to "combat fundamentalism, religious prejudice and extremism."¹¹⁵

Moreover, the Barcelona city council headed the preparation of a manifesto of municipalities against islamophobia, which was read during the celebration of the International Day against Islamophobia, the 12th December 2017.¹¹⁶

5. Position of immigrants in the country

In 2017, the public debates about immigration revolved mostly around the so-called refugees crisis and the arrival of immigrants by boat on the Spanish shores.

In this regard, while there has been a shift in migration flows in Spain as mentioned before, it is worth noticing that the number of arrivals and asylum claims in Spain increased significantly in 2017, compared to 2016. While Italy and Greece saw the number of migrants decrease in 2017 compared to the previous year, according to the International Organization for Migration, "7,847 people reached Spanish shores between January 1 and July 26, 2017, compared with 2,476 during the same period in 2016."¹¹⁷ This raises important concerns, especially in Ceuta and Melilla, insofar as "a number of children are living on the streets."¹¹⁸

Against this background, the rhetoric of the central Government has mostly consisted in stressing that Spain faces "an important pressure"¹¹⁹ and discouraging newcomers from

¹¹³ <http://www.lamoncloa.gob.es/consejodeministros/Paginas/enlaces/170317-racial.aspx>.

¹¹⁴ <http://ajuntament.barcelona.cat/alcaldessa/es/blog/declaracion-institucional-de-rechazo-al-atentado-de-la-rambla>

¹¹⁵ <http://www.europapress.es/sociedad/noticia-treintena-organizaciones-religiosas-condenan-atentados-manipulacion-religion-20170821175423.html>

¹¹⁶ <http://ajuntament.barcelona.cat/premsa/2017/12/12/barcelona-impulsa-un-manifest-per-lluitar-contra-la-islamofobia-i-millorar-la-convivencia-social-a-europa/>

¹¹⁷ <https://www.hrw.org/news/2017/07/31/spain-migrants-held-poor-conditions>.

¹¹⁸

https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=090000168079359d.

¹¹⁹ <https://www.hrw.org/news/2017/07/31/spain-migrants-held-poor-conditions>.

entering the country. In this regard, the law enforcement practices and living conditions of newly arrived migrants have been decried by civil society.¹²⁰

Additionally, pursuant to Organic Act 4/2000 (Aliens Act), a **return procedure** aiming those attempting to enter illegally on the Spanish territory comprises some legal safeguards.¹²¹ However, law enforcement authorities commonly push back migrants who attempt to enter Spanish territory at the border between Morocco and Spain, without any administrative or judicial review.

It is important to refer to the ECtHR's judgment of 3 October 2017 in the case of N.D. and N.T. v. Spain in this regard. In this judgment, the Court held that there had been a violation of articles 4 of Protocol No. 4 (prohibition of collective expulsions of aliens) to the ECHR and 13 (right to an effective remedy) in relation with the immediate return to Morocco of sub-Saharan migrants attempting to enter Spanish territory in Melilla. Indeed, the removal measures of migrants trying to enter Spanish territory illegally in Melilla and Ceuta in the absence of any prior administrative or judicial decision, or any identification procedure, were deemed collective in nature and therefore in violation of the Convention.¹²²

In response to this judgment, some political parties called for a legislative reform and/or effective compliance with the Aliens Act. However, the then Government refused to amend the legislation and rejected the claims that immediate returns were actually conducted in violation of international law and human rights standards. Accordingly, the Government further appealed the judgment.¹²³

On a related note, Spain committed to welcome 17.337 refugees under the **European Agenda on Migration** agreed upon in May 2015 by the EU Member States. However, it had resettled only 11,4% of them by the established deadline.¹²⁴

Once asylum seekers obtain refugee status, they benefit from 18 months of support, divided into three phases: one of temporary welcome, another of integration and the last one of autonomy. During the first six months, refugees live in shelters where they benefit from other social measures, such as legal and psychological assistance, health assistance, schooling, etc. During the second phase, they receive monthly benefits for housing and access to the labor market. Finally, during the third phase, they do not receive benefits on a monthly basis anymore, but only in cases of vulnerability. It should be noted in this respect that much of the social assistance that immigrants receive in Spain comes from NGOs and civil society organizations that support immigrants and refugees (e.g. CEAR, Proactiva, Red Acoge).

Finally, a criminalization of migrant rights activists has been observed in 2017, such as in the case of the journalist and activist Helena Maleno.¹²⁵

¹²⁰ On this aspect, see also question 1.e), on the treatment of migrants in CIEs.

¹²¹ <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544>.

¹²² <http://hudoc.echr.coe.int/eng?i=001-177683>.

¹²³ <http://www.lavanguardia.com/vida/20171108/432722042401/el-senado-rechaza-reformar-la-ley-para-evitar-las-devoluciones-en-caliente.html>.

¹²⁴ https://politica.elpais.com/politica/2017/09/24/actualidad/1506268455_577262.html.

