

Report of the 4th cycle of Spain's Universal Periodic Review

The right to freedom of expression and the right to freedom of peaceful assembly and of association in Spain



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1. Introduction

The organisations signing this document have created an ad hoc coalition to join their efforts in preparing this report for the 4th cycle of the Universal Periodic Review (UPR) of Spain.

The coalition is composed of the following civil society organisations:



Amnistia i Llibertat

A citizen platform that was born in Catalonia to defend and protect human rights and to put an end to repression against the Catalan pro-independence movement.



Associació Catalana de Professionals

An organisation that brings together professionals from different sectors who have in common their desire to get involved in the social and political challenges that Catalonia has to face.



Associació Nativitat Yarza

An association dedicated to advancing women's rights in general and political women's rights in particular throughout the Catalan Countries



Centre Internacional Escarré per les Minories Ètniques i Nacionals (CIEMEN)

An organisation that defends the rights of peoples and stateless nations and promotes the Catalan national identity in the world.



Fundació Catalunya Fons

An organisation established with the aim of defending the rights of Catalans, both individual and collective, especially those recognized by the United Nations Universal Declaration of Human Rights of 10 December 1948.



Fundació Josep Irla

A research institution based in Catalonia that aims to generate debate and reflection to build a fairer society from a progressive and pro-European approach and to protect the values of freedom, social justice and self-determination in Catalonia.



Grup de Periodistes Ramon Barnils

An association of journalists from the Catalan Countries who work around the defense of rigorous, critical and professional journalism and a communicative space where culture and language get together.



Language Rights

Organisation working for the promotion and recognition of cultural and linguistic diversity. From Geneva, it encourages cooperation between language communities around the world to protect language and human rights.



Plataforma per la Llengua

The Catalan-language NGO, created in 1993, with 26.000 members, is a non-governmental organisation that works to promote Catalan language as a social cohesion tool.



Quorum

A non profit organisation that promotes fundamental rights and democracy in Europe and globally



Sine Qua Non

A human rights organization that focuses on building capacities for civil society organizations and activists and on creating strategies to seek accountability for human rights abuses through international strategic litigation.

2. Object of the report and methodology

The co-signatories believe that Spain faces significant democratic deficits, which are leading to violations of human rights. These deficits stem from three main sources: laws that restrict civil and political rights, in particular freedom of expression and peaceful assembly; the politicisation of the judicial system, which undermines judicial guarantees for Spanish citizens; and the abusive practices by the state apparatus to persecute dissent. This report is structured around these three categories.

This shadow report for the fourth cycle of Spain's UPR covers the entire state but focuses on issues related to the political conflict between Catalonia and Spain, drawing on the expertise of the various organizations within this ad hoc Coalition.

All the organisations that are part of the Coalition were consulted in the preparation of this report, each providing information within their areas of expertise. In addition, the Coalition consulted members of the Spanish Congress and Senate to gather up-to-date data and monitor legislative initiatives in progress in the different chambers.

The Coalition also reviewed international and European regulations and resolutions, as well as decisions, opinions and official letters sent to the Spanish government.

This document assesses the state of implementation of the 19 recommendations between paragraphs 150.80 and 150.98 of Spain's third cycle UPR report. The state of implementation of these recommendations has been evaluated, with different colors indicating the degree of fulfilment. Recommendations noted by Spain, or accepted but not implemented, are highlighted in red. Recommendations that are in the process of being developed are marked in orange, unless there is no indication of a change in the direction required by the recommendation, in which case they are marked in red. Fully implemented recommendations are shown in green.



New topics of concern that don't have recommendations from previous UPR cycles are also brought up, along with recommendations for the state to address them.

3. 4th cycle of the Universal Periodic Review

3.1. Overview

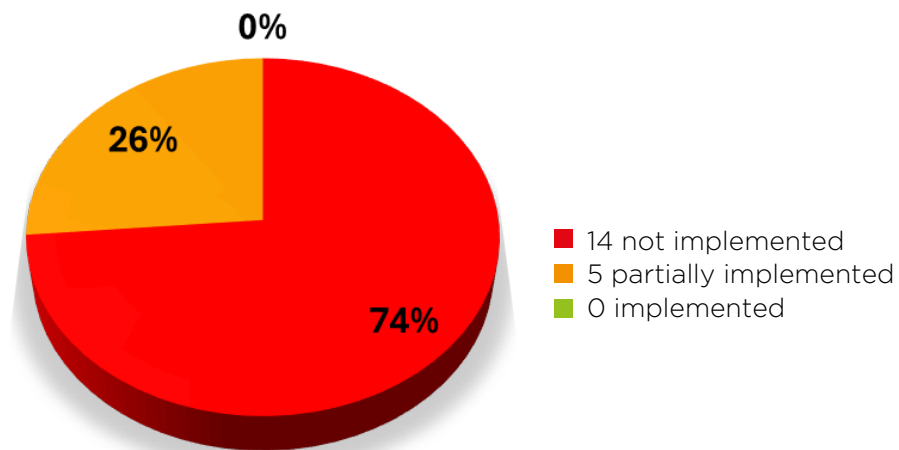
3.1.1. State of implementation of the 3rd cycle

Spain received a total of 275 recommendations and accepted 252 of them. This report focuses specifically on civil and political rights, with implications for freedom of expression and assembly. The number of recommendations related to these rights increased from 8 in 2015 to 19 in 2020.

As we already noted in our shadow report for the mid-term review¹, while it is commendable that Spain has accepted 17 of these 19 recommendations, we are concerned about the state's implementation efforts. As illustrated by the figures below, none of the recommendations have been fully implemented.

