Spain: Human Rights Violations during the COVID19 pandemic

On March 14th, 2020, the Spanish government led by Pedro Sánchez declared the state of alarm by the Royal Decree 463/2020, a provision included in art. 116 of the Spanish Constitution, which has been since then extended six times (Royal Decrees 476/2020, 487/2020, 492/2020, 514/2020, 537/2020 and 555/2020) with the varying support of the opposition, and is expected to end on June 21st. It is relevant to mention that point 6 of art. 116 of the Spanish Constitution states that “The declaration of the states of alarm, exception and siege won’t modify the principle of responsibility of the government and its agents”.

**Violations of freedom of Expression & Freedom of Assembly**

During the state of alarm, the Spanish law enforcement forces have made extensive use of the Organic Law 4/2015 of Citizen’s Security Protection, infamously known as “Gag Law”. By May 20th, the combined law enforcement forces had dispatched over 1 million fines and arrested over 8.400 citizens[[1]](#footnote-1), surpassing the accumulated number of fines in the previous four years[[2]](#footnote-2). The official guidelines released on March 16th by the Interior Ministry introduced fines from €601 to €10.400, including offenses such as “impoliteness” towards a police officer[[3]](#footnote-3).

Several media outlets have denounced mistreatments against citizens who broke confinement, often appearing in social media, as police officers are seen harassing and physically abusing them, often without any show of resistance from the part of the victim.[[4]](#footnote-4)[[5]](#footnote-5)[[6]](#footnote-6) Furthermore, the NGO Stop Represión and Asociación Pro Derechos Humanos of Andalusia denounced the “illegal arrest and police torture” of a woman who was protesting against a far-right VOX demonstration in Granada on May 23rd [[7]](#footnote-7).

The disproportionality of these punishments link directly to the “Gag Law”, as there were no previsions in the matter of punishments concerning offenses during a state of alarm until the Spanish Interior Minister Fernando Grande-Marlaska’s order INT/226/2020 of the 15th of March, where he dictated that grave offences during the confinement would be punished by the Spanish Penal Code, while less serious ones would fall under article 36.6 of the Citizen’s Security Protection law[[8]](#footnote-8). The legal standing of the measures is so dubious that bodies such as Spain’s General Solicitor & Ombudsman, as well as NGO have already criticized them[[9]](#footnote-9).

The Spanish “Gag Law” has been harshly criticized by international bodies such as Amnesty International or Reporters Without Borders, as well as several European states during the Universal Periodic Review to Spain of January 2020, for its controversial limitations to the freedom of speech, freedom of assembly and peaceful assembly. These measures represent an attack to the rights of freedom of expression, reunion & peaceful assembly of the ICCPR.

This situation was aggravated with the deployment of the army in the streets, which caused a rift between the Ministry of Interior, in command of the Spanish police and the paramilitary force Guardia Civil, and the Ministry of Defence, over what the army’s role was in keeping order[[10]](#footnote-10). Article 4.6 of the Royal Decree 463/2020 of the State of Alarm stipulated that public safety was the responsibility of the Interior Minister, and that they had the faculty to request the army’s support if that was necessary (article 5.6). The army had no faculties to fine or arrest, yet there are reports of patrols and road searches without notifying the Interior Ministry or the respective government representatives in the autonomous communities “creating tension”[[11]](#footnote-11).

The army has had a main role in every press briefing and in events such as the transformation of the event venue IFEMA in Madrid into a field hospital or the Madrid ice rink into a morgue, with statements such as a particular one by the Minister of Defence, Margarita Robles, who stated that the victims “didn’t pass away alone, as the military was with them”[[12]](#footnote-12). Aside from the confusion over preventative methods against contagion, the strong presence of the military in daily COVID19 briefings, broadcasted in public television, has been lined with an ever present nationalist narrative, asking the citizens to be “soldiers against the virus”[[13]](#footnote-13), and similar war-like metaphors.

As stated before, despite the state of alarm being declared on March 14th, the Spanish government took until the 16th of the same month to announce any specific measures to contain the virus, creating a confusing situation where thousands of citizens fled from urban areas to rural and coastal towns. Even though the Spanish authorities implemented what has been called “The strictest lockdown in Europe”[[14]](#footnote-14), it took more than two weeks[[15]](#footnote-15),[[16]](#footnote-16) to enforce total lockdown after its first cases, despite complaints from areas like Catalonia[[17]](#footnote-17), and Madrid quickly became the main focus of the infection, with a quick spike of deaths[[18]](#footnote-18). Studies suggest that the spread of the COVID19 in Spain has a radial pattern emitting from the capital, which would suggest that the hesitation of the government to impose a harsher lockdown led to the quick propagation of the virus in Spain[[19]](#footnote-19).

