

State of the Rule of Law in Europe in 2022

Reports from National Human Rights Institutions

Spain



Spain

Ombudsman of Spain

Impact of 2021 rule of law reporting

Follow-up by State authorities

The Spanish authorities analyse and, where appropriate, adopt decisions concerning issues raised in reports prepared by international human rights institutions and networks, such as the UN, ENNHRI or FRA. The same is done in relation to the reports and actions of the Ombudsman.

For example, the new IV Open Government Plan, launched in 2021, establishes renewed commitments in relation to public participation, transparency, accountability and public integrity.

The General Council of the Judiciary has continued this year with the "Educate in Justice" programme. It is aimed at secondary school students and its objective is to enhance the knowledge of students on the functioning of the judicial system in Spain, with special emphasis on aspects such as gender violence and the criminal responsibility of minors. As part of the program, the judges give talks to the students and mock trials are carried out with the help of the teachers.

References

- (1) https://transparencia.gob.es/transparencia/dam/jcr:d306cd62-cc0f-40a1-9be8-fe24e0000010d/IVPlanGobiernoAbierto-ES_2020-2024.pdf
- (2) <https://www.poderjudicial.es/cgpj/es/Temas/Educacion-en-Justicia/>

Impact on the Institution's work

The Ombudsman of Spain values highly ENNHRI's reports because they provide information relevant to work carried out by the institution, specifically on topics such as the realisation of economic, social and cultural rights or the protection of people with disabilities, among other issues.

Follow-up initiatives by the Institution

The Ombudsman of Spain has referenced the ENNHRI Rule of Law report in its other documents.

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Spanish NHRI was last reaccredited with A-status in May 2018 (1). The Sub-Committee on Accreditation (SCA) welcomed the actions the Spanish NHRI took to implement its previous recommendation.

Regarding selection and appointment, the SCA took the view that the selection process enshrined in the Law was not sufficiently broad and transparent in that it did not require the advertisement of vacancies, nor specified the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process of the Defensor. It encouraged the NHRI to advocate for changes in this regard.

Moreover, the SCA encouraged the Spanish NHRI to ensure the ongoing and effective fulfilment of its mandate by guaranteeing staff security of tenure, which could be achieved through an amendment to the law that explicitly provides for such security of tenure regardless of the election of a new Defensor. The SCA also recommended that there is a limitation in the enabling law to a re-election of only one additional term, as the legislation is currently silent on the number of times an individual can be re-elected.

While acknowledging that, in practice, the Spanish NHRI leadership and staff are reflective of the principles of pluralism and diversity, the SCA continued to encourage the institution to advocate for the inclusion in its enabling law of a requirement to ensure that its composition is broadly reflective of all of the segments of Spanish society.

The SCA further acknowledged that, at the time, the Spanish NHRI reported that it was not able to fully participate in all periodic reviews of Spain as a result of resource limitations. The SCA also noted the NHRI's view that it had not been allocated with sufficient funding to create new programs or strengthen existing ones. The SCA emphasized that, where an NHRI has been mandated with additional responsibilities, it must be provided with the adequate funding to effectively fulfil these duties. The SCA encouraged the Spanish NHRI to continue to advocate for the provision of adequate funding.

References

- (1) <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20May%202018-Eng.pdf>

Regulatory framework

The national regulatory framework applicable to the NHRI has not changed over the past year and it is at adequate level.

The institution of the Ombudsman of Spain has a constitutional basis. Its creation and mission are included in article 54 of the Magna Carta. The NHRI's mandate to contribute to access to justice for individuals is based on the functions of complaints-handling and awareness-raising. The Spanish NHRI also controls the "administration of the Administration of justice" - meaning the functions within the Administration of Justice, that are of a non-judicial nature which refer, therefore, to the management of general affairs and the staff at its service. Furthermore, the NHRI has power to lodge before the Constitutional Court the appeals of unconstitutionality and protection, which usually have strategic features.

Enabling and safe space

State authorities, regional and local authorities, as well as many public bodies through their relations with the Ombudsman of Spain have demonstrated to have good awareness of the NHRIs' mandate, independence and role.

The Ombudsman has adequate access to information and to policy makers in relation to policy making with human rights implications. However, information and policy makers are accessed on the initiative of the NHRI. The Ombudsman does not usually participate formally in the processes of drafting laws and other regulations.

