

Legal environment and space of civil society organisations in supporting fundamental rights

Spain

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1 Five most significant civic space developments in 2020

1.1 Political campaigning (including for electoral campaigns) / Transparency and lobbying/ Countering corruption

In Spain, on 29 October 2020, the Fourth Open Government Plan for the four-year period 2020-2024 was approved¹, pursuant to Order HFP/134/2018, of 15 February, which created the Open Government Forum.² This Plan includes 10 commitments³ assumed by public administrations to strengthen transparency and accountability, improve participation, establish systems of public integrity, and train and raise awareness among citizens and public employees around Open Government, with the aim of contributing to a fairer, more peaceful, and inclusive society. These commitments include the transposition of Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast).⁴ On 17 December 2020, more than 20 civil society organisations that are members of the Pro Access Coalition requested the government to publish the complete data from the commercial register, including data on the owners and the corporate structure, free of charge and in open format. "At a time when billions of euros are being spent on the fight against the Covid-19 pandemic, it is essential that we have reliable information on who controls companies in order to prevent financial mismanagement, fraud and corruption", these organisations argued in a letter to the Ministry of Economic Affairs and Digital Transformation.⁵

¹ Spain, Ministerio de Política Territorial y Función Pública (2020), Secretaría General Técnica, Centro de Publicaciones. available at:

https://transparencia.gob.es/transparencia/dam/jcr:eaa4dcf1-c1e6-48be-a43e-965d16a19983/4thPlan_OpenGov_Spain_EN.pdf.

² Spain, Order HFP/134/2018 creating the Open Government Forum, 15 February, 2018 (*Orden HFP/134/2018 que crea el Foro de Gobierno Abierto, 15 de febrero de 2018*), available at:

<https://www.boe.es/eli/es/o/2018/02/15/hfp134/con>.

³ La Moncloa (2020), 'Luz verde al IV Plan de Gobierno Abierto de España 2020-2024', Press release, 29 October 2020, available at:

<https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/territorial/Paginas/2020/291020-gobiernoabierto.aspx>.

⁴ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information, OJ L 172, 26.6.2019, p. 56–83.

⁵ Coalición Pro Acceso (2020), 'España: La sociedad civil urge al Gobierno la apertura completa del Registro Mercantil', Press release, 17 December 2020, available at:

<https://www.access-info.org/es/blog/2020/12/17/espana-registro-mercantil/>.

1.2 Freedom of peaceful assembly

In Spain, several civil society organisations promoted a manifesto⁶ in June 2020 to demand the amendment of Organic Law 4/2015, of 30 March, on the protection of citizen security, also popularly known as the Gag Law⁷, as they consider that, since its entry into force on 1 July 2015, the rights to freedom of expression, peaceful assembly and information have suffered a significant setback, thus reducing civic space.

According to these organisations, during the first year alone there were around 34,000 sanctions related to conduct that could be covered by the right to assembly, expression and information. More than 12,000 sanctions were imposed for disobedience or resistance to authority and almost 20,000 for disrespect or disregard for the security forces, with the interpretation of these facts left to the agents themselves.

In 2020, in the midst of a health crisis marked by the coronavirus pandemic, and since the Royal Decree of the State of Alarm was decreed in March⁸, more than a million sanction proposals have been imposed in application of the Law on Citizen Security. These organisations claim that under this law, in the context of the Covid-19 pandemic, the state security forces may have arbitrarily imposed sanctions against persons who allegedly disobeyed the Royal State Decree on Alarm, without observing the criteria of necessity and proportionality indicated by international human rights standards.

These same organisations, which are demanding an urgent reform of the said Gag Law, claim that the implementation of this law has had a dissuasive and demobilising effect by making it more difficult to take to the streets to protest and claim rights, thus muzzling many more people with the possibility of being fined, disqualified from public employment and even sent to prison. And they understand that the implementation of this law is having a clear consequence: increasing self-censorship and, in general, an inhibiting effect on freedom of expression and freedom of peaceful assembly and demonstration, in Spain.

