

# An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory

**Spain**

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# 1. Civic space developments in 2022

## 1.1. Fostering the rights to freedom of expression and peaceful assembly

Area	Freedom of peaceful assembly
Topic	Policing practices & participation to assemblies
Impact	Major

In Spain, during the year 2022, several demonstrations were held in numerous cities<sup>1</sup> against the Citizens' Security Law, so-called "Gag Law"<sup>2</sup>, demanding its repeal or reform<sup>3</sup>. The civil society organisations behind these demonstrations denounced the fact that the process of reforming the law in question had been blocked in parliament for more than six years. They demanded that the negotiations for its reform be resumed and carried out promptly, bringing the resulting text into line with international standards on freedom of expression, information, and peaceful assembly.

The media has been reporting extensively on the slow but steady progress of the Gag Law reform<sup>4</sup>. However, in an open letter addressed to EU Justice Commissioner Didier

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<sup>1</sup> elDiario.es (2022), '[Manifestaciones contra la Ley Mordaza en más de veinte ciudades españolas](#)', *elDiario.es*, 13 February 2022.

<sup>2</sup> Spain, Organic Law 4/2015 on the protection of public safety (*Ley Orgánica 4/2015 de protección de la seguridad ciudadana*), 30 March 2015. "BOE" no. 77, of 31 March 2015, pages 27216 to 27243. Available at: <https://www.boe.es/eli/es/lo/2015/03/30/4>.

<sup>3</sup> Amnistía Internacional (2022), '[Diez organizaciones guardan silencio durante 12 horas frente al Congreso para exigir el fin de la 'Ley Mordaza'](#)', Press release, 8 November 2022; García, T. (2022), '["Pedro Sánchez, cumple tu promesa y deroga la Ley Mordaza"](#)', *El Salto*, 8 November 2022; Amnistía Internacional (2022), '[Organizaciones denuncian seis años de bloqueo parlamentario de la reforma de la Ley Mordaza y exigen a los partidos políticos avanzar hacia la libertad de expresión](#)', Press release, 31 May 2022.

<sup>4</sup> Araque Conde, P. (2022), '[Así va la reforma de la 'ley mordaza', uno de los principales deberes pendientes del Gobierno para 2023](#)', *Público*, 31 December 2022; Frías, C. (2022), '[La reforma de la 'ley mordaza' avanza: difundir imágenes de policías no será delito y se despenaliza el 'top manta'](#)', *El Independiente*, 22 December 2022; Galvalizi, D. (2023), '[La reforma de la ley Mordaza, la promesa más difícil de cumplir](#)', *El Salto*, 1 January 2023; López-Fonseca, O.

Reynders in February 2022, the collective No Somos Delito (a broad coalition of more than one hundred associations and social movements belonging to a significant segment of Spanish civil society), together with Defender a quien Defiende, European Civic Forum, CIVICUS and Civil Society Europe, denounced that, in its current state, the referred reform "does not overcome the repressive nature of the Law, as it does not address the most harmful articles of the right to freedom of assembly, expression and information, as well as other human rights"<sup>5</sup>. Among these rights, Amnesty International highlights the right to protest which, in its view, remains at serious risk of being muzzled in Spain. In its report launched in November 2022 and entitled "Right to protest in Spain: seven years, seven gags that restrict and weaken the right to peaceful protest in Spain"<sup>6</sup>, this NGO identifies the main obstacles that the right to peaceful protest faces in Spain, after seven years of undue restrictions. [It calls on the Spanish Government<sup>7</sup>](#), which has committed to reform the law in question, to do so at once, including, among other aspects, (i) the removal of those articles that limit freedom of assembly, expression and information, (ii) the incorporation of independent investigation mechanisms to prevent excessive use of force or arbitrary actions by the police, and (iii) the repeal of the additional provision that provides legal cover to summary expulsions from Spain to Morocco.

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(2022), [‘La reforma de la ‘ley mordaza’ reinicia el trámite parlamentario con significativas discrepancias entre el PSOE y sus socios’](#), *El País*, 16 December 2022.

<sup>5</sup> CIVICUS (2022), ‘Citizens’ Security Law under reform, Rule of Law in Spain at stake’, Press release, 11 February 2022.

<sup>6</sup> Amnistía Internacional (2022), [Derecho a la protesta en España: siete años, siete mordazas que restringen y debilitan el derecho a la protesta pacífica en España](#), 3 November 2022.

<sup>7</sup> Amnistía Internacional (2022), [‘Ni ley mordaza ni mordaza maquillada’](#), Press release, 3 November 2022.

