

**Franet National contribution  
to the  
Fundamental Rights Report  
2021**

**Spain**

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SPAIN

<p><b>Franet country study: policy and legal highlights 2020</b></p>	
<p><b>Issues in the fundamental rights institutional landscape</b></p>	<p>The Council of Ministers approved the Agreement for (1) submitting the European Social Charter (revised) to the Spanish National Parliament and (2) and authorize Spain's consent to be obliged by that Charter.</p> <p>COVID-19 health crisis revealed an extreme vulnerability and special protection needs of elderly and/or disabled persons. A set of <a href="#">Recommendations to different Autonomous Communities in relation to the Residential Care Homes and the COVID-19</a> was sent by the National Ombudsman and files were opened by the State Attorney General's Office because of their management of the residential care homes and the social health centres.</p>
<p><b>EU Charter of Fundamental Rights</b></p>	<p>During 2020, the national Parliament approved 52 legislative initiatives. The review of all of them did not yield a positive result regarding the use of the Charter, which is not mentioned at all. The courts were the sector that contributed most to the dissemination and implementation of the Charter, followed, to a degree that could be considered modest, by academia and civil society organisations.</p>
<p><b>Equality and non-discrimination</b></p>	<p><a href="#">Royal Decree 455/2020 of 10 March developing the basic organic structure of the Ministry of Equality</a>. Between 2011 and 2018, areas such as discrimination against LGBTI or older people were placed under a Secretary of State of the Equality within other Ministries. With the entry into force of the new decree, a ministry on equality issues was created.</p>
<p><b>Racism, xenophobia &amp; Roma integration</b></p>	<p>Publication of a set of recommendations for <a href="#">avoiding discriminatory attitudes and discourses in the context of the current health, social and economic crisis</a>. The Council for the Elimination of Racial or Ethnic Discrimination aimed at highlighting its concern about cases of discrimination and hatred against ethnic or racial groups during COVID-19 health crisis, especially against the Roma people and the Asian community.</p> <p><a href="#">Guidance Protocol for the inclusion of Roma history and culture in the school curriculum and teaching practice</a> published by the Ministry of Education and Vocational Training.</p>
<p><b>Asylum &amp; migration</b></p>	<p>New legal instruments for foreigners to legalize their administrative legal situation in Spain, due to the context of the COVID-19 pandemic.</p> <p><a href="#">Suspension of administrative deadlines</a>, in application of the <a href="#">Royal Decree 463/2020 of 14 March</a> which declared the first <a href="#">State of Alarm</a> because of the COVID-19 health crisis. Those administrative deadlines restarted on 1 June 2020 with the end of the State of Alarm.</p>
<p><b>Data protection</b></p>	<p>Approval of the <a href="#">Order PCM/1030/2020, of 30 October, which publishes the Procedure for Action against Misinformation</a>. It aims at implementing</p>

<b>and digital society</b>	policies and strategies adopted in order to combat misinformation and identifies the relevant bodies, authorities and procedures. It also lays down the composition of a working team for the development of a National Strategy to Combat Misinformation.
<b>Rights of the child</b>	Approval by the Spanish Government of a <a href="#">Family Protection and Child Poverty Care Programme</a> . The programme supports family and fights child poverty with the allocation of eighty five million euros on funding for the Autonomous Communities and the Autonomous cities of Ceuta and Melilla.
<b>Access to justice, including victims of crime</b>	Bill to protect children and adolescents against violence: The <a href="#">Draft organic law for comprehensive protection of children and adolescents from violence</a> responds to the urgent need to introduce protective measures in the legal system. By the end of November, the bill was not adopted yet.
<b>Convention on the Rights of Persons with Disability</b>	Approval of a <a href="#">Draft Law reforming civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity</a> . The bill intends to enhance the respect for the rights of disabled persons. It responds to the need to adapt the Spanish Civil Code s to the CRPD. It is committed to the prevalence of the will of the person concerned over any other legal disposition.

## Chapter 1. Equality and non-discrimination

### 1. Legal and policy developments or measures relevant to fostering equality and combating discrimination against older people and against LGBTI people.

**On 10 March 2020**, the **Ministry for Territorial Policy and Civil Service** (*Ministerio de Política Territorial y Función Pública*) issued [Royal Decree 455/2020 of 10 March, implementing the basic organic structure of the Ministry of Equality](#)<sup>1</sup>. This once again elevated the Ministry of Equality to the level of a ministry. Previously, between 2011 and 2018, the areas under its competence, such as discrimination against LGBTI and older people, were placed under the Secretary of State for Equality, along with other ministries, including the Ministry of Health and Social Policy and the Ministry of the Presidency and Parliamentary Relations. Currently, under this new ministry and its new structure, there will be a particular Directorate-General for Sexual Diversity and LGBTI Rights (*Dirección General de Diversidad Sexual y Derechos LGTBI*), which will be under the competence of the Secretariat

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<sup>1</sup> Spain, Ministry of Territorial Policy and Civil Service (*Ministerio de Política Territorial y Función Pública*), [Royal Decree 455/2020 of 10 March, which implements the basic organic structure of the Ministry of Equality](#) (*Real Decreto 455/2020, de 10 de marzo, por el que se desarrolla la estructura orgánica básica del Ministerio de Igualdad*).

of State for Equality and against Gender-Based Violence (*Secretaría de Estado de Igualdad y contra la Violencia de Género*).

**From 26 June to 15 July 2020**, a [public consultation](#) was opened prior to the development of draft legislation consisting of an organic [law for the equality of LGBTI people and for non-discrimination based on sexual orientation, gender identity, gender expression or sexual characteristics](#)<sup>2</sup>. The rationale for this draft legislation was that, despite legislative achievements, there were indicators and recent studies revealing that intolerable levels of discrimination and violence towards the LGBTI group persisted in Spain and throughout Europe.

**From 30 October to 18 November 2020**, a [public consultation was opened to develop draft legislation for a law for the full and effective equality of transgender people](#) (*Consulta pública previa a la elaboración de un proyecto normativo consistente en una ley para la igualdad plena y efectiva de las personas trans*).

**The Ministry of Equality (*Ministerio de Igualdad*)** published several documents to respond to the needs that emerged from the COVID-19 health crisis. Several of them centred on managing this health crisis and its social impacts, focusing on the situation of citizen sectors with pre-existing discrimination, such as people with diverse or non-normative sexual orientations, identities and gender expressions, including: 1) [Opening Doors: the LGTBI group facing COVID-19: Resource guide to cope with exclusion and discrimination based on sexual orientation and gender identity during the COVID-19 crisis](#)<sup>3</sup>. The Guide was not intended to be comprehensive, but was instead an emergency resource that individuals and organizations could consult if needed assistance in this time of crisis; 2) [A quick guide for victims of hate crime LGBTI-phobia](#)<sup>4</sup>. It contains information about situations that are considered hate crimes. For victims of hate crimes, the document presented information about resources established for reporting the facts. It also described what rights the victims of a hate crime have; 3) [Quick guide for victims of intragender violence during the state of emergency](#) (*Guía rápida para víctimas de violencia intragénero durante la*

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<sup>2</sup> Spain, Ministry of Equality (*Ministerio de Igualdad*) (2020), [Public consultation prior to the development of draft legislation consisting of an organic law for the equality of LGBTI people and for non-discrimination on the basis of sexual orientation, gender identity, gender expression or sexual characteristics](#) (*consulta pública previa a la elaboración de un proyecto normativo consistente en una ley orgánica para la igualdad de las personas lgtbi y para la no discriminación por razón de orientación sexual, identidad de género, expresión de género o características sexuales*).

<sup>3</sup> Spain, Ministry of Equality (*Ministerio de Igualdad*) (2020), [Opening Doors: the LGTBI group facing COVID-19: Resource guide for coping with exclusion and discrimination based on sexual orientation and gender identity during the COVID-19 crisis](#) (*Abriendo puertas: el colectivo LGTBI frente al COVID-19. Guía de recursos para hacer frente a la exclusión y a discriminaciones por orientación sexual e identidad de género durante la crisis por COVID-19*), Madrid: Ministry of Equality, 2020.

<sup>4</sup> Spain, Ministry of Equality (*Ministerio de Igualdad*) (2020), Quick guide for victims of hate crimes because of LGTBI-PHOBIA (PDF) Alises, Charo, [Guía rápida para víctimas de delitos de odio por LGTBIFOBIA](#), Madrid: Ministerio de Igualdad, 2020.

vigencia del estado de alarma)<sup>5</sup>; 4) A Plan of Measures to Protect the Rights of LGTBI People from the Impacts of the Covid-19 Crisis <sup>6</sup> .

**In June 2020**, the **LGTBI People's Participation Council** (*Consejo de Participación de las Personas LGTBI*) was set up<sup>7</sup>. It aimed to institutionalize collaboration and strengthen the ongoing dialogue between the public administrations and civil society in matters related to equal treatment, and non-discrimination based on sexual orientation, identity or gender expression. The LGTBI People's Participation Council is constituted as a collegial body. It reports to the Ministry of Equality through the Secretariat of State for Equality and Against Gender-Based Violence. At the end of October 2020, a call was published (from 3 November to 2 December 2020) to select the organizations that will become members of the **LGTBI People's Participation Council**<sup>8</sup>.

**On 28 June 2020**, there was an [Institutional Declaration](#), for the **LGBTI National Pride Day 2020**<sup>9</sup>. The Spanish Government declared it was working tirelessly to achieve real and effective equality of LGBTI people and non-discrimination based on sexual orientation or gender identity, in accordance with [Article 9.2 of the Spanish Constitution](#).

**In September 2020**, [Report 2020: the Impact of the State of Emergency caused by COVID-19 on the FELGTB's Rainbow Information, Guidance and](#)

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<sup>5</sup> Spain, Ministry of Equality (*Ministerio de Igualdad*) (2020), [Quick guide for victims of intragender violence during the state of emergency](#) (*Guía rápida para víctimas de violencia intragénero durante la vigencia del estado de alarma*).

<sup>6</sup> Spain, Ministry of Equality (*Ministerio de Igualdad*) (2020), [Plan of Measures to Protect the Rights of LGTBI People from the Impacts of the Covid-19 Crisis](#) (*Plan de Medidas de Protección de los Derechos de las Personas LGTBI frente a Los Impactos de la Crisis del Covid-19*), Madrid, Ministry of Equality.

<sup>7</sup> Spain, Ministry of Equality (*Ministerio de Igualdad*), [Order IGD/577/2020 of 24 June, which creates and regulates the participation council for lesbian, gay, trans, bisexual and intersex persons \(LGTBI\)](#) (*Orden IGD/577/2020, de 24 de junio, por la que se crea el Consejo de Participación de las Personas lesbianas, gais, trans, bisexuales e intersexuales (LGTBI) y se regula su funcionamiento*), 28 June 2020.

<sup>8</sup> Spain, Ministry of Equality (*Ministerio de Igualdad*), [Resolution of 29 October 2020 by the Secretary of State for Equality and Against Gender-Based Violence, convening the process for the selection of foundations, organizations, associations, federations and confederations to be occupied by the members of the Council for the Participation of Lesbian, Gay, Trans, Bisexual and Intersex Persons \(LGTBI\) on behalf of the foundations, organizations, associations, federations and confederations working in the area of LGTBI](#) (*Resolución de 29 de octubre de 2020, de la Secretaria de Estado de Igualdad y Contra la Violencia de Género, por la que se convoca el proceso para la selección de las fundaciones, organizaciones, asociaciones, federaciones o confederaciones a las que corresponderá ocupar las vocalías del Consejo para la Participación de las Personas lesbianas, gais, trans, bisexuales e intersexuales (LGTBI) en representación de las fundaciones, organizaciones, asociaciones, federaciones o confederaciones del ámbito LGTBI*), 29 Octubre.

<sup>9</sup> Spain, Spanish Government (*Gobierno Español*), [Declaración institucional con motivo del 28 de junio, Día Nacional del Orgullo LGTBI](#), Press release, 23 June 2020.

Attention Service<sup>10</sup> was published. It concluded that in terms of growth compared to 2019, there was an important increase in consultations on hate speech against LGTBI people, psychological care, family conflicts and violence expressed in harassment, insults, and so forth, as well as the need for information/guidance on sexual orientation. In numbers, there were 209 cases in 2019 (90% of total consultations in this period), which jumped to 471 in 2020 (85.79% increase). In relation to trans persons, there were 63 consultations in 2020 compared to 18 in 2019, equal to 7.78% of total consultations in 2019 and 11.47% in 2020. Finally, non-binary people went from 1 in 2019 to 3 in 2020.

**On 11 November 2020, the Cantabria autonomous community issued a new [Law 8/2020, on the guarantee of rights of lesbian, gay, trans, transgender, bisexual and intersex people and non-discrimination on the basis of Sexual Orientation and Gender Identity](#) ( *Ley de Cantabria 8/2020, de 11 de noviembre, de Garantía de Derechos de las Personas Lesbianas, Gais, Trans, Transgénero, Bisexuales e Intersexuales y No Discriminación por Razón de Orientación Sexual e Identidad de Género*)<sup>11</sup>.**

**On 20 November 2020,** for Children's Day, FELGTB FELGTB brought to attention the violence against children that belong to LGBTI families to be considered a hate crime. FELGTB created a new webpage, [www.stopacosoescolarlgtb.com](http://www.stopacosoescolarlgtb.com), to help families and schools work on affective sexual, family, and gender diversity. Various educational materials are available for different ages and include an audiovisual format.

