

# **Coronavirus pandemic in the EU – Fundamental Rights Implications**

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**Date:** 2 July 2020

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# 1 Measures taken by government/public authorities

## 1.1 Emergency laws/states of emergency

The state of alarm for the management of the health crisis situation caused by COVID-19, declared on 14 March 2020 by Royal Decree 463/2020<sup>1</sup>, was extended for the sixth and last time on 5 June 2020, by means of Royal Decree 555/2020<sup>2</sup>.

Pursuant to Article 2 this Royal Decree, on 21 June 2020 the state of alarm ended and the entire country entered the so-called "new normality" post COVID-19.

The so-called "new normality" is the period in which the whole country entered after the state of alarm has ended and will remain in place until the government considers the health crisis caused by the coronavirus to be over, when it has been "definitively defeated" with an effective vaccine or therapy.

The expiration of the state of alarm implies the lifting of extraordinary containment measures, including those restricting freedom of movement. For this reason, the Spanish Government has been adopting a series of urgent measures of prevention, containment and coordination, which will allow the pandemic to continue to be handled and controlled until the health crisis situation officially ends.

Among the rules governing the "new normality", the following stand out:

- Royal Decree Law 21/2020 of 9 June on urgent measures for prevention, containment and coordination to deal with the health crisis caused by COVID-19<sup>3</sup>; and
- Royal Decree-Law 23/2020 of 23 June, approving measures in the field of energy and other areas for economic recovery<sup>4</sup>.

Among the prevention and hygiene measures established by Royal Decree Law 21/2020, the mandatory use of masks stands out, as set forth in Article 6(1), by virtue of which, with the legally established exceptions, persons aged six years and over are bound to wear masks on the public street, on all means of public transport, in outdoor spaces and in any enclosed space for public use or which is open to the public, provided that it is not possible to guarantee the maintenance of an interpersonal safety distance of at least 1.5 metres. In accordance with Article 31(2) of this decree, non-compliance with the obligation to wear a mask will be considered a minor infraction and will be sanctioned with a fine of up to 100 euros.

In addition, this same decree sets forth prevention and hygiene measures that must be taken in each of the areas and sectors of activity.

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<sup>1</sup> Spain, Royal Decree 463/2020 declaring the state of alarm for the management of the health crisis situation caused by COVID-19 (*Real Decreto 463/2020 por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19*), 14 March 2020.

<sup>2</sup> Spain, Royal Decree 555/2020 extending the state of alarm (*Real Decreto 555/2020 por el que se prorroga el estado de alarma*), 5 June 2020.

<sup>3</sup> Spain, Royal Decree Law 21/2020 on urgent measures to deal with the health crisis caused by COVID-19 (*Real Decreto-ley 21/2020 de medidas urgentes para hacer frente a la crisis sanitaria ocasionada por el COVID-19*), 9 June 2020.

<sup>4</sup> Spain, Royal Decree-Law 23/2020 on measures for economic recovery (*Real Decreto-ley 23/2020 de medidas para la reactivación económica*), 23 June 2020.

In turn, the sixth additional provision of Royal Decree Law 23/2020 states that the Ministry of Health shall determine the necessary health controls to which passengers arriving in Spain by air or sea must be subjected and the scope of such controls, and shall be responsible for their execution. These health checks may include taking the temperature, a documentary check and a visual check on the passenger's condition. Therefore, all travellers arriving in Spain, regardless of nationality or origin, must pass a visual check, temperature measurement and fill in a document.

In its decision of 30 April 2020<sup>5</sup>, the Constitutional Court rejected the appeal for protection lodged by the *Central Unitaria de Trabajadores* against the ruling of the Galician High Court of Justice that rejected its request for a demonstration in Vigo on 1 May. It was a march to be held in the city by car, with only one person per vehicle. The High Court considered that the circumstances that would allow the exercise of the right of assembly due to the pandemic situation did not exist. The relationship between the right to life and the right to assembly requires a weighting by which, in the absence of guarantees of security in a situation of maximum contagion, the former right must prevail.

Meanwhile, according to the media, the wave of anti-racist demonstrations provoked by the death of George Floyd also reached Spain. The administrative authorities authorised the demonstrations that took place in Madrid and Barcelona on 7 June 2020, each of which brought together some 3,000 people<sup>6</sup>.

## **1.2 Measures affecting the general population**

### **1.2.1 Social distancing**

The period from 1 to 20 June passed between measures that the "De-escalation Plan" established for Phases 2 and 3, which have meant a gradual lifting of the social distancing measures initially imposed.

For instance, in both phases, during social contacts with non-cohabiting third parties and especially with people from groups considered vulnerable, the safety and hygiene measures established by the health authorities should be respected: minimum safety distance of two metres, alternative physical protection measures if this was not possible, hand hygiene and respiratory etiquette.