6. Society's attitude towards immigrants, foreign nationals and various ethnic minorities.

The last national survey of the CIS (*Centro de Investigaciones Sociológicas*, the Spanish centre for sociological research) about attitudes towards immigration is dated November 2016. According to this survey, 52% of the Spanish population considers that immigration is positive or very positive for the country, while 25% believes that it is negative or very negative.¹²⁶ Furthermore, 56% think that immigrants living in Spain contribute a lot or quite to enrich Spanish culture, while 38% think they do not or do little. Regarding the motivation for these attitudes, a 2014 study revealed a clear association between the news media and native group attitudes towards immigration.¹²⁷

As to society's attitude towards various ethnic minorities, the last national survey of the CIS about perception of discrimination is dated 2013. In this survey, society's consideration of minorities is mainly measured with a question about being uncomfortable living next to neighbours perceived as part of a minority group.¹²⁸ According to this poll, the highest discomfort identified is towards Spanish Roma: only 48% of interviewees would not have any problem having them as neighbors, while 61% of interviewees would not mind living next to Muslims. This study did not measure attitudes specifically addressed towards Jewish people.¹²⁹

On the one hand, public sentiments towards Roma are motivated by the negative perception of this community, deeply rooted in the Spanish tradition, and nowadays perpetuated by the media,¹³⁰ as well as by Spanish public institutions.¹³¹ On the other hand, public sentiments towards Muslims seem to be also historically rooted- as they were expelled from the country or obliged to convert to Christianity in 1492- but have been exacerbated as a consequence of the general negative social perception of Islam. This negative perception is also widely spread by the media, who for instance frequently associate between Islam and terrorism. Just to mention an example of this media treatment, according to the Observatory of Islamophobia in the Media, around 90% of the news about Islam in Spain are negative.¹³²

During the last decade, and despite the economic crisis, the attitudes towards immigrants and foreign nationals have considerably improved in the country. The study "Evolution of racism, xenophobia and other related forms of intolerance in Spain", prepared by the Spanish Ministry of Employment and OBERAXE, shows a positive

¹²⁵ <https://www.theguardian.com/commentisfree/2017/dec/20/aid-drowning-migrants-criminal-activists-ngo-witness-brutal-border-policing>

¹²⁶ See question 23, http://www.cis.es/cis/export/sites/default/-Archivos/Marginales/3160_3179/3161/es3161mar.html.

¹²⁷ <http://www.redalyc.org/pdf/997/99734671001.pdf>

¹²⁸ See question 2, http://www.cis.es/cis/export/sites/default/-Archivos/Marginales/3000_3019/3000/es3000mar.html

¹²⁹ The Observatory against Anti-Semitism publishes an annual report. The most recent one covers the 2015-2016 period and is available at: <http://observatorioantisemitismo.fcje.org/>.

¹³⁰ <http://www.observatorioproxi.org/index.php/informate/articulos-semanales/item/196-igualdad-y-comunidad-gitana>

¹³¹ <http://ajuntament.barcelona.cat/bcnvsodi/es/silvia-aguero-fernandez/>

¹³² <http://www.observatorioislamofobia.org/2018/05/12/90-ciento-las-noticias-se-publican-islam-negativas/>

evolution of these attitudes in the period 2007-2015. As stated in this study, throughout the first seven years of the economic crisis, from 2008 to 2015, concern for immigration and manifest hostility toward immigrants had surprisingly decreased, conversely to other European countries hit by this crisis. For instance, in 2015 only 5% of the population agreed with not sanctioning racist or xenophobic opinions and insults, against 22% in 2008.¹³³

Many have tried to shed light into this Spanish exceptionality. A 2015 study by Rinken stresses, on the one hand, the predominance of a post-1978 political culture that disapproves intolerance and has a negative perception of the political class, therefore rejecting anti-immigration discourse by politicians; and, on the other hand, the awareness among the general population of the special vulnerability of immigrants towards the crisis -that has in fact triggered significant processes of return and re-emigration-, that has also deactivated to some extent scapegoating mechanisms.¹³⁴

However, there is no evidence of a similar change of attitudes towards the Roma in Spain.¹³⁵ According to the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, “racial discrimination, negative stereotypes, racial prejudice and hostility against Roma still prevails in the country”, and points to an increase in cases of hate speech on the Internet and in social networks.¹³⁶

First, negative public manifestations towards **immigrants and foreign nationals**, such as demonstrations, are scarce in the country. This is probably related to the fact that anti-immigration groups are weak, which is reflected for instance in the absence of any relevant political representation of anti-immigration parties in the Spanish political system. Moreover, it seems that the political conflict with Catalonia has replaced ultra-nationalist groups’ preoccupation with immigration with a new enemy: Catalan secessionists. However, the anti-immigration discourse is frequent online.¹³⁷

Second, during this year, no significant public demonstrations against the **Roma** have been reported. However, as it was previously mentioned, anti-gypsism is also abundant online, as it is reported in the *Fundación Secretariado Gitano* (FSG) 2017 annual report.¹³⁸

Third, regarding negative manifestations towards **Muslims**, according to the Annual report of the Citizen’s Platform against Islamophobia, in 2017 there were 57 cases of organized campaigns towards Muslims, both online and offline¹³⁹.

At the offline level, during 2017, there have been various positive public manifestations towards immigrants and foreign nationals. On the 18th of February, a mass

¹³³ http://www.empleo.gob.es/oberaxe/es/publicaciones/documentos/documento_0089.htm

¹³⁴ [http://digital.csic.es/bitstream/10261/137968/1/Migraciones%20\(2015\).pdf](http://digital.csic.es/bitstream/10261/137968/1/Migraciones%20(2015).pdf)

¹³⁵ In the 2015 report, there is only data about attitudes towards Spanish Roma since 2014.