1

Compliance with the 19 analysed recommendations



¹ https://sqn-org.ch/wp-content/uploads/2024/07/UPR_Spain_mid-term_review_3rd_cycle_expression_and_assembly-1.pdf

General recommendations on Civil and Political Rights: the rights of freedom of expression and association

150.80 Take steps to ensure the respect of the rights of freedom of expression as well as association (Ghana)	Accepted	Partially implemented
150.82 Ensure the full enjoyment of the right to freedom of expression and the right to peaceful assembly (Egypt)	Accepted	Not implemented
150.83 Take all necessary measures to guarantee the right of peaceful assembly in line with its obligations under Art. 21 of the ICCPR (Belgium)	Accepted	Not implemented
150.86 Progress in the full recognition of the right to peaceful assembly, in accordance with the International Covenant on Civil and Political Rights (Colombia)	Accepted	Partially implemented
150.87 Ensure full respect for the right to freedom of peaceful assembly and association, to participation in public affairs and to freedom of expression, ensuring that all measures aimed at controlling protests and peaceful assemblies are in line with its international obligations (Costa Rica)	Accepted	Not implemented
150.88 Ensure respect of the right of freedom of expression, in line with international and European standards (Cyprus)	Accepted	Not implemented
150.89 Adopt measures to guarantee the exercise of freedom of expression, and peaceful association and assembly (Islamic Republic of Iran)	Accepted	Partially implemented

3.1.2. Main developments and key concerns since the last UPR cycle

Since the third UPR cycle there have been three general elections in Spain, the most recent in November 2023. The Spanish Socialist Party (PSOE) has led the government during this period, forming coalitions with various political forces.

The series of elections, combined with the COVID-19 pandemic, which has exacerbated social inequalities, as well as the rise of the far right, which spreads misinformation and populist rhetoric, underline the highly polarised environment in Spain today.

In parallel, important steps have been taken in the political conflict between the Spanish state and Catalonia. In particular, the establishment of a negotiation table between the two governments facilitated the reform of the penal code in 2022, which eliminated the crime of sedition. This reform was a crucial step towards the Amnesty Law, passed in May 2024. Both legislative initiatives were designed to dejudicialize the conflict.

Unfortunately, despite these achievements, the more conservative wing of the judiciary continues to resist the application of the Amnesty Law, against the will of the Public Prosecutor's Office, thus maintaining a level of repression against the movement.

The conflict

More than 4.000 people in Catalonia have faced reprisals from the Spanish authorities, including investigations, trials, convictions, exile, imprisonment, injuries and harassment, in relation to their roles in the October 2017 referendum and subsequent public protests.

In October 2019, nine pro-independence political and social leaders were sentenced to up to 13 years in prison on charges of sedition, disobedience and misuse of public funds for their role in the events of 2017. In the days that followed, large demonstrations were held in protest against the sentences, organised by a citizen's platform known as Tsunami Democratic.

In December 2020, the Spanish and Catalan governments adopted the Pedralbes Declaration, acknowledging the existence of a political conflict over the future of Catalonia and supporting its resolution through democratic means. They launched a negotiation process to achieve this goal.

In June 2021, the nine pro-independence leaders were pardoned by the Spanish government after more than four years in prison. However, these pardons did not lift their disqualifications or expunge their criminal records.

In April 2022, CitizenLab exposed #CatalanGate, revealing that more than 65 individuals linked to the Catalan sovereignty movement had been under illegal surveillance for five years using the Pegasus malware. Those targeted included politicians, activists, journalists and lawyers. This action violated their rights to privacy, freedom of expression, freedom of the press, due process and fair trial, and had a significant chilling effect on society.

In an attempt to rebuild trust, the Spanish government agreed to the 2022 reform of the penal code, which abolished the crime of sedition, a crime that had been used to persecute the Catalan movement.

As a backlash to this positive step towards ending repression, and as soon as the negotiations for the Amnesty Law were announced in 2023, judicial reprisals intensified. A group of 12 people were charged with terrorism for being part of Tsunami Democratic, the platform that called for the protests that followed the conviction of nine Catalan leaders in 2019. These charges were an abuse of anti-terrorism legislation aimed at persecuting dissent and undermined the country's commitments to international standards.

The Amnesty Law, endorsed by the Council of Europe's Venice Commission, was passed by a broad and diverse majority in the Spanish Congress in May 2024. Its aim was to bring stability and social peace and to facilitate negotiations to resolve the roots of the political conflict with Catalonia. However, the judiciary is refusing to apply it, an unprecedented move that highlights the worrying politicisation of the Spanish judicial system.

In conclusion, Spain's efforts to improve international standards to reinforce and ensure the civil and political rights of all its citizens have fallen short of bringing about real change. Specifically, with regard to the political conflict between Catalonia and Spain, the reforms merely normalise an exceptional situation in a democratic country by addressing the imprisonment of politicians and civil activists. Moreover, the politicisation of the judiciary and its resistance to advancing the resolution of the conflict show that the Spanish authorities need to make a greater effort to genuinely fulfil their democratic obligations and comply with international human rights standards.