Wakes could be held with a maximum limit of 50 people (25 in Phase 2) in outdoor spaces or 25 people (15 in Phase 2) in indoor spaces, regardless of whether they are cohabitants. The entourage for the farewell of the deceased was restricted to a maximum of 50 people (25 in Phase 2) and always respecting the measures of distance and hygiene.

Attendance at places of worship was permitted as long as it did not exceed 75% of the capacity (50% in Phase 2). The safety distance should be maintained and, in any case, a maximum of 150 people in open spaces or 75 people in closed spaces. The maximum capacity should be published in a visible place of the space intended for worship.

Wedding ceremonies could be held in all types of installations either in open or closed spaces, as long as they do not exceed 75% of their capacity (50% in Phase 2), and in any case a maximum of 150 people (100 in Phase 2) in open spaces or 75 people (50 in Phase 2) in closed spaces.

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<sup>5</sup> Spain, Constitutional Court, Decision (*AUTO*) 40/2020 of 30 April (ECLI:EN:TC:2020:40A).

<sup>6</sup> 'Miles de personas marchan contra el racismo en Madrid y Barcelona tras la muerte de George Floyd', *La Vanguardia*, 7 June 2020.

Already in Phase 2, active tourism activities could be carried out and nature in groups of up to 20 people, these activities should be arranged preferably by appointment.

Congresses and meetings were also allowed, business meetings and conferences promoted by any public or private entity. To this end, congress halls, conference rooms, multipurpose rooms and other similar establishments and facilities should be opened<sup>7</sup>.

The penalty regime established for the state of alarm has remained unchanged until the end. According to *Radio Televisión Española* (RTVE)<sup>8</sup>, the state of alarm over the coronavirus pandemic came to an end with more than 9,000 people arrested and almost 1.2 million punished. During these months of state of alarm, breaking confinement either by making unauthorized displacements, organizing or participating in activities of groups that involved risk of contagion, was punished with arrests or fines. The search carried out on the official website of the Ministry of the Interior has not yielded any data that could ratify or deny this information.

### 1.2.2 Education

On 30 and 31 May, the media reported extensively on the Ministry of Education's intention to reopen classes in June for their "therapeutic and emotional value"<sup>9</sup>. However, with the exception of isolated cases indicated in the previous report, it has not been possible to confirm a general return to face-to-face classes during the month of June.

In the meantime, concerted efforts have been made by the central and regional governments to ensure the opening in September and the functioning of the 2020/2021 school year. Such efforts are reflected in Order EFP/561/2020, of 20 June, publishing the agreements of the Sectoral Conference on Education for the beginning and development of the school year 2020-2021<sup>10</sup>.

Among the measures to be observed, the one already provided for in Article 9 of the aforementioned Royal Decree Law 21/2020 stands out, which states: "In any case, it shall be ensured that the necessary organisational measures are taken to avoid crowding and to guarantee that a safety distance of at least 1.5 metres is maintained. Where it is not possible to maintain such a safety distance, appropriate hygiene measures shall be observed to prevent the risk of contagion".

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<sup>7</sup> All these measures are contained in Government of Spain, Ministry of Health (2020), Plan for the Transition to a New Normality: Guide to Phase 2 (*Plan para la Transición hacia la Nueva Normalidad: Guía de la Fase 2*), 23 May 2020, pp. 9-10, [https://www.lamoncloa.gob.es/covid-19/Documents/23052020\\_Plan\\_Transicion\\_Guia\\_Fase2.pdf](https://www.lamoncloa.gob.es/covid-19/Documents/23052020_Plan_Transicion_Guia_Fase2.pdf); and Government of Spain, Ministry of Health (2020), Plan for the Transition to a New Normality: Guide to Phase 3 (*Plan para la Transición hacia la Nueva Normalidad: Guía de la Fase 3*), 31 May 2020, pp. 8-9, <https://www.lamoncloa.gob.es/Documents/31052020PlanTransicionGuiaFase3.pdf>.

<sup>8</sup> 'Más de 9.000 detenidos y 1,2 millones de sanciones durante el estado de alarma', RTVE, 20 June 2020. Available at: <https://www.rtve.es/noticias/20200620/detenidos-sanciones-estado-alarma-coronavirus/2019933.shtml>.

<sup>9</sup> 'La ministra de Educación defiende reabrir las clases en junio por su 'valor terapéutico y emocional'', *eldiario.es*, 30 May 2020.

