

Spain

Ombudsman of Spain

International accreditation status and SCA recommendations

The Spanish NHRI was re-accredited with A status in May 2018. The SCA encouraged the NHRI to advocate for amendments to the establishing law in order to ensure a limit to the Ombudsman's term of office, a pluralist staff composition and a broad and transparent selection process with the direct participation of civil society. The SCA acknowledged the NHRI's level of engagement with the international human rights system and encouraged the NHRI to continue advocating for the provision of adequate funding.

Impact of 2020 rule of law reporting

Follow-up by State authorities

Specific follow-up concerned the concerns raised about the impact of COVID-19 on rule of law and human rights protection.

For example, as regards the fight against disinformation, the Spanish Government stressed the need to counter recent waves of disinformation through preventing mechanisms. These efforts have been justified to defend the National Health System, citizenship's security, and even Spain's economic interests. However, the most significant justification that was highlighted is the protection of the rule of law at the national level.

Follow-up initiatives by the Institution

Developing public events in the past year was challenging due to the different periods of lockdowns, and the consequences of the second and third wave of coronavirus that have been striking Spain over the past months.

Nonetheless, the Ombudsman engaged throughout the year in actions to follow-up and address the challenges posed by the COVID-19 outbreak. For example, he addressed the Secretary General of Penitentiary during the COVID lockdown to know about the communication protocols with the prisoners' families to inform them of the health situation of the inmates, so that the information flew daily to prevent the spread of fake news

References

- https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf (p. 179)

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There has been no change regarding the national regulatory framework or the Institution's internal composition.

Enabling space

The institutional value of the Spanish Ombudsman is widely respected and represents an undeniable voice of reference in Spain. The effectiveness and the development of the functions and the duties of the institution are therefore adequately protected. Furthermore, the fact that it is designated by the Constitution as the protector of fundamental rights of citizens with regard to the public administration, guarantees its recognition and its independence as an external institution with access to the resources it considers necessary to fulfil its mandate. In addition, the art. 502 of the Spanish Criminal Code punishes as disobedience the lack of cooperation with the Ombudsman.

References

- https://www.legislationline.org/download/id/6443/file/Spain_CC_am2013_en.pdf

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The Covid-19 pandemic and subsequent lockdowns changed the Institution's methods of work. Few on-site visits to places of deprivation of liberty or social centres could be carried out in order to respect the principle of Do No Harm, they resumed as soon as the situation improved.

The Ombudsman has been immersed in a digital transformation project for several years, that just crystallized in a macro-contract of 4M EUR, aiming to eliminate bureaucracy and streamline processes for citizens. The Institution's budget has raised for this reason.

There is a clear need to simplify and improve procedures, that the Ombudsman is committed to address in order to provide support to the citizens in a timely manner.

Citizens choose to submit complaints mainly through the institutional portal. For this reason, the key in the digital transformation project will be to improve the "user experience". In this way, an intelligent form will be created to help citizens expose their problems to the Institution.

In the framework of the COVID-19 outbreak, numerous issues were brought to the attention of the Institution, including in relation to the number of ERTes (temporary collective dismissals), aid to the culture sector, closure of the hotel industry, health waiting lists, nursing homes. In order to deal with these complaints more efficiently, the Institution is considering new ways of communicating with the people involved, such as a news item, a newsletter or surveys.

Human rights defenders and civil society space

The Organic Law 4/2015 on the protection of Citizen Security has continued to spark protests from civil society. Even international organizations have expressed their concern. The Venice Commission is currently preparing an opinion on this Organic Law at the proposal of the Parliamentary Assembly of the Council of Europe. The Ombudsman expressed concern and made recommendations in relation to external body searches on public roads, offences in the context of meetings and demonstrations, or the use of images or data by the police. The recent Ombudsman's annual reports, advocated for the reform of some aspects of this law, seeking the right balance between security and freedom.

Although there has been a parliamentary majority in favour of a reform of this law since 2016 and some legislative initiatives in this regard, such reform has not yet been completed, either due to a lack of sufficient political will or because of the parliamentary instability in recent years.

The Ombudsman recommends a reform of the current Organic Law 4/2015, addressing at least the following elements:

- Administrative and judicial guarantees regarding external body searches (art. 20(2)(b)) should be reinforced.
- Violation of article 37 should not hinder the rights of assembly and demonstration.

- Violation of article 36.23 should not hinder freedom of expression or the right to information.

References

- <https://www.defensordelpueblo.es/resoluciones/sobre-la-ley-organica-de-proteccion-de-la-seguridad-ciudadana-7/>
- https://www.defensordelpueblo.es/wp-content/uploads/2020/05/I_Informe_gestion_2019.pdf (p. 124–127)

Checks and balances

The “state of alarm” declared in response to the pandemic has decreased the parliamentary oversight of the government. However, the Ombudsman continued its scrutiny, and publicly shared its opinion about the relationship between state of alarm and fundamental rights on three occasions: in a resolution of January 2021 denying an appeal of unconstitutionality against the decree establishing the first state of alarm; in the public hearing before the Mixed Congress-Senate Commission on relations with the Ombudsman on November 26; and in the publication of December 2020 “Actions in the face of the COVID-19 pandemic”.

