

# Franet National contribution to the Fundamental Rights Report 2024

Spain

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# 1. Impact of the cost-of-living crisis and rising poverty in the EU

## 1.1. Legal measures impacting on vulnerabilities of persons affected by the rising costs of living and energy.

In December 2022, the Spanish Government approved a Decree-Law on measures to respond to the economic and social consequences of the war in Ukraine and to support the reconstruction of the island of La Palma and other situations of vulnerability<sup>1</sup> to be applied mostly in 2023. The measures aimed at restraining prices and supporting the most affected citizens and companies in five main areas: (a) energy (b) food (c) transport (d) intensive gas industry (e) economic and financial stability (f) social shield. There was a reinforcement of the social shield. In December 2023, the Central State Government decided to extend them and include certain adjustments<sup>2</sup>.

In April 2023, it was approved a legislation for the improvement of minimum pensions and other benefits<sup>3</sup>. It envisaged that from 2027 minimum retirement pensions will be linked to the at-risk-of-poverty threshold calculated in the Living Conditions Survey (*Encuesta de Condiciones de Vida*, ECV, in its Spanish acronym)<sup>4</sup>. The reference supposed to be the latest available data updated up to the relevant year with the average annual growth over the last eight years. It meant that the contributory retirement pension<sup>5</sup> for

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<sup>1</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 20/2022, of 27 December, on measures to respond to the economic and social consequences of the War in Ukraine and to support the reconstruction of the island of La Palma and other situations of vulnerability](#) (*Real Decreto-ley 20/2022, de 27 de diciembre, de medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania y de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad*), 28 December 2022.

<sup>2</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 8/2023, of 27 December, adopting measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East, as well as to alleviate the effects of the drought](#) (*Real Decreto-ley 8/2023, de 27 de diciembre, por el que se adoptan medidas para afrontar las consecuencias económicas y sociales derivadas de los conflictos en Ucrania y Oriente Próximo, así como para paliar los efectos de la sequía*), 27 December 2023.

<sup>3</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 2/2023, of 16 March, on urgent measures for the extension of pensioners' rights, the reduction of the gender gap and the establishment of a new sustainability framework for the public pension system](#) (*Real Decreto-ley 2/2023, de 16 de marzo, de medidas urgentes para la ampliación de derechos de los pensionistas, la reducción de la brecha de género y el establecimiento de un nuevo marco de sostenibilidad del sistema público de pensiones*), 16 March 2023.

<sup>4</sup> Spain, Statistics National Institute (*Instituto Nacional de Estadística*), [Official Website](#).

<sup>5</sup> A contributory pension (*pensión contributiva*) is an economic benefit included within the protective actions of the Social Security system and which is generated through the social contributions of employers and workers. The contributory pension offers workers - both employed and self-employed - an income to replace the wages received in the event of retirement or other contingencies, such as permanent disability. There is a proportionality between the benefit received as a contributory pension and what has been contributed throughout the working life. Different types such as: For retirement, for permanent disability, for death and survival, extraordinary for terrorism.

a person over the age of 65 with a dependent spouse will not be less than 1.5 times the at-risk-of-poverty threshold (*umbral de riesgo de pobreza*)<sup>6</sup> for a single-person household, which would be 60% of the median per capita income. The same minimum will apply to all other contributory pensions with a dependent spouse and to widow's or widower's pensions with family dependents. **According to an academic research**<sup>7</sup>, one of the key developments was the modification of the architecture of the adjustment mechanism included in the misnamed Intergenerational Equity Mechanism (MEI). Previously, such process was limited to a political promise that if in the future expenditure deviated significantly upwards from what was initially expected, the Government would take measures to contain expenditure or increase revenues after consultation with the social partners. After this new regulation, the adjustment becomes semi-automatic, so that, in the absence of other measures, social contributions will be gradually raised to correct the deviation over a maximum of five years.

Furthermore, the Minimum Vital Income (*Ingreso Mínimo Vital*, IMV, in its Spanish acronym) was raised up to a 8.5% in 2023 until reaching the one applied to non-contributory pensions, meaning<sup>8</sup>: a) For an individual beneficiary: 565.37 euros; b) For the cohabitation unit formed by an adult and a minor or two adults: 734.98 euros; For the cohabitation unit formed by one adult and two children, two adults and one child or three adults: 904.60 euros; d) For the cohabitation unit formed by one adult and three children, two adults and two children or three adults and one minor or by four adults: 1,074.21 euros; e) For a cohabitation unit consisting of one adult and four or more children, two adults and three or more children, or three adults and two or more children, or four adults and one minor: 1,243.82 euros. In 1 January 2023, a supplement amount based on the existence of children was also increased, which amounted 15 euros, in case of children under 3 years age, 80,50 euros for children over 3 years and under 6 years age; and 57,50 euros, for children over between 6 and 18 years age. From 2023, the incentive will allow the amount of the benefit to be increased if the beneficiary finds a job or their labour income improves based on three parameters: a) presence or absence of children; Household composition with a higher incentive for single-parent families and people with disabilities; the previous relationship with the labour market that meant that people who join the labour market got a higher incentive than those who were already working. It meant the possibility of accessing the IMV while occupying a job<sup>9</sup>. In those cases where the recipient of the IMV registers an increase in their income

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The non-contributory pension (*pensión no contributiva*) is an economic benefit received in Spain by retired or disabled people who have never contributed to Social Security or have not reached the minimum number of years required to receive a contributory pension. The purpose of non-contributory pensions is to guarantee a minimum income for these people as well as to provide them with free medical and pharmaceutical care. They are financed from the General State Budget.

<sup>6</sup> Spain, Statistics National Institute (*Instituto Nacional de Estadística*), [Official Website](#).

<sup>7</sup> De la Fuente, A. (2023), [The budgetary effects of the 2021-23 pension reform. The measures of Royal Decree-Law 2/2023](#) (*Los efectos presupuestarios de la reforma de pensiones de 2021-23. Las medidas del Real Decreto-ley 2/2023*), Madrid, FEDEA e IAE-CSIC.

<sup>8</sup> Revista de la Seguridad Social, [Cuantías y otras novedades del IMV en 2023](#), press reléase, 6 February 2023; Spain, Law 19/2021, of December 20, which establishes the minimum vital income (*Ley 19/2021, de 20 de diciembre, por la que se establece el ingreso mínimo vital*), 20 December 2021.

<sup>9</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 20/2022, of 27 December, on measures to respond to the economic and social consequences of the War in Ukraine and to support the reconstruction of the island of La Palma and other situations of vulnerability](#) (*Real Decreto-ley 20/2022, de 27 de diciembre, de medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania y de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad*), 28 December 2022.

from employment or self-employment that reached up to 60% to 100% of the IMV, an increase in their income for the same amount. In 2024, as stated by the Royal Decree approved on 28 December 2023<sup>10</sup>, the contributory pensions rise by a further 3.8%, in line with the average Consumer Price Index (*Índice de Precios al Consumo*, CPI, in its Spanish acronym) recorded between December 2022 and November 2023 as established in Law 21/2021 on the guarantee of the purchasing power of pensions agreed with the social partners<sup>11</sup>. It meant that retirement, permanent disability, orphan's and widow's pensions rose above 1,000 euros annually on average.