<sup>10</sup> Spain, Order on Agreements for the start and development of the 2020-2021 school year (*Orden sobre los Acuerdos para el inicio y el desarrollo del curso 2020-2021*), 20 June 2020. Available at: [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-6685](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-6685)

According to a number of media<sup>11</sup>, the Minister of Education<sup>12</sup> announced on 16th June a specific 260 million euro programme for the distribution of 500,000 electronic devices to close the digital gap in the education system. The computers and tablets will have Internet access and will be delivered to public centres, which will own them and in turn lend them out to students who need them. The aim is to ensure that all students have guaranteed access to the network, thus overcoming the problems of disconnection that have become apparent during the period of school closure, when the only way of teaching has been at a distance.

Meanwhile, in his appearance before the Congress of Deputies (the Spanish Parliament) on 25 June 2020, the Ombudsman stated that "the greatest challenge facing education in Spain today is social inclusion", and called on the administrations to work to "prevent educational poverty among large sections of the population who have many economic difficulties". He warned that "now families affected by unemployment and poverty have enormous difficulties in coping with major educational expenses such as computers, tablets, transport, language teaching, etc. He gave as an example of this situation the case of a hundred children of Moroccan origin who have lived in Melilla for years in a situation of complete invisibility and, therefore, social exclusion and who "lack access to basic rights such as education". He indicated that the impossibility of registering in this city prevents these children from going to school, and regretted that, "despite all the efforts made by his institution, the truth is that the 2019-2020 school year has ended and only one minor has been enrolled in school". In his opinion, "a complex reality cannot be solved at the expense of the rights of the most vulnerable", so "the children of Melilla, like those of the rest of Spain, have to be at school"<sup>13</sup>.

### 1.2.3 Work

During the de-escalation period, especially in Phase 3, remote working continued to take precedence over face-to-face work. This is what is expressed in Article 3 on the promotion of non-presential means of work of Order 458/2020 of the Ministry of Health<sup>14</sup>, whose paragraph 1 reads as follows: "Whenever possible, the continuity of teleworking shall be promoted for those workers who can carry out their work activity at a distance". In turn, paragraph 2 of this same article states that "notwithstanding the above, companies may draw up protocols for returning to work in person, always in accordance with labour and occupational risk prevention regulations, which must include recommendations on the use of protective equipment appropriate to the level of risk, a description of the safety measures to be

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<sup>11</sup> Silió, E. and Zafra, I. (2020), 'Gobierno y comunidades comprarán medio millón de ordenadores y tabletas para los colegios', *El País*, 16 June 2020.

<sup>12</sup> Spain, State Secretariat for Communication (2020), 'Referencia del Consejo de Ministros'. Press release, 16 June 2020, available at: <https://www.lamoncloa.gob.es/consejodeministros/referencias/documents/2020/refc20200616.pdf>.

<sup>13</sup> Spanish Ombudsman (*Defensor del Pueblo*) (2020), Ombudsman speaks to Congress on housing, gender violence, nursing homes, education, climate change, demographic shock and COVID-19 (*El Defensor habla en el Congreso sobre vivienda, violencia de género, residencias de mayores, educación, cambio climático, shock demográfico y COVID-19*), Press release, 25 June 2020, <https://www.defensordelpueblo.es/noticias/intervencion-en-el-pleno/>.

<sup>14</sup> Spain, Order for the relaxation of certain national restrictions established following the declaration of the state of alert in application of phase 3 of the Plan for the transition to a new normality (*Orden para la flexibilización de determinadas restricciones de ámbito nacional establecidas tras la declaración del estado de alarma en aplicación de la fase 3 del Plan para la transición hacia una nueva normalidad*), 30 May 2020. Available at: <https://www.boe.es/eli/es/o/2020/05/30/snd458>.

applied, regulation of the return to work with staggered hours for staff, whenever possible, as well as reconciliation of work and family life".

Among the sectors of activity envisaged in the aforementioned Ministerial Order, the following stand out: health centres, services and establishments; educational centres; social services; commercial establishments; hotels and tourist accommodation; hotel and restaurant activities; cultural facilities, public shows and other entertainment activities; as well as facilities for sports activities and competitions.

According to the same Ministerial Order and the Guide to Phase 3 of the Plan for the transition to a new normality<sup>15</sup>, in each of the work centres, companies and sectors of activity, among other measures:

- The necessary steps should be taken to comply with hygiene and/or prevention measures for workers.
- Care should be taken to ensure that water-alcoholic gels or disinfectants with virucidal activity are available to all workers at the workplace for cleaning hands, or where this is not possible, water and soap. Where an interpersonal safety distance of approximately two metres cannot be guaranteed, it should be ensured that workers are provided with protective equipment appropriate to the level of risk.
- Fingerprint tagging should be replaced by another timekeeping system that ensures adequate hygiene measures to protect worker health and safety, or the tagging device should be disinfected before and after each use.
- Centres should make adjustments to their organisation timetable to avoid the risk of a massive overlap of people in spaces or workplaces during the bands hours of predictable maximum flow or concentration.