In these statements, the Ombudsman concludes that the provisions of the first state of alarm, as well as those adopted by various authorities in the intermediate period between the two states of alarm (June to October 2020), have been adopted in line with the framework of the Constitution, of the Organic Law 4/1981, of June 1, of the states of alarm, exception and siege, and of the sanitary legislation foreseeing cases of epidemic.

The mere designation of the Spanish Ombudsman as a National Human Rights Institution serves as proof of how it interacts with the system of checks and balances that constitutes the separation of powers in Spain. It is the Congress of Deputies, along with the Senate, who decide by a 3/5 majority who will be the Spanish Ombudsman, whose term is of five years. As part of the Ombudsman’s activities, it elaborates an annual report including the issues identified as most important or which require the intervention of the executive and the legislative powers with relative urgency.

References

- <https://www.defensordelpueblo.es/noticias/segundo-estado-alarma/>
- https://www.defensordelpueblo.es/wp-content/uploads/2021/01/Resolucion-compulsada-20027822_1.pdf
- https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf
- <https://www.defensordelpueblo.es/noticias/comparecencia-covid-19/>

Media pluralism and freedom of expression

In the framework of the proposals of reform made by the institution concerning the Organic Law 4/2015 on the protection of Citizen Security, the Ombudsman advocated, with respect to the fundamental right to information and concerning the serious infraction established in article 36.23 of the Law, to establish urgent instructions to guarantee the interpretation and application in the most favourable way to the full effectiveness of freedom of expression. In particular, the Ombudsman stressed that the expression "**unauthorized** use of images or personal or professional data" should not be interpreted as requiring prior administrative authorization for the dissemination of such images or data. Likewise, article 19, relating to the apprehension of the effects of a crime or administrative offense, should not be interpreted as meaning that an apprehension of informative material is possible without judicial authorization.

Finally, and considering the difficulty for citizens to be aware *a priori* that the use of certain data or images can jeopardize the success of a police operation, it is advisable to reserve the provisions' application to cases where fraud circumstances are proven.

By a decision TC 172/2020 the Spanish Constitutional Court declared the prior authorization foreseen in art. 36.23 unconstitutional and null, and the rest of the section constitutional, provided that it is interpreted in the sense established in the Legal Ground number 7 C (FJ 7 C).

References

- <https://www.defensordelpueblo.es/resoluciones/sobre-la-ley-organica-de-proteccion-de-la-seguridad-ciudadana-7/>
- https://www.tribunalconstitucional.es/ResolucionesTraducidas/STC%20172%202020%20of%2019%20November%202020.%20Legal%20grounds%20and%20separate%20opinion_.pdf
- Constitutional Court decision TC 172/2020

Corruption

Considering the national economic situation and its GDP, Spain ranks as 32nd most corrupted country in the world, according to Transparency International.

Even though the level of corruption decreased from 2019 to 2020, the frequency of corruption scandals in Spain remains considerably high. The media play an important role by unveiling these cases, which are then adequately examined by the courts.

References

- <https://www.transparency.org/en/cpi/2020/index/esp>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Spanish Ombudsman, from the beginning of 2020 right until the end, carried out more than 26.000 interventions in response to the complaints brought to the Institution, most of which were related to the sanitary crisis. The Ombudsman was operating 24 hours per day via telecommuting. Amongst the different complaints, there were cases related to: incorrect sanctions in application of the Citizens Security Law, sanctions by the security forces regarding permission for minors to

leave their houses; the insufficiency of the health system and the inefficient use of the system's resources; the problematic of the most vulnerable households exposed to the most immediate effects of the pandemic; problems of assistance in nursing homes; the lack of access to digital resources, preventing impoverished children to adapt to the new format of education; non-discrimination and acceptance of migrants.

Given that Spain prevails as a major touristic destination worldwide, and as a result of the consequences that the pandemic has had short-term and medium-term, the major danger that Spain is facing at the moment is the enormous impact of the future economic recession on the country. The International Monetary Fund indeed stated that Spain will suffer the worst recession amongst the most developed countries in the world. Thus, the most worrying elements regarding rule of law and human rights protection in the following years will be marked by the lack of access to resources, decreased standards of living of a significant proportion of the population, homelessness, increase of people below /close to the income poverty line, social exclusion.

The current national and international health emergency situation represents an unprecedented challenge for all of society. Public bodies have been forced to act with an unprecedented immediacy in order to respond to changing and unpredictable circumstances, while citizens had to modify many of their habits.

The application of the health and social prevention and protection measures, approved by different Spanish public administrations to fight the pandemic, may have certain effects on the exercise of the fundamental rights recognized in the Title I of the Spanish Constitution.

Social distancing, the most effective preventive measure to prevent contagion, caused travel limitations and the generalization of blended learning at all educational levels.

On the other hand, the notable socioeconomic effects of the pandemic led to the overflow of requests for aid and social benefits.

Faced with this situation, the Ombudsman, within the framework of his powers, works to defend and safeguard fundamental rights. It published a whole report on its activities during the pandemic.

References

- https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf

Most important challenges due to COVID-19 for the NHRI's functioning

The lockdown required the Ombudsman office to change its working system. The Spanish Ombudsman adapted to the circumstances through the use of technological tools, transferring many of the proceedings, meetings, or initiatives on digital platforms.

During the first state of alarm, no NPM on-site visits were carried out in application of the Do No Harm Principle, only phone calls to supervise centres were made. The NPM resumed its activities in the end of May 2020.

References

- <https://www.defensordelpueblo.es/mnp/actividad/>

