



# Annual Civic Space Report - 2022

## Spain

***By Novact***

January 2023



## Contents

Contents.....	2
Summary.....	3
Key developments .....	3
Institutional, political, and socio-economic landscape .....	4
Independence movements, youth organisations, and associations accused of “terrorist activities” .....	5
The regulatory environment for and implementation of civic freedoms .....	5
Several cases of surveillance of CSOs.....	5
The Gag Law not in line with international human rights standards .....	7
Criminal Code amendments restrict right to protest .....	8
Attacks on journalists by law enforcement.....	9
Inadequate control and impunity of law enforcement officers .....	9
Freedom of expression and the right to privacy .....	11
Safe space .....	12
Environmental and housing CSOs especially targeted.....	12
Unequal sanctions, arrests, and deportations of anti-racism activists.....	12
Attacks against women’s rights and the trans community .....	13
The framework for civic organisations' financial viability and sustainability.....	14
The right to participation and dialogue between the sector and governing bodies .....	14
Civil society's resilience to challenges to democracy, the rule of law and fundamental rights .....	14
Recommendations .....	15
To the government of Spain:.....	15
The regulatory environment for and implementation of civic freedoms .....	15
Safe Space .....	15
The framework for civic organisations' financial viability and sustainability .....	16
The right to participation and dialogue between the sector and governing bodies:.....	16

## Summary

### Key developments

- 🌀 Gag law continues to restrict the right to protest and freedom of expression
- 🌀 Anti-terrorist laws instrumentalised by the State to restrict activism
- 🌀 Authorities continue to use excessive force against protesters with impunity

Civic space in Spain is rated as “narrow” by the CIVICUS Monitor<sup>1</sup> and has continued to decline with the 2015 Gag Law being used to target protesters and journalists. Although the government initiated a reform process for the law, it has failed to consult with civil society organisations adequately, who raised concerns over several problematic provisions which remain. Additionally, amendments to the Criminal Code, relating to public disorder are vague and may criminalise political dissent and pose further threats to the right to peaceful assembly. Environmental movements, housing CSOs, the LGBTQI+ community and people of colour remain targeted by police measures, sanctions, and restrictions. 2022 was defined by “Catalangate” with cases of severe espionage, massive surveillance schemes and infiltration of youth organisations by the government.

---

<sup>1</sup> <https://monitor.civicus.org/country/spain/>

## Institutional, political, and socio-economic landscape

2022 was announced to be the year when the Gag Law had to be reformed, but that did not happen. At the beginning of 2022, the government put forward a light reform proposal, which did not address any of the main issues that the law contained. As a result, CSOs mobilised for an international advocacy campaign that ended successfully with the publication of a letter issued by the European Commission stating that “the review of the 2015 Law on Citizens’ Safety should result in a better protecting human rights”.<sup>2</sup> The letter was sent to the Spanish Congress and Senate. These concerns have already been<sup>3</sup> addressed by the Council of Europe in 2018, highlighting issues related to the wide margin of discretion that the law grants to law enforcement to interpret it, which allows for possible disproportionate and arbitrary application.

The reform negotiations continued up to April 2022, when the espionage case against Catalan and Basque leaders, known as Pegasus, was exposed. In May, CSOs gathered again in order to protest against the reform of parliamentary blockage<sup>4</sup>. In July, due to the 7<sup>th</sup> anniversary of the Gag Law, CSOs protested and continued to express the law’s deficiencies. Finally, in October the political negotiations were resumed, and CSO kept pressuring for the reform. In November, simultaneous demonstrations took place around Spain calling on the government to keep its word and reform the Gag Law. However, the reform has not taken place as yet.

The Penal Code was reformed in December 2022, as a result of a very quick reform process, which barely gave time for CSOs to analyse the proposal and organise themselves. However, a unitarian CSOs’ public statement and a demonstration took place due to the seriousness of the situation. The reform proposed was perceived as an attack on the right to assemble as, apart from other modifications, it included the modification of the public disorder offence. Specifically, it typified the invasion or occupation of public or private premises or spaces, even when done without violence or intimidation (art. 557 bis), which is typically how the housing movement protests. The text that was finally passed did not contain this potential threat to CSOs, but still includes ambiguous concepts, and the typification of an aggravated offence of public disorders when committed by a “multitude” whose number, organisation, and purpose are suitable for seriously affecting public order, without specifying exactly how many people is considered a “multitude”. The articles have not yet been applied, which means that the impact they will have on activists is still unknown.