However, in its resolutions the institution frequently requests normative modifications of precepts that may affect the exercise of fundamental rights of citizens or that directly violate them. In the latter case, if necessary, the Ombudsman files the corresponding appeal of unconstitutionality.

In summary, the NHRI has ex-post and not ex-ante control in policymaking.

What is more, public authorities are obliged to give timely and reasoned responses to the requests made by the Ombudsman in the NHRI's resolutions.

Furthermore, it is worth noting that it is illegal for an authority or public official in Spain to obstruct the investigation of the Ombudsman, the Court of Accounts or equivalent bodies of the Autonomous Communities by refusing or unduly delaying the sending of the reports that they request or hindering their access to the files or administrative documentation necessary. Such actions are punished as crime of disobedience under Article 502.2 of the current Spanish Penal Code with the penalty being suspension of employment or public office for a period of six months to two years,

In addition to the protection established in the Penal Code mentioned above, Organic Law 3/1981, of April 6, on the Ombudsman, regulates a broad framework of protection for the head of the institution and his deputies so that they can exercise their function with absolute independence from the different public authorities.

Article 6.1 of the aforementioned Organic Law establishes that “the Ombudsman shall not be subject to any binding terms of reference whatsoever. He shall not receive instructions from any authority. He shall perform his duties independently and according to his own criteria”. And paragraph 2 reads that “The Ombudsman shall enjoy immunity. He may not be arrested, subjected to disciplinary proceeding, fined, prosecuted or judged on account of opinions he may express or acts he may commit in performing the duties of his office”.

References

- <https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/LOIngles.pdf>

Human rights defenders and civil society space

The Ombudsman of Spain notes that the fundamental rights protection system in Spain works well.

Laws and practices negatively impacting on civil society space and/or on human rights defenders’ activities

Not significant cases, except a few specific issues which have been successfully protected by Courts.

One of such cases concerned José Palazon, a Children’s Rights Defender in Melilla who was sued by the Education Counsellor on the grounds of attack to his honour. The judge declares Mr. Palazon to be a Human Rights Defender also taking into consideration that the Ombudsman had investigated the facts that lead to Mr. Palazon’s declarations.

References

- <https://www.elperiodico.com/es/sociedad/20180108/consejero-melilla-denunciara-prodein-acusacion-6538700>

NHRI’s role in promoting and protecting civil society space and human rights defenders

The Spanish Ombudsman has participated in the Latin American federation of Ombudsman (FIO) report on Human Rights defenders, which includes many recommendations to the governments (in general). The report is due to be released soon.

NHRI's recommendations to national and regional authorities

The NHRI recommends the modification of some aspects of Organic Law 4/2015, of March 30, on the protection of citizen security. The issue that is the subject of intense public debate and the Government of the Nation and several parliamentary groups have expressed their willingness to modify it.

In the 2019 annual report the Spanish Ombudsman recommended, in relation to the Citizens' Security Law, "to have an action protocol on the use of force, providing clear and accurate instructions to police officers on how and in what circumstances they should use both force and regulatory weapons and antiriot equipment, in order to reinforce legal certainty amongst agents and citizens.

References

- Defensor del Pueblo, Executive Summary - 2019 Annual Report: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2020/06/2019-Summary_Annual_Report.pdf
- Defensor del Pueblo, 2019 Annual Report (in Spanish): <https://www.defensordelpueblo.es/informe-anual/informe-anual-2019/>

Checks and balances

The ombudsman's work on Human Rights is adequately supported both by the Parliament of the nation and by all institutions.

Likewise, the work of the Ombudsman is adequately reflected in the media as well as on social networks. The annual reports of the Ombudsman are presented both before the Joint Congress and Senate Committee on relations with the institution, as well as in plenary sessions of both Chambers.

In addition, the promotion of the work of the Institution has been reinforced with the introduction of the role of a director of communication. The aim is to raise the profile and media presence of the Institution so that its work and mission are better known and recognized among the wider society.

Despite the effects produced by the pandemic, the NHRI judges the system of checks and balances as functioning in a balanced way. Various important requests on the topic made by the Ombudsman in its resolutions have been addressed.