3.2 Legislation restricting the exercise of the right to freedom of expression and peaceful assembly

Some Spanish laws do not guarantee the right to freedom of expression and assembly. In this line, the amendment of the Penal Code and the Citizens' Security Act has been an urgent issue in Spain since 2015, when these laws were passed. The international community has warned Spain to ensure that legislation does not criminalise peaceful acts of civil disobedience or unduly restrict freedom of peaceful assembly or expression by discouraging protest.^{2 3}

On July 16, 2024, the Spanish government announced reforms to both laws, including articles that criminalize or restrict freedom of peaceful assembly and expression.⁴ Although the Coalition welcomes this agreement, we will closely monitor developments, as previous attempts have failed to be implemented.

3.2.1 The Penal Code

150.84 Guarantee freedom of expression and opinion by revising the Criminal Code to ensure that its crimes are in line with internationally recognized definitions (Belgium)	Accepted	In process of implementation
150.85 Review the laws pertaining to criminal offences of insulting the Crown and offending religious feelings, and review Organic Law 9/1983 and the Organic Law on Citizen Security with the objective of protecting the rights of freedom of expression and peaceful assembly (Canada)	Accepted	Not implemented
150.94 Ensure full employment of the rights to freedom of assembly and association and freedom of expression and that all measures are in conformity with international standards (Czechia)	Accepted	In process of implementation
150.97 Decriminalize defamation and include it in the Civil Code, in accordance with international standards of necessity and proportionality with regard to restrictions on freedom of expression (Luxembourg)	Noted	Not implemented
150.98 Decriminalize defamation and place it within the civil code, in accordance with international standards of necessity and proportionality concerning restrictions on freedom of expression (Maldives)	Noted	Not implemented

Despite repeated requests to revise the penal code to guarantee civil and political rights, it was not until December 2022 when some changes were implemented.

² <https://ishr.ch/latest-updates/spain-gagging-laws-unduly-restrict-freedom-assembly-and-human-rights-defence-and-must-not-enter/>

³ <https://www.ohchr.org/en/press-releases/2015/02/two-legal-reform-projects-undermine-rights-assembly-and-expression-spain-un>

⁴ <https://www.elperiodico.com/es/politica/20240716/acuerdo-psoe-sumar-derogar-ley-mordaza-105702660>

3.2.1.1. Crimes of Public Disorders and Rebellion

Despite the above, the 2022 reform increased the minimum penalty for the crime of public disorder to 3 years' imprisonment for aggravated public disorder under Article 557.2 (the minimum penalty under the previous version of the Penal Code was 1 year). In addition, the reform amended Article 557 bis (formerly 557 ter.), which specifically punishes the peaceful occupation of public and private buildings with 6 months to 6 years imprisonment, jeopardising the non-violent use of civic space.

These modifications endanger the right to peaceful demonstration and fail to provide guarantees for social movements and peaceful protesters.

Although the 2022 reform is a step in the right direction, it missed the opportunity to abolish other political crimes, such as the crime of rebellion, which could be used to criminalise social movements.

For all the above, the Coalition recommends:

- Undertaking a new reform of the Penal Code to truly guarantee the protection of rights, ensuring that it cannot be used to criminalise social movements by:
 - Repealing Article 557 bis, which punishes peaceful occupations.
 - Modifying Article 557.2 to reduce the minimum penalty for public offenses when acting in a group.
 - Abolishing the crime of rebellion as defined under Article 472.

3.2.1.2. Crimes of Defamation and Offences

The Penal Code currently contains two offences punishing insults to the Crown and offences to religious feelings. In practice, anyone who refers to the Crown or religion, and therefore to its institutions, risks persecution. This constitutes a direct attack on freedom of expression and the democratic principle.^{5 6}

In 2018, the European Court of Human Rights (ECtHR) ruled that burning photographs of the Spanish monarch is not a criminal act and is protected by the right to freedom of expression.⁷ This ruling followed the 2008 case where two young Catalans were sentenced to 15 months' imprisonment for insulting the Crown.⁸

During the last legislature, two reforms were presented in the Spanish Congress to repeal these articles. Unfortunately, these proposals stalled in the amendment process for months and ultimately fell through when the legislature abruptly ended.

5 <https://www.publico.es/sociedad/resolvieron-jueces-10-casos-emblematicos-ofensas-religion.html>

6 <https://www.publico.es/sociedad/valtonyc-son-frases-versos-valtonyc-ira-prision-tres-anos-medio.html>

7 <https://revistas.mjusticia.gob.es/index.php/BMJ/article/view/6173/6111>

8 <https://confilegal.com/20180313-el-tedh-condena-a-espana-por-imponer-carcel-por-quemar-una-foto-de-los-reyes/>

For all the above, the Coalition recommends:

- Eliminating the crimes of insulting the Crown and offences against religious feelings in order to comply with international standards and recommendations.

3.2.2. Citizen Security Law

150.81 Ensure that the basic law on the protection of public security does not infringe on the freedom of expression and assembly (Iceland)	Accepted	Not implemented
150.85 Review the laws pertaining to criminal offences of insulting the Crown and offending religious feelings, and review Organic Law 9/1983 and the Organic Law on Citizen Security with the objective of protecting the rights of freedom of expression and peaceful assembly (Canada)	Accepted	Not implemented
150.90 Ensure that the implementation of Articles 36.6 and 37.4 of the Public Security Act, as well as the implementation of Real Decreto-Ley 14/2019 do not counteract the right to civil protest (Germany)	Accepted	Not implemented
150.91 Guarantee freedom of peaceful assembly and association, and ensure that in the context of public protests or demonstrations, government actions are carried out with full respect for the international obligations of the State (Mexico)	Accepted	Not implemented
150.92 Take further measures to ensure that the rights to freedom of expression and peaceful assembly are fully respected and effectively investigate all allegations of excessive use of force committed by the security forces (Italy)	Accepted	Not implemented
150.93 Reform Organic law of 30 March 2015 on the protection of citizen's security and Organic law of 15 July 1983 on the right of assembly, and establish a code of conduct for law enforcement (Switzerland)	Accepted	Not implemented
150.95 Ensure the independent and effective investigations into cases of disproportionate actions of police officers against participants of public demonstrations (Russian Federation)	Accepted	Not implemented
150.96 Hold accountable those responsible for crimes against journalists or that otherwise undermine the enjoyment of freedom of expression, regardless of whether they are non-state or state actors (United States of America)	Accepted	Not implemented