Therefore, as the population adapted to the confinement, after the Royal Decree 514/2020 of the 8th of May, an illegal demonstration broke out in the Salamanca district of Madrid, protesting the postponing of the end of the confinement. The protestors, over a hundred clad in Spanish flags, were mostly from a very affluent background, and even though several more took place that week, they died off quickly.

Despite the harshness of the previous punishments, and especially compared to protests before the confinement[[20]](#footnote-20), the behaviour of the police was extremely permissive in those cases, mostly only identifying some of the offenders[[21]](#footnote-21). More protests with a strong far-right component took place in different cities, with a similar behaviour from the law enforcement, reinforcing the double moral and arbitrary nature of the “Gag Law”. This is a violation of the right to peaceful assembly of Art. 21 of the ICCPR, as well as a show of impartiality and indicative of the lack of accountability of Spanish nationalism & the far-right in Spain.

**Freedom of expression and peaceful assembly online**

On March 28th, the Spanish government announced the monitoring of the population personal smartphone terminals, through the data gathered by eight telephone providers, without the specific permission of the citizens. This has caused major concerns, as the government’s Royal Decree 14/2019 of October 31st, also known as “Digital Gag Law”, passed without the ratification of the Spanish Parliament yet later ratified by it, allowed the Interior Ministry to take down websites and phone apps without the permission of a judge, which critically endangered freedom of expression and assembly online.

In the same vein, on April 19th, the Guardia Civil Chief José Manuel Santiago, who also took part in daily briefings, claimed the body had a branch dedicated to fight ‘fake news’, and added that “one of their lines of work was to minimize climates against the government’s crisis management”[[22]](#footnote-22)[[23]](#footnote-23). Basque MP at the Spanish Government [Jon Iñarritu](https://twitter.com/JonInarritu/status/1260480144462024709) even denounced that confidential orders by the Ministery of the Interior to the Spanish law enforcement alerted of possible “alterations of public order of separatist nature” and “movements of social conflict”, which encouraged “monitorization of such groups in social media, forums, etc.”. The lax and biased interpretation of the meaning of fake news by the law enforcement without the supervision of an independent body can be highly dangerous, as it may incur violations of the right to freedom of expression, under Art. 19 of the ICCPR.

Moreover, the Spanish Center for Social Investigation, linked to the Spanish Ministry of Presidency, and therefore publicly funded, asked the population a question on state censorship on an April 15th poll[[24]](#footnote-24). The question is the following: "Do you think that at the moment, the dissemination of hoaxes and misleading and unsubstantiated information by networks and the social media should be prohibited, referring all information about the pandemic to official sources, or do you think that total freedom must be maintained for the dissemination of news and information?”. The government’s inquiry, touching the subject of state intervention or censorship in the media raises many concerns, especially in Catalonia.

**Freedom of information, press, transparency & good governance**

The Royal Decree 463/2020 of March 14th had serious consequences for the freedom of expression, freedom of the press, transparency & good governance. One of the biggest offences was the suspension of the Spanish government transparency portal[[25]](#footnote-25), through which the citizens can review their personal data and access administrative procedures, all of which were paralyzed until June 1st, by Royal Decree 537/2020 of May 22nd[[26]](#footnote-26). The portal was accessible, yet any procedure was postponed indefinitely.

This fact was denounced by over 20 civil society organizations and NGO, led by the Coalición ProAcceso[[27]](#footnote-27), who called on the Spanish government to modify the Royal Decree 463/2020 to include the guarantee the access to information, prioritize queries related to the COVID-19, and to create a website with detailed and updated information, as well as to guarantee the privacy digital surveillance performed by the state “which should be of temporary nature and supervised constantly by specialists and civil society members”[[28]](#footnote-28). Most of these concerns have not been publicly addressed by the government.

When the government announced the reopening of the portal, they kept the deadlines observed in the Law 19/2013, of December 9th, that provides up to a month for the state to reply to citizen’s queries, extendable to one month after the deadline. The lack of information has also affected the public emergency contracting, regulated under article 120 of Law 9/2017. According to the Spanish Observatory of Public Contracting, even though article 154.1 of the Law of Contracting of Public Services establishes a two-week deadline to publish contracts in official state gazettes and does not specify any exceptions for emergency contracting. It also does not contradict article 154.7 of the same legislation, which would allow the government to not publish contracting information if it went against public interest[[29]](#footnote-29). The European Parliament and European Council Directive 2007/66/CE also does not establish exceptions in these cases.

Therefore, and according to the Law 19/2013 of November 9th, article 8.1, which establishes that “every contract will be published, indicating the purpose, duration, the amount of the tender and the award, the procedure used to carry it out, the instruments through which, where appropriate, it has been advertised, the number of bidders participating in the procedure and the identity of the awardee, as well as the modifications to the contract.”[[30]](#footnote-30), the Spanish government has effectively concealed information during a critical moment, which unfortunately led to controversial expenditures, such as the purchase of €116 million defective tests[[31]](#footnote-31), among others.