On the topic of the implementation of judgments of national or supranational courts, the NHRI notes f. ex. the reluctance of the Government of Catalonia to apply a judgment of

the Spanish Supreme Court on the declaration of Castilian as a "vehicular" language, in different areas of education on its territory. Reluctance has also been noted among some bodies of administration to apply UN Treaty Bodies rulings in particular cases. The Spanish Administration is reluctant to give them legal validity and make them effective, despite the fact that there are already Supreme Court rulings granting this value. The Ombudsman has advocated recognition of the effectiveness of these resolutions, which seek to remedy serious violations of human rights, since Spain has agreed to abide by these resolutions by signing international treaties.

References

- https://www.publico.es/politica/abogacia-desoye-onu-niega-indemnizar-victima-torturas-policiales.html?utm_source=twitter&utm_medium=social&utm_campaign=web
- [Dirección del Servicio Jurídico del Estado, Anales de la Abogacía General del Estado 2020](#)

Trust amongst citizens and between citizens and the public administration

State authorities try to foster a broad level of trust in the public regarding the activity of public administrations and their constitutional bodies, by applying, among other initiatives, formulas of transparency in their management, and promoting regulations that allow their control.

According to the Law of Transparency and Good Governance 1/2013, the application of transparency extends throughout the public administration but also applies to political parties and business and trade union organisations, expressly including the Royal Household - the first in Europe to do so within the text of a law on transparency - and those private entities that receive significant public funding.

The chapter on good governance introduces legal obligations for those in high office, and classifies three forms of infringement: conflicts of interest; economic-budgetary management; and offences of a disciplinary nature.

However, debates on social networks sometimes unveil criticism over the work of certain administrative or constitutional bodies, which may affect their credibility.

Likewise, in the political debate, criticism arises with relative frequency which affects citizens' trust in the public powers.

References

- Law of Transparency and Good Governance 1/2013:
https://transparencia.gob.es/transparencia/transparencia_Home/index/MasInformacion/Ley-de-Transparencia.html

NHRIs as part of the system of checks and balances

The Ombudsman of Spain advises public powers on the modification of practices, and even regulations, that affect the exercise of fundamental rights. Some examples from the past year include:

- The abolition of mechanical restraints for young people in Detention Centres for Minor Offenders (CIMIS).

The suspension of the visitation regime for those accused of gender violence.

- These first two cases have been reflected in the Organic Law for the Comprehensive Protection of Children and Adolescents against Violence.
- The modification of the Immigration Regulations, on the legal regime of unaccompanied foreign minors, which has allowed them to improve their documentation (residence and work permits) and guarantee them all the rights that correspond to them, once they have reached adulthood.

According to the Ombudsman of Spain the realisation of economic, social and cultural rights (health, education, pensions, etc) reveals to be more complicated as it requires resources, mainly human and economic, which are lacking.

References

- <https://www.defensordelpueblo.es/resoluciones/suspension-del-regimen-de-visitas-para-imputados-por-violencia-de-genero/>
- <https://www.defensordelpueblo.es/resoluciones/abolicion-de-la-sujecion-mecanica-en-los-centros-de-internamiento-para-menores-infractores/>
- <https://www.defensordelpueblo.es/resoluciones/residencia-de-los-ex-menores-tutelados-que-han-accedido-a-la-mayoria-de-edad-sin-haber-obtenido-la-pertinente-autorizacion/>

NHRI's recommendations to national and regional authorities

The Ombudsman of Spain recommends to the authorities to provide more prompt and more solidly motivated answers to queries raised by the NHRI.

Functioning of the justice system

The Spanish Ombudsman states that the lack of renewal of the Judicial Power Council is very worrying. The Council of the Judiciary has been acting in office since December 2018. It is up to the Parliament to appoint all its members by qualified majority of 3/5. Since 2018, when the negotiations between the main political parties reached an impasse, no significant progress has been made towards reaching an agreement, despite numerous calls, including from the EU, for its renewal.

As in so many other areas, the pandemic generated by COVID affected the proper functioning of the administration of justice and caused delays in the processing of procedures and in the holding of trials. After adopting extraordinary measures to deal with this situation, it has been reasonably normalized. In this regard, the Spanish Ombudsman recommended the President of the Spanish Council of the Judiciary to improve the monitoring and inspection of the courts whose incumbents have prolonged leave due to illness, or become incapacitated, so that response times can be improved in the measures of reinforcement and/or substitution, to avoid delays.

A different issue are the underlying problems of the administration of justice, which have been present for a long time, in terms of expanding its professional staff and providing material means which allow it to speed up its activity and which are expected to improve in the short term and medium term, with the increase in budget allocations.