## 1.2. Including the third sector in promotion of collaboration, transparency, participation, and accountability in public administrations

Area	Participation and cooperation with authorities
Topic	Access to consultations / participation in decision-making
Impact	Major

In Spain, the IV Open Government Plan 2020-2024<sup>8</sup>, incorporated into the Recovery and Resilience Plan<sup>9</sup>, has continued its implementation during the year 2022. The said Plan is "the result of a broad process of collaboration and joint creation by citizens, civil society organisations and public administrations". It consists of 10 ambitious commitments that public administrations undertake to strengthen transparency and accountability, improve participation, establish public integrity systems, and train and raise awareness of Open Government among citizens and public employees, with the aim of contributing to a fairer, more peaceful, and inclusive society. Among other activities, during 2022 the Plan included the meeting of the Plenary of the Open Government Forum<sup>10</sup> and the celebration of the Open Government Week 2022<sup>11</sup>. In the context of the latter, the European Network to Combat Poverty and Social Exclusion in Spain (EAPN-ES) and the Third Sector Platform denounced the existing digital gaps<sup>12</sup>, which constitute obstacles to the real and necessary participation of people in a situation or at risk of social vulnerability in democratic life, particularly in Open

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<sup>8</sup> [IV Open Government Plan 2020-2024](#)

<sup>9</sup> [Recovery, Transformation and Resilience Plan](#)

<sup>10</sup> Spain, Ministerio de Hacienda y Función Pública (2022), '[Nota informativa de la reunión del Pleno del foro de gobierno abierto](#)'. Jueves, 10 de marzo de 2022', Press release, 10 March 2022.

<sup>11</sup> Spain, Ministerio de Hacienda y Función Pública (2022), '[Semana Administración Abierta](#)', Press release

<sup>12</sup> EAPN-ES (2022), '[EAPN-ES impulsa la Jornada 'Gobierno Abierto, brechas digitales y participación' junto a la Plataforma del Tercer Sector](#)', Press release, 27 September 2022.

Government. Open Government is based on three basic pillars - Transparency, Collaboration, Participation – and aims to involve citizens in the creation and improvement of public services and in strengthening transparency and accountability<sup>13</sup>.

### 1.3. Protecting Human Rights at the Southern Border (Melilla)

Area	Access to justice
Topic	Fostering a rule of law culture
Impact	Major

In Spain, the collective Caminando Fronteras<sup>14</sup> describes as a "[massacre](#)"<sup>15</sup> the tragedy occurred on 24 June 2022 at the border between Melilla (Spain) and Nador (Morocco), during and after the attempt by refugees to jump the border fence. "Forty people died and hundreds were injured. The causes of these human rights violations: asphyxiated by gas, crushed by falls, beaten by military boots, truncheons, electric batons, shot with bullets and the denial of help by Spain and Morocco. Dozens of wounded, including teenagers, were sent back from Spain", this NGO points out. In its [report published on 13 December 2022](#), [Amnesty International](#) considers that on 24 June at the Melilla border, black people were subjected to lethal violence that could amount to torture and other ill-treatment, abuse, refoulement, forcible transfer and enforced disappearance, among other human rights violations, at the hands of Moroccan and Spanish border guards. This NGO therefore understands that these events demonstrate that Spain's and the European Union's current asylum policies and their initiatives to externalise migration can be harmful and have lethal consequences.

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<sup>13</sup> Government of Spain, Electronic Administration Portal, '[Gobierno Abierto](#)'.

<sup>14</sup> Caminando Fronteras (2022), [Victims of the Necrofrontier 2018-2022 for memory and justice](#), December 2022.

<sup>15</sup> Caminando Fronteras (2022), '[Un mes tras la masacre de melilla-nador: seguimos exigiendo justicia](#)', Press release, 24 July 2022.

After carrying out the relevant actions, the Ombudsman<sup>16</sup> considers that in the massive jump to the Melilla fence on 24 June, 470 migrants were rejected at the border "without complying with the legal provisions, both national and international". Thus, among other things, this institution reminds the responsible Spanish authorities of the need to "apply a rights-based approach to border management in order to guarantee the right to physical and moral integrity, without anyone being subjected to ill-treatment, inhumane or degrading treatment".

On 23 December, it became known that, contrary to the evidence that has been published since the time of the events, the Public Prosecutor's Office had decided to close the investigation into the deaths and disappearances of migrants on 24 June at the Melilla border, exonerating the Ministry of the Interior, the Civil Guard (*Guardia Civil*) and the agents who were on the ground that day from any responsibility<sup>17</sup>. Faced with this news, more than 150 civil society organisations denounced the closure of the investigations into the Melilla tragedy<sup>18</sup>. They insist on the need for an independent and impartial investigation into events that cannot go unpunished; the need to determine the responsibility of both Spain and Morocco; and the urgency of implementing accountability mechanisms to ensure justice, truth, and non-repetition. "The more than 150 signatory organisations consider the decision to close these investigations to be extremely serious and we continue to demand an independent and impartial investigation of the facts, as well as the determination of responsibilities and the guarantee of non-repetition, as fundamental pillars of the rule of law", these organisations state.

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<sup>16</sup> Spanish Ombudsman (2022), '[Actuaciones y medidas de los Cuerpos y Fuerzas de Seguridad del Estado en Melilla](#)', Press release, 14 October 2022.

