

# **Legal environment and space of civil society organisations in supporting fundamental rights and the rule of law**

**Spain**

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**Contractor: University Institute of Migration Studies**

**Author: Alfredo dos Santos Soares**

**Reviewed by: Cristina J. Gortázar Rotaeché**

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# 1 Civic space developments in 2021

<b>1.1 Including the third sector in Open Government and Recovery Plan measures</b>	
Area	Participation and cooperation with authorities
Topic	Access to consultations / participation in decision-making
Impact	Major

In Spain, the Recovery, Transformation and Resilience Plan, approved on 16 June 2021<sup>1</sup>, incorporates the IV Open Government Plan 2020-2024, with the aim of modernising public administrations. This 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.

In the context of the implementation of Open Government, on 30 November a collaboration agreement was signed between the General State Administration (Ministry of Finance and Public Administration) and the Third Sector Platform for the inclusive communication of open government<sup>2</sup>. This agreement establishes the terms of collaboration between the General State Administration and the Third Sector Platform for the development of initiatives for inclusive communication of the values of open government, mainly aimed at people living in poverty, at risk of social exclusion or affected by the digital divide due to their special vulnerability. The Third Sector Platform is a non-profit organisation, made up of more than 28,000 social organisations throughout Spain, which seeks to defend the social rights of the most vulnerable groups and equality between people.

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<sup>1</sup> [Recovery, Transformation and Resilience Plan](#)

<sup>2</sup> Spain, Resolution of the Secretary of State for Civil Service, which publishes the collaboration agreement between the General State Administration and the Third Sector Platform, for the inclusive communication of open government (*Resolución de 10 de diciembre de 2021, de la Secretaría de Estado de Función Pública, por la que se publica el Convenio de colaboración entre la Administración General del Estado y la Plataforma del Tercer Sector, para la comunicación inclusiva del gobierno abierto*), 10 December 2021. "BOE" no. 299, of 15 December 2021, pages 153817 to 153823. Available at: [https://boe.es/diario\\_boe/txt.php?id=BOE-A-2021-20692](https://boe.es/diario_boe/txt.php?id=BOE-A-2021-20692)

## **1.2 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, several civil society organisations<sup>3</sup> (CSOs) denounce that, since its entry into force, the so-called Gag Law<sup>4</sup> has been consolidated as a serious threat to the freedoms of expression, and peaceful assembly. They consider that this law was born in the socio-economic context experienced in Spain from 2008, and especially between 2011 and 2014, where the application of austerity measures led numerous groups to protest in the streets, obtaining a repressive response from the authorities through the excessive use of force. At the time, organisations protested that the government, instead of correcting the shortcomings and underpinning the right to peaceful assembly, put forward legislative proposals in the opposite direction.

In the view of these CSOs, this threat to freedom of expression has since materialised. They also understand that, since its entry into force in July 2015, this law has been used against social activism, hindering the right to express their demands in a peaceful manner. They argue that the ban on disseminating images of members of the security forces has hindered the exercise of the right to information. These same organisations also consider that the law in question has been used, during the successive states of alarm in the context of the current COVID-19 pandemic, as the legal basis for most of the proposed sanctions accumulated against thousands of citizens. Therefore, the aforementioned CSOs demand the reform of the Gag Law, so that it is aligned with international human rights standards. To this end, they urge to unblock the parliamentary procedure in the Spanish Congress of the Proposed Law to reform the Gag Law<sup>5</sup>.

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<sup>3</sup> No Somos Delito (2021), '[España: la libertad de expresión y el derecho a la protesta pacífica llevan seis años bajo amenaza pero existe una oportunidad de revertir la situación](#)', Press release, 29 June 2021. These are, in particular, the following organisations: Amnesty International, ARTICLE 19, Coordinadora de Organizaciones para el Desarrollo, Defender a Quien Defiende, Greenpeace, No Somos Delito and Plataforma por la defensa de la Libertad de Expresión.

<sup>4</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>5</sup> All of these statements can be found at No Somos Delito (2021), cited in note 4 above.

## 2 Examples of civil society contributions to the rule of law

### 2.1 Promoting legislative changes in defence of unaccompanied migrant children

Topic	Monitoring the legality and proportionality of laws, measures and practices; triggering the judicial review of laws, measures and practices and the enforcement of rulings
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In Spain, on 19 October 2021 the Government approved Royal Decree 903/2021, which modifies the Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, following its reform by Organic Law 2/2009, approved by Royal Decree 557/2011, of 20 April<sup>6</sup>.