The contributory pensions rose by 8.5%. The non-contributory retirement and disability and the Minimum Vital Income benefit were increased by a 15%. The objective was to guarantee the purchasing power of the pensioners based on the evolution of the Consumer Price Index (*Índice de Precios al Consumo*, CPI, in its Spanish acronym). The revaluation will be applied to the monthly amount of the pension on December 31, 2022. The pensions' increase was effective from 1 January 2023 onwards. The average retirement pension increased by 1,500 euros per year and the widow's pension by about 930 euros. The minimum pension for pensioners aged 65 or over was set at 10,963.40 euros per year and 13,526.80 in the case of retirees with a dependent spouse. Pensioners under that age will receive at least 10,256.40 euros and 12,682 if they have a dependent spouse. It is a modification of the decree so that these pensions are increased above inflation, thus guaranteeing their sufficiency. Taking as a reference the evolution of the minimum pension with a dependent spouse, the minimum contributory pensions will be progressively increased between 2024 and 2027 to ensure that, from 2027, they are not below the poverty line calculated for a household composed of two adults.

In 1 January 2023, entered into force the support allowance of 200 euros in order to support the incomes of middle-class families in a context of inflation<sup>12</sup>. The beneficiaries were those persons who could certified that during the year 2022 carried out an activity as a self-employed or employed person for which they are registered in the corresponding Social Security scheme, or were beneficiaries of the unemployment benefit or subsidy, provided that in 2022 they received a full income of less than 27,000.00 euros per year, and had assets of less than 75,000.00 euros per year as of 31 December 2022.

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<sup>10</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 8/2023, of 27 December, adopting measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East, as well as to alleviate the effects of the drought](#) (*Real Decreto-ley 8/2023, de 27 de diciembre, por el que se adoptan medidas para afrontar las consecuencias económicas y sociales derivadas de los conflictos en Ucrania y Oriente Próximo, así como para paliar los efectos de la sequía*), 27 December 2023.

<sup>11</sup> Spain, Head of State (*Jefatura del Estado*), [Law 21/2021, of December 28, 2021, on guaranteeing the purchasing power of pensions and other measures to strengthen the financial and social sustainability of the public pension system](#) (*Ley 21/2021, de 28 de diciembre, de garantía del poder adquisitivo de las pensiones y de otras medidas de refuerzo de la sostenibilidad financiera y social del sistema público de pensiones*), 29 December 2023.

<sup>12</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 20/2022, of 27 December, on measures to respond to the economic and social consequences of the War in Ukraine and to support the reconstruction of the island of La Palma and other situations of vulnerability](#) (*Real Decreto-ley 20/2022, de 27 de diciembre, de medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania y de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad*), 28 December 2022.

In October 2022, the Government approved the More Energy Security Plan (*Plan Mas Seguridad Energética*) to protect consumers and reduce gas consumption<sup>13</sup>. The protection of the population was guaranteed by expanding the coverage of the electricity and thermal social bonus. The minimum aid of the thermal social bonus (*bono social térmico*) increased to an average amount of 375 euros, and it could not be less than 40 euros. The Energy Justice Bond (*bono de justicia energética*) to face the increase in their vulnerability caused by the energy supply costs was created. This energy justice bond intended to be temporary and to run until the end of 2023 but on December 2023, it was decided to be extended during 2024<sup>14</sup>. Initially in 2022, it was established by Article 10 of a Law 18/2022<sup>15</sup> that included the temporary application of the social electricity bonus to low-income households particularly affected by the energy crisis. In terms of the beneficiaries profile, it addressed the holders of electricity supply contracts who were recipients of the social electricity bonus and who were recognized the condition of severe vulnerable or severe vulnerable at risk of social exclusion, in accordance with the categories defined by the Royal Decree 897/2017<sup>16</sup>, which regulates the figure of the vulnerable consumer, the social bonus and other protection measures for domestic consumers of electricity. It could also be received by all households whose income is between 1.5 and twice the total amounting the 14 payments Public Indicator of Income of Multiple Effects (*Indicador Público de Renta de Efectos Múltiples*, IPREM, in its Spanish acronym), with the multipliers applied to the conventional social bonus. In 2023, the IPREM amounted to 600 euros per month, € 7,200 (annual in 12 payments) or € 8,400 (annual of 14 payments). It applied a 40% discount on the voluntary price for small consumers (*precio voluntario para el pequeño consumidor*, PVPC, in its Spanish acronym) for low-income households particularly affected by the energy crisis. Consumers who own the electricity supply point in their habitual residence who, being natural persons, are covered by the PVPC, may benefit from the energy justice bond, the annual joint income of the cohabitation unit to which it belongs, is equal to or less than 2 times the IPREM of 14 payments (€ 16,212.56) and greater than 1.5 times the IPREM of 14 payments (€ 12,159.42). The income multipliers with respect to the IPREM index of 14 will be increased in the same proportion and under the same criteria as those

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<sup>13</sup> Spain, Council of Ministers (*Consejo de Ministros*), "[El Gobierno aprueba el Plan Más Seguridad Energética para proteger a los consumidores y reducir el consumo de gas](#)", press release, 11 October 2022.

<sup>14</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 8/2023, of 27 December, adopting measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East, as well as to alleviate the effects of the drought](#) (*Real Decreto-ley 8/2023, de 27 de diciembre, por el que se adoptan medidas para afrontar las consecuencias económicas y sociales derivadas de los conflictos en Ucrania y Oriente Próximo, así como para paliar los efectos de la sequía*), 27 December 2023.

<sup>15</sup> Spain, Head of State (*Jefatura de Estado*), [Royal Decree-Law 18/2022, of 18 October, approving measures to strengthen the protection of energy consumers and contribute to the reduction of natural gas consumption in application of the "Plan + security for your energy \(+SE\)", as well as measures regarding the remuneration of personnel at the service of the public sector and the protection of temporary agricultural workers affected by drought](#) (*Real Decreto-ley 18/2022, de 18 de octubre, por el que se aprueban medidas de refuerzo de la protección de los consumidores de energía y de contribución a la reducción del consumo de gas natural en aplicación del "Plan + seguridad para tu energía (+SE)", así como medidas en materia de retribuciones del personal al servicio del sector público y de protección de las personas trabajadoras agrarias eventuales afectadas por la sequía*), 18 October 2022.

<sup>16</sup> Spain, Ministry of Energy, Tourism and Digital Agenda (*Ministerio de Energía, Turismo y Agenda Digital*), [Royal Decree 897/2017, of 6 October, which regulates the figure of the vulnerable consumer, the social bonus and other protection measures for domestic consumers of electricity. Ministry of Energy, Tourism and Digital Agenda](#) (*Real Decreto 897/2017, de 6 de octubre, por el que se regula la figura del consumidor vulnerable, el bono social y otras medidas de protección para los consumidores domésticos de energía eléctrica*), 6 October 2017.

established in article 3.3 of Royal Decree 897/2017<sup>17</sup>. The final consumers of electricity to whom this energy justice electricity bond is applicable will not be beneficiaries of the thermal social bonus. The discounts of the pre-existing social bonus were also increased, so that for vulnerable consumers went from 60% to 65%, while for severe vulnerable consumers went from 70% to 80%. And the annual energy volume subject to the discount increases by 15%, to 1,587 kWh in a cohabitation unit of one or two people and up to 4,761 kWh in a unit of five or more persons. On 27 December 2023, it was extended the three categories of vulnerable consumers receiving the electricity social bonus and the discounts of 40%, 65% and 80%. It was also included a limit on the growth of the regulated gas tariff (*tarifa regulada de gas*, TUR in its Spanish acronym), and the existence of the specific TUR for neighbors community boilers and the 19.55 euros maximum price of the butane cylinder<sup>18</sup>. The tax rate of the Special Tax on Electricity was also temporarily reduced to 2.5% or 3.8%, depending on the quarter of the year, and a minimum tax of 0.5 or 1 euro per MWh was established.