Most of these measures established for Phase 3 of de-escalation have been consolidated in Royal Decree Law 21/2020 of the "new normality". Among them, the mandatory use of the mask and the social distance of 1.5 meters stand out.

In addition to the aforementioned instruments, the guide *Good practices at workplaces*<sup>16</sup> and the *Procedure for Action for Occupational Risk Prevention Services in relation to Exposure to SARS-CoV-2*

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<sup>15</sup> Government of Spain, Ministry of Health (2020), Plan for the Transition to a New Normality: Guide to Phase 3 (*Plan para la Transición hacia la Nueva Normalidad: Guía de la Fase 3*), 31 May 2020, pp. 5-7. Available at: <https://www.lamoncloa.gob.es/Documents/31052020PlanTransicionGuiaFase3.pdf>.

<sup>16</sup> Government of Spain, Ministry of Health (2020), Good practices at workplaces. Measures for the prevention of COVID-19 infections (*Buenas prácticas en los centros de trabajo. Medidas para la prevención de contagios del COVID-19*), updated on 11 April 2020, available at: [https://www.miteco.gob.es/es/ministerio/medidas-covid19/buenas-practicas-centros--trabajo/guiaparacentrosdetrabajo-covid-19\\_tcm30-508640.pdf](https://www.miteco.gob.es/es/ministerio/medidas-covid19/buenas-practicas-centros--trabajo/guiaparacentrosdetrabajo-covid-19_tcm30-508640.pdf).

are also relevant for the protection of workers. The latter, updated on 19 June 2020<sup>17</sup>, incorporates the *Strategy for the Precautionary Detention, Virology and Control of COVID-19*<sup>18</sup>.

#### 1.2.4 Access to justice

In its preamble, Royal Decree-Law 16/2020<sup>19</sup> recognised that "the Administration of Justice has suffered a significant slowdown as a result of the COVID-19 crisis, and it is therefore necessary to adopt this Royal Decree-Law which, in addition to other more specific ones, aims to provide an agile solution to the accumulation of procedures suspended by the declaration of the state of alarm when the suspension is lifted". And that "measures must be adopted in anticipation of the increase in litigation that will arise as a result of the extraordinary measures that have been adopted and the very economic situation resulting from the health crisis".

As a result of the implementation of the de-escalation plan established for the Administration of Justice, on 1 June, the administrative deadlines resumed, without prejudice to those whose continuation had been agreed during the state of alarm (i.e. certain tendering procedures for public contracts and special appeals for contracts).

On the other hand, on 4 June, the procedural deadlines were resumed in general, without prejudice to the exceptions established by law (i.e. third section of the second additional provision of Royal Decree 463/2020<sup>20</sup>). Also without prejudice to the extension foreseen for the announcement, preparation, formalization and filing of appeals against sentences and resolutions that end the procedure notified during the suspension of the deadlines or within the twenty working days following 4 June. On this same date the limitation and prescription periods resumed.

The organizational rules and criteria established in *Order JUS/504/2020 activating Phase 3 of the De-escalation Plan for the Administration of Justice before COVID-19*<sup>21</sup>, have made it possible to achieve 100% of the work of the personnel of each destination center, as a result of combining morning and afternoon shift work with teleworking.

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<sup>17</sup> Spain, Procedure for Action for Occupational Risk Prevention Services in relation to Exposure to SARS-CoV-2 (*Procedimiento de de Actuación para los Servicios de Prevención de Riesgos Laborales frente a la exposición al SARS-CoV-2*), 19 June 2020. Available at: [https://www.mscbs.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov-China/documentos/20200619Proteccion\\_Trabajadores\\_SARS-CoV-2.pdf](https://www.mscbs.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov-China/documentos/20200619Proteccion_Trabajadores_SARS-CoV-2.pdf).

<sup>18</sup> Spain, Strategy for the Precautionary Detention, Virology and Control of COVID-19 (*Estrategia de detección precoz, vigilancia y control de COVID-19*), 16 June 2020. Available at: [https://www.mscbs.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov-China/documentos/COVID19\\_Estrategia\\_vigilancia\\_y\\_control\\_e\\_indicadores.pdf](https://www.mscbs.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov-China/documentos/COVID19_Estrategia_vigilancia_y_control_e_indicadores.pdf).

<sup>19</sup> Spain, Royal Decree-Law 16/2020 on procedural measures and organizational arrangements to address COVID-19 in the area of Administration of Justice (*Real Decreto-ley 16/2020 de medidas procesales y organizativas para hacer frente al COVID-19 en el ámbito de la Administración de Justicia*), 28 April 2020.

<sup>20</sup> Spain, Royal Decree declaring the state of alarm for the management of the health crisis situation caused by COVID-19 (*Real Decreto por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19*), 14 March 2020. Available at: <https://www.boe.es/eli/es/rd/2020/03/14/463/con>.