¹³⁶ Ibid

¹³⁷ <http://www.observatorioproxi.org/images/pdfs/INFORME-proxi-2015.pdf>

https://www.gitanos.org/upload/58/92/Informe_de_discriminacion_2017_ingles.pdf

¹³⁹ <http://www.observatorioislamofobia.org/wp-content/uploads/2018/03/Informe-Islamofobia-en-Espa%C3%B1a.-PCCI-Informe-Anual-2018.pdf>

demonstration took place in Barcelona, where around 500.000 people marched in favour of refugees under the motto “Our house, your house”.¹⁴⁰ According to the organizers, it was the world’s biggest demonstration showing solidarity with refugees. In addition to that, an anti-racist demonstration was held on the 12th of November in Madrid that gathered hundreds of people that urgently demanded the repeal of the Spanish Aliens Act.

At the online level, it is worth noting the initiative *Somos Más* (We are More), aimed at raising awareness about hate speech and violent radicalization among youngsters, which includes the participation of prominent young youtubers, some of them from a migrant background.¹⁴¹ Regarding the Roma, it is also worth mentioning the support received by the campaign *#ElTatuajeQueMásDuele* (the tattoo that hurts the most) of the FSG, and that reached 35 million people on Twitter¹⁴².

7. Incitement to ethnic and religious hatred

Generally speaking, there are no calls for ethnic and religious hatred in mass media and mass communications in Spain. Nonetheless, the media sometimes contribute to the spread of racism and xenophobia.¹⁴³

As observed by ECRI, the media’s “tendency to sensationalism and alarmism concerning migration leads to an unjustified focus on the nationality of migrants suspected of criminal activities and a general association of migration and delinquency” together with a confirmation of existing prejudices. For example, a TV programme on the Chinese New Year broadcasted in January 2017 on a public channel collected only negative comments on the Chinese community living in Madrid. After some pressure from civil society organisations, political parties, and citizens, the public channel admitted that the programme was racist and apologized for its content publicly.¹⁴⁴

The Roma population also suffers from widespread prejudices and discrimination in the media and pop culture. It is worth mentioning the TV series “*Palabra de gitano*” in this regard. In the Ombudsperson’s view, this programme spreads negative stereotypes and a biased image of the Roma and their culture. Similarly, as mentioned before, the terminology used in the mass media in relation with Muslims sometimes contributes to their assimilation with terrorists and to the idea that they are foreigners, although 40% of the Muslims living in Spain are Spaniards.

There is also a concern that anti-Semitism is increasing in the media.¹⁴⁵ By way of example, in March 2016, a collaborator of the TV program “*Sálvame*”, Kiko Matamoros, used the expression “I am not going to call you a Jewish dog” when

¹⁴⁰ <http://www.casanostracasavostra.com/la-campanya/noticies/mig-milio-de-persones-fan-barcelona-la-manifestacio-mes-gran-dels-mon-pels>

¹⁴¹ <http://www.somos-mas.es/>

¹⁴² https://www.gitanos.org/upload/93/02/Informe_de_discriminacio_n_2017_fsg.pdf

¹⁴³ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

¹⁴⁴ <https://ocio.laopinioncoruna.es/tv/noticias/nws-566972-tve-admite-emitio-reportaje-racista-xenofobo.html>.

¹⁴⁵ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

referring to another person. Yet, nor the host neither the other members of the team reacted to such behaviour. Similarly, several newspapers and TV programs have referred to the “Jewish lobby” and other related conspiracy theories when reporting on Jews.¹⁴⁶

Furthermore, anti-Semitic statements are often published online, in blog posts, and social media. For example, a video published by a resident of Navarra in May 2015 called on people to attack Jewish people and the State of Israel. Another telling example is the tweet published in 2011 by town councillor Guillermo Zapata saying “How would you put five millions of Jews in a [SEAT] 600? In an ashtray.”¹⁴⁷ He later apologized for the tweet, arguing that it was a joke taken out of context.

Nonetheless, State-funded projects have been created to counter these discourses, aiming “to analyse and improve media reporting on integration”.¹⁴⁸ In particular, in 1993, the Federation of the Spanish Press established a *Code of Ethics for Journalists* that enshrines provisions on non-discrimination, and the Arbitration, Complaints, and Deontology Commission for Journalists, which decides on the complaints filed on the basis of the Code. Similarly, the National Markets and Competition Commission established in 2013 shall ensure that audio-visual media do not contain incitements to hatred.¹⁴⁹ However, according to ECRI, “these mechanisms do not function properly. They are not well-known and only receive a small number of complaints on racism and discrimination.”¹⁵⁰

On a different note, special mention needs to be made of the *Hazte Oír* case. A bus with a clear anti-LGBTI message (“Boys have penis. Girls have vulva. Don’t be fooled. If you were born as a man, you are a man. If you are a woman, you will remain so”) travelled through the city of Madrid in February 2017. This bus was promoted by an ultra-catholic group in response to the adoption of legislation against LGBTI-phobia at regional level.¹⁵¹ While the case was brought to court, the bus was allowed to circulate after precautionary measures had been taken against it. Indeed, the court ruled that even though the message promoted was uncomfortable and aggressive, it was not criminal and shall be protected by free speech.¹⁵²

Finally, it is not uncommon to find graffiti inciting to ethnic and religious hatred. By way of example, the village of Bernuy de Porrero (Castilla) was covered by racist

¹⁴⁶ http://observatorioantisemitismo.fcje.org/wp-content/uploads/wpcf7_uploads//2017/09/Informe-2015-2016.pdf.