Moreover, on April 1st, over 400 journalists joined a manifesto denouncing the limiting of their freedom of the press, as they claimed the Spanish government was “filtering” questions during COVID19 press briefings[[32]](#footnote-32), supported by the [International Press Institute](https://twitter.com/globalfreemedia/status/1245340302883389440). The same institution denounced physical attacks against a journalist from far-right VOX protesters in Málaga on May 23rd[[33]](#footnote-33). The Madrid area, ruled by the coalition People’s Party & Citizens (Ciudadanos), and the worst hit by the pandemic, did not offer press briefings until April 8th[[34]](#footnote-34), keeping citizens in the dark.

Furthermore, on May 6th, the Spanish Public Radio and TV (RTVE) News Board, denounced [political interference](https://twitter.com/CdiRNE/status/1257932059009523713) on the programming, as an interview with jailed Catalan leader Oriol Junqueras was scheduled to be aired, in context with the lack of political support of PM Pedro Sánchez to extend the state of alarm deadline. The News Board openly stated that “postponing the interview would remove its value and it is an attack to the freedom of press”. The political blockade between the governing socialist party PSOE and the conservative People’s Party has prevented an agreement to renovate crucial public institutions such as the Council of the Judiciary, the Constitutional Tribunal, the Court of Auditors, the Spanish Ombudsman and the RTVE Management Board[[35]](#footnote-35), highly risking political bias and corruption, and threatening the separation of powers.

These are offenses against the Freedom of Press, incompatible with article 11 of the Charter of Fundamental Rights of the European Union and article 3 of the Treaty on European Union, ratified by Spain, and under article 20 of the Spanish Constitution.

**Right to security in prisons**

Following the recommendations of international bodies such as the UN, WHO, the Council of Europe, and NGOs such as Amnesty International or Human Rights Watch, countries around the world have released thousands of prisoners in order to stop the spread of the COVID19 in prisons, including those who have been arbitrarily detained. Instead of observing the example of European neighbours such as the Netherlands, France and Germany, Spain has chosen to keep Catalan political prisoners in jail.[[36]](#footnote-36)

**Democratic representation & decision making**

The Spanish Parliament stopped most of its meetings since the publishing of the state of alarm, by the Royal Decree 463/2020, effectively “stopping the clock” by March 19th on the deadlines for the Government to reply to parliamentary questions or the parties to present amendments to propositions of laws and bills[[37]](#footnote-37). The Parliament’s activity was almost non-existent until April 13th, when the control sessions and different commissions started to resume their meetings, as the opposition pressed the government to resume presential plenary meetings.[[38]](#footnote-38) There has been debates on whether online plenaries should be taking place, yet the Spanish Congress rulebook & the Spanish Constitutional Court’s ruling 45/2019 of March 27th against the Catalan Parliament’s legislation to allow these procedures, prevents it from happening[[39]](#footnote-39).

By the Royal Decree 463/2020 of the state of alarm, the Spanish government effectively centralized the management of the Health system and emergency supply lines, which otherwise was the responsibility of autonomous communities. This created more confusion, as it clashed with regional governments, who were kept out of the decision-making process, to the point where the Spanish government refused to reveal the names of the team of experts in charge of designing the de-escalation schemes for each community[[40]](#footnote-40).

These limitations are a setback to democracy during a critical moment in history, while parliaments such as the United Kingdom[[41]](#footnote-41) or the European Parliament[[42]](#footnote-42) have adapted to the times and respected its democratic representation.

Moreover, the Spanish government only emitted information in Spanish, ignoring the OSCE High Commissioner on National Minorities recommendations on short-term responses to COVID19[[43]](#footnote-43). Catalan, Galician, and Basque have not been used in official, state-wide communications. In contrast, a European country like Finland has provided COVID-19 information in Finnish, Swedish, Sami Languages, Estonian, Russian, Somali, Arabic & English[[44]](#footnote-44).

**Conclusions**

Considering the effectivity and proportionality of security measures in the aftermath of the first wave of COVID19, the double standards exemplified before show an extremely zealous behaviour towards migrants[[45]](#footnote-45) and average citizens[[46]](#footnote-46), yet a certain leniency concerning aspects of Spanish nationalism and far-right groups[[47]](#footnote-47),[[48]](#footnote-48).

Furthermore, the lack of transparency and democratic guarantees during the COVID19 state of alarm, as well as the attacks against freedom of expression and freedom of assembly via the Organic law 4/2015, is a source of concern by international bodies and civil society NGOs alike. The rights of Freedom of Expression, Freedom of Association, Freedom of Assembly, Freedom of the Press, and Political Participation have been and continue to be violated by Spain, but the situation has worsened with the spreading and confinement of COVID19.

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