Regarding the situation of the judicial system, there is a system of random distribution of cases between courts and pre-existing rules to determine the competence of a judge or court to rule on litigation with no possibility of interference. More specific jurisdictions are held by the Audiencia Nacional (National Court), a central court set up to deal with matters of legal, economic and political importance (terrorism, felonies against the crown, drugs, etc.), with rules on competencies that are flexible and can be reinterpreted according to circumstances, with the power to take over matters that should not be tried in ordinary regional courts. A traditional way to do this is to classify the most radical forms of political dissidence as possible terrorist offences. This can lead to the criminalisation of movements and can have a deterrent or chilling effect on CSOs’ activities. The

<sup>2</sup> <https://www.coe.int/en/web/commissioner/-/commissioner-urges-spain-to-ensure-that-the-law-on-citizens-safety-upholds-the-rights-to-freedom-of-expression-and-freedom-of-peaceful-assembly>

<sup>3</sup> <https://www.coe.int/en/web/commissioner/-/commissioner-urges-spain-to-ensure-that-the-law-on-citizens-safety-upholds-the-rights-to-freedom-of-expression-and-freedom-of-peaceful-assembly>

<sup>4</sup> <https://nosomosdelito.net/article/2022/05/30/comunicado-de-prensa-organizaciones-en-defensa-de-los-derechos-humanos-denuncian>



political use of the concept of “terrorism” to allocate a case in the National Court is constant in Spain.

### **Independence movements, youth organisations, and associations accused of “terrorist activities”**

In 2022 the massive confidential case against *Tsunami Democràtic*, a platform that organised peaceful protests against the prison sentence of Catalan leaders in 2019, remained open in the National Court. This investigation has been conducted in secret for more than three years by National Court’s inquiry number six, with judges Joaquín Gadea and Garcia Castellon. It has been allocated in the National Court because the investigation is on the basis of “terrorism activities” by Tsunami Democràtic. On 12th December 2022, the Criminal Court of the National Court demanded clarification on why the case is still secret, three years later. This fact causes a breach in the right to defiance of the investigation and is a clear misuse of the Court allocation system and of the charges of terrorism.

Moreover, the National Court’s Inquiry seems to be specialised in prosecuting the activists of the self-determination movement. According to published information, in 2018 the Spanish National Police demanded the National Court to open a case for terrorism against a mix of political parties, youth organisations, and associations that defend the far-left independence of Catalonia, because it posed a “threat to the stability and social peace”. The police added names of MPs, spokespersons of anti-oppressive organisations, political parties, etc. into the investigation. The National Court judge Castellon allowed telephonic interventions of at least 38 people, who were wired for at least seven months. The information obtained from the investigation f was used by the National Court to open the aforementioned case of the “CDR” members accused of terrorism.

As the eco-social and economic crisis deepens, inequality and barriers to access social rights and losses of labor rights grow, mobilising civil society organisations on the issue. On 25th January, the Metal Workers Coordinator denounced the arrests of dozens of workers, the use of rubber bullets, and disproportionate use of force during the metal strikes in Cádiz, led by worker unions. They reported injuries to several people as a result of police charges. Climate activism has increased as the Government fails to urgently address the climate crisis. Instead, it has taken measures to criminalise some actions of nonviolent disobedience: The case of the arrest of 14 climate activists for the protest action that they carried out on the 6th April 2022 in the Congress of Deputies is a relevant example. This persecution also impacts the exercise of the right to information: two journalists were detained and are on trial after covering the actions of the civil disobedience protest on the 5th November 2022.

## **The regulatory environment for and implementation of civic freedoms**

### **Several cases of surveillance of CSOs**

The main laws that regulate freedom of association are the Spanish Constitution, Article 22, the Organic Law regulating freedom of association (LO 1/2002, 22 March), and the Penal Code (LO

10/1995, 23 November). The Penal Code has been recently reformed, but the modifications introduced do not affect freedom of association. These laws are in line with human rights and international standards.

In April 2022, the Pegasus case was uncovered, after an investigation led by The Citizen Lab of Toronto University showed that Catalan and Basque journalists, political and social leaders, and their lawyers, had been spied on using the Pegasus and Candiru spyware programs. The report “An Extensive Mercenary Spyware Operation against Catalans Using Pegasus and Candiru,” published on 18th April 2022, confirmed that at least 65 people in Catalonia have been attacked and were under surveillance with spyware between 2015 and 2021. It is considered a huge and flagrant violation of the right to privacy and secrecy of communications<sup>5</sup>.

Victims include the President of the Catalan Government, the President of the Catalan Parliament, dozens of politicians and senior officials, MEPs, members of civil society organisations, journalists, lawyers, and relatives. Moreover, this illegal surveillance extended far beyond the Spanish borders. The use of Pegasus against Catalan citizens traveling or living abroad has been documented in four different European countries: Belgium, France, Germany, and Switzerland.

This case, known as ‘Catalangate’, is the largest forensically documented cluster of mercenary spyware attacks and the biggest espionage case in Europe and in the world using Pegasus to date. It is considered as a huge and flagrant violation of the right to privacy and secrecy of communications. Technical experts from Amnesty International’s Security Lab have independently verified evidence of the attacks.