Tax cuts for certain basic consumer goods and food were introduced until the 30 June 2023 and on 28 December 2023 were extended until 30 June 2024.<sup>19</sup> The applicable the Value Added Tax (VAT) percentage was reduced for the fresh or staple foods to alleviate the rise in prices caused by the war in Ukraine. Since 1 January 2023, the VAT of products was reduced from 4% to 0%, which was applied to common bread and bread-making flours; Milks produced by any animal species: natural, certified, pasteurized, concentrated, skimmed, sterilized, UHT, evaporated and powdered. Furthermore, there was another VAT reduction from 10% to 5%, applied for other basic products including olive and seed oils. Furthermore, those who buy an electric vehicle access a 15% deduction in their personal income tax; the La Palma island residents continued to enjoy a deferral of Social Security contributions along with other tax measures; a 30% discount on transport passes and other ones addressing transporters were extended<sup>20</sup>.

Extraordinary measures on housing were introduced. Initially, at the end of 2022, a maximum limit of a 2% increase in the renting contract prices was applied and agreed to be extended during the year 2023<sup>21</sup>. In 2024, a maximum 3% increase on any renting

<sup>17</sup> Spain, Ministry of Energy, Tourism and Digital Agenda (*Ministerio de Energía, Turismo y Agenda Digital*), [Royal Decree 897/2017, of 6 October, which regulates the figure of the vulnerable consumer, the social bonus and other protection measures for domestic consumers of electricity](#). Ministry of Energy, Tourism and Digital Agenda (*Real Decreto 897/2017, de 6 de octubre, por el que se regula la figura del consumidor vulnerable, el bono social y otras medidas de protección para los consumidores domésticos de energía eléctrica*), 6 October 2017.

<sup>18</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 8/2023, of 27 December, adopting measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East, as well as to alleviate the effects of the drought](#) (*Real Decreto-ley 8/2023, de 27 de diciembre, por el que se adoptan medidas para afrontar las consecuencias económicas y sociales derivadas de los conflictos en Ucrania y Oriente Próximo, así como para paliar los efectos de la sequía*), 27 December 2023.

<sup>19</sup> Spain, Ministry of Finance and Public Function (*Ministerio de Hacienda y Funcion Pública*), [El Gobierno prorroga la rebaja del IVA de los alimentos, la limitación del precio de la bombona de butano y el apoyo a La Palma hasta final de año](#), press release, 27 June 2023.

<sup>20</sup> Spain, Ministry for the Ecological Transition and the Demographic Challenge (*Ministerio para la Transición Ecológica y el Reto Demográfico*), [El Gobierno prorroga las medidas energéticas de protección por la guerra en Ucrania, impulsa las renovables y reduce el impacto de la sequía](#), press release, 23 December 2023.

<sup>21</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 20/2022, of 27 December, on measures to respond to the economic and social consequences of the War in Ukraine and to support the reconstruction of the island of La Palma and other situations of vulnerability](#) (*Real Decreto-ley 20/2022, de 27 de diciembre, de medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania y de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad*), 28 December 2022.

contract will be applied and linked to the annual (*Índice de Precios al Consumo*, CPI, in its Spanish acronym). By 2025, a new minimum income calculation system was planned and to be defined by the Statistics National Institute (*Instituto Nacional de Estadística*, INE, in its Spanish acronym). In June 2023, the suspension of evictions were extended until 31 December 2023<sup>22</sup>. In May 2023, a new Housing Law<sup>23</sup> came into force introducing amendments as far as how the housing rents criteria will be applied. Each Spanish region (autonomous communities) had the competences to define the so-called stressed market zones (*zona de mercado tensionado*), which has consequences for the landlords in terms of rent limits and mandatory contract extensions. This law complemented the National State Plan for Access to Housing 2022-2025<sup>24</sup> as well as the measures to increase the affordable housing stock in the modalities of subsidized housing, social housing, empty housing or housing stock. It also included protection against evictions and the provision of alternative housing. The royal decree approved on 27 December 2023<sup>25</sup> stated that this measure continued in place until 2025 as far as any person in a vulnerable situation. Its Article 14 referred to homeless people, requiring the public bodies to develop specific measures to promote their inclusion in their housing policy programs or the reform of the Land and Urban Rehabilitation Law<sup>26</sup>. Certain civil society organizations claimed that there are still aspects to be improved such as the taxation of social entities that provide housing, which are currently considered to be at a disadvantage compared to for-profit providers.

In terms of public transport, since August 2023, free train tickets were issued to travel initially from 1 September 2023 to 31 December 2023 and on 27 December 2023<sup>27</sup>, it

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<sup>22</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 5/2023, of 28 June, adopting and extending certain measures in response to the economic and social consequences of the Ukrainian War, supporting the reconstruction of the island of La Palma and other situations of vulnerability; transposition of European Union directives on structural changes to commercial companies and work-life balance for parents and carers; and implementation and enforcement of European Union law](#) (*Real Decreto-ley 5/2023, de 28 de junio, por el que se adoptan y prorrogan determinadas medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania, de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad; de transposición de Directivas de la Unión Europea en materia de modificaciones estructurales de sociedades mercantiles y conciliación de la vida familiar y la vida profesional de los progenitores y los cuidadores; y de ejecución y cumplimiento del Derecho de la Unión Europea*), 28 June 2023.

<sup>23</sup> Spain, Head of State (*Jefatura del Estado*), [Law 12/2023, of 24 May, on the right to housing](#) (*Ley 12/2023, de 24 de mayo, por el derecho a la vivienda*), 26 May 2023.

<sup>24</sup> Spain, [State Plan for Access to Housing 2022-2025](#) (*Plan Estatal de Acceso a la Vivienda 2022-2025*), Madrid, Ministry of Transport, Mobility and Urban Agenda; Spain, Ministry of Transport, Mobility and Urban Agenda, (*Ministerio de Transportes, Movilidad y Agenda Urbana*), [Royal Decree 42/2022, of January 18, 2022, which regulates the Youth Rental Bonus and the State Plan for access to housing 2022-2025](#) (*Real Decreto 42/2022, de 18 de enero, por el que se regula el Bono Alquiler Joven y el Plan Estatal para el acceso a la vivienda 2022-2025*), 18 January 2022.

<sup>25</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 8/2023, of 27 December, adopting measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East, as well as to alleviate the effects of the drought](#) (*Real Decreto-ley 8/2023, de 27 de diciembre, por el que se adoptan medidas para afrontar las consecuencias económicas y sociales derivadas de los conflictos en Ucrania y Oriente Próximo, así como para paliar los efectos de la sequía*), 27 December 2023.

<sup>26</sup> Spain, Ministry of Infrastructure (*Ministerio de Fomento*), [Law on Land and Urban Rehabilitation, approved by Royal Legislative Decree 7/2015, of 30 October](#) (*Ley de Suelo y Rehabilitación Urbana, aprobado por Real Decreto Legislativo 7/2015, de 30 de octubre*), 30 October 2015.

<sup>27</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 8/2023, of 27 December, adopting measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East, as well as to alleviate the effects of the drought](#) (*Real Decreto-ley 8/2023, de 27 de diciembre, por el que se adoptan medidas para afrontar las consecuencias económicas y sociales derivadas de los conflictos en Ucrania y Oriente Próximo, así como para paliar los efectos de la sequía*), 27 December 2023.



was decided to maintain these public transport subsidies for frequent travelers in place until the end of 2024. A system of direct funding support was established for the autonomous communities and local entities that provide urban or interurban collective transport service to reduce the price of season tickets and multi-trip tickets by 50% during 2024. Those free travel tickets<sup>28</sup> intended to provide financial support to frequent travellers and encouraging the use of public transport. A single pass per person was allowed including a maximum of four trips per day including either one way or return ones. In order to access them, it was necessary to make a deposit of 10 euros in the case of the short distances one or 20 euros in the case of Medium Distance ones<sup>29</sup>.