¹⁴⁷ http://observatorioantisemitismo.fcje.org/wp-content/uploads/wpcf7_uploads//2017/09/Informe-2015-2016.pdf.

¹⁴⁸ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

¹⁴⁹ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

¹⁵⁰ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>.

¹⁵¹ <http://www.informeraxen.es/cifuentes-carmena-y-el-psoe-istan-a-actuar-contra-el-autobus-transfobode-hazte-oir/>.

¹⁵² https://politica.elpais.com/politica/2017/07/21/actualidad/1500641032_852873.html.

graffiti in December 2017.¹⁵³ Similarly, Nazi and racist graffiti were made in Bilbao on the same month.¹⁵⁴

8. Radical nationalist groups and parties

As a preliminary observation, it should be noted that Organic Law 6/2002 (on political parties) declares illegal any political party which persistently promotes, justifies, or excuses the exclusion or persecution of persons on the ground of their ideology, religion or beliefs, citizenship, race, sex or sexual orientation (art. 9.2.b), and provides for the possibility of their judicial dissolution under certain conditions (art. 102.a).

In general, radical nationalist groups and parties do not benefit from a significant social support, are not well structured, and do not play a catalyst role in mainstream politics. Therefore, as it was already mentioned, they are not represented in the national parliament. Pursuant to ECRI, this is due to different reasons, including the “empathy for foreigners derived from their own mass emigration in the 1960s”; the fact that Latin American migrants share several cultural factors with Spaniards (such as the language and religion), thus making their integration relatively easy; and that the society is hardened against extremism because of the recent memory of Franco’s dictatorship.¹⁵⁵

Nevertheless, such parties have managed to be elected at local level.¹⁵⁶ This is the case of *Plataforma per Catalunya*, an openly xenophobic party based in Catalonia who managed to win 67 seats in 40 Catalan local councils in 2011. However, its success declined importantly in the following elections, as it won only 8 seats in 2015. The case of Vox should also be mentioned, as it won 24 seats in 13 local councils in that same year. Particular attention should be paid to this political party in the long run, as it seems to be capitalizing on the Catalan crisis.¹⁵⁷

9. Public actions of extremists and radical nationalists, including among sports fans.

Public activity of extremist and ultra-nationalist groups is rarely visible in Spain.¹⁵⁸ Street protests or demonstration of these groups are scarcely attended. For example, on the 26th of February 2017 the neo-Nazi organization *Hogar Social* Madrid (HSM) made an appearance at a pro-refugee concentration in Madrid and was easily expelled from the place by demonstrators.¹⁵⁹

However, there is a general perception that the Catalan crisis (that gained momentum in the fall of 2017) has emboldened neofascist groups. In fact, the activity of these groups has become more visible since the celebration of the referendum held on the 1st of

¹⁵³ <http://www.informeraxen.es/denuncian-una-veintena-de-pintadas-racistas-por-todo-el-pueblo/>.

¹⁵⁴ <http://www.informeraxen.es/pintada-nazi-y-racista-con-el-mensaje-inmigracion-stop-en-la-zona-de-zorrozgoiti-bilbao/>.

¹⁵⁵ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-V-2018-002-ENG.pdf>

¹⁵⁶ See: <http://www.infoelectoral.mir.es/min/busquedaAvanzadaAction.html;jsessionid=08DDCA0B6BF3F99FDC3708ED4C157F8F.app1>.

¹⁵⁷ <http://www.publico.es/politica/afiliacion-partido-ultraderechista-vox-aumenta-20-40-dias.html>.

¹⁵⁸ <https://www.ft.com/content/250d09e2-2bf6-11e6-bf8d-26294ad519fc>

¹⁵⁹ <http://www.publico.es/sociedad/refugiados-madrid-sera-tumba-fascismo.html>

October 2017. Since then, many Spanish nationalists, including moderate and extremist, have found a reason to publicly demonstrate in places such as Catalonia, where they previously kept a low profile and rarely performed any public activity.¹⁶⁰

Thus, after this vote, different Spanish ultra-nationalist concentrations were reported by the media in Catalonia and other parts of the country. For example, on the day of the referendum, a neofascist ultra-group led a concentration of around 70 people in favor of the unity of Spain in Castellon (Valencia).¹⁶¹ On the same day, a similar concentration took place in Madrid.¹⁶² Some weeks later, in Barcelona, 5 people were hurt during an anti-secessionist demonstration, in an event that was characterized as “neo-Nazi violence.”¹⁶³ Similarly, on the 15th of November, 21 ultras linked to radical football clubs were detained for having participated in a fight in a bar in the aftermath of a demonstration in favor of the unity of Spain in Barcelona.¹⁶⁴

In connection with the latter, it is also worth noting the links established between neo-Nazi groups and ultra-football fans in the country. In fact, as reported by the Movement against Intolerance – which publishes annually the RAXEN report that gathers data regarding racist, xenophobic and related incidents – racist and neo-Nazi groups often find new followers among ultra-football fans.¹⁶⁵ In a similar vein, the State Commission against Violence, Racism, Xenophobia and Intolerance in Sport, popularly known as the Football’s Anti-Violence Commission, reported 13 incidents related to racism and xenophobia in the season 2016-2017¹⁶⁶. On a positive note, in line with this report, there has been a considerable reduction of these incidents in the last years (a 50% reduction since the season 2012-2013).