A new statute for lawyers has been approved, emphasizing their independence. It highlights the independence of lawyers and establishes new provisions regarding professional secrecy. It was adopted on March 2, 2021. The General Council of Lawyers participated in the legislative process.

In addition, on March 9, 2021, a Royal Decree on free legal assistance was approved, reinforcing the pre-existing system.

Various legislative reforms, especially those of a procedural nature, have been gradually improving the functioning of the administration of justice, but have not solved the problem of delays in judicial processes yet. This situation has been caused by many factors, the most important being the one mentioned above, an inadequate endowment of personal and material means.

Role of the NHRI in contributing to the effective functioning of the justice system

According to the Ombudsman, daily life problems have become excessively judicialized, which has led to increased litigation in Spain. On this topic,, the Ombudsman has advised all public institutions and administrations that have responsibilities in the Administration of

Justice or in the so-called "administration of the Administration of Justice", to adopt measures in order to achieve an equitable distribution of the workload of courts and tribunals in order to improve the speed of their action.

Access to justice is adequately guaranteed in the Spanish legal system. The capacities of the Ombudsman in relation to facilitating access to justice are limited. Article 17 of the Spanish organic law reads that: "The Ombudsman shall not investigate individually any complaints that are pending judicial decision, and he shall suspend any investigation already commenced if a claim or appeal is lodged by the person concerned before the ordinary courts or the Constitutional Court".

References

- <https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/LOIngles.pdf>

NHRI's recommendations to national and regional authorities

The Ombudsman recommends to adopt measures in order to achieve an equitable distribution of the workload of courts and tribunals to improve the speed of their action

Media freedom, pluralism and safety of journalists

The Ombudsman of Spain states that there are no problems in Spain concerning the exercise of freedom of expression in its different manifestations, covered by the Constitution. Besides, traditional plurality of Media has been complemented by digital tools and social networks where citizens can freely express their opinions.

The Ombudsman's human rights monitoring led to the conclusion, though, that the Organic Law 4/2015 of 30 March on the protection of Citizen Security, provoked protests from civil society since its promulgation.

The Ombudsman has 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 annual reports of the Ombudsman in recent years have gathered its performance concerning this issue.

In its annual reports the Ombudsman in recent years have advocated for the reform of some aspects of this Law, seeking the right balance between security and freedom. The recommendation concerning journalists is that the violation of article 36.23 does not hinder freedom of expression and the right to information.

This year, however, the Ombudsman has still received complaints about the right of access to public information, not by journalists but by general public. The position of the Ombudsman has been to ask the administrations to comply with the resolutions of the Transparency and Good Governance Council, and consequently to send the interested party the information whose access has been authorized by said body as soon as possible. Nowadays, a clear political will to reform this law is acknowledged, which will hopefully soon be carried out.

References

- <https://www.defensordelpueblo.es/resoluciones/solicitud-de-acceso-a-una-informacion-municipal/>

Corruption

The regulations in force in Spain to avoid cases of corruption in the public sphere are wide and varied. In such event when this type of phenomenon occurs, there is adequate legislation to prosecute and punish them.

In addition, the judicial procedures on corruption cases, as well as the judicial resolutions that derive from them, are subject to extensive informative monitoring by the media, which guarantees their knowledge by the citizens.

During COVID, investigations were initiated with several public entities, on the accreditation of the requirements of solvency, capacity and social adaptation to the object of the contract within the framework of the contracting carried out by the urgency procedure.

The Ombudsman indicated that emergency contracting (i.e in the fight against pandemic), does not exempt the contracting authority from carrying out actions to verify the capacity to contract and the solvency of the awardees.

It was also inquired about compliance with the requirements of transparency in this exceptional situation.

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

Emergency regimes and related measures

While the fight against the pandemic has been improving, especially with the mass vaccination of citizens, the adoption of restrictive measures of rights has been notably limited.

In Spain, at this time, there is no general regime of an exceptional nature to combat the pandemic, which could temporarily limit the exercise of fundamental rights.

However, certain restrictive measures of a local nature are applied on a timely basis in the fight against the pandemic, prior to their assessment and approval by judges and courts (in some territories).

A different issue is the intense debate in the European sphere about the scope of the COVID passport system in its territory, which raises various controversies.

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

It is still early to make a complete and precise balance of the serious economic, political and social impact suffered by the pandemic in Spain and in the rest of the world. That is why it is not surprising that society experiences this situation with anxiety about the present and uneasiness about the future.