⁶ Amnistía Internacional (2020), '5 años de mordazas. ¡Basta! Por una nueva legislación que garantice los derechos humanos', Press release, 18 June 2020, available at: <https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/5-anos-de-mordazas-basta/>. The *Manifiesto 5 years of gags Enough! For a new legislation that guarantees human rights* (Manifiesto 5 años de mordazas ¡Basta! Por una nueva legislación que garantice los derechos humanos) is available at: https://docs.google.com/forms/d/e/1FAIpQLSc2W1frcOCr_ZDPWTDmA-HRpwgVJrvPqBAewtq3qmrMrnTXuQ/viewform.

⁷ Spain, Organic Law 4/2015 on the protection of public safety (*Ley Orgánica 4/2015 de protección de la seguridad ciudadana*), 30 March 2015, available at: <https://www.boe.es/eli/es/lo/2015/03/30/4/con>.

⁸ 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.

It should be noted, however, that the disqualification from public employment which, according to the interpretation of these organisations, may result from the application of the Gag Law, is not set out ex professo in this legal text.

1.3 Financing of civil society work / Taxation / Charitable or public benefit status / Foreign funding

In Spain, during the year 2020, numerous civil society organizations have denounced the funding cuts they have been subjected to by several public administrations. This is, for example, the case for the Plataforma del Tercer Sector (PTS), composed of 28,000 NGOs, among which are the Red Cross, Cáritas, ONCE, the Spanish NGDO Coordinator and the Children's Platform. On 22 May 2020, this Platform denounced the decision of the Ministry of Social Rights and Agenda 2030 of the Spanish Government to drastically cut funding to national Social Action NGOs at a time of devastating crisis caused by the pandemic.⁹ From this Platform it is recalled that "during the State of Alarm, when social services have been overwhelmed, the entities of the Third Sector of Social Action have been a key factor in helping people in situations of social vulnerability. Recognition of this work should be shown with economic and legal guarantees so that (civil society organizations) can maintain their proven capacity to respond. The Ministry's decision only weakens the responses and instruments of the State's social policies".¹⁰ Likewise, in many regional and local administrations several civil society organizations have denounced a drastic reduction in the cooperation budget¹¹, the elimination of direct aid to historical organizations for LGTBI rights¹², the elimination of aid to feminist projects, equality and against gender violence¹³, as well as support for immigrants.¹⁴

⁹ European Anti Poverty Network (EAPN) (2020), 'Denuncian la decisión de recortar la financiación a las ONG estatales de Acción Social en plena pandemia', Press release, 22 May 2020.

¹⁰ Somos Pacientes (2020), 'El Tercer Sector denuncia el recorte de la financiación a las ONG de Acción Social en plena pandemia', Press release, 23 May 2020; La Razón (2020), 'Las ONG denuncian que la Junta recorta un 42% su financiación', 25 May 2020.

¹¹ Cenizo, N. (2020), 'La Junta de Andalucía avanza los primeros recortes: las ONG denuncian una reducción drástica del presupuesto para cooperación', *elDiario.es*, 7 May 2020.

¹² Pérez Mendonza, S. (2020), 'El Ayuntamiento de Madrid elimina las ayudas directas a organizaciones históricas por los derechos LGTBI', *elDiario.es*, 30 November 2020; Mopez, V. (2020), 'El Ayuntamiento de Madrid cede ante VOX: elimina las ayudas directas a históricas organizaciones LGTBI', *Los Replicantes*, 1 December 2020.

¹³ Valenzuela, J. L. (2020), 'Vox ya gobierna en Andalucía: la Junta deja 241 proyectos feministas sin financiación', *elplural.com*, 9 January 2020.

¹⁴ La Opinión de Murcia (2020), 'Vox quiere quitar ayudas a las ONG "que colaboren con las mafias de tráfico de personas"', 22 September 2020.