## 1.2. Policy measures impacting on vulnerabilities of persons affected by the rising costs of living and energy.

On 10 January 2023, a royal decree on urgent measures on incentives for labour recruitment and improvement of the social protection of artists was approved.<sup>30</sup> The aim was to promote the hiring of unemployed people, especially the most vulnerable, contribute to the creation, maintenance and improvement of the quality of employment and the professional promotion of employed people, as well as promoting self-employment and job creation in the field of the social economy.

In September 2023, the National Strategy for the fight against homelessness 2023-2030 (*Estrategia Nacional para la lucha contra el Sinhogarismo 2023-2030*)<sup>31</sup> was approved. It aimed to reduce by 95% the number of people who are involuntary in a homeless situation. There are approximately 28,500 homeless people in Spain nowadays. It proposed the transformation of the support network for homelessness people, moving towards a deinstitutionalizing and community-based model. The National Strategy intended to focus on the prevention and promotion of the autonomy of homeless people, based on supports in the key areas of inclusion. It was structured under 4 general objectives, 12 specific objectives per axis and several lines of action.

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<sup>28</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 20/2022, of 27 December, on measures to respond to the economic and social consequences of the War in Ukraine and to support the reconstruction of the island of La Palma and other situations of vulnerability](#) (*Real Decreto-ley 20/2022, de 27 de diciembre, de medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania y de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad*), 28 December 2022.; Ministry of Transport, Mobility and Urban Agenda (*Ministerio de Transportes, Movilidad y Agenda Urbana*), [El Gobierno aprueba la gratuidad de Cercanías, Rodalies, Media Distancia convencional y de las líneas de autobús estatales en 2023](#), press release, 27 December 2022.official website.

<sup>29</sup> Spain, Ministry of Transport, Mobility and Urban Agenda (*Ministerio de Transportes, Movilidad y Agenda Urbana*), [RENFE. Prórroga de la medida de abonos gratuitos para todo el año 2023](#), official website.

<sup>30</sup> Spain, [Royal Decree-Law 1/2023 of 10 January 2023 on urgent measures on incentives for labour recruitment and improvement of the social protection of artists](#) (*Real Decreto Ley 1/2023, de 10 de enero, de medidas urgentes en materia de incentivos a la contratación laboral y mejora de la protección social de las personas artistas*), 10 January 2023.

<sup>31</sup> Spain, (*Ministerio de Derechos Sociales y Agenda 2030*) (2023), [National Strategy for the fight against homelessness 2023-2030](#) (*Estrategia Nacional para la lucha contra el Sinhogarismo 2023-2030*), Madrid,

In September 2023, the 2023 Operational Plan for the Development of the National Strategy for the Prevention and Fight against Poverty and Social Exclusion (*Plan Operativo 2023 de Desarrollo de La Estrategia Nacional de Prevención y Lucha contra La Pobreza y La Exclusión Social*)<sup>32</sup> was approved. It aimed to specify the measures and actions corresponding to its lines of action, as well as the period of execution, the responsible body and the associated budget.

It entered in to force the first National Action Plan 2023-2026<sup>33</sup> to develop the National Strategy for Equality, Inclusion and Participation of Roma People. It addressed issues such as the reduction of poverty and social exclusion within the Roma population; the reduction of child poverty among the Roma population; the breach the intergenerational cycle of poverty; the improvement of the access to economic and social benefits; and aimed the reduction of the digital divide in the Roma population.

**Table 1 – Promising practice**

Promising practice	
Title (original language)	<i>Estrategia Nacional para la lucha contra el Sinhogarismo 2023-2030</i>
Title (EN)	<a href="#">National Strategy for the fight against homelessness 2023-2030</a>
Organisation (original language)	Ministerio de Derechos Sociales y Agenda 2030
Organisation (EN)	Ministry of Social Rights and Agenda 2030
Government / Civil society	Government
Funding body	It will be financed with the public bodies own funds that could come from the General State Budget and from endowments at the regional and municipal level. In addition, it may be funded by resources allocated and available through the Concerted Plan for Basic Social Services Benefits ( <i>Plan Concertado de Prestaciones Básicas de Servicios Sociales para apoyar la implementación de la Estrategia</i> ). pp.101 <sup>34</sup>

<sup>32</sup> Spain, Ministry of Social Rights and Agenda 2030 (*Ministerio de Derechos Sociales y Agenda 2030*) (2023), [2023 Operational Plan for the Development of the National Strategy for the Prevention and Fight Against Poverty and Social Exclusion 2019-2023](#) (*Plan Operativo 2023 de Desarrollo de La Estrategia Nacional de Prevención y Lucha contra La Pobreza y La Exclusión Social 2019-2023*), Madrid.

<sup>33</sup> Spain, Ministry of Social Rights and Agenda 2030 (*Ministerio de Derechos Sociales y Agenda 2030*), [National Strategy for Equality, Inclusion and Participation of Roma People 2021-2030. First State Operating Plan 2023-2026](#) (*Estrategia Nacional para la Igualdad, Inclusión y Participación del Pueblo Gitano 2021-2030. Primer Plan Operativo Estatal 2023-2026*), Madrid,

<sup>34</sup> It is a program that is developed from the cooperation and agreement of the administrations, General of the State, Regional and Local, of primary care of the Public System of Social Services. Its purpose is to guarantee the rights that, in terms of social services, all citizens have regardless of their territorial location. [REIS\\_093\\_06.pdf \(cis.es\)](#)

Promising practice	
Reference (incl. URL, where available)	<a href="https://www.mdsocialesa2030.gob.es/derechos-sociales/servicios-sociales/Personas-sin-hogar/docs/EstrategiaPSH20232030.pdf">https://www.mdsocialesa2030.gob.es/derechos-sociales/servicios-sociales/Personas-sin-hogar/docs/EstrategiaPSH20232030.pdf</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2023-2030
Type of initiative	National Strategy
Main target group	Homeless people
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>It establishes a common strategic framework for all administrations involved in the prevention and eradication of homelessness;</p> <p>And it promotes a change of approach in the conventional treatment of homelessness, based on the recognition of a series of principles, such as: rights of all people, prevention and early care, housing-oriented approach, people-centered approach, gender based perspective and improvement of knowledge and training.</p>
Highlight any element of the actions that is transferable (max. 500 chars)	<p>The implementation of policy measures to respond to the public responsibility for addressing homelessness, working on prevention and early intervention, which could be the most cost-effective way to address the issue. Furthermore, the recognition of the key and proactive role that could be played by the regional and local social security services to help homeless people reintegrate into society. And the analysis and recognition of concepts such as the aporophobia.</p>
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	<p>It's a public national strategy that will be developed during five years and it follows the first and previous 2015-2020 national strategy against homeless in Spain, which served to introduce key issues such as aporophobia, the focus on housing or the Housing First methodology in the public policies.</p>

Promising practice	
Give reasons why you consider the practice as having concrete measurable impact	All the monitoring and evaluation measures envisaged within the National Strategy will serve to measure the impact of it.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	EU have asked states to develop integrated strategies to tackle homelessness. Almost 1 million people are homeless on any given night across Europe <sup>35</sup> . The homelessness situations affects all Member States and has increased substantially over the last decade in the EU and in consequence European institutions, EU governments and civil society are committed to working together towards combatting homelessness <sup>36</sup>
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice	The participatory process developed to design the National Strategy was defined under section 1.3 related to the Participatory process for strategy development (pp. 14 to 16). It referred to the participation of several public bodies representing the national, regional and local levels, as well as several civil society organizations and individual experts.
Explain, if applicable, how the practice provides for review and assessment	The National Strategy envisaged to develop the monitoring and evaluation through: a) a biannual report to reflect the progress accomplished by the different stakeholders; b) the development of a monitoring dashboard; c) progress report; d) the programming of the lines of action and measures to be taken by the next operational plan.