In October 2022 an investigative report was published by the news outlet “Directa.”<sup>6</sup> This investigation showed that 38 left-winged independentist activists were victims of a massive police surveillance scheme, under the justification of “the anti-terrorist fight”. Again, “terrorism” is being used as a pretext to unlawfully prosecute and create a chilling effect amongst political dissidence. In this case, the espionage took place at least between November 2017 and March 2019. Members of youth organisations (such as Sindicat d’Estudiants del Paísos Catalans-SEPC), political parties (such as Candidatures d’Unitat Popular-CUP), or anti-repressive organizations (such as *Alerta Solidària*) were among the victims.

The surveillance scheme was ordered by the Spanish police forces (National Police and Civil Guard), and it included for example localisation and interception of calls and messages, use of spyware, physically following people, installation of localisation devices in cars. This massive surveillance case was allocated to the National Court (again, against the normal rules of case allocation, it was declared as “terrorism” so this investigation could be approved by the National Court) and approved by judges Diego de Egea, Carmen Lamena and Manuel García Castellón.

Earlier on 7th June 2022, the magazine La Directa<sup>7</sup> revealed that the Spanish police had infiltrated at least one police officer in the youth independentist organization SEPC (a university student’s union) and tried to do so the same with the youth organisation of the ERC party, revealed by La Directa and Ara on 27th June 2022. When asked about these police infiltrations in youth groups,

---

<sup>5</sup> <https://citizenlab.ca/2022/04/catalangate-extensive-mercenary-spyware-operation-against-catalans-using-pegasus-candiru/>

<sup>6</sup> <https://directa.cat/el-ministeri-de-linterior-espanyol-ha-punxat-massivament-les-comunicacions-de-lesquerra-independentista-i-dels-cdr/>

<sup>7</sup> <https://directa.cat/un-espia-camufelat-en-lactivisme/>





through a complaint filed by Òmnium Cultural, on 5th September the Spanish Government answered, admitting and justifying the illegal planting of undercover officers. In the five pages in which the Interior Ministry justified its actions against the two pro-independence youth organisations, it pointed out aspects such as the membership in multiple groups as a dangerous element of the fabric of the sovereigntist movement. The ministry claimed that such groups are "giving origin to dynamics that are violent and philo-terrorist" - that is to say, pro-terrorist dynamics.

The document from the Ministry that Òmnium received as a response argued that it considers it "legitimate, suitable and appropriate" to place undercover agents in youth movements to capture information, linking this directly with the usual practices in the prevention of terrorism on the basis of, according to the ministry, alleged violent actions and strategies in the independence movement: "people who belong to the sphere of pro-independence associations, encompassing a wide range of associations, work towards the achievement of the illegal independence of Catalonia, even carrying out in some cases radical-violent types of actions within the framework of the global secessionist strategy". These types of proceedings create, among other serious consequences, a chilling effect for potential activists promoting human rights.

### **The Gag Law not in line with international human rights standards**

The main laws that regulate freedom of assembly are article 21 of the Spanish Constitution, the Organic Law regulating Freedom of Assembly (LO 9/1983, 15<sup>th</sup> July), the Organic Law regulating Citizen Security (LO 4/2015, 30<sup>th</sup> March), also known as 'Gag' Law, and the Penal Code (LO 10/1995, 23 November), which has recently been reformed.

According to civil society organisations, and some political parties, the Gag Law and the new version of Penal Code are not considered to be in line with international human rights standards. In 2015 current prime minister Pedro Sanchez, promised to derogate the Gag Law if he had the power to do so.

The Gag Law has been criticised since it was passed due to multiple factors<sup>8</sup>, such as the discretionary powers that it gives to police officers, the increase of infractions that it establishes compared to the previous law, and the difficulty to appeal against a sanction (because of the veracity presumption that police officers have, and because of the bureaucracy and technicality to do so). The language that is used in the law has been a target of criticism because it is very ambiguous, which, in practice, allows irregular and arbitrary actions in police interventions.

The reform of the Gag Law has been a missed opportunity to fully adapt it to European and international human rights standards, particularly regarding the provisions that affect the right to freedom of expression, the right of peaceful assembly, the right to request asylum and the prohibition of refoulement. While the negotiations on the reform are ongoing, civil society space has continued to be mainly constrained, because of the severe effects which the current legal framework has on important rights for political participation such as the right to peaceful assembly and freedom of expression.

---

<sup>8</sup> <https://www.elsaltodiario.com/ley-seguridad-ciudadana/comision-europea-critica-actual-reforma-ley-mordaza-violando-libertad-expresion-manifestacion>

In this sense, it is important to note that the Catalan movement for self-determination was directly impacted by the law punishing sedition, which condemned nine of its leaders to hundred years in prison in 2019. This criminal category was eliminated by the Spanish Parliament in December 2022, stated already in the recent Penal Code reform.