10. Hate crime

Firstly, it should be noted that the statistics on hate speech and other hate crimes have significantly improved in Spain, thus allowing to better grasp the extent of such crime. In this regard, the Ministry of the Interior has published since 2013 data on hate crime on a yearly basis, the most recent statistics being from 2016.¹⁶⁷ NGOs and civil society organizations such as *Movimiento contra la Intolerancia*, *Plataforma Ciudadana contra la Islamofobia*, or *SOS Racismo* also collect data. The number of cases reported by such organizations tends to be higher than that of the Ministry of the Interior.

¹⁶⁰ <https://www.nytimes.com/es/2017/10/05/cataluna-espana-independientismo-nacionalismo/>

¹⁶¹ <https://www.levante-emv.com/castello/2017/10/01/manifestacion-ultra-unidad-espana-castello/1622484.html>

¹⁶² <https://www.independent.co.uk/news/world/europe/catalonia-independence-referendum-polls-open-vote-protests-barcelona-madrid-police-guardia-civil-a7976791.html>

¹⁶³ <http://www.informeraxen.es/wp-content/uploads/2018/01/Raxen-64-Montado.pdf>

¹⁶⁴ <http://www.informeraxen.es/wp-content/uploads/2018/01/Raxen-64-Montado.pdf>

¹⁶⁵ <http://www.informeraxen.es/movimiento-contra-la-intolerancia-presenta-el-informe-raxen-y-alerta-del-crecimiento-del-discurso-de-odio-y-del-avance-de-la-xenofobia/>

¹⁶⁶ http://www.csd.gob.es/csd/estaticos/dep-soc/Violencia_en_los_Espectaculos_Deportivos.Datos_Temporada_2016-2017.pdf

¹⁶⁷

<http://www.interior.gob.es/documents/642012/3479677/Informe+2016+delitos+de+odio+en+Espa%C3%B1a/6746b021-9197-48a0-833b-12067eb89778>.

In general terms, pursuant to official data, the total number of hate crimes recorded by law enforcement authorities for the year 2016 amounts to 1.272 cases. Among those, the number of cases of racism and xenophobia is the highest one (416 cases) and anti-Semitism the lowest (7 cases). In a positive evolution, a decrease of 4.2% of hate crime-related police statements is observed in comparison with the previous year.¹⁶⁸

a) Vandalism at cemeteries and religious sites

Graffiti inciting to ethnic and religious hatred or targeting human rights organizations is not uncommon. By way of example, the premises of *SOS Racismo* were covered by stickers with stereotyped images of Islam in September 2016.¹⁶⁹

There has also been an increase in the attacks and vandalism targeting mosques, which, according to the *Plataforma Ciudadana contra la Islamofobia*, creates a general feeling of insecurity for the Muslim population.¹⁷⁰ Pursuant to official data, 47 attacks were recorded in 2016.¹⁷¹ The Barcelona terrorist attacks were followed by an increase in such attacks and different cases were reported in Granada and Seville in 2017.¹⁷²

Lastly, the 2015-2016 report of the Observatory against Anti-Semitism provides one example of vandalism in Jewish cemeteries, as some graves were destroyed in San Rafael (Malaga province) in December 2015.¹⁷³

b) Cases of violence motivated by racial, ethnic or religious differences, attacks on human rights activists and antifascists

The cases of violence motivated by racial, ethnic or religious differences are among the most numerous ones. Regarding male victims, the most common offences are attacks, threats, and humiliating treatment. As for female victims, they generally suffer from attacks, threats, but also sexual abuse.¹⁷⁴

¹⁶⁸

<http://www.interior.gob.es/documents/642012/3479677/Informe+2016+delitos+de+odio+en+Espa%C3%B1a/6746b021-9197-48a0-833b-12067eb89778>

¹⁶⁹ <http://www.sosracismomadrid.es/web/wp-content/uploads/2017/09/Informe-Anual-2017-SOSweb.pdf>.

¹⁷⁰

<http://www.interior.gob.es/documents/642012/3479677/Informe+2016+delitos+de+odio+en+Espa%C3%B1a/6746b021-9197-48a0-833b-12067eb89778>.

¹⁷¹

<http://www.interior.gob.es/documents/642012/3479677/Informe+2016+delitos+de+odio+en+Espa%C3%B1a/6746b021-9197-48a0-833b-12067eb89778>.

¹⁷² Movimiento contra la Intolerancia, Informe Raxen Racismo, Xenofobia, Antisemitismo, Islamofobia, Neofascismo y otras manifestaciones de Intolerancia a través de los hechos, Número 63, Julio - Septiembre 2017, Alerta temprana de los delitos de odio.