<sup>35</sup> [Rapport EIGHTH OVERVIEW OF HOUSING EXCLUSION IN EUROPE 2023 EN.pdf \(feantsa.org\)](#)

<sup>36</sup> Homelessness - Employment, Social Affairs & Inclusion - European Commission (europa.eu)

## 2. Threats to democratic values - Protecting civic space, strengthening meaningful participation and the rights to freedom of association, peaceful assembly and expression

### 2.1. Major threats to democracy as reflected in national legal and political developments and the discourse at national level.

#### Table 2 – Challenges

Based on a scan of legislative and policy and other developments and the public discourse please identify **three major challenges** to democracy emerged in the course of 2023.

Challenges	Justification/explanation: description of issue at stake and its overall relevance compared to other challenges to democracy and the civic space. Please provide examples and references.
Attacks and threats to the safety of civil society organisations, human rights defenders and journalists	<p>The Citizen Security Law (<i>ley de Seguridad Ciudadana</i>)<sup>37</sup>, known also as the Gag Law (<i>ley mordaza</i>) had a very negative impact on the right to assembly, the freedom of expression, the right to protest and the rights of migrants and refugees.<sup>38</sup> The main fundamental rights objections were related to:</p> <ul style="list-style-type: none"> <li>• Article 30.3 of the Gag Law considers as an organizer or promoter any person who "even if he has not signed or presented the communication (...) by publications or</li> </ul>

<sup>37</sup> Spain, Head of State (*Jefatura del Estado*), [Organic Law 4/2015, of 30 March, on the protection of citizen security](#), 01/07/2015, *Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana*, 1 July 2015.

<sup>38</sup> National Parliament (*Congreso de los Diputados*), [Minutes of the Committee on the Interior No. 864](#) of 14 March 2023 Congress, Minutes of the Committee on the Interior No. 864 of 14 March 2023

declarations convening them, by the oral or written statements that are disseminated therein (...) it can reasonably be determined that they are directors of the same". The law provides for fines that can reach 600,000 euros.

- In terms of terrorism implied severe penalties and the suspension of fundamental rights such as incommunicado detention or violation of the secrecy of communications for those who are accused. It affects journalism because computer crimes are considered terrorism, including access to data contained in a system (Article 573); anyone who covers protest actions (Article 579); anyone who habitually accesses websites with terrorist content (Article 575) or habitual forms of cyber-protest such as the dissemination of slogans or the alteration of the appearance of a website (Articles 578 and 579).
- It modified the Criminal Procedure Law as it expanded the cases in which wiretaps can be carried out without judicial control.
- As for police recordings, it stated that the unauthorized use of images or personal or professional data of authorities or members of the Security Forces and Corps that may endanger the personal or family safety of the officers is considered a serious infraction. Fines can be up to €30,000. Although the article 36.26 of the Gang Law mentioned that it should be applied with respect for the fundamental right to information, it was questioned that it will not be a judge who assesses it, unless the affected person initiates a contentious-administrative procedure against the sanction once it was already imposed. In practice, it was argued as leading to discrimination and defencelessness of vulnerable groups' situations, such as racial profiling cases.<sup>39</sup> Furthermore, around 250,000 people, it was denounced that many of them activists and journalists were sanctioned for peacefully exercising their right to protest or trying to document police action<sup>40</sup>.

<sup>39</sup> Amnesty International, [España/ Ley Mordaza: Oportunidad perdida y frenazo en la protección de los derechos humanos](#), press release, 14 March 2023.

<sup>40</sup> Amnesty International, [Ocho organizaciones piden a los partidos políticos que acepten las recomendaciones internacionales para proteger el derecho a la protesta y reformen la Ley Mordaza en seis meses](#), press reléase, 29 June 2023.

	<p><b>Since November 2021 an amendment of Citizen Security law<sup>41</sup> the Gang law was proposed but serious political discrepancies were encountered when discussing its amendment and the process came to a halt.</b> The discussions focused on three articles of this Citizen Security Law: Article 23 relating to the use by the Security Forces of riot control equipment and, in particular, rubber bullets; Article 37.4 related to the sanctions for disrespect to the agents; Article 36.6 referred to the sanctions based on the disobedience or resistance to the authority or its agents, and also on the additional provision that endorses the rejections, known as migrants push-backs (<i>devoluciones en caliente</i>) at the land borders of Ceuta and Melilla.</p> <p><b>According to Amnesty international and other civil society organisations,</b> not continuing with the parliamentary processing of the reform of the Citizen Security Law (<i>ley de Seguridad Ciudadana</i>)<sup>42</sup>, known also as the Gag Law (ley mordaza) was a missed opportunity and bad news for human rights in Spain.</p>
<p>Legal and administrative constraints, harassment, intimidation, and reprisals against civil society organisations, human rights defenders (including SLAPPs - strategic lawsuits against public participation)</p>	
<p>Lack of media freedom a/o media pluralism;</p>	<p><b>From 2017 to 2020,</b> the devices of at least 65 Catalan politicians and activists were reportedly targeted by a spying programme, named as Pegasus and Candiru spyware<sup>43</sup>. The victims of those spying actions included public political representative members</p>

<sup>41</sup> Spain, National Parliament (*Congreso de los Diputados*), [Proposal for an Organic Law to reform Organic Law 4/2015, of 30 March, on the protection of citizen security](#) (*proposición de Ley Orgánica de reforma de la Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana*), 30 November 2021.

<sup>42</sup> Amnesty International, [España/ Ley Mordaza: Oportunidad perdida y frenazo en la protección de los derechos humanos](#), press release, 29 June 2023.

Spain, Head of State (*Jefatura del Estado*), [Organic Law 4/2015, of 30 March, on the protection of citizen security](#), 01/07/2015, *Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana*), 1 July 2015.

<sup>43</sup> John Scott-Railton, E., Bahr Abdul R. et al, (2022), [CatalanGate Extensive Mercenary Spyware Operation against Catalans Using Pegasus and Candiru](#), CitizenLab, Toronto University.

<p>disinformation (incl. online)</p>	<p>and activists in Spain following the independence bid in 2017, Catalan minority leaders, Members of the European Parliament, legislators, jurists, and members of civil society organizations following the referendum for Catalonia's independence. Those cases were under investigation on different judicial courts in Madrid and most of them within Barcelona city (courts number 19, 24 and 29) on the grounds that their fundamental rights had been violated by the alleged <b>intervention, listening and dissemination</b> of their communications.</p>
<p>Foreign interference</p>	<p><b>On 2 February 2023</b>, "UN experts raised their concerned and request that the Spanish authorities must thoroughly investigate reports that about the interference into the human rights of Catalan leaders and other minority activists to freely hold and express their views, exchange information and ideas, assemble peacefully and participate in associations. They are entitled to a private life, the privacy of correspondence and to be treated equally before the law..."<sup>44</sup></p> <p>During 2023, the two Catalan political parties, Junts per Catalunya and (<i>Esquerra Republicana de Catalunya</i>, ERC, in its Spanish acronym), reached an agreement with the Socialist political party (<i>Partido Socialista obrero español</i>, PSOE, in its Spanish acronym) for the constitution of the Bureau of the Congress (<i>mesa de congreso</i>)<sup>45</sup> to include the creation of a commission of inquiry into the espionage Pegasus case to independence leaders in addition to the two existing investigatory commissions under the Catalan regional Parliament and the European Parliament. It was finally approved on 12 December 2023.<sup>46</sup></p> <p><b>In May 2022, the National Ombudsman closed his ex officio proceedings<sup>47</sup></b> in relation to the verification of the compliance with the provisions of Article 12 of Law 11/2002 on prior judicial</p>

<sup>44</sup> United Nations, OHCHR, [Spain: UN experts demand investigation into alleged spying programme targeting Catalan leaders](#), press release, 2 February 2023.