### **Criminal Code amendments restrict right to protest**

The new Criminal Code also modified the crime of public disorders and is a step closer in the criminalisation of political dissent and persecution of the right to protest.<sup>9</sup> This reform dangerously expands the crime of public disorder, by incorporating the concept of “intimidation” - a broad category that can be applied to many actions, even if they are peaceful, and aggravate a crime if committed by “a well-organised crowd”. This will be especially harmful to activists who form part of an organised, coordinated and strong movement, and will leave the door open for restrictive interpretations of the right to peaceful assembly.

This aggravated criminal category carries a punishment of three to five years of prison which makes it impossible to negotiate with the public prosecutor to avoid serving jail time, as this can only be done with crimes with minimum punishments of less than two years. CSOs are afraid that way more participants in demonstrations could end up serving prison time under this new wording.

Several violations of the right to the freedom of peaceful assembly have taken place. While the police did not gain any additional powers in 2022, anti-riot equipment was used disproportionately. For example, in Melilla on the 24th June when hundreds of people tried to jump over the fence that separates Morocco from Spain<sup>10</sup> the Guardia Civil shot 65 rubber bullets and threw 86 tear-gas canisters, and at least 23 persons died.

Multiple demonstrations were prohibited due to the breach of formal criterion, such as failing to respect the notification time formalities established in the law. It is important to underline that in Spain, in order for demonstrations to take place, authorisation from the administration is not needed. The organisers only need to notify them. For instance, the demonstration against the deportation of Mohamed Said and Amarouch Azbir in Madrid was prohibited because the administration was notified 21 hours before the protest was supposed to take place, instead of 24 hours<sup>11</sup>. Apart from prohibiting demonstrations, the Spanish administration tends to modify some of their structural elements of protests in order to lose all their meaning. For example, the government did not prohibit the weekly demonstration that was taking place in Madrid which asked for more pedestrian spaces, but prohibited the protesters from stopping traffic, which was clearly needed in order to send their message.

Proportionality is not being ensured when using police force in assemblies, and when applying fines to protesters. A clear example is the disproportionate number of fines that the CSO *Desarma*

<sup>9</sup> <https://www.elsaltodiario.com/codigo-penal/puntos-mas-polemicos-reforma-delito-desobediencia>

<sup>10</sup> [La Guardia Civil usó 65 balas de goma y 86 botes de gas lacrimógeno en el salto a Melilla \(theobjective.com\)](https://www.theobjective.com/la-guardia-civil-uso-65-balas-de-goma-y-86-botes-de-gas-lacrimogeno-en-el-salto-a-melilla)

<sup>11</sup> <https://www.facebook.com/sosmadrid/photos/5749053828485178/>



*Madrid* received after a peaceful civil disobedience action against the OTAN Summit on 26th June<sup>12</sup> amounting to 16.800€ for painting the *Escuela de Guerra*.

### Attacks on journalists by law enforcement

Attacking on journalists by police officers while they are covering demonstrations and rallies is a common phenomenon in Spain. The Censorship Map of the Catalan organisation of journalists *Media.cat*<sup>13</sup>, which analyses the situation of the right to information in Catalonia, shows that officers have hindered journalistic work, either by identifying them restricting their movements, threatening them with the opening of disciplinary procedures or even assaulting them. During 2022, journalists have faced threats, intimidation, identification, and assaults while working on the street, circumstances that represent over 30 per cent of the incidents collected by *Media.cat*. Once again, the coverage of evictions is a significant part of the cases. Several photojournalists complained about the difficulties they encounter in working when the Mossos d'Esquadra operation is deployed and force them to stand behind the police perimeters without visibility.

In January 2022, for example, journalist Andreu Merino from TV3 denounced that the Mossos d'Esquadra "pushing" had "swept the press" of an eviction in Badalona and had left them outside the police cordon without visibility. On the 9th November the National Police also denounced journalist Pilar de la Fuente, from À Punt, when she tried to report live on, an eviction in the Orriols neighborhood of Valencia. Police formed a security cordon, asked the journalist for her ID and sanctioned her under the Gag law for "alleged disobedience"<sup>14</sup>. The judicial harassment and punishment of communication professionals limits the right to information, discourages other journalists from carrying out this work and inevitably violates the right to protest.

On a positive note, The Constitutional Court ruled that the Spanish judicial system did not thoroughly investigate enough the complaint file by journalist Sira Esclasans, who was shot a foam bullet impact in her leg while working during a demonstration<sup>15</sup>.

### Inadequate control and impunity of law enforcement officers

The government has failed to take steps to ensure accountability for disproportionate policing of assemblies, as some of the data in a report published in 2022 found:<sup>15</sup>

- ✎ Internal police investigations regarding unlawful actions committed by police officers are not independent and efficient enough, which has a negative impact on court proceedings.