¹⁷³ http://observatorioantisemitismo.fcje.org/wp-content/uploads/wpcf7_uploads/2017/09/Informe-2015-2016.pdf.

¹⁷⁴

<http://www.interior.gob.es/documents/642012/3479677/Informe+2016+delitos+de+odio+en+Espa%C3%B1a/6746b021-9197-48a0-833b-12067eb89778>.

One example of attack on human rights activists occurred in February 2017, when members of a neo-Nazi organisation, *Lo Nuestro*, violently attacked two persons because of their membership to alternative groups.¹⁷⁵

c) Hate crime murders

Because of the lack of appropriate statistics, the exact number of hate crime murders committed in the country in the last decades is unknown. However, the project *Crímenes de Odio: Memoria de 25 años de olvido*, identified 88 cases since 1990¹⁷⁶. No such cases have been found in 2017.

d) Terrorist attacks motivated by radical nationalism or religion

In August 2017, Barcelona and the nearby city of Cambrils suffered from a terrorist attack. A van drove into pedestrians through La Rambla, a touristic street of Barcelona, killing 14 people and injuring at least 130 others. Nine hours after, another car was driven into pedestrians in Cambrils. A woman was stabbed to death and six other people were injured.¹⁷⁷ The police killed the perpetrators. The Islamic State claimed responsibility for the attack.¹⁷⁸

11. Glorification of German National Socialism and collaborators of the Nazi Germany

Generally speaking, neo-Nazi groups have little influence in Spain,¹⁷⁹ even though there are sporadic events. For example, it was not until April 2017 that a plaque honouring seven German pilots belonging to the Condor Legion in a cemetery based in Madrid was removed. Pursuant to Madrid city council, the withdrawal was made on the basis of the wish expressed by the German embassy and the willingness of the municipal funeral establishment.¹⁸⁰ In addition, in October 2015, a monument to the victims of the Holocaust in Oviedo was covered by paint and the plaque stating that the Nazi Barbary shall not occur ever again was removed.¹⁸¹

One of the most notorious cases involving the glorification of German National Socialism is the *Libreria Europa* case, already mentioned, a bookstore that contained thousands of books dealing with the denial of the holocaust and where private conferences were held on national socialism and Zionism. After the judgment held by the Constitutional Court declaring that the prohibition of Holocaust denial is unconstitutional, other proceedings took place. In 2010, the Barcelona district court

¹⁷⁵ <http://www.informeraxen.es/identifican-a-la-intocable-y-a-otros-9-neonazis-por-dar-una-paliza-a-una-familia/>.

¹⁷⁶ <http://www.informeraxen.es/crimenes-de-odiomemoria-de-25-anos-de-olvido/>

¹⁷⁷ <https://www.telegraph.co.uk/news/2017/08/17/everything-know-barcelona-terror-attack/>.

¹⁷⁸ http://www.ara.cat/societat/LEstat-Islamic-reivindica-latemptat-Barcelona_0_1852614918.html.

¹⁷⁹ https://en.wikipedia.org/wiki/Category:Neo-Nazi_organizations_in_Spain.

¹⁸⁰ Movimiento contra la Intolerancia, Informe Raxen Racismo, Xenofobia, Antisemitismo, Islamofobia, Neofascismo y otras manifestaciones de Intolerancia a través de los hechos, Número 62, Abril - Junio 2017, Monitorización del discurso y de los delitos de odio.

¹⁸¹ http://observatorioantisemitismo.fcje.org/wp-content/uploads/wpcf7_uploads/2017/09/Informe-2015-2016.pdf.

convicted the owner for “dissemination of genocidal ideas”¹⁸² and in 2016, the bookstore was sealed by the police.¹⁸³

On a related note, the glorification of the Francoist regime – to some extent, a collaborator of the Nazi Germany – remains a subject of concern. Indeed, due to the special features of the Spanish transition to democracy, which transformed a dictatorial regime into a liberal democracy without civil war or revolution, there are some vestiges of this period in the present times, as well as relevant pending issues in the area of remembrance of the Civil war (1936-1939) and the subsequent Francoist repression. In fact, in Spain, there are still a least 114.000 people “disappeared” (*desaparecidos*), for whom the State has never taken responsibility, despite UN recurrent calls to do so.¹⁸⁴

After 2004, for the first time since the end of the dictatorship, the Socialist party government of president Jose Luis Rodríguez Zapatero took some initial steps towards the recognition of the victims of the Francoist repression. First, in 2006, Spain signed the *UN International Convention for the Protection of all Persons from Enforced Disappearance*. And after that, in 2007, the Spanish parliament passed Law 52/2007 of the 26 December, popularly known as the *Law of Historical Memory*, that, among other things, provided funding for the exhumation and the identification of human remains from mass graves and partially addressed the issue of Francoist remembrance in the public space. As a clarification, in 2007, it was very common to find streets or squares in Spain with names of former Francoist leaders as well as of members of the military that participated in the 1936 coup (at the end of 2017 it was still possible, but less common).

However, in 2011, with the victory of the conservative party PP and its arrival to the government, the provisions made by the Law of Historical Memory, including the budget allocations for exhumations, were widely dismantled. Three years after, Pablo De Grieff, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence urged the government to implement politics of memory that clarified these past violent acts.¹⁸⁵ In 2017, the socialist opposition party put forward a resolution for the removal of Franco’s remains from the crypt of the basilica of the Valley of the Fallen, as well as for launching a truth commission to investigate the crimes of his regime. The resolution was rejected by the PP.