**On 23 April 2020, the National Ombudsman** sent a series of formal [Recommendations to different autonomous communities on residential care homes and the COVID-19 health crisis and the medical care and information provided](#)<sup>12</sup>. **Its purpose is to improve the health care of residents in senior centres/care homes, as well as** improving the information provided to their families and protecting their rights. The National Ombudsman received a high number of complaints in which residents' relatives pointed out shortcomings in their health care and lack of

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<sup>10</sup> National Federation of Lesbians, Gays, Transexuals and Bisexuals (*Federación Estatal de Lesbianas, Gais, Trans y Bisexuales*) (2020), [Report 2020: Impact of the State of Emergency caused by COVID-19 on the FELGTB's Rainbow Information, Guidance and Service Line](#) (*Informe 2020. Impacto del Estado de Alarma provocado por el COVID-19 en el Servicio de Información, Orientación y Atención Línea Arcoiris de FELGTB*), Madrid, National Federation of Lesbians, Gays, Transexuals and Bisexuals.

<sup>11</sup> Cantabria Government (*Gobierno de Cantabria*), [Law 8/2020, on guarantee of the rights of lesbian, gay, trans, transgender, bisexual and intersex people and non-discrimination on the basis of Sexual Orientation and Gender Identity](#) ( *Ley de Cantabria 8/2020, de 11 de noviembre, de Garantía de Derechos de las Personas Lesbianas, Gais, Trans, Transgénero, Bisexuales e Intersexuales y No Discriminación por Razón de Orientación Sexual e Identidad de Género*), 11 November 2020.

<sup>12</sup> Spain, National Ombudsman (*Defensor del Pueblo*), [Residential care homes, health care and Covid-19 emergency information](#) (*Residencias de mayores, atención sanitaria e información emergencia Covid-19*). Official webpage.



information and transparency on the information provided by the care homes. The National Ombudsman asked for an in-depth review of the care model and the lack of human and material resources in many of those care homes. Later in the year, the National Ombudsman made further statements related to protecting the rights of the elderly, stating that the COVID-19 health crisis put the spotlight on a long-standing problem at care homes<sup>13</sup>.

In **May 2020**, the **National Ombudsman** (*Defensor del Pueblo*), as a part of its [Annual Report 2019](#) (*Informe Anual 2019*)<sup>14</sup> published in 2020, published this supplement entitled [Annex on care for the elderly: Residential care homes](#) (*Separata sobre la atención a personas mayores. Centros residenciales*). It includes several conclusions and a summary of the most significant aspects of what the National Ombudsman did over the past three decades in the area of care for the elderly living in residential and nursing homes. It highlights that the regulation's inclusion was still pending in a number of legal acts on the requirements to be met by residential care centres. To resolve this situation, the autonomous communities were required to make an important effort to update and standardise their policies. It also referred to the inexistence of an effective mechanism commonly shared among all public administrations to collect data to enable reliable statistics to be regularly updated on the residential care resources available.

**On 25 June 2020**, the **National Ombudsman** presented [its 2018 and 2019 annual reports to the Spanish Parliament](#)<sup>15</sup>. In relation to the elderly, he again referred to the residential care home system for adults in Spain that – according to the National Ombudsman – suffered from a number of dysfunctions that need to be corrected. Likewise, in April 2020, the National Ombudsman reopened an ex officio process with all Regional Ministries of Health (*Consejerías de Salud*) and all Regional Ministries for Social Policy (*Consejerías de Política Social*) in every autonomous community. All autonomous communities were recommended to strengthen the healthcare system at care homes for COVID-19 patients, as well as providing personal protective equipment for their staff and residents. However, in June 2020 the National Ombudsman had still not received enough information on this issue.

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<sup>13</sup> Spain, National Ombudsman (*Defensor del Pueblo*), [Fernández Marugán, sobre las residencias para mayores: La pandemia ha puesto la lupa en un problema que venía de atrás](#), Press release, 9 July 2020.

<sup>14</sup> Spain, National Ombudsman (*Defensor el Pueblo*) (2020) [Annual Report 2019](#) (*Informe Anual 2019*), Madrid.

<sup>15</sup> Spain, Congress of Deputies (2020), [National Ombudsman's appearance in the Congress of Deputies to present the 2018 and 2019 annual reports](#) (*comparecencia del defensor del pueblo (e.f.) en el congreso de los diputados para presentar los informes anuales de 2018 y 2019*), XIV Legislature no. 33 p. 1 Honourable Presidency, 25 June 2020, Ombudsman's reports on management carried out during 2018 and 2019.

**In September 2020**, the [2019 Public Prosecutor's Office Annual Report](#) was published (*Memoria de la Fiscalía General del Estado 2019*)<sup>16</sup>. The State Public Prosecutor's Office proposed to enact a legal reform of the judicial control mechanisms for having the elderly or disabled persons admitted to residential care homes, health, and social care centres when they are unable to make their own decisions. The report specified the need to address these admissions in a specific regulation, separately from admission in psychiatric health facilities, establishing a procedure that ensures due periodic control of each person's situation, as it is considered to affect their fundamental right to freedom, as set out in Article 17 of the Spanish Constitution<sup>17</sup>. It highlighted that the health crisis caused by the **COVID-19 disease revealed the extreme vulnerability of elderly and disabled persons and their special protection needs, particularly affecting people entering care homes or social health care centres.**

**In July 2020**, there were several autonomous communities where there were cases and investigations opened because of their management of care homes<sup>18</sup>. This issue led to much contention<sup>19</sup> because of the triage protocols established to define which COVID-19 patients could enter Intensive Care Units at hospitals. The issue was particularly contentious in the Madrid Autonomous Community, where the opposition political parties requested an investigation into the guidelines set by the Health Council of the Madrid regional government, which were sent to hospitals. The guidelines established that people with disabilities and dependent adults should be excluded even from hospitalization. According to the [Disability Services Office](#) (*Oficina de Atención a la Discapacidad, OADIS*, in its Spanish acronym), the complaints were studied, but the official reports were pending issuance by every public administration involved in each case.

**On 25 April 2020, the first proposals<sup>20</sup> and on 7 May 2020 the second proposals** were published by the [State Board for Rights of the Elderly](#) (*Mesa Estatal por los Derechos de las Personas Mayores*). The latter is entitled [Second Document of Proposals due to the Coronavirus Pandemic in Defence](#)

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<sup>16</sup> Spain, Ministry of Justice (*Ministerio de Justicia*) (2020), [Public Prosecutor's Office Annual Report 2019](#) (*Memoria de la Fiscalía General del Estado 2019*), Chapter III.12, pp 1045-1066, Madrid, Ministry of Justice.

<sup>17</sup> Spain, Parliament (*Cortes Generales*), [Spanish Constitution](#) (*Constitución Española*), 29 December 1978.

<sup>18</sup> 65ymas.com, "[Estas son las CCAA con más expedientes abiertos por la gestión de las residencias de mayores](#)", Press release, 10 July 2020.

<sup>19</sup> 65ymas.com, "[Un juez sentencia que Madrid no denegó auxilio a una residencia al no derivarse mayores a hospitales](#)", Press release, 20 June 2020; *Publico*, "[Madrid registra el 58% de las quejas en España por discriminar a personas con discapacidad durante el estado de alarma](#)", Press release, 20 June 2020.

<sup>20</sup> [State Board for Rights of the Elderly](#)<sup>20</sup> (*Mesa Estatal por los Derechos de las Personas Mayores*), 2020, [Proposals due to the Coronavirus Pandemic in Defence of the Rights of the Elderly](#) (*Documento de Propuestas ante la Pandemia del Coronavirus en Defensa de los Derechos de las Personas Mayores*), Madrid, State Board for Rights of the Elderly.

[of the Rights of the Elderly](#) (*Segundo Documento de Propuestas ante la Pandemia del Coronavirus en Defensa de los Derechos de las Personas Mayores*)<sup>21</sup>. It stated that during the COVID-19 health crisis, it witnessed situations of clear discriminatory treatment, especially against people with disabilities and the elderly. These situations involved receiving different treatment in some health care protocols, such as the limited priority given to protecting and providing medical care to the elderly, when they had the highest health risks. The State Board for Rights of the Elderly asked for actions such as awareness campaigns on senior rights, and the organisation of training sessions for officials and other social players.

**On 9 June 2020**, the [Organic Law for Comprehensive Protection of Children and Adolescents against Violence](#), known as the Rhodes Law (**Ley Rhodes**), was approved by the Council of Ministers<sup>22</sup>. The aim is that the law will draft and include protocols against violence. In relation to **hate crimes**, it will enact a new regulation, incorporating age as a cause of discrimination, both among children and adolescents, **and against the elderly within these crime types**. This new regulation, which will be submitted to the Congress of Deputies (*Congreso de los Diputados*) to begin its parliamentary process, includes a reform of the Criminal Code to establish a new regulation on hate crimes that includes **ageism**, or discrimination based on age, as an aggravating factor in this type of crime.

**In July 2020**, eight NGOs specialising in combating all forms of racism created the Alliance for an Equal Treatment Act (*Alianza por una Ley de Igualdad de Trato*)<sup>23</sup>. The **aim** was to promote a new law on equal treatment, requiring the authorities to comply with the commitment they expressed in the United Nations Human Rights Council. **In July 2020**, [Spain underwent its third Universal Periodic Review](#) and several states included the need for a comprehensive law on equal treatment among their recommendations to Spain. On this occasion, the **Spanish Government expressed its commitment, confirming its willingness to approve the Comprehensive Law for Equal Treatment and Non-Discrimination soon**, which according to the Spanish Government would involve the

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<sup>21</sup> State Board for Rights of the Elderly (*Mesa Estatal por los Derechos de las Personas Mayores*), 2020, [Second Document on Proposals due to the Coronavirus Pandemic in Defence of the Rights of the Elderly](#) (*Segundo Documento de Propuestas ante la Pandemia del Coronavirus en Defensa de los Derechos de las Personas Mayores*), Madrid, State Board for Rights of the Elderly.

<sup>22</sup> Spain, Ministry of Justice (*Ministerio de Justicia*), [Preliminary Draft Organic Law for Comprehensive Protection of Children and Adolescents against Violence](#) (*Anteproyecto de Ley Orgánica de Protección Integral a la Infancia y la Adolescencia frente a la Violencia*), Press release, 28 December 2018.

<sup>23</sup> Spanish Commission for Refugees (*Comisión Española de Ayuda al Refugiado*), [“ONG se alían para exigir a España una Ley de Igualdad de Trato”](#), Press release, 16 July 2020.

creation of a national agency, as an Equality Authority, specifically responsible for promoting and ensuring its effective implementation<sup>24</sup>.

**In June 2020**, the [National Ombudsman](#) (*Defensor del Pueblo*), published its [Annual Report 2019: National Prevention Mechanism](#) (*Informe Anual 2019. Mecanismo Nacional de Prevención*)<sup>25</sup>, which contained a reference to [a particular ruling](#)<sup>26</sup> issued by the Secretariat for Criminal Measures, Reintegration and Victim Care (*Secretaria de Mesures Penals, Reinserció i Atenció a la Víctima*, SMPRAV, in its Catalan acronym) to guarantee the rights and non-discrimination of transgender and intersex people in Catalan prisons. It makes reference to a person whose name and gender on official documentation do not match. In such cases, the person must be consulted on how they want to be treated, for all purposes, either according to their preferred gender identity or in accordance with the birth gender on the document. Every person's self-definition and the identify of their gender are the only criteria of proof required. Transexual people must be cared for, for all purposes, according to their gender identity. They must be consulted, during the first social interactions that take place between the prison staff and the person who arrives at the centre, about how they want to be treated. The person's wishes and decision on gender identity must be a core area driving relationships with trans people.

**On 22 November 2020**, the Spanish Society of Geriatrics and Gerontology (*Sociedad Española de Geriatria y Gerontología*, SEGG, in its Spanish acronym) called on national and international organizations, research groups and the business sector of the pharmaceutical industry **to minimize this age discrimination in the design of future studies**. SEGG emphasized that in these studies, as in most clinical trials of other new medicines, the older adult population is underrepresented<sup>27</sup>.

## **2. Findings and methodology of research, studies and surveys on experiences of discrimination against older people and against LGBTI people**

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<sup>24</sup> Spain, Ministry of Foreign Affairs, European Union and Cooperation (*Ministerio de Asuntos Exteriores, Unión Europea y Cooperación*), [Examen Periódico Universal de España](#), Press release, 22 January 2020.

<sup>25</sup> Spain, National Ombudsman's Office (*Oficina del Defensor el Pueblo*), 2020, [Annual Report 2019](#) (*Informe Anual 2019*), Madrid.

<sup>26</sup> Spain, Secretariat for Criminal Measures, Reintegration and Victim Care (*Secretaria de Mesures Penals, Reinserció i Atenció a la Víctima*), [Instruction 1/2019, to guarantee the rights and non-discrimination of transgender and intersex people in Catalan prisons](#) (*Instrucció 1/2019, para garantizar los derechos y la no discriminación de las personas transgénero e intersexuales en los centros penitenciarios de Cataluña*), 2020.

<sup>27</sup> [Sociedad Española de Geriatria y Gerontología](#) La [SEGG](#) hace un llamamiento para que se minimice la discriminación por edad en los ensayos clínicos, press reléase, 21 Decembre 2020

[In May 2020, the article <sup>28</sup> entitled Discrimination, work stress, and psychological well-being in LGBTI workers in Spain](#) was published. The study highlighted that the most relevant findings confirmed that discrimination based on sexual orientation led to an increase in work stress among LGBTI employees, resulting in a higher incidence of mental disorders and depression. In terms of methodology, the study was conducted with 377 participants, although 11 did not answer the question about sexual orientation and were removed from the study. Of the remaining participants, 137 defined themselves as heterosexual, 134 as gay, 61 as lesbian, and 34 as bisexual. Individuals self-defined as gay, lesbian, or bisexual were grouped into the same category, with 229 LGBTI individuals in the scale answered by the largest number of participants. Regarding education level, 62.1% had university degrees, 30.9% had completed secondary studies, and 7.1% had completed primary school. In terms of marital status, 46% were single, 28.4% married, and 6.8% separated or divorced. 95.7% of participants were working at the time (70% full-time) and 4.3% were not employed. Regarding gender identity, 50.5% defined themselves as men, 37.2% as women, 1.7% as trans men, 2.9% as trans women, and 7.7% as non-binary. It analysed patterns of missing data for each scale. In total, 2.7% of participants did not answer the question on work stress, 4.1% did not complete the CESD-7, and 6.3% did not complete the SRQ-20. Analyses were conducted with a sample of 356 participants to evaluate the levels of work stress, 351 participants to analyse SRQ-20 and 343 participants for CESD-7.