1.4 Access to information / Civil dialogue / Consultations / Participation in decision-making

In Spain, the transparency portal of the General State Administration¹⁵ reflects that in June and September 2020 deliberative workshops were held with the participation of representatives of civil society and different public administrations, to discuss proposals for commitments and activities to be included in the Fourth Open Government Plan. The conclusions of these workshops, together with the contributions received in the previous consultation phase, were taken into account in the preparation of the draft of this Plan. The previous consultation phase lasted from 18 March to 10 April, 2019 and was used by civil society (organisations and citizens in general) to make their proposals for the Plan, using a form. All of this leads to the conclusion that the Fourth Open Government Plan¹⁶, both in its elaboration and approval (on 29 October 2020), and in its implementation, is a space and an instrument for consulting civil society organisations and their participation in decision-making for multilevel governance, especially for the implementation of Agenda 2030.

1.5 Emergency measures (including those related to COVID) / Travel restrictions / Freedom of movement / Visa bans

In Spain, a report was published in May 2020, based on information provided by 170 non-profit organizations (NGOs), as part of a study on the "COVID-19 impact on non-profit organizations", carried out by the Spanish Association of Fundraising (AEFr), the Deloitte Foundation and the Fundación Lealtad¹⁷. Among the main conclusions of this study, the following stand out: (i) 70% of the non-profit organizations in Spain expect their income to decrease as a result of the crisis caused by the coronavirus, while 33% of the entities have increased the number of beneficiaries and, therefore, the expenses of their activity. In addition, during the confinement the number of volunteers has been reduced by 47%. (ii) More than 75% of the entities have been able to adapt to teleworking. In the meantime, a high percentage of the entities that have participated in the study work in Social Insertion, Disability, Health (34%, 34% and 42%) sectors, where face-to-face activity is essential; more than 45% have difficulties in carrying out their work, while 17% cannot do so. (iii) Many entities have had to take advantage of special measures to mitigate the effects of the pandemic and most (52%) have opted for the ERTE (Temporary Employment Regulation Scheme). (iv) Fundraising as a source of financing has allowed 72% of the organizations to have a reserve fund

¹⁵ Spain, Gobierno de España, Portal de la transparencia. Administración General del Estado,

https://transparencia.gob.es/transparencia/transparencia_Home/index/Gobierno-abierto/ivPlanAccion/Como_participo_IV_plan.html.

¹⁶ Spain, Ministerio de Política Territorial y Función Pública (2020), *IV National Action Plan Open Government 2024*, Secretaría General Técnica, Centro de Publicaciones, available at: https://transparencia.gob.es/transparencia/dam/jcr:ea4dcf1-c1e6-48be-a43e-965d16a19983/4thPlan_OpenGov_Spain_EN.pdf.

¹⁷ Fundación Deloitte, Asociación Española de Fundraising y Fundación Lealtad (2020), *Impacto COVID-19 en entidades no lucrativas*, May 2020, available at: <https://sinapse.gife.org.br/download/impacto-covid-19-en-entidades-no-lucrativas>.

to face the next months of lockdown, however funding is conditioned by the socioeconomic situation of each moment.

All seems to indicate that this study, widely disseminated on the web, is the most important to date on the effects that the pandemic caused by Covid-19 and the measures to counter it are having on civil society organizations in Spain.

2 Example of promising practice

Considered as the new turning point towards the consolidation of the Open Government in Spain, the 4th Spanish Open Government Plan¹⁸ may be deemed as one of the most important promising practices during 2020 in the field of legal environment and space for civil society organisations in supporting fundamental rights. It is so insofar as it favours the proactive and monitoring role of civil society organisations so that Public Administrations strengthen transparency and accountability, improve participation, establish systems of public integrity, and train and raise the awareness of citizens and public employees in matters of Open Government, with the aim of contributing to a more just, peaceful, and inclusive society.

¹⁸ Spain, Ministerio de Política Territorial y Función Pública (2020), *IV National Action Plan Open Government 2024*, Secretaría General Técnica, Centro de Publicaciones, available at: https://transparencia.gob.es/transparencia/dam/jcr:eaa4dcf1-c1e6-48be-a43e-965d16a19983/4thPlan_OpenGov_Spain_EN.pdf.