Finally, in this respect, it is worth mentioning the existence of the Francisco Franco’s foundation, a lobby aimed at protecting the dictator’s legacy. Among other activities, it has provided legal assistance to the city councils that were unwilling to change the Francoist street names¹⁸⁶ and organized celebrations in Franco’s honour.¹⁸⁷

¹⁸² https://elpais.com/elpais/2010/03/08/actualidad/1268039835_850215.html.

¹⁸³ <https://www.elperiodico.com/es/barcelona/20160709/los-mossos-precintan-la-libreria-europa-y-busca-su-dueno-para-detenerlo-5257928>.

¹⁸⁴ <http://memoriahistorica.org.es/s1-news/c1-ultimasnoticias/onu-censura-desinteres-de-espana-con-los-114-000-desaparecidos-en-la-dictadura/>

¹⁸⁵ De Grieff, Pablo. 2014. Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence. In General Assembly United Nations, ed. Human Rights Council. Twenty-seventh session. Agenda item 3.

¹⁸⁶ https://www.eldiario.es/sociedad/Denuncian-Fundacion-Franco-Fiscalia-Ayuntamientos_0_593541003.html.

12. Persecution of human rights activists

a) Public calls for repressions against the veterans and partisans of the anti- Hitler coalition, as well as antifascists

In Spain, the equivalent of the anti-Hitler coalition would be the Republicans: the anti-fascists that supported the 1931 Republic and fought against the military uprising that took place in 1936 and ended with the victory of General Franco in 1939. For obvious reasons, public open calls for repression against Republicans are not common in Spain (few veterans of this war are still alive).

b) Restrictions on human rights and antifascist organisations imposed by the authorities

During the last year, there has been a wave of criminal prosecution of antifascist activists, as well as relevant restrictions of civil and political rights such as freedom of speech and peaceful assembly. On the one hand, Criminal Law is being used in Spain to crack down on antifascist activists. As an example, in February 2017, the Spanish Supreme Court sentenced left-wing rap singer César Strawberry to prison for a series of tweets, that included a joke about Admiral Carrero Blanco, a Francoist leader that was assassinated by ETA in 1973. The Court accused him of “feeding hate speech, legitimizing terrorism as a means of resolving social conflict, and forcing victims to recall the painful experience of threat, kidnapping or murder of a close family member.”¹⁸⁸

This case has been followed by other similar cases throughout 2017.¹⁸⁹ These cases have generated considerable preoccupation among human rights organizations such as Amnesty International, which considers them as illegitimate restrictions of freedom of speech.¹⁹⁰ Furthermore, other critics highlighted the inappropriate use of the concept of hate speech, which is aimed at protecting vulnerable groups, as well as the lack of proportionality in the sanctions, that frequently include jail sentences up to 4 years.¹⁹¹ In fact, a “confuse attitude” of Spanish courts has been pinpointed in regard to the definition and consideration of hate speech.¹⁹² Therefore, it is deemed necessary to adapt to the international framework on this issue, in particular ECRI’s General Policy Recommendation no. 15, that recalls that the legislation aimed at regulating hate speech is aimed at “protect(ing) members of vulnerable groups” and notes with concern “that

¹⁸⁷ https://www.eldiario.es/sociedad/Melia-Castilla-Madrid-homenaje-Franco_0_453554845.html.

¹⁸⁸ <https://www.liberties.eu/en/news/sentencing-of-a-twitter-user-imperils-freedom-of-speech/11352>

¹⁸⁹ <https://www.politico.eu/article/spains-real-rap-battles-catalonia-pablo-hasel-josep-valtonyc/>

¹⁹⁰ https://www.eldiario.es/desalambre/oscuras-derechos-Espana-Amnistia-Internacional_0_742625885.html

¹⁹¹ http://ajuntament.barcelona.cat/bcnvsodi/wp-content/uploads/2017/05/BCNvsOdi_Relatoria_CAST.pdf

¹⁹² <https://repositorio.comillas.edu/xmlui/bitstream/handle/11531/23527/TD00305.pdf?sequence=1>

they may have been disproportionately the subject of prosecutions or that the offences created have been used against them for the wrong reasons.”¹⁹³

On the other hand, human rights organizations have reported illegitimate restrictions of the freedom of expression and peaceful assembly in Catalonia. The use of violence by riot police on voters during the referendum celebrated on the 1 October 2017 has been characterized by Human Rights Watch as disproportionate, as well as a violation of the right to peaceful assembly.¹⁹⁴ Similarly, Amnesty International has considered the prosecution of prominent pro-independence activists Jordi Sánchez and Jordi Cuixart – who are held in preventive detention since mid-October 2017 – as “excessive restrictions of their rights to freedom of expression and of peaceful assembly”.¹⁹⁵ Despite their manifest commitment to non-violence, they were held on charges of sedition against the State, which carries a sentence of up to 15 years of imprisonment.

13. Conclusions for the period

During the last decades, Spain has developed a legal and policy framework regarding minority rights and protection generally consistent with international norms. Moreover, there have been relevant recent legal and policy efforts revolving around the fight against hate crime.