**In June 2020**, the State Federation of LBTB (*Federación Estatal LGTB*) published its [Report 2020: Situation of Lesbian, Bisexual and Trans Women in the Private Sector](#) (*Informe 2020 Situación de las Mujeres Lesbianas, Bisexuales y Trans en el Sector Privado*). It referred to how LGTB women face sexism, lesbophobia, transphobia and biphobia in the private sector in terms of invisibility, harassment and glass ceilings and sticky floors that prevent their career advancement. Likewise, it concluded that more and more companies are beginning to address LGTBI diversity as an effective tool. The workplace was defined as an important part of the socio-political sphere in which LGTBI people live. The report stressed that the defence and promotion of human rights called for the establishment of concrete mechanisms for addressing harassment, discrimination, violence and even impunity for behaviours and actions that seek to exclude, limit, restrict or offend these people.

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<sup>28</sup> Miguel Moya<sup>1</sup>, Alba Moya-Garófano (2020), [Discrimination, work stress, and psychological well-being in LGBTI workers in Spain](#) (*La discriminación, el estrés laboral y el bienestar psicológico en personas trabajadoras LGTBI en España*), *Psychosocial Intervention*, Vol. 29, Issue 2, Madrid, May 2020, E-pub 11-May-2020 available at <http://dx.doi.org/10.5093/pi2020a5>.

The **University of Seville** published an article entitled [Opinions of young university students about groups facing discrimination](#)<sup>29</sup>. The study purpose is to explore the opinions and attitudes young university students doing undergraduate degrees in Education and master's degrees in Psychology have about groups traditionally **discriminated against due to sexual orientation, gender, race and disability**. A questionnaire was conducted with four areas of relevant content on these groups in situations of social exclusion. Among the results obtained, it highlighted that higher education students believe that society generally understands people with different sexual orientations, although verbal aggressions towards them still exist; they recognized that it is at work where there is the greatest gender discrimination due to a traditional and prototypical mentality; that society treats people with disabilities inappropriately, causing the greatest discrimination due to labelling, social rejection and lack of capacity, and that society relies little on other races to establish friendships, identifying a feeling of hostility towards them. It concluded that the idea raised was that higher education should develop 'discursive practices'. It proposed discussion group dynamics to create transformative attitudes based on equality, diversity principles and the responsibility of university teachers towards university students and the training provided.

[In July 2020, a research project was published entitled Analysis of the prevalence of homophobia in young people impact on quality of life](#)<sup>30</sup>. Its aim was to show that, although laws have been passed in recent decades in favour of sexual diversity, homophobia and discrimination towards the LGBTI group is still common in society as a whole. However, supposedly the literature has not yet been analysed in detail. The purpose of the research was to check whether the well-being of young people is related to their sexual orientation. It also wanted to find out if the participants had suffered any type of discrimination and physical or verbal violence because of their sexual orientation. In terms of methodology, 602 people (221 men and 381 women), with an average age of 21.78 (SD=6.52), completed a survey on sexual experience and practices. 90% considered themselves heterosexual and the other 10% were homosexual. The results of the study showed that homosexuals had lower satisfaction with their lives, their bodies and, finally, with their sex lives; homosexuals had low sexual desire compared with heterosexuals. Likewise, it was concluded that homosexuals suffer more discrimination and more violence; and homophobia remains a scourge of society. In spite of the progress made, the LGBTI group continues to be harshly discriminated against, both socially and personally, affecting their quality of life and their happiness.

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<sup>29</sup> [Hernández de la Torre, E. Fernández Rodríguez, A.](#) (2020), [Opinions of young university collectives to discrimination situation](#), University of Seville, [Prisma Social: revista de investigación social](#), No. 30, 2020, pp 276-294.

<sup>30</sup> Elipe-Miravet, M. Nebot-García, J. Antelo-García, A.García-Barba, M. Ballester-Arnal, R., 2020, [Analysis of the prevalence of homophobia in young people: impact on quality of life](#), pp 67-75, *Ágora de Salut VII*.

**In November 2020, the State Federation of Lesbians, Gays, Transsexuals and Bisexuals (*Federación Estatal de Lesbianas, Gais, Transexuales y Bisexuales, FELGTB*, in its Spanish acronym) presented its [EMIDIS 2019](#) report.** This research aimed to uncover current trends in LGTBI diversity management in the private sector. It is an analysis of the LGTBI inclusion and diversity strategies of 15 pioneering companies in Spain (Admiral Seguros, Axa, Baker McKenzie, Airbus, IBM, ONCE Foundation, Johnson&Johnson, Repsol, Telefónica, BBVA, Viewnext, PayPal, eBay, Netflix, and Amazon). It concluded that 73% of these companies have a DSG (sexual, family and gender diversity) training plan. However, more than a 60% of the companies do not have yet the training mandatory for team leaders. The report reveals that 73% of participating companies have equality plans that specifically include sexual orientation and gender diversity. Also 87% have protocols to prevent harassment and ~~that~~ 93% have a responsible person to implement them.

The **University of Barcelona** and its Department of Cognition, Development and Educational Psychology (*Departamento de Cognición, Desarrollo y Psicología de la Educación*) published an article entitled [Media representation of the elderly during the COVID-19 pandemic: Did it reinforce ageism?](#)<sup>31</sup> It intended to show **how the COVID-19 pandemic affects various age groups differently. It highlighted that** the highest number of deaths are concentrated among the older population and those with previous health conditions. This led to a greater presence of older people in the media limelight. The article aimed to analyse these discourses and representations related to older people as presented in the headlines of publications disseminated in two national newspapers (*ABC* and *El País*) during the most critical periods of the pandemic in Spain. In terms of methodology, an analysis was made of 501 headlines related to older people and the COVID-19 pandemic (380 from *ABC*, and 121 from *El País*) from the perspective of Critical Discourse Studies (Van Dijk, 2003), as well as carrying out a content analysis. The results concluded that 71.4% of these headlines represented the elderly unfavourably in 71.4% of cases, presenting them as a homogeneous group and associating them with deaths, deficiencies in residential care, or extreme vulnerability. The presence of certain potentially derogatory or improper terms (elderly, grandparents) was consistent with this negative representation. In light of these results, the extent to which the COVID-19 pandemic may reinforce an ageist narrative of the elderly was discussed, based on frailty, decline, and dependency, which may justify discriminatory practices directed at this population sector.

**In July 2020**, a guide on sexual, gender and family diversity for education was published under the title [“We are diversity”](#) (*Somos diversidad*)<sup>32</sup>. It is a ‘toolbox’ where people can search for resources and teaching activities to develop training on sexuality, family, body and expression and gender

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<sup>31</sup> Bravo-Segal, S. Villar, F. (2020), [Media representation of the elderly during the COVID-19 pandemic: Did it reinforce ageism?](#), Departamento de Cognición, Desarrollo y Psicología de la Educación, Universitat de Barcelona.

<sup>32</sup> Spain, Ministry of Social Rights and 2030 Agenda (*Ministerio de Derechos Sociales y Agenda 2030*) and Ministry of Equality (*Ministerio de Igualdad*), 2020, [“We are diversity”](#) (*Somos diversidad*), Madrid,

identity diversity, aimed at professionals in educational communities. It was the result of the activity 'Youth and LGTBI+: embracing diversity in informal and formal education' (*Juventud y LGTBI+: abrazar la diversidad en la educación no formal y formal*) within the Transnational Activities Plan of the Erasmus+ programme: Youth in Action, organised by Injuve and the research group 'Anthropology, Diversity and Harmonious Coexistence' (*Antropología, Diversidad y Convivencia*) at the Complutense University of Madrid.

**In June 2020, the Democratic Union of Pensioners and Retirees of Spain** (*Unión Democrática de Pensionistas y Jubilados de España*) published the report [UDP Elderly Report – UDP Barometer](#) (*Informe Mayores Udp – Barómetro Udp*)<sup>33</sup>. The report concluded that more than half of the elderly in Spain feel that the elderly suffered or was suffering discrimination on grounds of age during the health crisis (55.2%). This means that one in ten persons felt personally discriminated against as an older person (10.9%). 69.4% of older people said that the treatment of the elderly by health services was correct and 64.3% felt the same about general citizens. It also concluded that a clear majority of them claimed that the treatment received by politicians was not correct (63.9%). Among the elderly who consider that there was age discrimination during the crisis, more than six out of ten identified cases of discrimination when accessing specialised health services (61.6%). This view was even more widespread among those who are 65 to 74 years old, who did not live alone and who have university level studies.

**In 2020, the Bartolomé de las Casas Institute of Human Rights**, for the international organisation, HelpAge, published a study entitled '[Age-Based Discrimination in Spain](#)' (*La discriminación por razón de edad en España*)<sup>34</sup>. The study concluded that society as a whole has a negative view about older people and ageing, which is called ageism. One of the researchers was Mr Martinez, who emphasised that the elderly suffer discrimination in health, employment, access to justice, education, public participation and, even, violence and abuse. Another researcher, Ms Carmen Barranco, stated that 'If human rights are universal, older people should not be uncommon holders. (...) We tend to link having rights to autonomy, to people who are self-sufficient and independent' (*Si los derechos humanos son universales, las personas mayores no deberían ser peculiares titulares. (...) Tendemos a vincular titularidad de derechos a la autonomía, a que las personas sean autosuficientes e independientes*). Ms. Barranco said that discrimination against the elderly does not cause alarm bells among society due to prejudices. In addition, she pointed out that ageing is conceived as a cost-related problem, which later guides public policies, which are not guided by guaranteeing the rights of the elderly.

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<sup>33</sup> Democratic Union of Pensioners and Retirees of Spain (*Unión Democrática de Pensionistas y Jubilados de España*). [UDP Elderly Report – UDP Barometer](#) (*Informe Mayores Udp – Barómetro Udp*), Year VIII, No. 1, Ref.: 20065-20133 (I).

<sup>34</sup> Bartolomé de las Casas Institute of Human Rights (*Instituto de Derechos Humanos Bartolomé de las Casas*) (2020), [Age-Based Discrimination in Spain](#) (*La discriminación por razón de edad en España*), Madrid, HelpAge International & IMSERSO.



**In October 2020**, the Ethics Committee of the **Spanish National Research Council** (*Consejo Superior de Investigaciones Científicas*) published its [Statement on the COVID-19 pandemic](#)<sup>35</sup>. It referred to cases in which patients' lives depended on whether or not they had access to health resources, and mainly access to a hospital bed that would most benefit their health for receiving treatment. In addition, although it recognised the complexity of making decisions in a context of extreme scarcity such as the COVID-19 health crisis, there was suspicion of discriminatory practices. It mentioned an action principle of 'exclusive selection' (*seleccionar excluyendo*), which did not involve individualised assessments of each patient's health condition, but was instead general categorisation by which all residents of geriatric centres were considered unrecoverable. This assumption proved to be morally unacceptable and provoked outrage among a large percentage of the population. In the same line, the Spanish Collegial Medical Organization published in March 2020, a [Report of the Central Commission on Ethics on the prioritization of decisions on critically ill people in a health catastrophe](#).<sup>36</sup>

**In December 2020**, Amnesty International published a report titled [Abandoned to Their Fate the Unprotection and Discrimination of the Elderly in Care Centres during the Covid-19 Pandemic in Spain](#).<sup>37</sup> It concluded that there was a significant lack of systematic data collection for social services staff who worked at the care residences unlike the data collection of the health care workers affected by the disease in hospitals. As a result, the impact of COVID-19 on staff working in residences cannot be estimated. It declares that during March and April, the most critical times of the pandemic there were cases at residences where more than 50% of staff were working. Social services staff who worked at the care residences were in need of health care but not given the opportunity for adequate treatment for possible COVID-19 or other pathologies they suffered.

**On 2 December 2020**, the Ministry of the Social Rights and Agenda 2030 presented a **Final Report of the COVID-19 Working Group and Care Centres** under the title "[Covid-19 and care centres](#)"<sup>38</sup> (*Covid-19 y residencias*). It analysed the impact of the pandemic on care centres during the first wave of the pandemic. This report results from the work carried out

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<sup>35</sup> Spain, Ministry of Science and Innovation (*Ministerio de Ciencia e Innovación*), CSIC Ethics Committee's Statement on the COVID-19 pandemic (*Declaración del Comité de Ética del CSIC en relación a la pandemia COVID-19*), 21 October 2020.

<sup>36</sup> Spanish Collegial Medical Organization (*Organización médica Colegial de España*) (2020), [Report of the Central Commission on Ethics on the prioritization of decisions on critically ill people in a health catastrophe](#) (*Informe de la Comisión Central de Deontología en relación a la priorización de las decisiones sobre los enfermos en estado crítico en una catástrofe sanitaria*), Madrid, 23 March 2020.

<sup>37</sup> Amnesty International (2020), [Abandoned To Their Fate The Unprotection And Discrimination Of The Elderly In Residences During The Covid-19 Pandemic In Spain](#) (*Abandonadas A Su Suerte La Desprotección Y Discriminación De Las Personas Mayores En Residencias Durante La Pandemia Covid-19 En España*), Madrid, Amnistía Internacional España.