<sup>12</sup> <https://www.elsaltodiario.com/antimilitarismo/16800-euros-multas-pintadas-escuela-guerra-durante-cumbre-otan#:~:text=Antimilitarismo-16.800%20euros%20en%20multas%20por%20hacer%20pintadas%20en%20la%20Escuela,Defensa%20ha%20renunciado%20a%20denunciar.>

<sup>13</sup> [El pes de les amenaces i pressions creix en un context de menys mobilitzacions \(media.cat\)](https://www.media.cat/)

<sup>14</sup> [La periodista de À Punt multada durante un desahucio en Valencia: "He visto una cara de la Policía que me da miedo" \(eldiario.es\)](https://www.eldiario.es/)

<sup>15</sup> <https://novact.org/2022/10/informe-transparencia-i-rendicio-de-comptes-dels-cossos-policials-a-lestat-espanyol/?lang=es>

- ✎ There is no public access to the protocols, guidelines for action, or internal instructions that regulate the use of force and police tools and weapons of the Spanish police forces.
- ✎ Police officers are not correctly identified. For instance, during the demonstration that took place in Madrid on the 26th June against the NATO Summit, the vast majority of anti-riot police officers were unidentified.
- ✎ Public prosecutors in court proceedings regarding unlawful actions committed by police officers tend to have an insufficient role.
- ✎ The Ombudsman's power is limited when investigating police actions. For example, in its response to the platform *Defender a quien Defiende* over the lack of police identification at the demonstration that took place in Madrid on the 26th June, Spanish Ombudsman simply stated that, as the Ministry of Interior assured that all police officers were correctly identified, the complaint had to be filed.

On 8th November 2022 the Parliament of Catalonia passed a motion for the riot police officers of the *Mossos d'Esquadra* to display the Police Operational Number (NOP) in a visible and obligatory manner on the back, chest and helmet<sup>16</sup>. In addition, the numbering changes from nine digits to six, with a new, shorter alphanumeric coding. These changes have been made effective in Catalonia since March 2022.

On the other hand, the Interior Commission of the Congress of Deputies urged the government to adopt strict protocols for the use and supervision of the Taser electric pistols among the police. A No Law Proposition (PNL) was approved to guarantee the introduction of adequate control measures in the use of taser pistols. In this proposal, it is made explicit that the taser pistols are accompanied by a video recording that allows guarantees regarding their use. However, as of today, there is still no publication on specific regulation for its use, as requested by the Ombudsman and the Congress of Deputies.<sup>17</sup>

Many of the irregular actions of the law enforcement officers, such as police officers, maintain strong impunity in the excessive use of force. Many of the incidents remain without judicial review due to the lack of effective transparency and accountability mechanisms. Correct police identification is still a pending task and an important demand of CSOs. The lack of clear and visible identification on the uniforms of the officers makes it difficult to clear responsibilities in cases of malpractice or criminal indicia. This lack of transparency, justified in a generalised way for reasons of public and national security, makes adequate accountability difficult and prevents public control of certain weapons.

On a positive note, the Audiencia Nacional ruled that the Public Administration has an obligation to compensate Aingeru Zudaire, who lost his eye in 2012 due to the impact of a rubber bullet shot by the Policía Nacional the amount of 100.000€<sup>18</sup>. It agreed that "a rubber ball fired by a National

---

<sup>16</sup> <https://www.elpuntavui.cat/politica/article/17-politica/1695327-el-parlament-aprova-que-els-mossos-vagin-correctament-identificats.html>

<sup>17</sup> [Interior entrega pistolas táser a Policía y Guardia Civil sin las instrucciones para su uso que pidió el Defensor del Pueblo \(20minutos.es\)](https://www.20minutos.es/interior-entrega-pistolas-taser-a-policia-y-guardia-civil-sin-las-instrucciones-para-su-uso-que-pidio-el-defensor-del-pueblo)

<sup>18</sup> <https://www.noticiasdenavarra.com/sucesos/2022/11/04/indemnizan-100-000-euros-aingeru-6194689.html>



Police agent was the cause of the injuries that caused the loss of an eye to Aingeru Zudaire, and that they occurred when he was participating, without any assault, at the demonstration [held at 12:00 noon on September 26, 2012]."

## Freedom of expression and the right to privacy

The main laws that regulate freedom of expression are art. 20 of the Spanish Constitution, the Organic Law regulating Citizen Security (LO 4/2015, 30th March), and the Penal Code (LO 10/1995, 23rd November).

Regarding the Gag Law, the main articles that affect freedom of expression are art. 36.23 and 37.4. On the one hand, article 36.23 "The unauthorized use of images or personal or professional data of authorities or members of the Security Forces that may endanger the personal or family safety of the agents, of the protected facilities or those at risk success of an operation, with respect to the fundamental right to information", is used by police officers to prevent protesters from recording their actions and to frighten them, even if the articles per se does not typify this action. On the other hand, article 37.4 "The lack of respect and consideration whose addressee is a member of the Security Forces and Corps in the exercise of their functions of protection of the security, when these behaviors do not constitute a criminal offence", allows police officers to fine protesters because of their words.