Spain has been repeatedly urged to reform the Organic Law of 30 March 2015 on the Protection of Citizens' Security to ensure that it does not restrict citizens' right to protest, freedom of expression and access to information.^{9 10 11}

⁹ Positioning from Amnesty International:

<https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/amnistia-internacional-lamenta-que-la-propuesta-de-reforma-de-la-ley-de-seguridad-ciudadana-siga-suponiendo-una-mordaza-frente-a-la-protesta-pacifica/>

¹⁰ Report of the UPR working group on the 2nd cycle of Spain:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/61/PDF/G1507661.pdf?OpenElement>

In the nine years since the law was passed with strong opposition,¹² significant concerns have been raised about the wide discretionary powers granted to security forces during peaceful demonstrations, the abusive use of less lethal weapons such as rubber bullets or foam projectiles, frequent court rulings in favour of the police, counter-claims by the police against demonstrators or journalists reporting abuses, and the lack of effective accountability mechanisms for the security forces.

The law is in direct conflict with the freedom of the press. The arbitrary imposition of administrative sanctions by the police has a discouraging effect on journalists' ability to carry out their work. Furthermore, the law allows for the confiscation of images obtained, which is against the Constitution.

According to Amnesty International, some 291,400 sanctions have been imposed since the law was passed, based on two articles alone: "resistance, disobedience or refusal to identify oneself" (Article 36.6) and "disrespect for authority" (Article 37.4), accounting for 77% of all sanctions imposed under the Citizen Security Measures.¹³

The law has also had a serious impact on the rights of migrants and refugees, particularly through an additional provision that seeks to legalise the illegal practice of summary and collective expulsions at the border, known as "hot returns". During the Melilla massacre on 24 June 2022, 470 hot returns were carried out, resulting in at least 37 deaths and over seventy disappearances.¹⁴ Two years later, there is still no effective, independent and transparent investigation to hold accountable the officials responsible for the unlawful use of force.

For all the above, the Coalition recommends:

- Complying with international standards by eliminating or, at least, amending the Citizens' Security Act. Specifically, we call for:
 - Abolishing the grossly disproportionate fines that can be imposed under this law for the legitimate exercise of the rights to peaceful assembly and freedom of expression.
 - Amending Article 24 of the law to abolish the use of rubber bullets.
 - Amending Article 30.3 of the law to abolish the subsidiary responsibility of the organisers of demonstrations.
 - Ending the discretionary powers of the police, the sanctions for disobedience (Article 36.6 of the Citizens' Security Act) and for offending the authority (Article 37.4), which are also acts that are already included in the Penal Code.
 - Deleting the first additional provision relating to the forced return of migrants, in order to put an end to this practice and guarantee the rights of migrants and asylum seekers.
 - Launching a transparent and independent investigation to hold accountable the officials responsible for the unlawful use of force in the June 2022 massacre.

¹¹ <https://www.coe.int/en/web/commissioner/-/spain-the-review-of-the-2015-law-on-citizens-safety-should-result-in-better-protecting-human-rights>

¹² https://elpais.com/politica/2014/12/11/actualidad/1418305773_390197.html

¹³ <https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/ley-mordaza/>

¹⁴ <https://www.theguardian.com/world/2023/aug/29/the-melilla-massacre-spanish-enclave-africa-became-deadly-flashpoint-morocco>

3.2.3. Anti-terrorism Law

The Spanish anti-terrorism law's vague and overly broad definitions of terrorism are problematic and fail to meet the legal certainty required by international human rights standards. . This can lead to the criminalisation of a wide range of activities that may not traditionally be considered terrorism, such as peaceful protests or political dissent, as we have seen recently in the case of the Catalan movement and the 2019 Tsunami Democratic protests.^{15 16 17}

Further, the current wording can have a chilling effect on freedom of expression and assembly as individuals may refrain from participating in protests or expressing dissenting opinions for fear of being labelled as terrorists.¹⁸

For all the above, the Coalition recommends:

- Redefining the crime of terrorism in line with international standards and European regulations by:
 - Providing clear and precise definitions of what constitutes terrorism.
 - Removing the term "subversion of the constitutional order" from the definition of terrorism to prevent political activities and dissent from being targeted.
 - Repealing Article 578 of the Penal Code (glorification of terrorism) and ensuring that none of its provisions violate Spain's obligations under international human rights law and standards, in particular Article 19 of the ICCPR.

3.3. Politicisation of the judicial system

One of the challenges faced by the Spanish State is the politicisation of the Spanish judiciary, which has led to a lack of judicial independence and a sense of mistrust among citizens towards the institutions.