<sup>38</sup> Spain, Ministry of the Social Rights and Agenda 2030 (*Ministerio de Derechos Sociales y Agenda 2030*) (2020), "[Covid-19 and care centres](#)"<sup>38</sup> (*Covid-19 y residencias*), Madrid, [C:\Users\devli\Downloads\Covid-19 and care centres \(Covid-19 y residencias\)](#)

by the working group set up within the Delegated Committee of the Territorial Council (*Comisión Delegada del Consejo Territorial*). It counted on the participation of social agents such as trade union and employers' centres in the field of care centres and territorial representatives of municipalities and provinces represented all of them within the Advisory Committee. It also had contributions made by social actors and scientific societies. Age discrimination has negative effects on the health and self-perception of the elderly. In the event of contagion, health authorities shall ensure access to hospital care for people residing in these centres on an equal footing with the rest of the public without generic protocols for discrimination of age or disability. Access to hospitals or health facilities should be decided according to the individual situation of each patient and not by application of general criteria.

## **Chapter 2. Racism, xenophobia and related intolerance**

### **1- Legal and policy developments on the application of the Racial Equality Directive**

**On 10 March 2020**, the **Ministry of Territorial Policy and Civil Service** (*Ministerio de Política Territorial y Función Pública*) issued Royal Decree 455/2020 of 10 March, which implements the basic organic structure of the Ministry of Equality<sup>39</sup>. This elevated the Ministry of Equality to a ministerial level once again. Previously, between 2011 and 2018, the areas under its competence, such as discrimination against LGBTI and older people, were placed under the Secretary of State for Equality, and part of other ministries such as the Ministry of Health and Social Policy and the Ministry of the Presidency and Parliamentary Relations. At present, under this new Ministry and its new structure, there will be a particular Directorate-General for Equal Treatment and Racial-Ethnic Diversity (*Dirección General para la igualdad de trato y diversidad étnico racial*), which will be under the competence of the Secretariat of State for Equality and Against Gender Violence (*Secretaría de Estado de Igualdad y contra la Violencia de Género*).

**On 1 April 2020**, the [Announcement made on agreements signed between the Secretariat of State for Equality and Against Gender Violence](#)<sup>40</sup>, with the

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<sup>39</sup> Spain, Ministry of Territorial Policy and Civil Service (*Ministerio de Política Territorial y Función Pública*), [Royal Decree 455/2020 of 10 March implementing the basic organic structure of the Ministry of Equality](#) (*Real Decreto 455/2020, de 10 de marzo, por el que se desarrolla la estructura orgánica básica del Ministerio de Igualdad*), 10 March 2020.

<sup>40</sup> Spain, Ministry of Equality (*Ministerio de Igualdad*), [Announcement of agreements signed by the Secretariat of State for Equality and Against Gender Violence](#) (*Anuncio de formalización de contratos de: Secretaría de Estado de Igualdad y Contra la Violencia de Género*), 1 April 2020.

[NGO Gypsy Secretariat Foundation](#). The **objective** was to formalise the management, coordination and competences assigned to the Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination (*Servicio para la asistencia y orientación a víctimas de discriminación por origen racial o étnico*). It incorporated new functions to be developed as **strategic litigation**. In **October 2020**, Mr Antumi Toasijé was designated as the new President of the Council for the Elimination of Racial or Ethnic Discrimination. This appointment followed the recommendation made by the Working Group of Experts on Afro-Descendants, in its final report following its visit to Spain, which asked steps to be taken to increase the representation of Afro-descendants at all levels of the public administration<sup>41</sup>.

**On 15 April 2020**, the Council for the Elimination of Racial or Ethnic Discrimination (*Consejo para la Eliminación de la Discriminación o Étnica*) wanted to highlight its concern about cases of discrimination and hatred that occurred against ethnic or racial groups during the COVID-19 health crisis. Therefore, it publicised a series of recommendations to avoid discriminatory attitudes and discourses in the context of the health, social and economic crisis '[Avoiding discriminatory attitudes and discourses in the current context of the health, social and economic crisis](#)' (*Evitar actitudes y discursos discriminatorios en el actual contexto de crisis sanitaria, social y económica*)<sup>42</sup>. The recommendations were: To avoid discriminatory discourse and the stigmatisation of groups, especially from the media and public representatives; to stop the spreading of fake news and hate speech, where informing yourself only through reliable sources and comparing information before sharing it were stressed as important; to ensure equal treatment by public administrations of all persons regardless of racial or ethnic origin and administrative status; to pay special attention to the most vulnerable groups and to intersectional discrimination on the grounds of gender, age, disability, sexual orientation or gender identity, among others; to create networks of anti-racism solidarity by weaving networks of mutual support and promoting equality as a state policy, urging all players involved to defend equality and continue to promote real commitment to the fight against racism and xenophobia; to report any discrimination to the Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination.

In **May 2020**, the **National Ombudsman** (*Defensor del Pueblo*) published its [Annual Report 2019](#) (*Informe Anual 2019*)<sup>43</sup>. Under the heading of Equal Treatment, it referred to issues that emerged due to police identification

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<sup>41</sup> Spain, President of the Government's Office (*Presidencia del Gobierno*), "[Antumi Toasijé nombrado nuevo presidente del Consejo para la Eliminación de la Discriminación Racial o Étnica](#)", Press release, 13 October 2020.

<sup>42</sup> Spain, Council for the Elimination of Racial or Ethnic Discrimination (*Consejo para la Eliminación de la Discriminación Racial o Étnica*), Recommendation for [Avoiding discriminatory attitudes and discourses in the current context of the health, social and economic crisis](#) (*Recomendación Evitar actitudes y discursos discriminatorios en el actual contexto de crisis sanitaria, social y económica*), 13 April 2020.

<sup>43</sup> Spain, National Ombudsman (*Defensor el Pueblo*), 2020, Annual Report 2019 (*Informe Anual 2019*), Madrid.

controls and the discrepancies in identification controls based on ethnic and racial profiles. Therefore, actions related to the need to eradicate police identifications based on ethnic and racial profiling were referred to as in process. The report highlighted that the Roma community, people with disabilities, women and people belonging to the LGTBI group were the focus of most of the National Ombudsman's actions. It also mentioned the actions that were re-initiated related to the need to ensure the right of irregular foreigners to report crimes under safe reporting conditions. Monitoring of media treatment of people with disabilities also continued. In addition, certain proceedings were opened following complaints received for assaults suffered by unaccompanied foreign children residing at the Hortaleza First Accommodation Centre (Madrid), and messages against them on social media, including criminalising statements by political representatives. It contained a reference about documentary deficiencies, which referred to their limited access to basic rights such as health care and education, and/or their administrative legal status, which frequently cannot be regularised.

**In July 2020**, eight NGOs specialising in combating all forms of racism created the 'Alliance for an Equal Treatment Act' (*Alianza por una Ley de Igualdad de Trato*)<sup>44</sup>. The **aim** was to promote a new equal treatment act, requiring the authorities to comply with the commitment made in the United Nations Human Rights Council. **In July 2020**, Spain underwent its third Universal Periodic Review and several states included the need for a comprehensive Equal Treatment Act among the 275 recommendations made to Spain by 110 states<sup>45</sup>. On this occasion, the **Spanish Government expressed its commitment and willingness to approve the Comprehensive Law for Equal Treatment and Non-Discrimination soon**, which according to the Spanish Government would imply the creation of a national agency, with the character of an Equality Authority, specifically responsible for promoting and ensuring its effective implementation<sup>46</sup>.

**After September 2020**, the **General Council of Spanish Lawyers** (*Consejo General de la Abogacía*) organised a [HELP course to fight racism, xenophobia, homophobia and transphobia](#)<sup>47</sup>. It was a free course addressed to legal professionals with the aim of explaining European anti-discrimination

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<sup>44</sup> Spanish Commission for Refugees (*Comisión Española de Ayuda al Refugiado*), *ONG se alían para exigir a España una Ley de Igualdad de Trato*, Press release, 16 July 2020.

<sup>45</sup> United Nations (2020), National report submitted in accordance with paragraph 5 of the Annex to Human Rights Council Resolution 16/21\* Spain, A/HRC/WG.6/35/ESP/1, 20–31 January 2020.

<sup>46</sup> Spain, Ministry of Foreign Affairs, European Union and Cooperation (*Ministerio de Asuntos Exteriores, Unión Europea y Cooperación*), Universal Periodic Review of Spain, Press release, 22 January 2020.

<sup>47</sup> General Counsel of Spanish Lawyers (*Consejo General de la Abogacía*), [Curso HELP sobre lucha contra el racismo, la xenofobia, la homofobia y la transfobia](#), Press release, 15 September 2020. The event was still in process at the time this report was finished.

legislation (CoE and EU) and the broad jurisprudence produced by the ECtHR and the CJEC. The course was divided into four modules, covering topics such as discrimination in selection processes or in the workplace, discrimination in the health system, hate crimes, hate speech or harassment in areas of racism or homophobia, lack of respect for the personal and family life of the LGBT community and legal recognition of gender. There were 30 participants.

**In Spain**, the Minister of the Inclusion, Social Security, and Migration (*Ministerio de Inclusión, Seguridad Social y Migraciones*) published a study titled "Survey on Intolerance and Discrimination against Muslims in Spain"<sup>48</sup>. The Observatory on Racism and Xenophobia (*Observatorio Español del Racismo y la Xenofobia*, OBERAXE, in its Spanish acronym) conducted it from the Secretary of State for Migration in collaboration with the European Commission, national institutions and civil society organisations. Its results determined that both people and associations that work with Muslims perceive expressions of Islamophobia. It concluded that nine out of ten Muslims are discriminated when buying or renting a home (87%) and when accessing the labour market (83%). It warns about the prejudices that may have increased due to certain politicians speeches (74.5%), to jihadist attacks (73.7%) and the media narrative (70.8%). Lastly, it concluded that the prejudices towards Muslims place them among the most rejected and discriminated groups in Spain, alongside the Roma people. The survey was conducted between 24 April and 15 May 2019. The questionnaire was sent by email to 582 recipients distributed among national, regional and local administrations, non-governmental organizations, immigrant organizations, mosques and other centres of worship and Muslim and non-Muslim people. The questionnaire included 20 questions, subdivided into a number of sub-questions. 163 valid replies were received, which represented a 30% out of the total emails sent. The distribution of respondents according to autonomous community were: Madrid Autonomous Community (35,6%), Andalusia (17,8%), Catalonia (11,7%), Castille and León (6,7%), Murcia Region (6,1%), Valencia Community (6,7%), La Rioja (5,5 %), Cantabria (2,5 %), Vasque Country (1,2 %), Castille la Mancha (1,2 %), Melilla (1,2 %), Others (2 %), No .Response (1,8 %).

**In October, a publication** was presented titled [Covid-19 health crisis: Racism and xenophobia during the state of alarm in Spain](#) (*Crisis sanitaria Covid-19: Racismo y xenofobia durante el estado de alarma en España*).<sup>49</sup> It referred to the racist incidents and hate speech towards people of Asian origin that occurred in Spain since the beginning of the COVID-19 epidemic. It also referred to cases of police stops due to racial profiling and harassment that mostly affected people of colour, Afro-descendants, Arab-Muslims, Gypsies, Latin Americans, as well as particularly vulnerable migrants. It

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<sup>48</sup> Spain, the Minister of the Inclusion, Social Security and Migration (*Ministerio de Inclusión, Seguridad Social y Migraciones*) (2020), "[Survey on Intolerance and Discrimination against Muslims in Spain](#)" (*Encuesta sobre intolerancia y discriminación hacia personas musulmanas en España*), Madrid, Observatorio Español del Racismo y la Xenofobia (OBERAXE).

<sup>49</sup> Rights International Spain (2020), [Covid-19 health crisis: Racism and xenophobia during the state of alarm in Spain](#) (*Crisis sanitaria Covid-19: Racismo y xenofobia durante el estado de alarma en España*), Madrid, Rights International Spain.

concluded that there was a lack of gender and racial focus with the proper measures to address the COVID-19 health crisis in Spain. It does highlight an absence of a plural and crosscutting view to address the serious impact of the COVID-19 pandemic among ethnicity and race. This absence of data, during and after the COVID-19 crisis, lacks the ability to define strategies to reduce the situation of exclusion of Arab-Muslim, Roma, Afro-descendant, Latin American and Asian groups.

## **2- Legal and policy developments related to the application of the Framework Decision on Racism and Xenophobia relevant to combating hate speech and hate crimes**

**In March 2020**, the [National Ombudsman](#) (*Defensor del Pueblo*) analysed the conclusions of the Report by the United Nations Special Rapporteur on minority issues following his visit to Spain in 2019, on his participation at the 43<sup>rd</sup> session of the UN Human Rights Council held in Geneva. The [National Ombudsman](#) (*Defensor del Pueblo*) declared that racism, xenophobia and hate speech constitute 'one of the main attacks on their human rights in Spain' (*uno de los principales atentados contra sus derechos humanos en España*) and acknowledged that this problem mainly affects minorities such as the **Roma community, people of African descent, migrants and the Muslim religious minority**<sup>50</sup>.

The **NGO Observatory of Islamophobia in the Media** (*Observatorio de la Islamofobia en los Medios*) published an [article on Islamophobia, hate crimes and their reporting mechanisms](#). It reported there is a growth in hate speech, especially on social media and the internet, via devices and apps, where hate crimes are increasingly proliferating. The mechanisms served to report the cases to the security forces and to different organisations that become aware of the problem and put in place different reporting systems. It concluded that although Islamophobic incidents were frequent in Spain, the reporting mechanisms available for the Muslim population to denounce such attacks remained scarce<sup>51</sup>.