<sup>45</sup> Expansion, [El caso Pegasus y otras condiciones que ha pedido Junts al PSOE para dar su apoyo a Armengol](#), press release, 17 August 2023.

<sup>46</sup> Spain, National Parliament (*Congreso de los Diputados*), [Request by the Republican, Euskal Herria Bildu and Mixed Parliamentary Groups, for the creation of a Commission of Inquiry into espionage and intrusion into privacy and intimacy, through the Pegasus and Candiru malware, against political leaders, activists, lawyers, journalists, institutions and their families and friends](#) (*Solicitud de los Grupos Parlamentarios Republicano, Euskal Herria Bildu y Mixto, creación de una Comisión de Investigación sobre el espionaje e intromisión a la privacidad e intimidad, a través de los malware Pegasus y Candiru, a líderes políticos, activistas, abogados, periodistas, instituciones y sus familiares y allegados*), Madrid, Congreso de los Diputados.

<sup>47</sup> Spain, [el Defensor del Pueblo verifica que la actuación del CNI se ha realizado conforme a la Constitución y la Ley en los casos examinados](#), press release, 18 May 2022.



control of communications interceptions<sup>48</sup>. The National Ombudsman concluded that the National Intelligence Center (*Centro Nacional de Inteligencia*, CNI, in its Spanish acronym) acted in compliance with the various legal provisions relating to prior judicial control of the interception of communications that took place on some (18) of the persons referred to in different reports published in April 2022.

**In July 2023**, the Spanish National High Court (*Audiencia Nacional*) close the case based on the lack of legal cooperation from Israel, where the headquarters of the company that created Pegasus, NSO Group, is located.

**In July 2023**, the Supreme Court (*Tribunal Supremo*) dismissed a cassation appeal filed by the former president of the Catalonia government on the grounds that the National High Court (*Audiencia Nacional*) provided objective data, not mere indications, which show that he was not the victim of political espionage by the Spanish Government through the National Intelligence Centre (CNI).

**In July 2023**, the **European Commission stated that it will continue to monitor the situation** in the context of the preparation of the Rule of Law Report in 2024, as there were no relevant changes between July 2022 and July 2023<sup>49</sup>.

**On 11 October 2023**, **The Parliamentary Assembly of the Council of Europe (PACE)**<sup>50</sup> asked Spain for more transparency on the use of the Pegasus espionage device with personalities of the Catalan independence movement. A resolution<sup>51</sup> was approved calling certain Member States that used Pegasus, including Spain for clarification from national authorities and courts. The aim was to determine whether, by accessing the mobile phones of political figures, journalists, lawyers and human rights defenders through this spying programme, this intrusion into their privacy was carried out for a legitimate purpose, such as national security or the prevention of crime.

**On 13 November 2023**, the Central Government received the request sent to the Council of Ministers by one of Judges studying one case at a Barcelona's judicial court requesting the

<sup>48</sup> Spain, Head of State (*Jefatura del Estado*), [Law 11/2002, of 6 May, regulating the National Intelligence Centre](#) (*Ley 11/2002, de 6 de mayo, reguladora del Centro Nacional de Inteligencia*), 6 May 2002.

<sup>49</sup> European Commission (2023), [Report on the Rule of Law in 2023](#), Brussels.

<sup>50</sup> Council of Europe, [Pegasus spyware called into question by PACE](#), press release, 16 October 2023.

<sup>51</sup> [Parliamentary Assembly, Assembly debate on 11 October 2023 \(22nd sitting\) \(see Doc. 15825, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pieter Omtzigt\). Text adopted by the Assembly on 11 October 2023 \(22nd sitting\). See Recommendation 2258 \(2023\).](#)

	<p>declassification of reserved or secret information gathered by the Intelligence National Center (<i>Centro Nacional de Inteligencia</i>, CNI, in its Spanish acronym).<sup>52</sup></p> <p><b>On December 2023</b>, Ministries of the Spanish Central Government declared that it is possible for the Government to declassify the Intelligence National Center reports on Pegasus, which affects the espionage of pro-independence activists, if it is understood that it is opportune, reasonable and in accordance with the law.</p> <p>Likewise, <b>there are other academic sources that considers the initial Citizens Lab report as part of a political propaganda campaign to be a key element of a political campaign aimed at portraying a wide network of politicians and activists as victims of the Spanish security forces</b><sup>53</sup>. It also stated that the evidence provided by the CatalanGate report is clearly insufficient to make specific accusations, such as those directed against the Spanish Government. It concluded that there are no sufficient grounds to assert that Spain engaged in illegal, unlimited, unnecessary or disproportionate espionage of Catalan politicians and activists, as suggested by Citizen Lab.</p>
<p>Lack of (processes for) transparent, accountable, democratic and pluralistic participation in law and policymaking; incl. access to information</p>	
<p>Lack of election integrity (incl. electoral process, political campaigning and party financing)</p>	

<sup>52</sup> EuropaPress, [CGPJ pide al Gobierno no desclasificar "para su espuria difusión" documentos como los del 'caso Pegasus'](#), press reléase, 20 December 2023.

<sup>53</sup> Olivas Osuna, J. (2023), [The Pegasus Case: A Critical Review of Citizen Lab's "CatalanGate" Report](#) (*El Caso Pegasus: Una revisión crítica del informe "CatalanGate" de Citizen Lab*).

Disproportionate use of law enforcement measures (surveillance, police violence, unlawful arrest etc.)	
Corruption, including misuse of EU funds	
Lack of (effective judicial protection by) independent and impartial courts	<p>Concerns over judicial independence, the impartiality of the judiciary and ultimately respect for the principle of separation of powers were raised. This situation had an impact on a decreasing institutional and public confidence as far as the level of independence of the Spanish judiciary system.<sup>54</sup></p> <p>In 2022, the Council of Europe made reference to the reforms that still remained necessary to introduce additional safeguards against undue political influence in the selection process of members of the judicial council. It made reference to the need to solve the deadlock in the designation of the general council for the judiciary and to address concerns regarding the system of appointments for the members of that general council, actually elected by member of the legislative and executive government and not elected by their peers<sup>55</sup>.</p> <p>In July 2023, the European Commission commented that “the absence of renewal was weakening and eroding the rule of law in Spain, and was leading to a clear deterioration of the situation of the Supreme Court and of the Council for the Judiciary”<sup>56</sup>.</p>
Threats to (the independence of) the fundamental rights institutional landscape (NHRIs, equality bodies, data protection	

<sup>54</sup><https://www.cambridge.org/core/journals/european-constitutional-law-review/article/spain-judicial-independence-and-judges-freedom-of-expression-missing-an-opportunity-to-leverage-the-european-constitutional-shift/221F3DA35803BFFD0CC35E4A33B3FD23>

<sup>55</sup> Council of Europe (CoE), [GRECO's Addendum to the Second Compliance Report in respect of Spain](#), (GRECORC4(2022)16, 5 December 2022, paragraph 16; European Commission 2022 Rule of Law Report – Country Chapter on the rule of law situation in Spain (SWD(2022) 509 final), 13 July 2022.