3.3.1. Renewal of the General Council of the Judiciary

The governance system of the Spanish judiciary is under significant political control. The members of its governing body, the General Council of the Judiciary (CGPG, for its name in Spanish), are directly elected through agreements between political parties represented in the Spanish Parliament. Since December 2018, the mandate of these members had expired, and it was not until June 2024 that the situation was resolved between the main political parties, the PSOE and the PP. This resolution came after multiple complaints by the UN and mediation by the EU.^{19 20}

¹⁵ https://en.wikipedia.org/wiki/Democratic_Tsunami

¹⁶ <https://www.amnesty.org/es/documents/eur41/7924/2018/es/>

¹⁷ <https://www.amnesty.org/es/latest/news/2018/03/spain-counter-terror-law-used-to-crush-satire-and-creative-expression-online/>

¹⁸ <https://www.amnesty.org/es/latest/press-release/2017/01/eu-orwellian-counter-terrorism-laws-stripping-rights-under-guise-of-defending-them/>

¹⁹ <https://www.ohchr.org/en/press-releases/2024/01/spain-un-expert-concerned-about-five-year-delay-appointing-general-council>

²⁰ <https://verfassungsblog.de/renewal-of-the-judiciary/>

The lack of political agreement led to five years of legal uncertainty that affected the entire Spanish judicial system. At the heart of this deadlock was an attempt by the PP to manipulate the Second Chamber of the Supreme Court, which has the power to judge Spanish parliamentarians. The leak of a WhatsApp conversation²¹ from a PP leader confirmed this intention and led to the resignation of the President of the Second Chamber of the Supreme Court and a candidate for the presidency of the CGPJ.

The appointment system for the highest-level judges in the judiciary, such as those in the Supreme Court, the Audiencia Nacional and the Constitutional Court, is also concerning. This system often results in promotions that favour a particular ideology. Although the system for electing these judges is lawful, the rules encourage the politicisation of the judiciary, as appointments are made by Congress and the Senate. The president of the CGPJ is also the president of the Supreme Court. This politicisation extends to the Constitutional Court, whose members are elected by a three-fifths majority in Congress; four members are proposed by the Senate with the same majority, two by the government and two by the CGPJ.

After his visit to Spain, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition noted that the judiciary had undergone the fewest structural reforms since Spain's transition to democracy.²²

For all the above, the Coalition recommends:

- Undertaking a legal reform of the election system for judicial bodies and the appointment of judges.
- Introducing a different type of majority that allows all parties represented in Congress to participate in the selection process.
- Implementing an election system based on objective criteria of professional merit, supervised by independent committees of experts.

3.3.2. Lack of Independence of Judges

In November 2023, when the Amnesty Law was starting to be negotiated, the plenary of the CGPJ issued a statement²³ against the proposed law, with conservative members warning that it would undermine the rule of law. However, a report by the Venice Commission in March 2024 found the law to be constitutional and aimed at promoting social peace.²⁴

21 https://elpais.com/politica/2018/12/14/actualidad/1544793963_694764.html

22 <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F27%2F56%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=False>

23 <https://www.poderjudicial.es/cgpj/en/Judiciary/Panorama/Declaracion-institucional-del-Pleno-del-CGPJ--6-noviembre-de-2023->

24 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)003-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)003-e)

On the same day that the Spanish Congress attempted to pass the law- and failed due to disagreements over amendments, judge Joaquín Aguirre, during the ongoing judicial investigation related to the Catalan movement,²⁵ gave an interview to German TV channel "Das Erste" alleging "Russia's direct influence in the Catalan independence process".

"Diario.Red" revealed that judge Aguirre claimed responsibility for the failure of the first vote to approve the Amnesty Law, linking it to his actions against Catalan leaders.²⁶ The report included audio recordings of Aguirre boasting about his influence and judicial decisions affecting political stability. Neither the judges' associations nor the CGPJ have commented on this matter.²⁷

Further, at the end of May 2024, CGPJ distributed an "anti-amnesty guide" via corporate email, promoting questions of unconstitutionality and prejudicial issues.²⁸ This private use of official channels to disseminate biased opinions undermines the impartiality of the judiciary and the separation of powers.

The Amnesty Law, which was finally approved by the Spanish Congress with a broad and diverse majority and entered into force on 8 July, 2024, is a means to de-judicialise the conflict and address the repression against the pro-referendum Catalan movement. However, the judiciary is resisting its application.

The Supreme Court, which sentenced the nine Catalan leaders, has decided not to apply the Amnesty Law, ruling that it does not apply to charges of misuse of public funds.²⁹ This decision is a blow to the democratic system and the will of the people expressed in the Spanish Parliament. It undermines the impartiality of the Spanish judiciary, which is supposed to be independent in the application of the law.

This translates to a mistrust towards institutions, as it is reflected in the European Commission's 2023 Rule of Law Report;³⁰ which states that only 34% of the population in Spain perceive the level of independence of courts and judges to be 'fairly or very good' in 2023, a percentage that has decreased compared to 2020 (44%).

For all the above, the Coalition recommends:

- Reforming the system for appointing judges to the Constitutional Court and the CGPJ to make it more transparent and less susceptible to political influence. Appointments should be based on merit and ability, not political affinities.
- Establishing clear sanctions for judges who act in a biased manner or who use their office for political influence. This should include swift and transparent disciplinary procedures.
- Ensuring that approved laws, such as the Amnesty Law, are respected and implemented by all judicial bodies. This includes measures to prevent individual judicial decisions from contravening the democratic will.