On **15 April 2020**, the **Council for the Elimination of Racial or Ethnic Discrimination** (*Consejo para la Eliminación de la Discriminación Racial o Étnica*) published a set of recommendations for '[Avoiding discriminatory attitudes and discourses in the current context of the health, social and economic crisis](#)' (*Evitar actitudes y discursos discriminatorios en el actual contexto de crisis sanitaria, social y económica*)<sup>52</sup>. It sought to highlight its

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<sup>50</sup> Spain, [National Ombudsman](#) (*Defensor del Pueblo*), [El Defensor asegura que el derecho de las minorías al uso de la lengua propia está plenamente garantizado por la constitución](#), Press release, 12 March 2020.

<sup>51</sup> Amate, L., 2020, [Islamophobia and hate crimes: reporting mechanisms](#) (*Islamofobia y delitos de odio: mecanismos de denuncia*), Madrid, Observatorio de la Islamofobia en los Medios.

<sup>52</sup> Spain, Council for the Elimination of Racial or Ethnic Discrimination (*Consejo para la Eliminación de la Discriminación Racial o Étnica*), Recommendation for [Avoiding discriminatory attitudes and discourses in the current context of the health, social and economic crisis](#) (*Recomendación Evitar actitudes y discursos discriminatorios en el actual contexto de crisis sanitaria, social y económica*), 13 April 2020.

concern about cases of discrimination and hatred that have occurred against ethnic or racial groups during the COVID-19 crisis, especially against the Roma people and the Asian community. The Council and its Support and Guidance Service for Victims of Racial or Ethnic Discrimination increased their activity to combat the racist and xenophobic treatment identified in certain cases related to news concerning the COVID-19 pandemic. **The recommendations were:** To avoid discriminatory discourse and the stigmatisation of groups, especially in the media and by public representatives; to stop the spreading of fake news and hate speech, where informing yourself only through reliable sources and comparing information before sharing it were stressed as important; to ensure equal treatment by public administrations of all persons regardless of racial or ethnic origin and administrative status; to pay special attention to the most vulnerable groups and to intersectional discrimination on the grounds of gender, age, disability, sexual orientation or gender identity, among others; to create networks of anti-racism solidarity by weaving networks of mutual support and promoting equality as a state policy, urging all players involved to defend equality and continue to promote real commitment to the fight against racism and xenophobia; to report any discrimination to the Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination.

**On 6 June 2020**, the **National Ombudsman** shared the report and **[response received by the National Ombudsman's Office from the Public Prosecutor's Office for Children](#)**<sup>53</sup> with several NGOs. The Public Prosecutor's Office for Children committed to strengthening **its actions to prevent hate crimes against unaccompanied migrant children** by opening several investigations, reinforcing cooperation between the competent public administrations, protecting the victims, and defining actions to pursue **hate speech on social media. The response sent by the Public Prosecutor's Office for Children was issued after**, in November 2019<sup>54</sup>, denouncing the facts to the Public Prosecutor's Office. They filed a joint complaint with the National Ombudsman. These organisations called for an investigation into several videos created and disseminated during Vox's (political party) latest election campaign on its official pages and networks.<sup>55</sup> The Public Prosecutor's Office highlighted the difficulty in prosecuting these offences, due to the websites containing the hate speech now being closed. In response, the Public Prosecutor stated that he understands that the risk situation persists and that cooperation between all competent administrations was required to ensure the safety of these children, committing to promote the implementation of several measures.

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<sup>53</sup> SOS RACISMO official website, [National Ombudsman Communication](#), 6 June 2020.

<sup>54</sup> [Andalucía Acoge](#), [Asociación Pro derechos Humanos de Andalucía \(APDHA\)](#), [CEAR](#), [Asociación Elín](#), [Iridia](#), [Red Acoge](#) and [Alianza por la Solidaridad](#), SOS Racismo.

<sup>55</sup> SOS RACISMO, [Fiscalía Reforzará Sus Acciones Para Prevenir Los Delitos De Odio Contra Los Menores Migrantes No Acompañados Tras La Queja Que Efectuamos Varias Organizaciones Al Defensor Del Pueblo](#), Press release, 3 June 2020.

Simultaneously, the **National Ombudsman's committed** to launching an investigation with the Secretariat of State for Gender Equality and Against Gender Violence to find out which public policies have been implemented in terms of awareness-raising and hate-prevention plans towards this group, and what protective measures were developed for these children.

**In June 2020**, the European Union conducted its **5<sup>th</sup> evaluation of the Code of Conduct on countering illegal hate speech online**. And **Spain reported a number of cases from different organisations and public institutes: the Gypsy Secretariat Foundation** (*Fundación Secretariado Gitano*) reported 108 cases; the State Federation of Lesbians, Gays, Transsexuals and Bisexuals (*Federación Estatal de Lesbianas, Gais, Transexuales y Bisexuales*, FELGTB, in its Spanish acronym) reported 99 cases; the Spanish Observatory on Racism and Xenophobia (*Observatorio Español del Racismo y la Xenofobia*, OBERAXE, in its Spanish acronym) reported 102 cases; and the Spanish Ministry of the Interior reported 45 cases<sup>56</sup>.

**In June 2020**, the Council for the Elimination of Racial or Ethnic Discrimination (*Consejo para la Eliminación de la Discriminación o Étnica*) published its annual [Report on the Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination: Cases handled related to the Covid-19 crisis and the state of emergency](#) (*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*)<sup>57</sup>. It highlighted several cases of hate crimes against the Roma population and referred to this crisis as a setback in victims of discrimination being able to exercise their rights. There is a fear that the enormous dependence that many families have on social aid means that they do not want to be denounced for fear of reprisals or that support allowances to be withdrawn. As noted above, certain rumours stigmatise the Roma community by linking it to transmission of the virus, which generates hate speech and discrimination. There were 21 media cases registered mentioning the Roma ethnicity related to the spreading of the virus or alleged breaches of confinement.

**On 9 June 2020**, the [Organic Law for the Comprehensive Protection of Children and Adolescents against Violence](#) was approved by Council of Ministers<sup>58</sup>. It responded to the urgent need to introduce into the legal

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<sup>56</sup> European Commission, 2020, [Countering illegal hate speech online. Fifth evaluation of the Code of Conduct on Countering Illegal Hate Speech Online](#), Brussels, Directorate-General for Justice and Consumers.

<sup>57</sup> Spain, Council for the Elimination of Racial or Ethnic Discrimination (*Consejo para la Eliminación de la Discriminación o Étnica*) (2020), [Report on the Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination: Cases handled related to the Covid-19 crisis and state of emergency](#) (*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.

<sup>58</sup> Spain, Ministry of Justice (*Ministerio de Justicia*), [Draft Organic Law for Comprehensive Protection of Children and Adolescents against Violence](#) (*Proyecto de Ley Orgánica de Protección Integral a la Infancia y la Adolescencia frente a la Violencia*), 19 June 2020. Spain, President of the Government's Office (*Presidencia del Gobierno*), [Protección integral a la infancia y la adolescencia frente a la violencia](#), Press release, 9 June 2020.



system the commitments made by Spain for the comprehensive protection of children and adolescents against violence. The aim is for the law to include the design of protocols against violence. In relation to **hate crimes, it resolves several previous gaps in legislation by listing the six articles of the Criminal Code mentioning 'age' and 'reasons for agoraphobia or social exclusion'**, which represent the inclusion of personal conditions or circumstances not listed previously in Article 22.4 of the Criminal Code. In addition, the reform emphasises that the commission of these hate crimes does not require the victim's effective membership in a particular social group. The **key issues for the new aggravating circumstance to be applied under Article 22.4 bis of the Criminal Code** will be that perpetrators act because of their prejudice towards the alleged status of their victim, but not that the victim necessarily belongs to that particular social group.

On **25 June 2020**, a guide was published, entitled [Islam, Muslim People and Journalism: Media Guidelines](#), which addresses the media, providing guidelines for journalists on how to be more precise and inclusive in addressing issues concerning Muslims. It was produced by the Al Fanar Foundation for Arab Knowledge (*Fundación Al Fanar para el Conocimiento Árabe*) in collaboration with the European Institute of the Mediterranean (IEMed), the Collectif contre l'Islamophobie en Belgique (CCIB), the Media Diversity Institute (MDI), the NOOR Foundation, the European Federation of Journalists (EFJ), and the Spanish Observatory on Racism and Xenophobia (*Observatorio Español del Racismo y la Xenofobia*, OBERAXE, in its Spanish acronym). It was co-financed by IEMed as a partner in the STOP-ISLAMOPHOBIA project, which was funded by the European Union's Rights, Equality and Citizenship Programme 2014-2020. The Observatory of Islamophobia in the Media was also a partner organization. Its work, drawn up in Spanish and English, offers a number of general considerations and recommendations for writing about Islam, as well as guidance for handling sensitive issues such as terrorism, gender and migration, based on awareness of conceptual frameworks laden with negative stereotypes to which Islam and Muslims are reduced, usually unconsciously.

**On 25 July 2020, the protocol for police action for hate crimes was updated** by [Instruction 4/2020, by the Secretary of State for Security \(Ministry of the Interior\)](#), updating the [Action Protocol for the security forces for hate crimes and behaviours breaching legal rules on discrimination](#)<sup>59</sup>. Another development was the need to emphasise the importance of the Security Forces (*Fuerzas y Cuerpos de Seguridad*), sending copies of the proceedings carried out by an alleged hate crime to the Provincial Public Prosecutor's Office for Hate Crimes and Against Discrimination (*Fiscal Delegado Provincial para delitos de odio y contra la discriminación*), even if there is no known perpetrator, in order to further improve the knowledge

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<sup>59</sup> Spain, Ministry of the Interior (*Ministerio del Interior*), [Instruction 4/2020, by the Secretary of State for Security](#), updating the '[Action Protocol for the security forces for hate crimes and behaviours breaching legal rules on discrimination](#)' (*Instrucción 4/2020, de la Secretaría de Estado de Seguridad, por la que se actualiza el "Protocolo de actuación para las Fuerzas y Cuerpos de Seguridad para los delitos de odio y conductas que vulneran las normas legales sobre discriminación*), July 2020.

and registration of the facts noted. It included additional circumstances and/or conditions, in addition to the aggravators contained in Article 22.4 of the Spanish Criminal Code, others not reflected in the rule, such as aporophobia (fear of the poor), generational/age discrimination and antigypsyism.

**In 2020**, ARTICLE 19 published an article related to hate speech in Spain entitled [Spain: Speech related offences of the Criminal Code](#)<sup>60</sup>. ARTICLE 19 recommended that Article 510 of the Criminal Code, which prohibits hate speech and several types of incitement offences, should be reviewed. The advocacy of discriminatory hatred represented by an incitement to hostility, discrimination or violence should be prohibited in line with Articles 19.3 and 20.2 of the ICCPR, establishing a high threshold for limitations on free expression (as set out in the Rabat Plan of Action). ARTICLE 19 stated that the two provisions of the Criminal Code to protect from insulting religion and religious feelings – Article 524 and Article 525.1 – did not comply with international freedom of expression standards. ARTICLE 19 finds that a number of the provisions related to hate speech, defamation and insults extensively restrict speech and should be subject to excessive penalties.

In terms of **data collection**, the **Ministry of the Interior** (*Ministerio del Interior*) published a [Report on the evolution of hate crimes in Spain 2019](#) (*Informe sobre la evolución de los incidentes relacionados con los delitos de odio en España 2019*)<sup>61</sup>. The National Report concluded that there were 1,706 hate crimes and incidents recorded in 2019. It registered 515 cases (30.19%) based on racism and xenophobia, 66 cases (3.86%) based on religious beliefs or religious practices, and 596 cases (35%) based on ideology. In contrast, other grounds registered were: anti-Semitism 5 cases (0.29%), 26 cases (1.52%) based on people with disabilities, and 278 cases (16.29%) based on sexual orientation and gender identity. In terms of methodology, it was the first time it included a differentiation between criminal offences and administrative offences. Also for the first time, the heading 'Hate crimes committed via the internet or social media' included all hate crimes committed through the internet, social networks or social media, and not only hate speech, as was the case previously.

**In 2020**, the **Basque Government** (*Gobierno Vasco*) published a [Report on Hate Cases in Euskadi 2019](#) (*Informe de Incidentes de Odio de Euskadi 2019*)<sup>62</sup>. It concluded that during 2019 there were 115 **hate crimes in the Basque Country**. They were distributed among: 105 crimes (91.3%) 10 administrative offences (8.7%). By offence: racist or xenophobic offences account for the majority of recorded crimes: 55 cases (52.4%), with a figure slightly lower than that of the previous year; hate speech: 20 cases

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<sup>60</sup> ARTICLE 19 (2020), [Spain: Speech related offences of the Criminal Code](#), London, ARTICLE 19.

<sup>61</sup> Spain, Ministry of the Interior (*Ministerio del Interior*) (2020), [Report on the evolution of hate crimes](#) (*Informe sobre la evolución de los incidentes relacionados con los delitos de odio en España 2019*), Madrid, Ministry of the Interior.

<sup>62</sup> Spain, Basque Government (*Gobierno Vasco*), [Report on Hate Crimes in Euskadi 2019](#) (2020) (*Informe de Incidentes de Odio de Euskadi 2019*), Bilbao, Catedra UNESCO de Derechos Humanos y Poderes Públicos, Universidad del País Vasco/Euskal Herriko Unibertsitatea (UPV/EHU).