As established previously, the Penal Code has been reformed. However, this reform doesn't affect the articles regarding freedom of expression. The articles that are mostly used to repress protest are glorification of terrorism (art. 578 PC), injuries against the monarchy or public agents (art. 490.3 PC) and offences against religious feelings (art. 525 PC). One of the most important cases, even if it happened in 2021, is the imprisonment of the rapper Pablo Hasel, sentenced to nine months in prison because of his lyrics against the monarchy.

Freedom of expression on social networks has also been affected in 2022. Sanctions and prosecutions of Twitter users for their comments on social networks or journalists for publishing certain issues related to police malpractice have been constant since the implementation of the Gag Law<sup>19</sup>, although it currently occurs less frequently. Legal proceedings and investigations have been opened against twitter users: in one of the cases charges were brought against about fifty people, who made critical comments about the court ruling that imposed a 25 per cent Spanish language in Catalan schools. In another case, in May 2022 journalist Diego Díaz Alonso was fined after the publication of an article in May 2022 about disproportionate police actions. The complaint and the disciplinary file explicitly mentioned the article: "Chronicle and video of a disproportionate police intervention." Alonso is also the director of Nortes, the Asturias newspaper

The right to privacy has not been protected in Spain in 2022. Racial and ethnic profiling in Spain is a worrying issue regarding the right to privacy. Organisations like SOS Racisme or Rights International Spain have largely denounced this situation. As SOS Racisme states in its latest report

---

<sup>19</sup> [https://www.infolibre.es/politica/tuitea-si-atreves-amnistia-internacional-denuncia-vulneracion-libertad-expresion-espana\\_1\\_1156200.html](https://www.infolibre.es/politica/tuitea-si-atreves-amnistia-internacional-denuncia-vulneracion-libertad-expresion-espana_1_1156200.html)



<sup>20</sup>, in Spain, non-white communities are disproportionality identified on the streets by police officers, criminalising them and exposing them to risk.

## Safe space

### Environmental and housing CSOs especially targeted

During 2022 some groups in Spain have been treated more severely than others. Environmental groups are especially being detained and fined, as happened in the action that *Rebelión Científica* organised in front of the Spanish Congress in Madrid on 6th April, or the action of *Futuro Vegetal* in El Prado on 5th November 2022. Housing organisations had to pay 300,000€ in fines, 44 people have been detained, and 86 people are accused of committing criminal and civil offences only in Catalonia between 2019 and 2022<sup>21</sup>. Already in October 2021, groups from the Catalan housing rights movement denounced that they had accumulated 364 fines since March 2020 on charges of obstruction, disobedience, or disrespect for authority.

The judicial and administrative harassment of activists is not new: the application of the 'Gag' Law, the Civil Code, and the Penal Code in order to discourage protests or civic actors' actions was common in 2022. The housing movement is one of the most affected. For instance, two members of the *Sindicat de Llogaters* were accused of coercion after a 2018 protest was staged to convince the owner of a house to negotiate with the tenants about the price decline of the rent. Finally, in February 2022 both activists were acquitted.<sup>22</sup>

### Unequal sanctions, arrests, and deportations of anti-racism activists

Public space remains subject to unequal access for some, particularly excluded groups. Specifically, migrants with an irregular administrative status cannot fully exercise their right to peaceful assembly, given that they risk deportation due to a punitive vision of demonstrations in which identifications and sanctions of protesters have become the rule. Even migrants with a regular administrative status (such as a residence permit) have expressed that the risk of being sanctioned during a peaceful assembly prevents them from participating, given that a sanction can imply a denial of residence permits' renewal. CSOs point to a racist bias in the access to public space as a space for political participation. Discrimination in the access to public space and exercise of freedom of peaceful assembly is intersectional and creates specific security risks for women and the LGBTQI+ people, who may suffer concrete discrimination in their interactions with police officers because of their gender identity and/or expressions.

The lack of rule of law in the application of antiterror measures in Spain has been instrumentalised by the State to restrict activism supporting ethnic and religious minorities. In 2022, activists Mohamed Said and Amarouch Azbir were unjustifiably arrested and forcibly deported after thirty years of living in Catalonia (with a residence permit), after being accused of "radicalism" and

<sup>20</sup> [https://sosracisme.org/informe\\_perfil\\_racial/](https://sosracisme.org/informe_perfil_racial/)

<sup>21</sup> <https://www.elsaltodiario.com/vivienda/manifestacion-represion-multas-barcelona>

<sup>22</sup> [https://cronicaglobal.elespanol.com/vida/condena-sindicat-llogaters-coacciones-propietaria\\_546864\\_102.html](https://cronicaglobal.elespanol.com/vida/condena-sindicat-llogaters-coacciones-propietaria_546864_102.html)

"participating in activities contrary to national security" without a trial nor presenting any evidence. Both activists who were very active in denouncing institutional racism and pointing out state Islamophobia, received the support of local and independent institutions who advocated for their freedom. The importance of detention and expulsion of these activists is a deterrent to freedom of expression and participation in political life. Furthermore, demonstrations organised in Madrid against the deportation of these activists were banned, as denounced by *Defender a Quien Defiende* and *SOS Racismo*. The two organisations also point out that at the time of the demonstrations, police forces racially profiled protesters.