25 Judge Joaquín Aguirre was the instructor of the "Volkhov Case". This name is due to the cryptonym that received an operation carried out by the Spanish Civil Guard on October 28, 2020. It involved multiple searches and arrests commissioned by Judge Joaquín Aguirre. Some of the people allegedly investigated were related to Tsunami Democratic. In addition, the Civil Guard would link pro-independence militants with Julian Assange, Edward Snowden and the Kremlin, in an eventual "strategy to try to destabilise Spain". https://ca.wikipedia.org/wiki/Operaci%C3%B3_V%C3%B3lkhov

26 <https://www.diario.red/articulo/actualidad/exclusiva-audios-juez-joaquin-aguirre-lev-arnistia-rumbo/2024070108000032166.html>

27 <https://www.diario.red/articulo/actualidad/ninguna-asociacion-jueces-pronuncia-audios-juez-aguirre/20240702124622032249.html>

28 <https://www.publico.es/politica/grupo-jueces-cgpj-enviar-guia-arnistia.html>

29 <https://cnnespanol.cnn.com/2024/07/01/tribunal-supremo-espana-niega-arnistia-mantiene-orden-detencion-carles-puigdemont-malversacion-fondos-orix/>

30 https://commission.europa.eu/document/download/62fdb34b-78d4-4d53-b9ea-67286facc01e_en?filename=23_1_52576_coun_chap_spain_en.pdf

3.3.3. Popular accusation

Only Spain maintains the figure of the “popular accusation” in criminal proceedings. In the rest of Europe, only the victims or the public prosecutor can file charges.

Across Europe, the exercise of criminal action is exclusively reserved for the Public Prosecutor’s Office, which holds the monopoly on this function. In nearly all legal systems, no one other than the prosecution is allowed to request restrictive measures on rights or participate in a criminal case. Therefore, no outside party can demand prison sentences for anyone.

Popular accusation, enshrined in Article 125 of the Spanish Constitution, has been the subject of legal debate. Despite failed reform attempts, the judiciary, the public prosecutor’s office and the academia agree that political parties and trade unions must be excluded from its exercise because of their status as organisations with public relevance and the risk of instrumentalisation of the process.

Popular accusation has often been abused as a self-serving political instrument to justify judicial decisions that deviate from the true objectives of what the administration of justice should be, and the Public Prosecutor’s Office has recently called for reflection on its exercise

For all the above, the Coalition recommends:

- Reforming Article 125 of the Spanish Constitution, to restrict the exercise of the right of popular accusation to non-profit legal entities that have a demonstrated aim, as stated in their statutes, to defend human rights or other legally protected public interests.

3.4. Abusive practices to persecute dissent

The Spanish state employs a range of measures to suppress political and social opposition that extend far beyond the mere application of the law. These measures include not only prospective investigations but also extensive espionage activities, infiltration of opposition groups, and the recruitment of informers, as well as practices that limit the freedom of press. These undermine the foundational values of a democratic society, eroding trust in public institutions and stifling legitimate dissent.

3.4.1. Prospective investigations

One of the tools used by the Spanish judiciary to carry out abusive practices that target political dissent is the prospective investigation³¹ ³²

31 https://www.eldiario.es/politica/audiencia-nacional-ordena-garcia-castellon-archivar-investigacion-secreta-prospectiva_1_9120025.html

32 <https://www.libertaddigital.com/espana/2024-07-04/marlaska-situa-al-juez-peinado-fuera-de-la-ley-le-acusa-de-hacer-una-investigacion-prospectiva-contrabegona-gomez-7144175/>

Prospective investigations are those that are not carried out because there is evidence of a crime, but with the intention of finding incriminating evidence in the behaviour of the person being investigated. Instead of starting with a suspicion based on evidence, these investigations start with the intention of finding something incriminating.

This practice violates the right to the presumption of innocence, the right to a fair trial (effective judicial protection) and the right to privacy. It is also used to intimidate, discredit or imprison political opponents and social dissent.

The consequences of these investigations have a chilling effect, leading to distrust of the judicial system. They create a climate of fear and self-censorship among the population, especially those who protest or are active in public life. Ultimately, this undermines the rule of law.

For all the above, the Coalition recommends:

- Investigating and accounting for the cases of prospective investigations that have been carried out by the Spanish judiciary to ensure that these practices do not happen again.

3.4.2. Illegal espionage

3.4.2.1. Use of malware for political espionage

In April 2022, Citizen Lab published a report confirming that over 65 people³³ linked to the Catalan sovereignty movement had been under surveillance for years using Pegasus .

This practice constitutes a violation of the right to privacy, freedom of expression, freedom of the press, due process, and fair trial, and has a strong chilling effect, as Amnesty International Spain stated³⁴.

The UN Special Procedures³⁵, the Parliamentary Assembly of the Council of Europe³⁶ and the European Parliament³⁷ have all launched investigations into the matter and have issued reports with specific recommendations for Spain.

While we welcome the creation of a commission of inquiry by the Spanish Congress in December 2023, we are concerned by the lack of progress.

³³ <https://citizenlab.ca/2022/04/catalangate-extensive-mercenary-spyware-operation-against-catalans-using-pegasus-candiru/>

³⁴ <https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/pegasus-espionaje-masivo/>

³⁵ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?glid=27548>

³⁶ <https://pace.coe.int/files/33116/pdf>

³⁷ https://www.europarl.europa.eu/doceo/document/TA-9-2023-0244_EN.html

Regarding investigations, the government continues to be inactive and opaque about the cases. It has evaded requests for information on illegal espionage using malware by invoking the Official Secrets Act.³⁸

Although some cases have been opened, the prosecution has not brought charges. Currently, there are more than a dozen open criminal cases in Barcelona related to spyware. However, many of these are at an early stage due to a lack of cooperation from the Spanish authorities, who should be providing the information requested by the courts.^{39 40}

Furthermore, in the context of the fight against organised crime and terrorism, the government has not been able to demonstrate that a single case has been prevented using this malware. Instead, only civilians have been targeted and remain unprotected.