(19.05%); crimes against ideology and political orientation: 18 cases (17.1%); against sexual orientation and identity: 13 cases (12.4%). Further, there were offences based on functional diversity: 6 cases; religious beliefs and practices: 7 cases; aporophobia: 3 cases and sex: 3 cases; made up 18.1% of the recorded crimes. The 2019 report was the first to include the gender criterion independently.

**In October 2020**, a bill was introduced [on the prevention of spreading hate speech in the digital space](#) (*Proposición no de Ley sobre la prevención de la propagación de discursos de odio en el espacio digital*)<sup>63</sup>. It was introduced by one of the political parties that is now a member of the Spanish government known as Unidas Podemos. It contains proposals for legal changes to stop fake news and unfounded rumours on the internet. Its purpose is to ensure that users of technology companies and users of social media have the precise information on how to report content that incites hatred. It also proposes to simplify the mechanisms for reporting messages, to minimize the time to process the content, and to give operators of ICT companies 24 hours to remove the messages from the digital space. In reality, there are no particular offences contained in the Criminal Code that may be applied in the case of the dissemination of fake news and unfounded rumours.

**On 18 December 2020**, the **National Office for combating Hate Crimes of the Ministry of the Interior** launched a survey in order to conduct a study on hate crimes in Spain. The questionnaire is available from today until the end of March 2021 on the web site: <https://encuestadelitosdeodio.ses.mir.es>. This survey is included in the Action Plan of the National Office to Combat Hate Crimes and its publication is a commitment from the Ministry of the Interior to regularly update the situation of such crimes and behaviours in Spain. The participation is voluntary and anonymous. In addition, participants are provided with direct contact to the National Police and Civil Guard if they wish to expand any information regarding the specific case because it could not be incorporated into the different items of the survey<sup>64</sup>.

## Chapter 3. Roma equality and inclusion

### 1. Measures and developments addressing Roma/Travellers

**In June 2020**, the Council for the Elimination of Racial or Ethnic Discrimination (*Consejo para la Eliminación de la Discriminación Racial o Étnica*) published its annual [Report on the Assistance and Guidance Service](#)

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<sup>63</sup> Spain, National Parliament (*Congreso Nacional*), [Advisory resolution on the prevention of spreading hate speech in the digital space. \(161/001536\)](#) (*Proposición no de Ley sobre la prevención de la propagación de discursos de odio en el espacio digital* (161/001536)).

<sup>64</sup> Spain, Ministry of the Interior (*Ministerio del Interior*) [Interior pone en marcha una encuesta para actualizar el mapa de los delitos de odio en España](#), press release, 18 December 2020.

[for Victims of Racial or Ethnic Discrimination: Cases handled related to the Covid-19 crisis and the state of emergency](#) (*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*)<sup>65</sup>. This report identified 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<sup>66</sup>. They are: 1) Bad practices by some police forces: their powers were increased by the decree of the State of Emergency, without the establishment of control mechanisms, thus increasing the circumstances under which discriminatory bias may occur; 2) Under-reporting, due to fear of reprisals in a context of dependence on social support, as well as urgent need, which means that the priority is not the exercise of rights, or the possible irregular administrative status of some victims; 3) 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 media against migrants and Roma (which in turn generate hate speech); 4) Serious barriers in access to basic services (water, electricity, etc.), which were fundamental in a health emergency situation. There was evidence of discriminatory bias based on racial or ethnic origin.

With regard to the increased vulnerability of the Roma population because of the state of emergency due to the COVID-19 crisis, the Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*, FSG, in its Spanish acronym) carried out a relevant telephone survey. 11,000 Roma people throughout the country participated and because of the survey, their lack of food and basic needs, the scarcity of resources, and the educational gap were identified, among the serious impacts of the coronavirus crisis on the Roma population<sup>67</sup>.

The **National Ombudsman**, on the 43<sup>rd</sup> session of the UN Human Rights Council, discussed the conclusions of the Report published by the United Nations Special Rapporteur on minority issues in Spain that followed the UN Rapporteur's visit to Spain in 2019. The National Ombudsman ensured that the right of minorities to use their own language is fully guaranteed by the

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<sup>65</sup> Spain, Council for the Elimination of Racial or Ethnic Discrimination (*Consejo para la Eliminación de la Discriminación o Étnica*), 2020, [Report on the Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination. Cases addressed related to the Covid-19 crisis and the state of emergency](#) (*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.

<sup>66</sup> For more information on the impact of COVID-19 on Roma equality and inclusion in Spain, please see pp 12-13 of the [Franet country study](#) released on 29 July 2020.

<sup>67</sup> For more information on the impact of COVID-19 on Roma equality and inclusion in Spain, please see pp 14-15 of the [Franet country study](#) released on 28 May 2020.

Spanish Constitution<sup>68</sup>. In relation to the Roma community in Spain, the **National Ombudsman** highlighted the work done to improve the life of the Roma community, especially in terms of social integration and guaranteeing the schooling and the image of the Roma people in Spanish society. With regard to **the schooling of Roma children**, the National Ombudsman noted that the main problem is the lack of official data to have knowledge on the real situation of Roma students. Ethnicity data are limited by existing privacy protection legislation. The National Ombudsman declared that personal data protection should not prevent the collection of disaggregated data, as it is already done for gender issues, in order to become aware of the level of discrimination that the Roma community may face in Spain.

**On 8 April 2020**, the Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*, FSG, in its Spanish acronym) published a statement entitled '[Gypsy People's Day – 8 April 2020 - Health and Freedom](#)' (*Día del Pueblo Gitano - 8 de abril 2020 - Salud y Libertad*). The Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*, FSG, in its Spanish acronym) wanted to focus on the inequality and poverty risk that continues to mark the lives of many Roma children and their right to education under equal conditions. It called for attention to be given to the aggravated situation provoked by the Covid-19 confinement and the urgent need for measures that can bridge the gap that this situation caused. The Foundation highlighted that the lack of technical resources and technological knowledge represents added difficulties for Roma children to be able to follow online education<sup>69</sup>. To respond to and focus on this reality, the Gypsy Secretariat Foundation edited a one-minute adapted piece of [The Gypsy Desk](#) (*El Pupitre Gitano*) campaign. This is an ongoing signature collection action calling on the public authorities to reform the current Education Law to promote truly inclusive education, a shock plan against school failure and measures to prevent and reverse school segregation, specifically addressing Roma children.

In **April 2020**, the **Council for the Elimination of Racial or Ethnic Discrimination** (*Consejo para la Eliminación de la Discriminación Racial o Étnica*) published recommendations for [Avoiding discriminatory attitudes and discourses in the current context of the health, social and economic crisis](#) (*Evitar actitudes y discursos discriminatorios en el actual contexto de*

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<sup>68</sup> Spain, [National Ombudsman](#) (*Defensor del Pueblo*), [El Defensor asegura que el derecho de las minorías al uso de la lengua propia está plenamente garantizado por la constitución](#), Press release, 12 March 2020.

<sup>69</sup>Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*), [Día del Pueblo Gitano - 8 de abril 2020 - SALUD Y LIBERTAD](#), Press release, 8 April 2020.

*crisis sanitaria, social y económica*)<sup>70</sup>, **especially against the Roma people and the Asian community**. The Council and its Support and Guidance Service for Victims of Racial or Ethnic Discrimination increased their activity to combat the racist and xenophobic treatment identified in certain cases in relation to news concerning the COVID-19 pandemic. They believe the news promotes the **stigma and rejection of** certain groups because of the COVID-19 crisis. Some racist and xenophobic incidents and insults were documented on public roads and on social media. **Certain media reported** the rise of discriminatory attitudes, rejection and hatred suffered by the Roma population, who were accused of being guilty for the increased number of Covid-19 cases<sup>71</sup>. The **Gypsy Secretariat Foundation** placed particular emphasis on the role of the media, as they collected references to the Roma ethnicity from seven national newspapers and in more than 20 local media, as well as on major television stations, and national and local radio stations.

**On 21 April 2020**, the [Report of the Special Rapporteur on extreme poverty and human rights on his visit to Spain](#) (*Informe Final del Relator de Extrema Pobreza de Naciones Unidas en España*)<sup>72</sup>. The report gathered the **conclusions of Rapporteur Mr Alston after his visit to Spain from 27 January to 7 February 2020**. It stated that some groups were particularly affected by poverty in Spain. Roma communities suffer from shocking rates of poverty and inequality, as well as severe de facto segregation in the education system. More than 80 per cent of the Roma population face poverty or social exclusion and 46 per cent are extremely poor, with a monthly income below 310 euros. The child poverty rate stands at 89 per cent and the unemployment rate at 52 per cent. Roma women suffer a clear disadvantage in all areas, with an employment rate of 16 per cent. According to this report, a high percentage of Roma children attend segregated schools, with only 17 per cent of the population over 16 years of age completing secondary education or higher<sup>73</sup>.

Due to the serious effects of the Covid-19 health crisis on the Roma community, the **Gypsy Secretariat Foundation** (*Fundación del Secretariado Gitano*, FSG, in its Spanish acronym) implemented a number

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<sup>70</sup> Spain, Council for the Elimination of Racial or Ethnic Discrimination (*Consejo para la Eliminación de la Discriminación Racial o Étnica*), Recommendation for [Avoiding discriminatory attitudes and discourses in the current context of the health, social and economic crisis](#) (*Recomendación Evitar actitudes y discursos discriminatorios en el actual contexto de crisis sanitaria, social y económica*), 13 April 2020.

<sup>71</sup> The Objective, [Cómo el coronavirus puede agravar la discriminación hacia los gitanos](#), Press release, 8 April 2020.

<sup>72</sup> United Nations (2020), [Report of the Special Rapporteur on extreme poverty and human rights on his visit to Spain](#), A/HRC/44/40/Add.2

<sup>73</sup> OHCHR, [Statement by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights on his visit to Spain, 27 January – 7 February 2020](#), Press release, Madrid, 7 February 2020.

of initiatives, such as the donation of tablets to Roma students. They also launched a [Social Emergency Fund](#)<sup>74</sup> so that they could provide an urgent response to the situation of extreme vulnerability in which thousands of Roma families were left because of the COVID-19 crisis and confinement. According to the Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*, FSG, in its Spanish acronym), to 9 July 2020, they were able to meet the urgent needs of more than 4,961 families, equal to 20,745 persons, through the Social Emergency Fund<sup>75</sup>.

The Gypsy Secretariat Foundation (*Fundación Secretariado Gitano*) claims that the reactivation and value of street selling is accounted for in the reconstruction process. The Gypsy Secretariat Foundation launched, in May 2020, **the #YoSoyDelMercadillo initiative** to raise awareness of the importance of street market commerce (*mercadillos*) as a livelihood for many families, including for the Gypsies<sup>76</sup>. Its intent was to encourage buying at street markets, supporting all sellers, and making their importance visible in crazy trading. The campaign launched a [video](#) of celebrities and individuals supporting street trade to encourage people to buy at street markets.

**In September 2020**, an innovation project named **Employing Digital** (*Empleando Digital*) **received the Digital Skills Award Spain 2020**, awarded by the Association of Companies in the Digital Technology Industry Sector (*Asociación de Empresas del Sector de la Industria Tecnológica Digital*) in Spain<sup>77</sup>. It was undertaken by the Gypsy Secretariat Foundation, along with the Red Cross Foundation, with the support of the Accenture Foundation. Its purpose is to promote job placement for the most vulnerable

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<sup>74</sup> Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*), Fundación Bancaria "la Caixa", Caixa Bank, Fundación Mapfre, Fundación Endesa, United Way Foundation, Alimerka, Mercadona, Unidas Podemos, Grupo CLN, Fundación Pertusa, HOAC Murcia, Carrefour, Consum, Centro Formativo Planform, SL, Gadisa, Alcampo, Forplan Gestión SL, Musgrave España, Más y Más, El Corte Inglés Albacete, ACL Servicios Informáticos y de Formación, Vegalsa Asturias, Trinexo Comunicación e Informática, Ayuntamiento Navalmodal de la Mata, Copriser, Instituto Cefa Albacete, 2006 Rodríguez Losada SL, Sistemas Instalación y Servicios de Galicia y Panadería Pastelería Miguez.

<sup>75</sup> The Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*), [La Fundación Secretariado Gitano pone en marcha el Fondo de Emergencia Social #JuntoALasFamiliasGitanas para dar respuesta a la situación de vulnerabilidad en que han quedado miles de familias](#), Press release, 29 April 2020; The Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*), [El Fondo de Emergencia Social de la FSG #JuntoALasFamiliasGitanas ofreció ayudas urgentes a 4.961 familias](#), Press release, 26 October 2020.

<sup>76</sup> Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*), #YoSoyDelMercadillo, una iniciativa que apoya la venta ambulante ante la crisis del Covid-19, Press release, 6 October 2020.

<sup>77</sup> Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*), [El programa de innovación Empleando Digital recibe el Premio "Digital Skills Awards Spain 2020" que concede la Asociación de Empresas del Sector de la Industria Tecnológica Digital en España](#), Press release, 17 September 2020.

people. The initiative allowed the digital divide to be lessened among vulnerable people, bringing technology and digital skills closer to the most disadvantaged groups and promoting access to equal opportunities. It was implemented during two years in 12 autonomous communities with the direct participation of more than 300 employment professionals, with almost 10,000 beneficiaries, improving their skills and knowledge.