Two crises, almost successive, have hit us: the financial one in 2008 and the Covid one in 2020, separated by just three years of partial recovery, and they have caused devastating damage.

With the pandemic, everything was done from a significant margin of uncertainty: there was no experience, there was no background and even science was hesitant.

An enthusiastic scientific research has been carried out in the struggle to find a quick and stable way out of the pandemic. But this is very laborious; It requires time, dedication, resources and success.

Vaccines have started the way to end up defeating the virus. This generates understandable optimism, but we must be cautious and not relax our behaviour in the fight against the pandemic that still persists.

Citizens are afraid and uncertain, individually and socially, about the future.

Public services are overflowing and social protection networks are straining in the face of massive demands for survival, since it is obvious that this crisis is not being the same for everyone.

The pandemic has had serious effects on our lives, but above all it has greatly affected those who were already in a vulnerable situation.

The policies used to fight the economic crisis in the first half of the last decade, based on cutbacks in the welfare state, on spending control and on meeting deficit targets, impoverished the population in the most precarious situation.

In addition to the precarious jobs that already exist, the increase in unemployment, the cessation of activity or the loss of employment has now been added.

The digital gap and housing differences have also become more visible.

Women, who already suffered a higher risk of poverty than men before the coronavirus crisis, have seen it increase. Having children or being a single-parent family increases the risk of severe poverty.

In the past months, we have been able to see long lines of people looking for food in front of social aid organizations.

In short, all these factors have been added to the previous delicate situation, which was already being experienced by people in the most vulnerable situations, which is why it is now essential to focus on them.

Although there is still no exact and complete data to quantify the impact of the virus on poverty, some indicators show notable increases in it.

References

- <https://www.foessa.es/blog/foessa-presenta-la-primera-radiografia-social-completa-de-la-crisis-de-la-covid-19-en-toda-espana/>

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

The Ombudsman has not experienced any hurdles to carry out its tasks during the pandemic.

What is more, comparing the statistical data of the last yearly report, there is a noticeable increase in the Spanish NHRI's activity.

References

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

Efforts by state authorities to mitigate challenges

Many measures to tackle COVID related problems were adopted in many fields (health, education, social services, etc). The National Government has compiled them all on its web page.

It is true that now, both in Spain and in Europe, the policies that are being applied are clearly different from those of the previous economic crisis. They are characterized by their expansive and protective cut.

This is proven in Spain by the numerous measures adopted by the Government and Parliament, such as the introduction of ERTes (Temporary Employment Regulation), the implementation of the Minimum Vital Income, the different aids for SMEs and workers or the limitation of evictions and cuts in basic services such as electricity, among others, which are helping to alleviate the effects of Covid, especially on the most vulnerable people.

But to combat the risk of poverty and exclusion, the public authorities must persevere in a continuous attention to the neediest groups. It is very necessary to continue implementing measures that shield public services such as education or health and reinforce social protection, as they are essential to alleviate the effects of the crisis we are experiencing and prevent anyone from being left behind.

In conclusion, we must take advantage of this moment to continue adopting measures from the point of view of social justice and fundamental rights.

References

- <https://www.lamoncloa.gob.es/covid-19/Paginas/medidas.aspx>

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

All Spanish Ombudsman activities related to protection of human rights during the Covid-19 crisis are gathered in the monographic report "Actions in the context of the COVID pandemic", published and presented before the Parliament" (1).

Furthermore, the Ombudsman released a report on "Migration in Canary Islands" (2), focusing on specific problems related with the pandemic concerning the attention to irregular migrants arriving massively to the Canary Islands during the pandemic.

References

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

- (2) https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2021/04/INFORME_Canarias-EN.pdf

NHRI's recommendations to national and regional authorities

- The Ombudsman recommends to resume of several train communications which were stopped by COVID situation.
- The Ombudsman also recommends to improve the COVID passport use.

References

- More Ombudsman's recommendations are presented in the Chapter 30 of the report "Actions in the context of the COVID pandemic":
https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf

Other relevant developments or issues having an impact on the national rule of law environment

The increase of poverty, notably in the most vulnerable groups which was reinforced by the pandemic.

References

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

NHRI's recommendations to national and regional authorities

All of them are included in the annual and monographic reports prepared by the Ombudsman, which are promptly sent to Parliament and are fully accessible on its institutional website.

References

- <https://www.defensordelpueblo.es/informes/>