However, despite an arsenal of tools, those are neither sufficient nor well implemented. The policy framework is fragmented and lacks coherence, as, for instance, there is no comprehensive legislation in the field of discrimination, racism, xenophobia and related intolerance. Furthermore, regarding the institutional framework, anti-discrimination institutions have been created, but frequently lack powers and/or resources. In fact, the CERED, the Spanish equality body, has been left to languish almost since its creation.

In regard to society’s perception of minorities, the attitudes towards immigrants and foreign nationals have surprisingly improved during the economic and refugee’s crisis. Accordingly, while some political groups and the media have sometimes resorted to a xenophobic discourse, public manifestations of solidarity and tolerance towards immigrants and other minority groups have also been observed. Specifically, the terrorist attacks of August 2017 in Barcelona and Cambrils have triggered not only some Islamophobic outbursts, but also a massive public reaction against racism and xenophobia. Conversely, there is no evidence of a similar change of attitudes towards the Roma, which remain a widely discriminated group in the country.

These attitudes towards migration during last years’ multiple crises make of Spain, along with Portugal, an exception within the European context. This is reflected in the low impact of far-right and neo-Nazi political parties and groups in the Spanish political landscape in general. Overall, radical nationalist groups and parties do not benefit from a significant social support and do not play a catalyst role in mainstream politics.

¹⁹³ https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N15/REC-15-2016-015-ENG.pdf

¹⁹⁴ <https://www.hrw.org/news/2017/10/12/spain-police-used-excessive-force-catalonia>

¹⁹⁵ <https://www.amnesty.org/download/Documents/EUR4173082017ENGLISH.pdf>

Nevertheless, considering the current tendencies in the Western countries, there is no reason to be too optimistic. Some Spanish political groups and parties have resorted to racism and xenophobia in the past, and nothing prevents them from doing it again. Moreover, in the current context of nationalistic polarisation, the impact of the Catalan crisis and corresponding radicalization remains an issue of concern.

In addition, it should be noted that major human rights issues remain unsolved in the country. Relating to remembrance and the politics of memory, Spain should take responsibility of the at least 114.000 people disappeared during the Civil War and the subsequent repression, as well as adequately confront Franco's heritage. In addition to that, the recent deterioration of civil and political rights, particularly freedom of expression and the right to peaceful assembly, should also be put to an end as these rights are essential for the work carried out by human rights and antifascist activists.

14. Recommendations

a) General recommendations for the accession to international agreements and conventions.

In order to adequately protect minorities in the country, Spain should pursue the ratification of the following international treaties:

- the 1990 International Convention on the protection of the rights of all migrant workers,
- the 1961 Convention on the reduction of statelessness,
- the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid
- the International Labour Organization Migrant Workers (Supplementary Provisions) Convention of 1975 (No. 143), and
- the 1985 International Convention against apartheid in sports.

b) General recommendations for adjustments to the legal framework

First, although the Constitution provides a good legal framework for the development of **anti-discrimination law**, it would be advisable to amend it to enshrine the principle of equality before the law for non-citizens. Additionally, the country would benefit from adopting a comprehensive non-discrimination legislation (in line with the standards laid down in paras 4 to 17 of ECRI GPR no. 7).

Second, the country should align its **criminal law** with ECRI General Policy Recommendation no. 7. This would involve including the grounds of colour, language, citizenship and gender identity in all relevant provisions, as well as the appropriate criminalization of the support for groups that promote racism and all racial discrimination in the exercise of one's public office or occupation. At the same time, criminal law and its implementation should follow ECRI General Policy Recommendation no. 15 regarding hate speech, assuring the correct use of the concept

as well as the proportional use of sanctions to avoid illegitimate restrictions on the freedom of expression.

Third, Spain should ensure the adequate implementation of **ECtHR judgments**, particularly regarding the modification of the legal provisions that are not in line with the appropriate jurisprudence. This is especially relevant with regard to the legalization of practices like the collective expulsion of migrants and racist or ethnic profiling.

c) General recommendations for the executive bodies in the field of law enforcement and human rights

Firstly, Spain should adopt a **national plan or strategy** regarding non-discrimination and racism that includes integration policies for migrants and refugees; this plan should also include indicators for success, so as to allow an evaluation of the policies put in place.

Second, the country should establish an **independent equality body** or ensure that the CERED, the Spanish equality body, is fully independent and operational, in line with ECRI's GPR no. 2 and 7, and EU Directive 2000/43/EC. This body should ensure appropriate coordination at national, regional and local levels, which is especially important in the field of education for children with migration backgrounds.

Thirdly, Spain should ensure that **law enforcement authorities** comply with human rights standards at the borders, in line with the ECtHR jurisprudence. Spain should immediately stop collective pushbacks of migrants by border police forces, which according to the ECtHR are unlawful (case N.D. and N.T. v. Spain). Moreover, it should take relevant steps to accept more refugees in the country, according to European set quotas.

Fourthly, Spain should continue to implement measures to **train** the members of police forces on the international and national standards in the field of non-discrimination, particularly in regard to the necessity of avoiding ethnic profiling and other discriminatory practices. Furthermore, it should continue its efforts to raise awareness on the existence of rights and appropriate mechanisms to denounce hate crimes and discrimination.