Moreover, new cases of political espionage have recently emerged, showing that the problem is far from being resolved.⁴¹

For all the above, the Coalition recommends:

- Opening an immediate, impartial and public investigation regarding the use of the Pegasus malware, to identify the individuals responsible and to establish measures that guarantee the non-repetition of the events and to ensure that the victims have access to effective redress.
- Establishing a legal and policy framework that makes the acquisition of surveillance tools subject to robust public oversight, consultation, and control.

3.4.2.2 Illegal infiltrations in social and political movements

In addition to cyber-espionage, instances of political espionage have been uncovered. These include three instances of police infiltration of social movements in Catalonia, which began in 2020 as well as an attempted recruitment of an informant within a Catalan political party.^{42 43 44} These developments suggest a broader strategy by the Spanish authorities to infiltrate social and political movements in Catalonia.

38 <https://www.publico.es/politica/sanchez-anuncia-nueva-ley-secretos-oficiales-y-reforma-del-cni-caso-pegasus.html>

39 <https://elpais.com/espana/2024-01-28/el-tortuoso-camino-hacia-la-verdad-en-el-caso-pegasus.html>

40 <https://www.amnesty.org/es/latest/news/2023/07/spain-lack-of-cooperation-from-israel-on-pegasus-spyware-firm-highlights-impunity/>

41 <https://www.rtve.es/noticias/20220502/espionaje-pegasus-pedro-sanchez-reacciones-unidas-podemos/2346000.shtml>

42 <https://directa.cat/dani-el-segon-talp-destat-per-espia-lactivisme/>

43 <https://directa.cat/un-talp-policia-en-lactivisme-de-valencia/>

44 <https://directa.cat/un-espia-camuflat-en-lactivisme/>

This practice affects not only individuals but also large groups, violating their fundamental rights to privacy, the right to respect private and family life and the right of assembly and association.

The Spanish Ministry of Internal Affairs has consistently maintained that the police officers did not require judicial authorisation because they were "intelligence agents" acting under the orders of the General Commissariat of Information⁴⁵ Their activities have been documented in "secret" files, protected under the Official Secrets Act of 1968.

For all the above, the Coalition recommends:

- Establishing procedures for providing reparations for damages caused by unjustified infiltrations. Such procedures should include provisions for compensation and public apologies.
- Setting clear regulations limiting the use of undercover police in civil organizations, ensuring they are employed only in cases of genuine and justified threats to public security.
- Introducing mechanisms for transparency and accountability in undercover operations, including prior judicial approval.
- Ensuring that all surveillance activities comply with international human rights standards.

3.4.3. Abusive Use of Counter-Terrorism Legislation

As noted above, the focus of anti-terrorism legislation on the political aims and projects of those under investigation, rather than their actual involvement in acts of violence, can result in individuals being prosecuted based on their political beliefs or affiliations rather than their actions.

In recent years, we have seen several examples^{46 47 48 49 50 51} where state authorities have used these practices to persecute dissenting voices, violating the rights to effective judicial protection, presumption of innocence, freedom of expression, assembly, and association, as well as the right to an independent and impartial tribunal. Several organisations, such as European Civic Forum and Amnesty International, have joined forces to denounce this practice.⁵²

The arbitrary and abusive use of anti-terrorism legislation leaves victims in a vulnerable position, facing accusations that have been prepared over long periods of time without access to information, and subjected to trials that lack judicial guarantees and can result in prison sentences of up to 14 years. Moreover, this undermines confidence in the judicial system and fosters a climate of helplessness and fear, especially among political and social dissidents.

45 <https://cadenaser.com/nacional/2023/02/02/interior-justifica-la-infiltracion-de-agentes-en-cataluna-la-multimilitancia-de-los-secesionistas-radicales-complica-su-vigilancia-mediante-otros-medios-cadena-ser/>

46 <https://www.publico.es/sociedad/audiencia-nacional-decia-cometer-enaltecimiento-tenias-proceder-entorno-terrorista.html>

47 <https://confi legal.com/20200225-el-constitucional-anula-la-condena-a-cesar-strawberry-al-considerar-que-se-ha-vulnerado-su-derecho-a-la-libertad-de-expresion/>

48 <https://noticias.juridicas.com/actualidad/noticias/11771-la-audiencia-nacional-absuelve-a-un-acusado/>

49 https://es.wikipedia.org/wiki/Caso_Alsasua

50 <https://www.publico.es/politica/represion-precedente-adria-tamara-carrasco-acusacion-terrorismo-rebelion-caeria-cabo-meses.html>

51 https://es.wikipedia.org/wiki/Operaci%C3%B3n_Judas

52 <https://civic-forum.eu/wp-content/uploads/2024/02/Joint-statement-Solidarity-for-Activists-in-Catalonia.pdf>

Another significant concern is the politicization of the body responsible for applying anti-terrorism legislation: the Audiencia Nacional. Legal operators within this institution often act in accordance with political interests, compromising its ability to ensure a fair and impartial approach to counterterrorism. The Audiencia Nacional's historical legal practices and lack of independence from political influence further undermine its credibility in ensuring justice in terrorism-related cases.