<sup>21</sup> Spain, Order JUS/504/2020, activating Phase 3 of the De-escalation Plan for the Administration of Justice before COVID-19 (*Orden JUS/504/2020 por la que se activa la Fase 3 del Plan de Desescalada para la Administración de Justicia ante el COVID-19*), 5 June 2020. Available at: <https://www.boe.es/eli/es/o/2020/06/05/jus504/con>.

Therefore, the holding of face-to-face proceedings has resumed. With regard to procedural acts via telematics, the provisions of Article 19 of the aforementioned Royal Decree 16/2020 apply, which establishes that *during the state of alarm and up to three months thereafter*, the acts of trial, appearances, declarations and hearings, and in general *all procedural acts, shall be carried out preferably via telematics*. This is provided that the necessary technical means are available and the procedural requirements of the procedure in question are guaranteed.

Meanwhile, the scale of both the "slowdown suffered" and the "increase in litigation" has led to a "shock plan" for the administration of justice being prepared by the Ministry of Justice, which could be approved by the Council of Ministers on 7 July 2020<sup>22</sup>. Among other measures, this plan provides for the creation of temporary courts (particularly in the social, commercial and contentious-administrative areas) to hear cases related to the coronavirus and thus avoid the collapse of the administration of justice<sup>23</sup>.

### 1.2.5 Freedom of movement

On 21st June Spain reopened its borders with the countries in the Schengen area with the exception of Portugal<sup>24</sup> which will be delayed until 1st July. From this date the 14 day quarantine obligation<sup>25</sup> was also lifted for travellers arriving in Spain. The reopening of borders, which from 1st July will be extended, in a staggered manner, to other countries outside the Schengen area<sup>26</sup>, is due to be accompanied by a plan to boost tourism designed by the government together with representatives of the sector and the autonomous communities. It was presented on 18 June and has a total economic endowment of 4,262 million euros<sup>27</sup>.

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<sup>22</sup> La Moncloa (2020), 'Justicia presenta sus planes de choque a comunidades autónomas, sindicatos y colectivos de jueces, fiscales y letrados', Press release, 26 June 2020. Available at: <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/justicia/Paginas/2020/260620-covid-ccaa.aspx>.

<sup>23</sup> Spain, Ministry of Justice (2020), 'Plan de Actuación tras COVID-19', Press release, 26 June 2020. Available at: <https://www.mjusticia.gob.es/cs/Satellite/Portal/es/ministerio/gabinete-comunicacion/noticias-ministerio/ministerio-justicia-presenta>.

<sup>24</sup> Spain, Order INT/550/2020, extending the controls at the internal borders with Portugal temporarily re-established as a result of the health crisis caused by COVID-19. (*Orden INT/550/2020 por la que se prorrogan los controles en las fronteras interiores con Portugal temporalmente restablecidos con motivo de la situación de crisis sanitaria ocasionada por el COVID-19*), 21 June 2020. Available at: <https://www.boe.es/eli/es/o/2020/06/21/int550/con>.

<sup>25</sup> Set up by Order SND/403/2020 on the quarantine conditions to which persons from other countries must be submitted on arrival in Spain, during the health crisis caused by COVID-19 (*Orden SND/403/2020 sobre las condiciones de cuarentena a las que deben someterse las personas procedentes de otros países a su llegada a España, durante la situación de crisis sanitaria ocasionada por el COVID-19*), 11 May 2020. Available at: <https://www.boe.es/boe/dias/2020/05/12/pdfs/BOE-A-2020-4932.pdf>.

<sup>26</sup> Spain, Order INT/551/2020 extending the criteria for the application of a temporary restriction on non-essential travel from third countries to the European Union and associated Schengen countries for reasons of public order and public health on the occasion of the health crisis caused by COVID-19 (*Orden INT/551/2020 por la que se prorrogan los criterios para la aplicación de una restricción temporal de viajes no imprescindibles desde terceros países a la Unión Europea y países asociados Schengen por razones de orden público y salud pública con motivo de la crisis sanitaria ocasionada por el COVID-19*), 21 June 2020. Available at: <https://www.boe.es/eli/es/o/2020/06/21/int551/con>.

<sup>27</sup> Government of Spain (2020), Plan to boost the tourism sector: towards safe and sustainable tourism (*Plan de impulso para el sector turístico: hacia un turismo seguro y sostenible*). Available at: [https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/industria/Documents/2020/20062020\\_PlanTurismo.pdf](https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/industria/Documents/2020/20062020_PlanTurismo.pdf).