<sup>17</sup> Rodríguez-Alarcón, I. (2022), '[La masacre de Melilla se cierra un viernes para que tú no lo sepas](#)', *Público*, 24 December 2022; RTVE (2022), '[La Fiscalía archiva la investigación de la tragedia en la valla de Melilla al "no apreciar indicios de delito"](#)', *RTVE.es*, 23 December 2022; Cabezas, A. (2022), '[La Fiscalía archiva la investigación sobre la tragedia de Melilla](#)', *ABC*, 23 December 2022; Sánchez, G. (2022), '[Del Tarajal a Melilla: muertes de migrantes sin culpable oficial](#)', *elDiario.es*, 30 December 2022.

<sup>18</sup> CEAR (2022), '[Más de 150 organizaciones denuncian el archivo de la Fiscalía de la tragedia de Melilla](#)', Press release, 24 December 2022.

## 2. Promising practice in 2022

### 2.1. Promoting legislative changes in defence of migrant fundamental rights

In Spain, on 21 December 2022, a group of activists and volunteers, representing more than 900 collectives<sup>19</sup> that have joined the ‘essential\*’ (“esenciales\*”) campaign<sup>20</sup>, led by migrant organisations and individuals, delivered to the Spanish National Parliament more than the 700,000 signatures<sup>21</sup> collected to promote the Popular Legislative Initiative (ILP) for the extraordinary regularisation of the almost 500,000 migrants already living and working in Spain. The promoters of the campaign justify it in the following terms: "In Spain there are more than 500,000 foreigners living in an irregular administrative situation. We are in a bureaucratic limbo, because we are part of society and carry out essential jobs, but we cannot rent a flat, sign a contract or have a health card. We are told that we are essential, but we lack the most basic rights. That is why we have taken the step and launched this Popular Legislative Initiative. A process that, when it gathers 500,000 signatures, will ensure that the proposal for the extraordinary regularisation of migrants is debated in the Spanish National Parliament". Therefore, with its 700 thousand signatures, this Popular Legislative Initiative legally forces the Spanish National Parliament to debate the approval of this proposal for the extraordinary regularisation of these foreigners [before 23 June 2023](#). This initiative can be considered a promising practice, insofar as it contributes to increasing the dialogue, participation and cooperation of civil society organisations with the authorities, in this case with the Spanish Parliament, on the protection of fundamental rights.

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<sup>19</sup> Cáritas (2022), '[Una cadena humana lleva 700.000 firmas por la regularización de personas migrantes al Congreso](#)', Press release, 21 December 2022.

<sup>20</sup> [esenciales\\* 500 mil firmas para 500 mil personas esenciales](#); por Causa (2022), [esenciales\\*. Cinco buenas razones para aprobar una regularización extraordinaria de migrantes sin papeles](#), por Causa, March 2022.

<sup>21</sup> Cáritas (2022), '[Una cadena humana lleva 700.000 firmas por la regularización de personas migrantes al Congreso](#)', Press release, 21 December 2022.



## 3. Visa for human rights defenders

### 3.1. Entry and stay for human rights defenders (HRDs) at risk

Dedicated visa scheme for HRDs at risk available in your country	Yes
Other type of visa or alternative legal entitlement or derogation clause applied to HRDs	N/A

Spain is among the few EU countries with HRD facilitation schemes. It has run a temporary shelter programme since 1995 through the Office for Human Rights in the Ministry of Foreign Affairs<sup>22</sup>. In fact, Spain is often cited as a good example to follow in this matter<sup>23</sup>.

The Spanish protection programme for human rights defenders has a dual geographical articulation: national and regional<sup>24</sup>.

At the national level, this programme, called the Temporary Protection Programme for Human Rights Defenders, is run by the Spanish Section of Amnesty International. At the regional level, this programme is implemented in the Basque Country, Valencia, Asturias and Catalonia<sup>25</sup>.

The duration of the reception varies between 3 months and 1 year, extendable, depending on the situation and specific needs.

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<sup>22</sup> Meloni, A. et al. (eds.) (2020), *Human rights defenders in EU visa policy: recommendations for reform*, CEELI Institute, Prague, pags. 32, 44.

<sup>23</sup> Ioannides, I. (ed.), European Parliamentary Research Service (EPRS) (2022), *EU Guidelines on Human Rights Defenders. European Implementation Assessment*, European Parliament, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/730345/EPRS\\_STU%282022%29730345\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/730345/EPRS_STU%282022%29730345_EN.pdf).

<sup>24</sup> Ibid., p.46.

<sup>25</sup> International Action for Peace, 'Programas de Acogida Temporal', <https://www.actionpeace.org/programas-acogida-temporal/>

The programme excludes the exercise of lucrative labour activity. Its main objective is to temporarily protect HRDs from the imminent danger of violation and abuse of their fundamental rights. Secondly, this programme aims to: promote the work of human rights defenders, through activities linked to this end, in a context of security; offer the opportunity to recover from intimidation or violations to which they have been subjected; raise awareness of the situation of human rights defenders in other parts of the world, exchanging experiences and training between these people and the community of the country that receives them<sup>26</sup>.

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<sup>26</sup> International Action for Peace, Programa de Protección Temporal a defensores y defensoras de Derechos Humanos, <https://www.actionpeace.org/wp-content/uploads/2022/07/9.-AMNISTI%CC%81A-INTERNACIONAL.pdf>.