This politicisation has exacerbated conflict and hindered efforts to resolve the dispute between Catalonia and the Spanish state. A notable example was, shortly after the announcement of negotiations on the Amnesty Law, the terrorism charges brought against Catalan politicians and activists associated with the Tsunami Democratic platform, which organised non-violent protests in 2019 against the sentencing of nine Catalan leaders.

Although the Tsunami Democratic case is now closed due to a procedural error⁵³, we are still concerned about the abuse of the anti-terrorism law with clear political intentions.

For all the above, the Coalition recommends:

- To return the competences for the investigation and adjudication of terrorism offenses to ordinary courts, eliminating the special jurisdiction regime of the Audiencia Nacional.
- To train judges and prosecutors in European law, international jurisprudence and the human rights jurisprudence of the European Court of Human Rights and ensure that interpretation by Spanish courts is in line with these standards.

Systematic pattern of criminalisation of dissent

The UN Special Rapporteurs, in their 2023 communication to the Spanish authorities, expressed their concern "about the apparent misuse of criminal law and the supervisory power of the State to prosecute leaders and members of civil society", and that "these actions to criminalize people exercising their civil and political rights are becoming a systematic pattern."

The pattern works in the following way:

1. Information appears in the Spanish media targeting supporters of the pro-independence movement in Catalonia, revealing secret information according to which they are being investigated by the Audiencia Nacional. This information is usually released to coincide with election campaigns, with the clear anti-democratic intention of influencing the results.
2. According to leaks from Guardia Civil, they are being accused of terrorism for acts related to peaceful demonstrations.
3. The victims and their legal teams are denied access to any information for years, and the only information they receive is through the press.
4. The secret investigation that always accompanies these cases is designed to make up evidence and to intervene aggressively in communications (with spyware such as Pegasus). This is usually followed by arrests and provisional detention.

This systematic repression typically begins with the unauthorised leaking of police reports to the media, the construction of a narrative that incriminates the targeted individuals, and often leads to court proceedings conducted in excessive secrecy. This pattern of abuse effectively criminalises the victims, leaving them defenceless and violating their rights to access information and to defend themselves.

53 <https://www.rtve.es/noticias/20240708/juez-garcia-castellon-archiva-causa-tsunami-democratic-tras-declarar-nulo-caso-por-error-del-juzgado/16179065.shtml>

54 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27719>

3.4.4. Restrictions on press freedom

Since the last UPR, restrictions on freedom of information and expression have persisted. The Grup de periodistes Ramon Barnils and Mèdia.cat, have observed that incidents involving police forces against journalists have continued over the past few years: 3 out of every 10 incidents recorded on the Censorship Map⁵⁶ were caused by police forces.

These incidents occur especially during street protests, where journalists face identification checks, detentions, threats, intimidation, and even physical assaults.

Notably, the protests in February 2021 demanding the release of Pablo Hásel saw the highest number of cases, with several professionals injured by foam bullets.⁵⁷

Another persistent issue is police restrictions on the coverage of evictions. On multiple occasions, journalists and photojournalists have had their visibility obstructed, hindering their ability to do their job. Until the beginning of 2022, journalists continued to be fined under the abovementioned "gag law". Although these fines have decreased, obstacles to covering evictions remain.⁵⁸

Lastly, with the arrival of Vox and the Popular Party to power in the Valencian and Balearic governments, there has been an increase in the censorship of cultural expressions and instances of restricting the right to information, driven by the far right.⁵⁹

For all the above, the Coalition recommends:

- Strengthening laws to protect journalists from police violence, intimidation, and detention, including the implementation of mandatory police training and accountability for misconduct.
- Implementing policies to counter censorship from extremist groups to safeguard cultural expression and press freedom.

55. <https://www.media.cat/2022/02/22/policies-contra-periodistes/>

56. <https://mapacensura.media.cat>

57. <https://www.media.cat/2021/03/16/un-mes-de-protestes-per-hasel-deixa-16-periodistes-ferits-i-mes-incidentes-al-mapa-de-la-censura/?hilit=pablo+has%C3%A9l>

58. <https://www.media.cat/2023/01/18/el-pes-de-les-amenaces-i-les-pressions-creix-en-un-context-de-menys-mobilitzacions/>

59. <https://www.media.cat/2024/01/17/mapa-de-la-censura-2023-es-doblen-els-incidentes-causats-per-lextrema-dreta/>

4. Conclusions and general recommendations

The Spanish legal framework together with the abusive practices by the state apparatus leads to an increase in the persecution of protest and coercion in the use of public space, restricting freedom of expression and civil rights and freedoms. This creates a criminalising and repressive legal practise.

The undersigned organisations believe that the best way to strengthen democracy is to protect civil and political rights, ensuring that civil society organisations and citizens have the space to peacefully protest and freely express their views. Empowering society by guaranteeing people's rights to participate in political and social life protects and strengthens the democratic principle.

For all these reasons, the Coalition encourages the State to:

- Provide comprehensive human rights training to policymakers, the judiciary, and law enforcement officials, ensuring they are equipped to protect and uphold the fundamental rights of all citizens.
- Ensure that all national laws align with international legal standards and human rights obligations, while actively implementing recommendations from bodies such as the PACE, UN Special Procedures, and the Commissioner for Human Rights.
- Establish independent, external, and transparent mechanisms to monitor and assess the actions of law enforcement officials, ensuring accountability through thorough investigations when misconduct or abuses occur.
- Keep working for the resolution of the political conflict, monitoring and securing the implementation of the Amnesty Law to ensure the end of the judicialisation as the first step to explore the roots of the conflict and find a democratic and peaceful solution to it.

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September 2024



QUORUM