Protesters have been disproportionately detained (for instance activists from *Futuro Vegetal*), disproportionately fined (for example activists from *Desarma Madrid*), and physically attacked. For instance, during the protest against the international congress named The District, a police officer, twisted a protesters' arm,<sup>23</sup> while during the eviction of *La Higuera*, a building in Madrid, a girl suffered multiple fractures in her arm as a result of police force).<sup>24</sup>

### Attacks against women's rights and the trans community

Attacks against trans feminist collectives and intersectional feminists were carried out by movements, organisations, and political parties. An example of this was the events at Ca La Dona, a meeting place for the Barcelona trans feminist movement. The headquarters were attacked by trans-exclusionary abolitionists in October 2022, in response to the call for intersectional feminist conferences<sup>25</sup>.

On the institutional level, the president of the Feminist Party, Lidia Falcó, is being investigated for a hate crime for her statements against the trans community.<sup>26</sup> This same party aligns itself with the positions of the extreme right and against the laws that ensure protection of the fundamental rights of trans people. Its positions crystallised in the street, with counter-demonstrations staged during the historic feminist protests (March 8 and November 25).<sup>27</sup>

On 6th April 2022, the Senate approved a Law that modifies the Penal Code which prohibits harassment of women who are going to have an abortion<sup>28</sup>. Despite this, ultra-groups and anti-abortion organisations such as *Hazte oír* have continued their actions of harassment even in front of the voluntary termination pregnancy clinics. The feminist movement claims the protection of women and recalls the importance of ensuring that abortions can still be performed in public health care and not only in private clinics.

<sup>23</sup> [https://twitter.com/La\\_Directa/status/1582655794163568640?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1582655794163568640%7Ctwgr%5Ec6dabe46977a61a779aa1f5e1a4e7f93559b199a%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2Fdirecta.cat%2Fcentenars-de-manifestants-ocupen-la-cimera-de-fons-dinversio-the-district-que-se-celebra-a-fira-de-barcelona%2F](https://twitter.com/La_Directa/status/1582655794163568640?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1582655794163568640%7Ctwgr%5Ec6dabe46977a61a779aa1f5e1a4e7f93559b199a%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fdirecta.cat%2Fcentenars-de-manifestants-ocupen-la-cimera-de-fons-dinversio-the-district-que-se-celebra-a-fira-de-barcelona%2F)

<sup>24</sup> [https://www.eldiario.es/madrid/somos/tetuan/final-bajaron-tejado-desalojo-resistencia-cargas-policiales-demolicion-higuera\\_1\\_9622915.html](https://www.eldiario.es/madrid/somos/tetuan/final-bajaron-tejado-desalojo-resistencia-cargas-policiales-demolicion-higuera_1_9622915.html)

<sup>25</sup> <https://twitter.com/caladona/status/1583754082027974656?t=exnzAArLicvyzlr6-qTUbW&s=35>

<sup>26</sup> [El partido feminista y Vox se unen contra la Ley trans que consideran "peligrosa" y anticonstitucional \(europapress.es\)](https://europapress.es)

<sup>27</sup> [El movimiento feminista se fractura este año con dos manifestaciones a la misma hora por el centro de Madrid \(europapress.es\)](https://europapress.es)

<sup>28</sup> [Aprobada la ley que penaliza el acoso ante clínicas abortivas con el voto en contra de PP y Vox | Público \(publico.es\)](https://publico.es)

## The framework for civic organisations' financial viability and sustainability

The main problem related to funds is that none of the Spanish autonomous communities has reached the commitment to allocate 0.7 per cent to public cooperation policy<sup>29</sup>. The third sector, during 2022, denounced this fact, which in a context of crisis, becomes more decisive. The organisations propose to gradually increase the funds allocated to this use, establishing a calendar to meet the 0.7 per cent before 2030 and to prevent, in addition, a reduction in the number of resources allocated for cooperation.

Another barrier is the strong bureaucratisation when working with public administrations. Entities such as Lafede.cat and the Table of Entities of the Third Social Sector of Catalonia<sup>30</sup> have denounced this problem when requesting and justifying projects, which hinder the work of social and cooperation entities in Catalonia.