<sup>56</sup> European Commission, [2023 Rule of Law report. Country Chapter on the rule of law situation in Spain](#), Commission Staff Working Document, Brussels, 5.7.2023. SWD (2023) 809 final.

<p>authorities and similar bodies), incl. closure of fundamental rights bodies, legal changes, budget cuts and harassment</p>	
<p>Institutional issues linked to checks and balances (lack of parliamentary oversight, lack of implementation of final court decisions by executive, etc.)</p>	
<p>Other major developments threatening democratic values</p>	<p>On 6 June 2023, a <b>judicial judgment issued by the Provincial High Court of Huelva<sup>57</sup> marked new limits between the freedom of the press and the right to information.</b> It condemned a reporter to two years in prison for revealing information from a secret investigation. The judgment established that the journalist obtained information from the summary of the case and disseminated it through newspaper articles. The judges considered that some details revealed were unnecessary and irrelevant to the public interest and that they affected the privacy of the victim and his family. Based on article 197.3 of the Criminal Code<sup>58</sup>, on discovery and revelation of secrets. The Public Prosecutor's Office requested the revocation of the ruling and that the accused reporter should be convicted of the same crime but applying the defense of acting in the exercise of the journalistic profession.</p> <p>According to the Federation of Journalists' Associations of Spain (<i>Federación de Asociaciones de Periodistas de España</i>, FAPE, in its Spanish acronym)<sup>59</sup>, this judicial ruling generated a deep concern in journalists' professional associations, since it left to the free opinion of the judges the relevance of the information, which, as long as it is truthful, is considered to be covered by article 20 of the Spanish Constitution<sup>60</sup>. It complicated the</p>

<sup>57</sup> Spain, Huelva Provincial High Court (*Audiencia Provincial de Huelva*), [Judgment 96/2023](#), 6 June 2023.

<sup>58</sup> Spain (2015), [Law amending the Criminal Code](#) (*Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*), 30 March 2015.

<sup>59</sup> APM, [La FAPE respalda a las asociaciones de la prensa de Andalucía en su rechazo a una sentencia que coarta la libertad de prensa](#), press release, 4 July 2023.; Tinto Noticias, [La periodista condenada por el caso Laura Luelmo pide su absolución](#), press release, 14 September 2023.

<sup>60</sup> Spain, National Parliament (*Cortes Generales*), [Spanish Constitution](#) (*Constitución Española*), 29 December 1978.

freedom of the press and it created a fraudulent way to punish the journalist who publishes a secret that is allowed by law.

Other cases related to journalist and the protection of the freedom of expression happened. In July 2023, a Barcelona court opened a case against two editors of the satirical magazine Mongolia who were charged with the crime of offences to religious feelings<sup>61</sup>. Likewise, in May 2023, the 5th court of Sant Feliu de Llobregat in Barcelona opened preliminary investigation proceedings against three journalist of the TV3 channel for the comic scene about the Virgen del Rocío broadcast the 2023 Holy Week. It was based on an alleged crime against the Constitution covered by Article 525.1 of the Criminal code, which refers to offences to the feelings of members of a religious and the complaint was filed by the ultra-Catholic entity Spanish Foundation of Christian Lawyers (Fundación Española de Abogados Cristianos). In September 2023, the judge decided to file the case recognizing the facts as covered by the right of the freedom of expression.

## 2.2. Legislative and policy measures having an impact on the freedom of assembly/association/expression of civil society actors.

On 23 September 2023, SUMAR Spanish political party registered a law proposal to protect freedom of expression<sup>62</sup>. The objective was to ask for the elimination of certain types crimes of opinion existing under the Criminal Code<sup>63</sup>. The Spanish Constitutional jurisprudence indicates that, in case of conflict, freedom of expression must prevail if it is not exercised with the intention of insulting or hurting, if what is expressed responds to a truthful fact of public interest or, especially, if it is exercised from a means of communication. Despite this, in recent years in Spain there were cases restriction of the fundamental right to freedom of expression, as stated under Article 20.1 a) of the

<sup>61</sup> Mongolia, [Dos editores de 'Mongolia', imputados por ofensas a los sentimientos religiosos](#), press release, 12 July 2023.

<sup>62</sup> Spain, National parliament (*Congreso de los Diputados*), [Proposal of Law. 122/000006 Proposal for an Organic Law amending Organic Law 10/1995, of 23 November, on the Criminal Code for the protection of freedom of expression](#) (*Congreso de los Diputados. XV Legislatura. Serie B: PROPOSICIONES DE LEY 29 de septiembre de 2023 Núm. 19-1 Pág. 1. BOLETÍN OFICIAL DE LAS CORTES GENERALES PROPOSICIÓN DE LEY. 122/000006 Proposición de Ley Orgánica de reforma de la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal para la protección de la libertad de expresión*), No. 19-1 Page 1. OFFICIAL GAZETTE OF THE CORTES GENERALES 29 September 2023.

<sup>63</sup> Spain (1995), [Organic Act 10/1995, on the Criminal Code](#) [*Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*], 23 November 1995..

Spanish Constitution<sup>64</sup>. This reform seek to end several judgment against singers, artists and comedians that were imposed under the qualification of terrorism and other crimes of opinion. It requested the amendment of a number of crime types such as: 1) in Article 525 of the Criminal Code<sup>65</sup> related to offences against religious feelings or public ridicule; 2) Articles 490.3 and 491 of the Criminal Code<sup>66</sup> related to offences against the Crown, which were already referred and contained in the judgment of the case of Otegi Mondragón v. Spain<sup>67</sup> issued 15 March 2011, where Spain was condemned for violating freedom of expression; 3) Article 543 of the Criminal Code<sup>68</sup> related to offenses or outrages verbally, in writing or in fact to Spain, its Autonomous Communities or their symbols or emblems. In this sense, there was a judgment of the ECtHR, in the case Spain vs Fragoso Dacosta, of 8 June 2023<sup>69</sup>, on insults to the flag, where it was ruled that freedom of expression "does not apply only to information or ideas that are perceived as harmless", but also to those that "offend, create impact or disturbance to the State or to any sector of society", and Spain was condemned for the disproportionate use of the Criminal Code to punish this type of conduct; 4) Article 504 of the Criminal Code<sup>70</sup> related to insults to the Government of the Nation, the General Council of the Judiciary, the Constitutional Court, the Supreme Court, or the Council of Government or the High Court of Justice of an Autonomous Community and the Armies, Classes or Security Forces and Corps; 5) Article 578 of the Criminal Code<sup>71</sup> which prohibits the glorification

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<sup>64</sup> Spain, National Parliament (*Cortes Generales*), [Spanish Constitution](#) (*Constitución Española*), 29 December 1978.; Article 20 states: 1. The following rights are recognised and protected: a) the right to freely express and disseminate thoughts, ideas and opinions through words, in writing or by any other means of communication; b) the right to literary, artistic, scientific and technical production and creation; c) the right to academic freedom; d) the right to freely communicate or receive accurate information by any means of dissemination whatsoever. The law shall regulate the right to personal freedom Right to intimacy. Inviolability of the home. Freedom of residency and movement Freedom of expression late the right to invoke personal conscience and professional secrecy in the exercise of these freedoms. 2. The exercise of these rights may not be restricted by any form of prior censorship. 3. The law shall regulate the organisation and parliamentary control of the social communications media under the control of the State or any public agency and shall guarantee access to such media to the main social and political groups, respecting the pluralism of society and of the various languages of Spain. 4. These freedoms are limited by respect for the rights recognised in this Title, by the legal provisions implementing it, and especially by the right to honour, to privacy, to personal reputation and to the protection of youth and childhood. 5. The confiscation of publications and recordings and other information media may only be carried out by means of a court order.