**In Spain**, the Minister of the Inclusion, Social Security, and Migration (*Ministerio de Inclusión, Seguridad Social y Migraciones*) published a study titled "[Survey on Intolerance and Discrimination against Muslims in Spain](#)"<sup>78</sup>. The Observatory on Racism and Xenophobia (*Observatorio Español del Racismo y la Xenofobia*, OBERAXE, in its Spanish acronym) conducted it from the Secretary of State for Migration in collaboration with the European Commission, national institutions and civil society organisations. Its results determined that both people and associations that work with Muslims perceive expressions of Islamophobia. It concluded that the prejudices towards Muslims place them among the most rejected and discriminated groups in Spain, alongside the Roma people. The survey was conducted between 24 April and 15 May 2019. The questionnaire was sent by email to 582 recipients distributed among national, regional and local administrations, non-governmental organizations, immigrant organizations, mosques and other centres of worship and Muslim and non-Muslim people. 163 valid replies were received, which represented a 30% out of the total emails sent. The distribution of respondents according to autonomous community were:

**In October, a publication** was presented titled [Covid-19 health crisis: Racism and xenophobia during the state of alarm in Spain](#) (*Crisis sanitaria Covid-19: Racismo y xenofobia durante el estado de alarma en España*).<sup>79</sup> It referred to the racist incidents and hate speech towards people of Asian origin that occurred in Spain since the beginning of the COVID-19 epidemic. It also referred to cases of police stops due to racial profiling and harassment that mostly affected people of colour, Afro-descendants, Arab-Muslims, Gypsies, Latin Americans, as well as particularly vulnerable migrants. It concluded that there was a lack of gender and racial focus with the proper measures to address the COVID-19 health crisis in Spain. It does highlight an absence of a plural and crosscutting view to address the serious impact of the COVID-19 pandemic among ethnicity and race. This absence of data, during and after the COVID-19 crisis, lacks the ability to define strategies to reduce the situation of exclusion of Arab-Muslim, Roma, Afro-descendant, Latin American and Asian groups.

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<sup>78</sup> Spain, the Minister of the Inclusion, Social Security and Migration (*Ministerio de Inclusión, Seguridad Social y Migraciones*) (2020), "[Survey on Intolerance and Discrimination against Muslims in Spain](#)" (*Encuesta sobre intolerancia y discriminación hacia personas musulmanas en España*), Madrid, Observatorio Español del Racismo y la Xenofobia (OBERAXE).

<sup>79</sup> Rights International Spain (2020), [Covid-19 health crisis: Racism and xenophobia during the state of alarm in Spain](#) (*Crisis sanitaria Covid-19: Racismo y xenofobia durante el estado de alarma en España*), Madrid, Rights International Spain.



**On 2 December 2020**, the **Gypsy Secretariat Foundation** (*Fundación del Secretariado Gitano*, FSG, in its Spanish acronym) launched an awareness raising campaign #PanParaMañana [www.panparamañana.org](http://www.panparamañana.org) to demand job opportunities for young Roma and Gypsies. The campaign called for decent work for Roma youth and the need to invest in effective and inclusive active employment policies to complement the current social protection system. Such protections systems should include effective ways to combat structural poverty, the removal of barriers, and the creation of opportunities to end the current inequality gap. The unemployment rate in the Roma population is 52%, which is three times higher than the population as a whole. This is partly because 63% of young Roma between the ages of 16 and 29 neither study nor work.

**On 11 December 2020**, the **Gypsy Secretariat Foundation** (*Fundación del Secretariado Gitano*, FSG, in its Spanish acronym) presented its annual report "Discrimination and Gypsy Community 2020" (*Discriminación y Comunidad Gitana 2020*)<sup>80</sup> with a focus on discrimination in employment. In 2019, the FSG collected and dealt with 425 cases of discrimination. This is an increase in the number of cases collected in comparison to the previous year. This is due, on the one hand, to a change in the case collection methodology as because they started to count the hate speech detected on social networks. On the other hand, it is also due to an increase in cases in certain areas, such as the access to goods and services. The FSG expresses its deep concern for the impact of the COVID-19 crisis on racism and anti-gitanism with new forms of discrimination that are arising. The report includes 425 registered and assisted cases of discrimination and anti-gitanism. As for the profile of the victims, it is found that discrimination affects mostly young Roma people between the ages of 16 and 30. Women are also affected with 222 women out of the 321 victims identified.

## **2. Policy and legal measures and developments directly or indirectly addressing Roma/Traveller inclusion**

**On 14 February 2020**, the **Ministry of Education and Vocational Training** (*Ministerio de Educación y Formación Profesional*) presented a protocol for the inclusion of Gypsy history and culture in the school curriculum, [Orientation Protocol for the inclusion of Romani history and](#)

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<sup>80</sup> Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*) (2020), "Discrimination and Gypsy Community 2020"[1607696188\\_informe-anual-fsg-2020.pdf \(plataformaong.org\)](#)" (*Discriminación y Comunidad Gitana 2020*), Madrid, Gypsy Secretariat Foundation.

[culture in the school curriculum and teaching practice](#) (*Protocolo orientativo para la inclusión de la historia y la cultura gitana en el currículo escolar y la práctica docente*). It is part of the actions promoted within the Education Working Group of the State Council of Gypsy People (*Grupo de Trabajo de Educación del Consejo Estatal del Pueblo*). The protocol aims to guide both teachers and educational administrations on how to address Roma history and culture in the school curriculum and in teaching practice. It includes information such as a brief historical overview of the Roma people, information on antiquity and recommendations on the use of fundamental concepts or recommendations related to publishing educational materials. It intends to be an introductory framework for new publications of specific teaching materials<sup>81</sup>.

**In March 2020**, during the process of the [Fifth evaluation of the Code of Conduct on countering illegal hate speech online](#), the Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*, FSG, in its Spanish acronym) reported specific data on anti-gypsy hate contents, which were 9.9% of all contents (435 messages). This translates into the fact that antigypsyism is the third leading cause of hate speech, only behind sexual orientation (33%) and xenophobia<sup>82</sup>. This reporting was possible after the inclusion of a separate antigypsyism category in 2019.

**In March 2020**, the [National Ombudsman](#) (*Defensor del Pueblo*) analysed the conclusions of the Report by the United Nations Special Rapporteur on minority issues following his visit to Spain in 2019, on his participation at the 43<sup>rd</sup> session of the UN Human Rights Council held in Geneva. The [National Ombudsman](#) (*Defensor del Pueblo*) declared that racism, xenophobia and hate speech constitute 'one of the main attacks on their human rights in Spain' (*uno de los principales atentados contra sus derechos humanos en España*) and acknowledged that this problem mainly affects minorities such as the **Roma community, people of African descent, migrants and the Muslim religious minority**<sup>83</sup>.

**In May 2020**, the **National Ombudsman** (*Defensor del Pueblo*) published its [Annual Report 2019](#) (*Informe Anual 2019*)<sup>84</sup>. Under the heading of Equal

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<sup>81</sup> Spain, Ministry of Education and Vocational Training (*Ministerio de Educación y Formación profesional*), [El MEFP presenta un protocolo para la inclusión de la historia y la cultura gitana en el currículo escolar](#), Press release, 14 February 2020.

<sup>82</sup> European Commission (2020), [Fifth evaluation on the Code of Conduct on Countering Illegal Hate Speech Online](#), Brussels.

<sup>83</sup> Spain, [National Ombudsman](#) (*Defensor del Pueblo*), [El Defensor asegura que el derecho de las minorías al uso de la lengua propia está plenamente garantizado por la constitución](#), Press release, 12 March 2020.

<sup>84</sup> Spain, National Ombudsman (*Defensor el Pueblo*), 2020, Annual Report 2019 (*Informe Anual 2019*), Madrid.

Treatment, it referred to issues that emerged due to police identification controls and the discrepancies in identification controls based on ethnic and racial profiles. Therefore, actions related to the need to eradicate police identifications based on ethnic and racial profiling were referred to as in process. The report highlighted that the Roma community together with people with disabilities, women and people belonging to the LGBTBI group were the focus of most of the National Ombudsman's actions.

**On 1 June 2020**, the **Gypsy Secretariat Foundation** (*Fundación del Secretariado Gitano*, FSG, in its Spanish acronym) appeared **at the Congress of Deputies** (*Congreso de los Diputados*)<sup>85</sup>. The Foundation presented **ten proposals**: to lower the age for receiving the [minimum living wage](#) (*ingreso mínimo vital*, IMV, in its Spanish acronym) from 23 to 20 year old; to accompany the IMV with real opportunities to guarantee the subjective right to activate people; a shock plan to combat school failure; to plan to prevent and reverse school segregation of Roma students; to promote inclusive measures to avoid the digital divide; to reactivate adapted measures for training and access to employment; to protect street selling as a profitable and sustainable economic activity; to plan for the eradication of shanty towns; to plan for the intervention and rehabilitation of neighbourhoods with high vulnerability; and, finally, the urgent approval of the Comprehensive Law on Equal Treatment and Non-Discrimination.

**In 2020**, for the first time the [Ministry of the Interior's Annual Hate Crimes Report](#) included the separate category of antigypsyism, registering 14 cases in 2019<sup>86</sup>.

**In July 2020**, the organization **Rights International Spain** published a report entitled [Project ROMA: the fight against unconscious bias towards ethnic Roma people in the criminal justice system](#) (*Proyecto ROMA: la lucha contra el sesgo inconsciente hacia las personas de etnia gitana en el sistema de justicia penal*)<sup>87</sup>. This research was carried out within the European project, Fight against unconscious bias towards Roma women in the criminal justice system, with the financial support of the European Union's Justice

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<sup>85</sup> The Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*), [La Fundación Secretariado Gitano comparece ante la Comisión de Reconstrucción en el Congreso para presentar sus propuestas](#), Press release, 2 June 2020.

<sup>86</sup> Spain, Ministry of the Interior (*Ministerio del Interior*) (2020) [Annual Hate Crimes Report](#), Madrid, Ministry of the Interior.

<sup>87</sup> Rights International Spain (2020), [Project ROMA: the fight against unconscious bias towards ethnic Roma people in the criminal justice system](#) (*Proyecto ROMA: la lucha contra el sesgo inconsciente hacia las personas de etnia gitana en el sistema de justicia penal*), Madrid, Rights International Spain.

Programme. The methodology was based on a number of semi-structured interviews conducted with Roma and professional people who work in the criminal justice system. The objective of the report was to fight against the unconscious bias existing within the criminal justice system.

**On 15 October 2020**, the Council of Europe published an [opinion on the Spanish level of compliance with its commitments to the Spanish Roma population](#) under the Framework Convention for the Protection of National Minorities<sup>88</sup>. It concluded that the discrimination against the Roma community persists at local and regional levels in certain areas, such as education, housing rental and employment. It also points out the serious problem of school segregation of Roma students in some schools in our country. The Council of Europe Advisory Committee urges the authorities to amend Article 22.4 of the Criminal Code, which currently includes antigypsyism as one of the aggravating circumstances. It also pointed out the problem of ethnic profiling as something that continues to affect Roma people particularly.

**On 26 November 2020**, the **Criminal Chamber of the Spanish Supreme Court** published a dismissal order (*Providencia desestimatoria*) for the appeal entered after the judgment of the Madrid Provincial Court (*Audiencia Provincial*) on 8 July 2019. The appellant was convicted of a continuing crime of slander and insults to the Gypsy Secretariat Foundation and its President. That is to say, the appellant's conviction for the continued crime of slander and insults (*calumnias e injurias*) to the **Gypsy Secretariat Foundation** (*Fundación del Secretariado Gitano*, FSG, in its Spanish acronym) as well as the payment of the appeal's costs.<sup>89</sup>

**On 21 December 2020**, the **Gypsy Secretariat Foundation** (*Fundación del Secretariado Gitano*, FSG, in its Spanish acronym) published a note entitled [Spain as a Slum Free Country](#)<sup>90</sup>. It relates to the problem of shantytowns or slums that persist in Spain and how it disproportionately affects the Roma population. It concluded, "While it is true that the dimension of slum housing of Roma has been declining in the last years in Spain, this severe residential exclusion persists and seems to have stagnated." And that "Two specific housing features [...] characterise the situation of the Roma: the prevalence of slums and the discrimination when

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<sup>88</sup> Council of Europe, Fifth opinion on Spain, Secretariat of the Framework Convention for the Protection of National Minorities Council of Europe F-67075 Strasbourg Cedex ACFC/OP/V(2020)002Final.

<sup>89</sup> Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*) [El Tribunal Supremo ratifica la sentencia en la que se condenaba a Lagarder Danciu por un delito continuado de calumnias e injurias a la FSG y a su Presidente](#), press release, 30 December 2020.

<sup>90</sup> Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*) (2020), *Spain as a Slum Free Country: It Is Possible*, Madrid, Gypsy Secretariat Foundation.

accessing housing, both matters relate to the lack of a human rights guarantee.”

### **At a regional level**

**On 4 June 2020, and in response** to this situation of high vulnerability and social inequality that was exacerbated as a result of the economic, educational, social and labour impacts caused by the COVID-19 health crisis, the Department of Women, Equality, LGBTI, Families and Social Policy (*Consejería de Mujer, Igualdad, LGTBI, Familias y Política Social, Instituto Murciano de Acción Social*) in the Murcia Region made a commitment to promote public, general and specific actions, and comprehensive implementation for the Roma population. In terms of **aids, benefits and subsidies**, a new decree was enacted, [Decree No 37/2020 of June 4 regulating the direct granting of subsidies to certain town councils, to develop comprehensive social care programmes for the Roma people](#) (*Decreto n.º 37/2020, de 4 de junio, por el que se regula la concesión directa de subvenciones a determinados Ayuntamientos, para el desarrollo de programas de atención social integral para el pueblo gitano*)<sup>91</sup>.

On **24 July 2020**, the Valencia Regional Government published [Decree 75/2020 by the Council, amending initial Decree 5/2019, for the creation of the Valencian Council of Gypsy People](#) (*Decreto 75/2020, de 17 de julio, del Consell, de modificació del Decreto 5/2019, de 25 de enero, del Consell, por el que se crea el Consejo Valenciano del Pueblo Gitano*)<sup>92</sup>. A number of restrictions were identified in the initial decree. The second one's purpose is to ensure maximum plurality in the composition of the Council and facilitating the participation of the Gypsy associative movement.