## The right to participation and dialogue between the sector and governing bodies

The dialogue that exists between government and civil society is insufficient and opaque. A clear example of the shortcomings of this type of process has been the reform process of the Citizen Security Law (Gag Law). Organisations in defense of human rights and civil society have had very few opportunities for dialogue with the government in an open and public way to express their demands.

## Civil society's resilience to challenges to democracy, the rule of law and fundamental rights

During the month of June 2022, the Network for the Observation of Rights in the Context of Protest was born in Madrid<sup>31</sup>, in order to monitor possible violations of rights in the context of protest by state security forces and bodies. The observers are voluntary and independent people who have been trained by the state Platform Defender a quien Defiende (DqD), a plural network made up of organisations that work to defend and protect the human rights of civil society. These observers monitor police interventions that may involve violations of rights.

The network has been activated twice in the capital, during demonstrations against the NATO summit in Madrid and during protests against gender-based violence. In both cases, the lack of identification by the police officers was denounced before the government delegation and the

<sup>29</sup> [Las comunidades autónomas, lejos del compromiso del 0,7% - Coordinadora de Organizaciones para el Desarrollo \(coordinadoraongd.org\)](https://coordinadoraongd.org/)

<sup>30</sup> [10 propostes de les entitats socials per simplificar la relació burocràtica amb l'administració pública - Lafede.cat](https://lafede.cat/)

<sup>31</sup> <https://www.elsaltodiario.com/represion/protesta-otan-domingo-observadores-monitorearan-actuacion-fuerzas-seguridad>



ombudsman. The network has recorded a total of 17 cases where National Police agents were not identified with the Police Operational Number (NOP), including during the feminist movement demonstration on 25 November and 33 cases of agents who were not identified properly during protests against NATO in June 2022. The network in Madrid would not exist without the previous work carried out in Catalonia by Som Defensores, which since 2017 systematises human rights violations in the context of protests and legally and psychologically assists in cases of institutional violence.

Observation contributes to the free, full and effective exercise of the basic rights of citizenship, grants greater security to those who exercise their freedom of protest and on occasions, can dissuade and/or prevent, with its presence, possible violations of rights by the security forces and bodies. If these violations have taken place, the observer can inform the public and competent authorities in order to demand the examination and investigation. For all these reasons, the task of the Network for the Observation of Rights in the context of protest, has the dual objective of dissuading and tempering violations of rights due to their presence on the ground; and collecting data that can help accountability processes for observed violations, support judicial processes, and challenge institutions to make changes that guarantee the exercise of rights for the entire population.

During 2022, the trust placed in the social sector has been high, leading to continuing political and social advocacy processes not present in previous years. However, some legal change procedures have been carried out without considering civil society and produced exclusively through negotiations between political parties. One of these legal changes has been the recent reform of the penal code or the reform of the Gag Law (which is still in the approval process today).

At present, the third sector and all the work that it develops is not undervalued, indeed, the vision of social organisations is in good condition.

## Recommendations

### To the government of Spain:

#### The regulatory environment for and implementation of civic freedoms

- ⑩ Reform the Gag law through an open, inclusive and transparent consultation process with civil society, to ensure it is in line with international standards, including the Venice Commission opinion.
- ⑩ Repeal the amendment to the Criminal code which modifies public order and could be used to crackdown on peaceful assembly

#### Safe Space

- ⑩ Refrain from targeting, harassment and criminalise of youth organisations, climate activists and housing organisations, including Tsunami Democratic movement. Drop all charges against them and scrap fines issued.

- ⑩ Refrain from surveillance, which is being used as a pretext to unlawfully prosecute and create a chilling effect amongst political dissidence groups.
- ⑩ Urgently conduct independent, transparent and thorough investigations into cases of surveillance
- ⑩ Refrain from attacking and criminalising journalists and urgently investigate cases of attacks against journalists to hold perpetrators to account.
- ⑩ Carry out independent, transparent and thorough investigations into excessive force used by authorities during protests to hold perpetrators to account.
- ⑩ Ensure that police officers are identifiable through the Police Operational Number and that it is legible and visible 360°
- ⑩ Refrain from targeting housing organisations and scrap fines issued against them.
- ⑩ Refrain from targeting excluded groups, including migrant LGBTQI and women, during protests

#### **The framework for civic organisations' financial viability and sustainability**

- ⑩ Commit to allocating 0.7 per cent to public cooperation policy to ensure funding for civil society organisations
- ⑩ Refrain from creating bureaucratic measures for access to state funding

#### **The right to participation and dialogue between the sector and governing bodies:**

- ⑩ Ensure regular, transparent, inclusive consultation with civil society by establishing bodies for dialogue
- ⑩ Ensure that adequate time is allocated to consultation processes.

*\*About the contributors:*

*NOVACT, The International Institute for Non-violent action provides support, training and counseling to nonviolent or peaceful civil resistance movements which work for conflict transformation and human security.*