After several years of struggle and proposals together with the recommendations of the Ombudsman, dozens of organisations defending the rights of migrant children and young people<sup>7</sup> consider this reform to be a historic step towards the inclusion of children who arrive alone in Spain. This is insofar as this reform may benefit thousands of young people, who have been suffering for years from the consequences of insurmountable obstacles and barriers to their integration imposed by the law. These organisations understand that, in practice, the new Regulation ensures that all minors arriving alone in Spain and under the protection of the Administration are duly documented, and that their residence authorisations can be processed at the request of the children themselves and, in any case, the immigration offices are obliged to do so 90 days after the entry of the minor into the Protection System. Residence permits which, in the case of minors aged 16 and over, will always be accompanied by permission to work, as is the case for young Spaniards aged 16 and over. This will put an end to having thousands of undocumented young people or young people with a permit to live in Spain but who are not allowed to work.

<sup>6</sup> Spain, Royal Decree 903/2021, which modifies the Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, following its reform by Organic Law 2/2009, approved by Royal Decree 557/2011, of 20 April (*Real Decreto 903/2021 por el que se modifica el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009, aprobado por el Real Decreto 557/2011, de 20 de abril*), 19 October 2021. «BOE» no. 251 of 20 October 2021, pages 127708 to 127719. Available at: <https://www.boe.es/eli/es/rd/2021/10/19/903>

<sup>7</sup> MUGAK (2021), '[Las entidades y profesionales de infancia y migraciones celebran la tan esperada reforma del reglamento de extranjería que mejorará la vida de los niños y niñas que llegan solos a España](#)', Press release, 19 October 2021.

## 2.2 Protecting Human Rights at the Southern Border (Ceuta and Melilla)

Topic	Fostering a rule of law culture
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In Spain, several organisations specialised in migration<sup>8</sup> have once again urged the government to repeal the 10<sup>th</sup> additional provision, introduced in the Immigration Law<sup>9</sup> by the so-called Gag Law<sup>10</sup>, which gives legal cover to summary expulsions at the border (Ceuta and Melilla). The wording of the aforementioned provision in its first paragraph sets out the following: "foreigners who are detected on the border line of the territorial demarcation of Ceuta or Melilla while trying to overcome the border containment elements to cross the border irregularly may be rejected in order to prevent their illegal entry into Spain". Considering summary expulsions, a practice contrary to human rights,<sup>11</sup> the aforementioned organisations demand the repeal of this legal provision, in order to bring the legislation into line with the ruling of the Constitutional Court, which makes such refolements impossible. In this sense, these civil society organisations recall that the Constitutional Court (Ruling 172/2020 of 19 November<sup>12</sup>) does not endorse collective expulsions at the border, since this type of refolement can only respond to individualised processes, with full legal control, complying with international law, and taking into account situations of special vulnerability (minors, women, pregnant women, etc.) or the person's right to asylum.

## 2.3 Defending human rights in prisons

Topic	Fostering a rule of law culture
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In Spain, after learning that the coalition government parties had proposed that prison officers should be considered as law enforcement officers (*agentes de autoridad*) on 30 November 2021, some 27 civil society organisations requested the Spanish Parliament to backtrack and not to approve this proposal, presented as an amendment in the context of the repeal of the Law on Citizen Security (Gag Law).<sup>13</sup> These organisations consider that, if approved, this proposal would open

<sup>8</sup> CEAR (2021), '[Organizaciones piden derogar la disposicional adicional 10ª de la 'Ley Mordaza'](#)', Press release, 15 November 2021.

<sup>9</sup> Spain, Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration (*Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social*), 11 January 2000. «BOE» no. 10, of 12 January 2000. Available at: <https://www.boe.es/eli/es/lo/2000/01/11/4/con>

<sup>10</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>11</sup> [Organizaciones piden derogar la disposicional adicional 10ª de la 'Ley Mordaza' | CEAR](#)

<sup>12</sup> [STC 172 2020 of 19 November 2020. Legal grounds and separate opinion .pdf \(tribunalconstitucional.es\)](#)

<sup>13</sup> Ala – Asociación Libre de Abogadas y Abogados (2021), '[27 organizaciones solicitan al Congreso de los Diputados que den marcha atrás y no se apruebe que los funcionarios de prisiones sean considerados agentes de la autoridad](#)', Press release, 15 December 2021.

the door to turning prison officers into a sort of police body (*policialización de los funcionarios de prisiones*<sup>14</sup>), as well as to increased arbitrariness in decisions affecting prisoners. This would mean the abandonment of the rehabilitative paradigm that theoretically should guide the functioning of the penitentiary system and, therefore, an increase in the difficulties to denounce situations of mistreatment in the context of deprivation of liberty.

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<sup>14</sup> [27 organizaciones solicitan al Congreso de los Diputados que den marcha atrás y no se apruebe que los funcionarios de prisiones sean considerados agentes de la autoridad – ALA \(Asociación Libre de Abogadas y Abogados\) – Madrid](#)