<sup>65</sup> Spain (2015), [Law amending the Criminal Code](#) (*Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*), 30 March 2015

<sup>66</sup> Spain (2015), [Law amending the Criminal Code](#) (*Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*), 30 March 2015

<sup>67</sup> ECtHR, [Judgment of the European Court of Human Rights, SJUR 2011 75916, Complaint No. 2034/2007](#) (*Sentencia del Tribunal Europeo de Derechos Humanos, MARGINAL: JUR 2011 75916 Demanda núm. 2034/2007*), 15 March 2011.

<sup>68</sup> Spain (2015), [Law amending the Criminal Code](#) (*Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*), 30 March 2015.

<sup>69</sup> ECHR, [Judgment Case of Fragoso Dacosta V. Spain](#). (Application no. 27926/21), Strasbourg, 8 June 2023.

The Fifth Section of the European Court of Human Rights (ECtHR) unanimously ruled that Spain violated the applicant's rights under Article 10 of the European Convention of Human Rights (ECHR). The applicant, who was a trade union representative, shouted offensive words, inter alia towards the national flag during a protest due to unpaid wages. He was criminally convicted, by national courts, for a criminal act of insulting Spain. The ECtHR found that the local courts did not take into account the context of the case, in particular that the impugned statements were related to the labor protest, that the applicant was a trade union representative, and that there was no public disorder, but merely offensive words. Thereby, the interference in the applicant's freedom of expression was not necessary in a democratic society.

<sup>70</sup> Spain (2015), [Law amending the Criminal Code](#) (*Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*), 30 March 2015.

<sup>71</sup> Spain (2015), [Law amending the Criminal Code](#) (*Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*), 30 March 2015.

of terrorism and the humiliation of the victims of terrorist crimes. In order to prevent similar cases to the ones that carried prison sentences and fines to the singer César Strawberry<sup>72</sup>, as well as the rappers Valtonyc<sup>73</sup>, Pablo Hásel<sup>74</sup> for glorifying terrorism and insulting the Crown and institutions. The amendment recognized the right to spontaneous demonstration without prior notification, but a sanction supposed to be maintained for the organizers in case of "disturbance of public order" (*alteración del orden público*). Articles 36.6 referred to the resistance, disobedience and refusal to identify oneself; or Article 37.1 in reference to the spontaneous demonstrations; and Article 37.4 referred to the lack of respect; and Article 36.23 for the use of images of security forces had a decisive impact on the right to peaceful protest, weakening it extremely.

On 20 September 2023, the Supreme Court issued a judgment related to the freedom of expression<sup>75</sup>. The appeal in cassation upheld in a case of conflict between the right to honour and freedom of information. The Court stated that the defendant journalist considered that the investigation of those facts carried out by the Arrecife No. 3 Court of First Instance and Instruction also affected the conduct of the plaintiff as it considered him to be involved in the conduct described in the order of that court as the object of investigation or that it qualified them as "falsification" of the case. It is protected by the legitimate exercise of freedom of the press since it is the journalist's assessment of truthful facts, sufficiently contrasted, even if they were not subsequently considered criminal. The freedom of expression was understood as allowing the journalist to make personal assessments, even resorting to exaggeration and hurtful criticism. Journalists can make known their own assessments and hypotheses regarding criminal investigations even if they are not later considered crimes.

**Table 3 – Case law**

Case law	
Deciding body (in original language)	Tribunal Constitucional
Deciding body (in English)	Constitutional Court

<sup>72</sup> Spain, Constitutional court (*Tribunal constitucional*), [Judgement 35/2020, 25 February](#) (*Sentencia 35/2020, de 25 de febrero*), 25 February 2020.

<sup>73</sup> Spain, [Supreme Court Criminal Chamber \(Tribunal Supremo, Sala de lo Penal\), nº 4/2017, Rec 1619/2016](#), 18 January 2017.

<sup>74</sup> General Council of the Judiciary (*Consejo General de Poder Judicial*), [El Tribunal Supremo confirma la pena de tres años y medio de cárcel a un cantante de rap por enaltecimiento del terrorismo, injurias a la Corona y amenazas](#), press release, 20 February 2018.

<sup>74</sup> General Council of the Judiciary (*Consejo General de Poder Judicial*), [La Audiencia Nacional condena al rapero Hásel a dos años cárcel y 24.300 euros de multa por enaltecimiento del terrorismo e injurias a la Corona e instituciones](#), press release, 2 de marzo de 2018.

<sup>75</sup> Spain, [Supreme Court Civil Chamber \(Tribunal Supremo, Sala de lo Penal\), nº 1274/2023, Rec 2940/2022](#), 20 September 2023.

Case law	
Case number (also European Case Law Identifier <a href="#">ECLI</a> , where applicable)	Judgment nº 79/2023. Appeal nº 3638-2020.
Parties	Murcia Region Federation for Citizenship Services of CCOO ( <i>Federación de Servicios a la Ciudadanía de CCOO de la Región de Murcia</i> ) against the Cartagena Port Authority ( <i>Autoridad Portuaria de Cartagena</i> ), the Works Council and the General Union of Workers ( <i>Unión General de Trabajadores</i> , UGT, in its Spanish acronym).
Decision date	3 August 2023
Web link to the decision (if available)	<a href="#">ECLI:ES:TC:2023:22<sup>76</sup></a>
Which fundamental freedoms of (peaceful assembly, association and/or expression) were referred to in the case?	Freedom of expression and the right of unionisation by linking articles 20.1 and 28.1 of the Spanish Constitution <sup>77</sup> .
Key facts of the case (max. 250 words)	Lawsuit Promoted by the Federation of Citizen Services of Workers' Commissions of the Murcia Region, against the Cartagena Port Authority in proceedings for the protection of fundamental rights. The trade union that filed the amparo appeal publicly criticized the management of the use of a house at the Mazarrón lighthouse. In response to the criticism, the management of the Port Authority announced that the right of port workers to enjoy the building was subject to the public retraction of the trade union centre.
The key legal question raised by the Court	Violation of the right to freedom of expression in relation to the right to freedom of association: the right to use the house of the Mazarrón lighthouse is subject to the retraction of a critical statement issued by the union.

<sup>76</sup> Rojo Torrecilla, E. (2023), [Strengthened protection of freedom of expression in trade union activity](#) (*La protección reforzada de la libertad de expresión en la actividad sindical*), *REVISTA DE JURISPRUDENCIA LABORAL* - Número 5/2023 ; <https://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/29283#ficha-tecnica>

<sup>77</sup> Spain, National Parliament (*Cortes Generales*), [Spanish Constitution](#) (*Constitución Española*), 29 December 1978.



Case law	
Result of the case in terms of factual outcome, and in terms of assessment of the legal question raised	The Constitutional Court judgment addressed the issue of the scope of freedom of expression when it comes to trade union activity. The Constitutional Court judgment stated that the Cartagena Port Authority violated both rights, and therefore proceeds to reinstate the trade union that has filed the appeal for protection and returns the proceedings to the High Court of Justice to rule on the challenge of the State Attorney Office on the amount of compensation requested for moral damages.