According to the Minister of Health, in statements collected by the media<sup>28</sup>, tourists arriving in Spain will have to pass a triple check: temperature, documentary and visual inspection. The documentary control consists of identifying the address and the places where the tourist will stay as well as "some medical information that allows us to have the certainty that they do not have symptoms and, therefore, do not suffer from Covid-19". In addition, it is essential that airlines provide international passengers with a public health form during the flight, to be filled in upon arrival and handed to the health authorities<sup>29</sup>.

According to CEAR (Spanish Refugee Aid Commission), one of the first effects of the state of alarm in Spain, in relation to international protection, has been the 'de facto' suspension of the possibilities of applying for asylum. The closure of borders has meant a notable reduction in entry flows, although these have not ceased to exist at any time<sup>30</sup>.

Focusing on the latter aspect, data compiled by the Ministry of the Interior<sup>31</sup> reveal that the closure of borders has led to a significant drop in the number of applications for international protection. The vast majority of asylum seekers are Venezuelans, Colombians and Central Americans who arrive in Spain by plane, a journey now very difficult to achieve.

In an attempt to explain the figures made public by the Ministry of the Interior, ACCEM (*Asociación Comisión Católica Española de Migraciones*)<sup>32</sup> indicates that, in 2020, between 1 January and 31 May, a total of 37,366 people have requested international protection in Spain. This is almost 20% less than in 2019, when 46,596 applications were submitted in the first five months of the year. The essential factor in this decrease has been the outbreak of the Covid-19 pandemic in Spain, which has led to the establishment of the state of alarm and the temporary paralysis of the state asylum system. In recent weeks and months, the possibility of applying for international protection in Spain has been interrupted. Thus, from this total, up to 29,117 applications, representing 78% of the total, were submitted in the months of January and February.

### 1.3 Impact of measures on particular groups

During the month of June, the media brought to light abundant information on the "human drama" of the elderly people in nursing homes and geriatric centres throughout the country. With more than

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<sup>28</sup> 'Triple control en el aeropuerto a los turistas que lleguen a España', *La Vanguardia*, 20 June 2020

<sup>29</sup> This is in accordance with the Resolution of the General Directorate of Public Health, Quality and Innovation, concerning the completion of a health form by travellers arriving in Spain (*Resolución de la Dirección General de Salud Pública, Calidad e Innovación, relativa a la cumplimentación de un formulario de salud por los viajeros que lleguen a España*), 19 June 2020. Available at: [https://www.mscbs.gob.es/profesionales/saludPublica/sanidadExterior/CHS/Pdf/RESOLUCION\\_DGSP\\_Formulario\\_de\\_salud.pdf](https://www.mscbs.gob.es/profesionales/saludPublica/sanidadExterior/CHS/Pdf/RESOLUCION_DGSP_Formulario_de_salud.pdf).

<sup>30</sup> CEAR (2020), *Informe "Situación de las personas en necesidad de protección internacional ante la COVID-19"*. Available at: [https://www.cear.es/wp-content/uploads/2020/06/Informe-COVID\\_web.pdf](https://www.cear.es/wp-content/uploads/2020/06/Informe-COVID_web.pdf).

<sup>31</sup> Spain, Ministry of the Interior (2020), Monthly advance of international protection data accumulated at 31 May 2020 (*Avance mensual de datos de protección internacional acumulados a 31 de mayo de 2020*). Available at: <http://www.interior.gob.es/web/servicios-al-ciudadano/oficina-de-asilo-y-refugio/datos-e-informacion-estadistica>.

<sup>32</sup> ACCEM (2020), 'Últimos datos de protección internacional en España en 2020 (Enero-Mayo)', 16 June 2020, <https://www.accem.es/tag/proteccion-internacional/>.

7,690 deaths from March to May - which is 18.1% of the total<sup>33</sup>, Madrid is the true epicentre of this untold tragedy.

Criminal investigations by the Public Prosecutor's Office into discrimination practices and irregularities suffered by elderly people in nursing homes are announced, as well as numerous complaints and lawsuits by their relatives against nursing home management and political-administrative authorities<sup>34</sup>. The press reports that about 300 families of the deceased have already joined several collective complaints against the regional government and the residences<sup>35</sup>.

According to some media<sup>36</sup>, the regional government of Catalonia has recently withdrawn the management of two residences in Barcelona from the company Eulen due to "irregularities" in the care of the elderly. As a result, the company is exposed to economic fines and to being suspended from providing services for a period of four years.

It appears that the issue of nursing homes will continue at the top of the political agenda in the face of fears of further outbreaks of the coronavirus.

The sector of people with disabilities, represented by the CERMI Women's Foundation (FCM), has denounced the added difficulties that girls and young women with disabilities have suffered in accessing education during the COVID-19 pandemic, as a result of the lack of support and deficiencies in terms of accessibility to telematic teaching platforms<sup>37</sup>.

In 2019, it was estimated that there were some 40,000 people in a situation of homelessness in Spain, of which around 16% were women, an "invisible" group that has increased in recent years<sup>38</sup>. As reflected in previous reports, this group is among the most vulnerable and hardest hit by the multifaceted impacts of the coronavirus. This report has not been able to identify specific measures, more or less structural, to care for these people. Nor has it been possible to identify what the real positive impact of "minimum living income"<sup>39</sup> might be on these people.

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<sup>33</sup> Galaup, L. and Caballero, F. (2020), 'Cronología del desastre en las residencias de Madrid: 7.600 fallecidos, crisis en el Gobierno e investigación judicial', *eldiario.es*, 19 June 2020.

<sup>34</sup> Pampín, M. (2020), 'El relato de dos familias contra DomusVi: abandono de ancianos, desinformación y 'un riesgo de muerte multiplicado por 24'', *eldiario.es*, 13 June 2020; 'Madrid suma el mayor número de investigaciones de la Fiscalía en residencias con 61 de las 143 abiertas', *eldiario.es*, 6 May 2020.

<sup>35</sup> Peinado, F. and Mateo, J. J. (2020), 'Los mayores con seguro privado sí fueron trasladados de residencias a hospitales en Madrid', *El País*, 11 June 2020.

<sup>36</sup> 'La Generalitat retira a Eulen la gestión de dos residencias de Barcelona por 'irregularidades' en la atención a ancianos', *eldiario.es*, 28 June 2020; Rodríguez, P. (2020), 'Eulen, un imperio de las externalizaciones en guerra familiar y señalado ahora por irregularidades en dos residencias', *eldiario.es*, 29 June 2020.

<sup>37</sup> CERMI (2020), Girls and young women with disabilities denounce "lack of support and accessibility" in access to telematic education during the pandemic (*Niñas y jóvenes con discapacidad denuncian "falta de apoyos y de accesibilidad" en el acceso a la educación telemática durante la pandemia*), 17 June 2020. Available at: <https://www.cermi.es/es/actualidad/noticias/ni%C3%B1as-y-j%C3%B3venes-con-discapacidad-denuncian-%E2%80%9Cfalta-de-apoyos-y-de-accesibilidad%E2%80%9D>.

<sup>38</sup> 'Unas 40.000 personas viven sin hogar en España, de las cuales un 16% son mujeres', *infoLibre*, 24 October 2019.

<sup>39</sup> Spain, Royal Decree-Law 20/2020 on the minimum living income (*Real Decreto-ley 20/2020 del ingreso mínimo vital*), 29 May 2020.

## 2 Selected issues emerging during the COVID-19 crisis

### 2.1 Xenophobic speech, acts of harassment and violent attacks

The report 'Racism and Xenophobia during the state of alarm in Spain'<sup>40</sup>, prepared by the Team for the Implementation of the Decade of African Descent in Spain in collaboration with Rights International Spain (RIS), and made public on 12 June 2020, denounces more than "70 racist incidents and discriminatory institutional practices" during the state of alarm. In its conclusions this report states: "Despite the fact that several independent mechanisms of the United Nations have issued numerous recommendations to the Government of Spain regarding police violence, racial ethnic profiling, institutional and structural racism, labour exploitation of people of African descent and other racial ethnic groups, these have not only not been addressed with real effectiveness as shown by data and reality, but have increased during the global pandemic caused by the COVID-19" (p.28).

Among its recommendations (p.31), the report calls on political leaders to "react quickly and effectively to hate messages and racist narratives arising from the COVID-19 health crisis"; to prohibit by law the use of racial-ethnic profiling when identifying individuals; and to conduct "prompt, thorough and effective" investigations into reports of alleged police abuse. The report also recommends that, in the case of temporary workers and those in an irregular administrative situation who live in conditions of social exclusion, "public administrations should regularize their work situation by guaranteeing their full rights, their access to decent sanitation and housing conditions, immediately and definitively".

In turn, the Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination, attached to the Council for the Elimination of Racial or Ethnic Discrimination, indicated in its recent report<sup>41</sup> that, overall, as of 8 May 2020, this service had identified 53 cases of racial or ethnic discrimination. In its view, this is a fairly significant number, given that the confinement decreed by the State of Alarm has reduced the spaces for social coexistence and, therefore, the areas in which discrimination can occur. And that this number may be considerably higher, if one takes into account the under-reporting that accompanies the current situation of very serious social and economic crisis, which affects people belonging to ethnic or racial minority groups in a more accentuated way.

This report identifies five main areas of concern, which mainly affect people of foreign origin, many of whom are undocumented and homeless, as well as people from the Roma community. These are: (i) Bad practices by some police forces: as their powers have been increased by the State Decree on the Alarm, without the establishment of control mechanisms, the circumstances in which a discriminatory bias may occur have increased. (ii) Under-reporting, due to fear of reprisals in a context of dependence on social assistance, as well as to the urgent need, which means that the priority is not the exercise of rights, or to the possible irregular administrative situation of some victims. (iii) Stigmatisation and accusations linking certain minorities to the spread of the virus (harassment, racist insults, denial of services), bullying and rumours in the media and social networks against migrants and Roma (which

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<sup>40</sup> Equipo de Implementación del Decenio Afrodescendiente en España and Rights International Spain (RIS) (2020), *COVID-19 Health Crisis - Racism and Xenophobia during the state of alarm in Spain*, 12 June 2020. Available at: <http://www.rightsinternationalspain.org/uploads/publicacion/d0b782ac0452e9052241b17a646df19ad4edf12c.pdf>.

<sup>41</sup> Spain, Consejo para la Eliminación de la Discriminación o Étnica (2020), *Informe del Servicio de Asistencia y Orientación a Víctimas de Discriminación Racial o Étnica. Casos atendidos relacionados con la crisis de la Covid-19 y el estado de alarma, June 2020*. Available at: <https://asistenciavictimasdiscriminacion.org/wp-content/uploads/2020/06/Informe-Servicio-de-Asistencia-COVID-19..pdf>.

in turn generate hate speech). iv) Serious barriers in access to basic services (water, electricity, etc.), which are fundamental in a health emergency of this kind, where there is evidence of a discriminatory bias based on racial or ethnic origin.

## 2.2 Infringement of privacy and/or data protection rights

The Spanish Data Protection Agency (AEPD) considers that "before implementing technological solutions to deal with the COVID-19 it is essential that they are integrated into the framework of a strategy of realistic, effective, scientifically based, legitimate and proportional legal and organisational measures". Thus, in its report "The use of technologies in the fight against COVID19. A cost-benefit analysis"<sup>42</sup>, this Agency provides an analysis (of an educational nature) of some of the technologies in the fight against COVID-19, the benefits they promise to bring in the fight against the pandemic and the costs to the privacy of individuals that they may entail, in particular: Geolocation through information collected by telecommunications operators; Geolocation on social networks; Apps, websites and chatbots for self-testing or appointment; Apps for collecting information from infected people; Apps for monitoring contacts; digital passports for immunity; as well as infrared cameras.

Published on 7 May 2020, this report is part of the proactive effort that has characterized the action of the AEPD in the context of the current pandemic crisis. During the period under review, it has not been possible to identify any relevant developments in its content, either in aspects of data protection mentioned in previous reports.

## 2.3 Spread of disinformation online

Fake news, hoaxes and disinformation practices in the context of the coronavirus have not stopped proliferating. This has led many media and social platforms to refine and increase their verification capabilities. Among them *maldita.es* and the Radio Television of Spain (RTVE) stand out.

On its official website, the first claims to have verified 618 lies, false alerts and misinformation about COVID-19 since the beginning of the pandemic<sup>43</sup>.

On June 29, RTVE<sup>44</sup> reported that the announcement that lemon and bicarbonate, mixed with hot tea, are a simple remedy to "kill" COVID 19 is being re-circulated, according to an alleged Israeli custom that has allowed Israel to relax in the face of the virus. Verifica RTVE's team claims to have received the following message on several occasions: "The recipe is simple. 1. Lemon. 2. Bicarbonate. Mix and drink as hot tea. Every afternoon, the action of the lemon with hotter baking soda immediately kills the virus. It eliminates it completely from the body. These two components alkalize the immune system, because when night falls the system becomes acidic and the defenses decrease. After checking this message, the team concluded that it is a hoax: "neither lemon nor bicarbonate

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<sup>42</sup> AEPD, The use of technologies in the fight against covid19. A cost-benefit analysis (*El uso de las tecnologías en la lucha contra el covid19. Un análisis de costes y beneficios*), 7 May 2020. Available at: <https://www.aepd.es/sites/default/files/2020-05/analisis-tecnologias-COVID19.pdf>.

<sup>43</sup> 'El coronavirus y sus bulos: 618 mentiras, alertas falsas y desinformaciones sobre COVID-19', *maldita.es*, 30 June 2020, <https://maldita.es/malditobulo/2020/07/01/coronavirus-bulos-pandemia-prevenir-virus-covid-19/>

<sup>44</sup> 'No, ni el limón ni el bicarbonato eliminan el COVID-19', RTVE, 29 June 2020, <https://www.rtve.es/noticias/coronavirus-covid-19/bulos-fake-news/>.

eliminates VID-19. And that "there is no scientific evidence of foods or liquids that serve to eliminate the virus".

Beyond the verification effort of the public entity RTVE, during the period under review no measures adopted by the public authorities (central and regional governments) have been identified, aimed specifically at fighting hoaxes and disinformation, in the context of the current pandemic.