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<sup>91</sup> Spain, Government Council (*Consejo de Gobierno*), [Decree No 37/2020 of June 4 regulating the direct granting of subsidies to certain city councils, to develop comprehensive social care programmes for the Roma people](#) (*Decreto n.º 37/2020, de 4 de junio, por el que se regula la concesión directa de subvenciones a determinados Ayuntamientos, para el desarrollo de programas de atención social integral para el pueblo gitano*), 11 June 2020.

<sup>92</sup> Spain, Vice-President's Office and Ministry of Equality and Inclusive Policies (*Vicepresidencia y Conselleria de Igualdad y Políticas Inclusivas*), [Decree 75/2020, by the Council, amending Decree 5/2019, of January 25, of the Consell, creating the Valencian Council of the Gypsy People](#) (*Decreto 75/2020, de 17 de julio, del Consell, de modificació del Decreto 5/2019, de 25 de enero, del Consell, por el que se crea el Consejo Valenciano del Pueblo Gitano*), 17 July 2020.

## **Chapter 4. Asylum, visas, migration, borders and integration**

Extension of residence permits and other authorisations to stay that expired during the COVID-19 pandemic measures.

EUMS/ Republic of North Macedonia, Republic of Serbia	Category of TCN	Brief description of the measure	Legal source (legislation or case law as relevant) with hyperlink	Comments
	<p>Complete this row if measures concern all/most of the TCN listed below whose (national or EU law based) permission to stay expired during COVID-19 related travel restrictions. In this case indicate in the next rows the categories to which the measure applies</p>	<p>In March 2020, the <b>Ministry of Social Inclusion, Social Security and Migrations</b> published a communiqué concerning the <a href="#">suspension of administrative deadlines</a><sup>93</sup>, in line with the application of the <b>third additional provision of Royal Decree 463/2020 of 14 March</b> which declared the <a href="#">state of emergency</a> for the <b>Covid-19 health crisis</b>.</p> <p>It addresses how to proceed with the different situations</p>	<p>Spain, Ministry of Health (<i>Ministerio de Sanidad</i>), <a href="#">Order SND/421/2020 of 18 May adopting measures concerning the extension of authorizations for the stay and residence and/or work and other situations of foreigners in Spain, in application of Royal Decree 463/2020 of 14 March</a> (<i>la Orden SND/421/2020, de 18</i></p>	<p>Spain, Ministry of the Interior (<i>Ministerio del Interior</i>), <a href="#">Measures relating to the extension of validity of certain documents issued by the Aliens and Borders Units, on the occasion of the emergency status declared by the COVID-19 health emergency</a> (<i>Medidas relativas a la prórroga de vigencia de determinados documentos expedidos por las Unidades de</i></p>

<sup>93</sup> Spain, Ministry of Inclusion, Social Security and Migrations (*Ministerio de Inclusión, Seguridad Social y Migraciones*), [La Secretaría de Estado de Migraciones comunica a las oficinas de extranjería cómo proceder ante la suspensión de plazos administrativos](#), Press release, 19 March 2020.

		<p>arising from the suspension of deadlines, in turn responding to the needs of the entities collaborating in the system.</p> <p>It means that:</p> <ol style="list-style-type: none"> <li>1. If the proposal for a resolution was favourable, applications submitted before the entry into force of <a href="#">Royal Decree 463/2020 of 14 March</a><sup>94</sup> should be finalized;</li> <li>2. Certificates accrediting administrative silence) (<i>certificado acreditativo del</i></li> </ol>	<p><i>de mayo, por la que se adoptan medidas relativas a la prórroga de las autorizaciones de estancia y residencia y/o trabajo y a otras situaciones de los extranjeros en España, en aplicación del Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19</i>), 18 May 2020.</p>	<p><i>Extranjería y Fronteras, con ocasión del estado de alarma declarado por la emergencia sanitaria COVID-19</i>), 22 May 2020.</p> <p><b>After the initial suspension, on 8 June 2020, the Ministry of the Interior (Ministerio del Interior) published an <a href="#">Informative Note</a><sup>109</sup>. It made reference to frequent questions about the situation of the international</b></p>
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<sup>94</sup> Spain, Ministry of the Presidency (*Ministerio de la Presidencia*), Relations with the Courts and Democratic Memory (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*), (2020), [Royal Decree 463/2020, of 14 March, declaring the state of emergency for the management of the health crisis situation caused by COVID-19](#). (*Real Decreto 463/2020, de 14 de marzo, 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>109</sup> Spain, Ministry of the Interior (*Ministerio del Interior*), [Answers to frequently asked questions about the situation of the international protection system during the state of emergency period](#) (*Respuestas a preguntas frecuentes sobre la situación del sistema de protección internacional durante el periodo de estado de alarma*), 8 June 2020



		<p><i>silencio administrativo</i>)<sup>95</sup> were issued in applications submitted under <a href="#">Law 14/2013 of 27 September</a><sup>96</sup>, prior to the entry into force of <a href="#">Royal Decree 463/2020 of 14 March</a><sup>97</sup>;</p> <p>3. If an application submitted before the entry into force of <a href="#">Royal Decree 463/2020 of 14</a></p>	<p><b>Spain</b>, the Ministry of Social Inclusion, Social Security and Migration, <a href="#">Royal Decree 463/2020 of 14 March</a><sup>108</sup></p>	<p><b>protection system during the state of emergency period.</b></p> <p>Questions clarified were:          What should I do if I wish to apply for international protection at this time?          What if I had an appointment to formalize my application (interview with National Police) or to</p>
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<sup>95</sup>The certificate accrediting administrative silence (*certificado acreditativo del silencio administrativo*) is a document certifying the admission or dismissal of requests by interested parties before the expiry of the maximum period in which to issue and notify the express resolution by the Public Administration. Article 21 of [Law 39/2015 of 1 October on the Joint Administrative Procedure of Public Administrations](#) (*Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas*, LPACAP, in its Spanish acronym) that the Administration is obliged to give an express decision and notify it in all proceedings whatever its initiation method. In those cases where the initiation of the proceedings occurs at the request of the interested parties, the expiry of the maximum period without having notified the express decision, legitimizes the person concerned or interested parties in order to understand it as admitted or rejected by administrative silence, as set out in Paragraph 24 of the LPACAP. Thus, administrative acts produced by administrative silence may be enforced both with the public Administration or before any private institution.

<sup>96</sup> Spain, Jefatura del Estado Ley 14/2013, de 27 de septiembre, de apoyo a los emprendedores y su internacionalización. 29/09/2013. <https://www.boe.es/eli/es/l/2013/09/27/14/con>

<sup>97</sup> Spain, Ministry of the Presidency, Parliamentary Relations and Democratic Memory (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*), (2020), [Royal Decree 463/2020, of 14 March, declaring the state of emergency for the management of the health crisis situation caused by COVID-19](#). (*Real Decreto 463/2020, de 14 de marzo, 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>108</sup> Spain, Ministry of the Presidency, Parliamentary Relations and Democratic Memory (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*), (2020), [Royal Decree 463/2020, of 14 March, declaring the state of emergency for the management of the health crisis situation caused by COVID-19](#). (*Real Decreto 463/2020, de 14 de marzo, 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.

		<p><a href="#">March</a><sup>98</sup> was going to be rejected or the file closed, any decision was suspended;</p> <p>4. The public administration bodies should accept documents that may have expired during the exceptional situation;</p> <p>5. The time periods for stays of third-country nationals whose return was not possible because of the international health emergency were suspended;</p> <p>6. Any type of applications for initial authorizations (regardless of whether they were to enter, to stay, for residence or to work) and their renewals that were</p>	<p><a href="#">Instructions DGM 6/2020 on initiated procedures relating to social roots</a> (<i>Instrucciones DGM 6/2020 sobre los procedimientos iniciados relativos a arraigos sociales</i>);</p> <p><a href="#">Instructions DGM 5/2020 on the renewal of residence and/or work permits</a> (<i>Instrucciones DGM 5/2020 sobre la renovación de las autorizaciones de</i></p>	<p>renew my documentation during the state of emergency period before entering Phase 2? How long will my documentation related to the application for international protection that expired during the state of emergency period be in force?</p> <p><a href="#">Royal Decree 537/2020, of 22 May, extending the state of alarm declared by Royal Decree 463/2020, of 14 March, declaring the state of alarm for the management of the health crisis situation</a></p>
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<sup>98</sup> Spain, Ministry of the Presidency, Parliamentary Relations and Democratic Memory (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*), (2020), [Royal Decree 463/2020, of 14 March, declaring the state of emergency for the management of the health crisis situation caused by COVID-19](#). (*Real Decreto 463/2020, de 14 de marzo, 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.

		<p>submitted after <a href="#">Royal Decree 463/2020 of 14 March</a><sup>99</sup> should be declared admissible and processed.</p> <p>The <a href="#">Ministry of Inclusion, Social Security and Migrations</a> (<i>Ministerio de Inclusión, Seguridad Social y Migraciones</i>)<sup>100</sup> <b>protects children</b> who were legally staying in Spain but due to the circumstances arising from the COVID-19 crisis could not return to their country of origin as envisaged<sup>101</sup>. Then,</p>	<p><i>residencia y/o trabajo</i>);</p> <p><a href="#">Instructions DGM 4/2020 on the easing of the requirement of sufficient means in the processing of residence permits for family reunification</a> (<i>Instrucciones DGM 4/2020 sobre la flexibilización del requisito de medios suficientes en la tramitación de</i></p>	<p><a href="#">caused by COVID-19</a> provided that:</p> <p>Article 8. Suspended procedural deadlines will be lifted on 4 June 2020; Article 9. Administrative deadlines suspended will resume, or restart on 1 June 2020; Article 10. Deadlines for the limitation and expiration of suspended rights and actions will be lifted on 4 June 2020.</p>
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<sup>99</sup> Spain, Ministry of the Presidency, Parliamentary Relations and Democratic Memory (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*), (2020), [Royal Decree 463/2020, of 14 March, declaring the state of emergency for the management of the health crisis situation caused by COVID-19](#). (*Real Decreto 463/2020, de 14 de marzo, 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>100</sup> Spain, Ministry of Inclusion, Social Security and Migration (*Ministerio de Inclusión, Seguridad Social y Migraciones*), [Los menores extranjeros con fines de escolarización podrán prorrogar su estancia en España un curso académico más](#), Press release, 9 July 2020.

<sup>101</sup> Spain, Royal Decree 557/2011, of April 20, approving the Regulations of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration (hereinafter Foreign Regulations), regulates, in its article 188, the displacement to Spain of childrens for reasons of schooling.

		<p>and in order to prevent them from entering an illegal administrative status when their authorizations expired, an <b>extension</b> could be requested during the 60 calendar days prior to the expiry date of the validity of its authorization. It already took into account the extension granted by <a href="#">Order SND/421/2020</a> adopting <b>measures concerning the extension of stay, residence and/or work</b></p>	<p><i>autorizaciones de residencia por reagrupación familiar</i>).</p> <p>Spain, Ministry of Inclusion, Social Security and Migration</p>	
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Paragraph 3 states that the stay for the study of these childrens will have ended at the end of the academic year, at which point, unless exceptional reasons prevent it, they must return to their country: "3. The stay will end at the end of the academic year, at which time, unless exceptional reasons prevent it, the children must return to their country." (*El Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social (de aquí en adelante Reglamento de Extranjería), regula, en su artículo 188, el desplazamiento a España de menores por motivos de escolarización. En su apartado 3 establece que la estancia por estudios de estos menores habrá terminado al finalizar el curso académico, en cuyo momento, salvo que razones excepcionales lo impidan, deben regresar a su país: '3. La estancia acabará al finalizar el curso académico, en cuyo momento, salvo que razones excepcionales lo impidan, el menor deberá regresar a su país'*).

		<p><b>authorizations for foreigners in Spain</b><sup>102</sup>.</p> <p>In any case, the stay of the child who submitted the application was deemed extended until the time the procedure was resolved in cases where the application is filed within 90 days of the end date of the term of the previous authorization, including the extension granted by aforesaid <a href="#">Order SND/421/2020 (pg.2, paragraph 3)</a> and in line with</p>	<p>(Ministerio de Inclusión, Seguridad Social y Migraciones), <a href="#">Instruction 7/2020 on the displacement of foreign children for schooling purposes</a> (<i>Instrucción DGM 7/2020 sobre el desplazamiento de menores extranjeros con fines de escolarización</i>), 8 July 2020.</p>	
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<sup>102</sup> Spain, Ministry of Health (*Ministerio de Sanidad*), [Order SND/421/2020 of 18 May adopting measures concerning the extension of authorizations for stay and residence and/or work and other situations of foreigners in Spain, in application of Royal Decree 463/2020 of 14 March](#) (*la Orden SND/421/2020, de 18 de mayo, por la que se adoptan medidas relativas a la prórroga de las autorizaciones de estancia y residencia y/o trabajo y a otras situaciones de los extranjeros en España, en aplicación del Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-199*), 18 May 2020.

		<p><b>article 188 of the Legal Act<sup>103</sup>.</b></p> <p>In <b>Spain</b>, the Secretary of State for Migration, due to the difficult context of the COVID-19 pandemic, issued certain instruments available to foreigners to regularize their administrative legal status in the country. These instruments were related to <b>the approval of the new minimum living wage</b> (<i>renta</i></p>		
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<sup>103</sup> Spain, Ministry of Inclusion, Social Security and Migration (*Ministerio de Inclusión, Seguridad Social y Migraciones*), [Instruction 7/2020 on the displacement of foreign children for schooling purposes](#) (*Instrucción DGM 7/2020 sobre el desplazamiento de menores extranjeros con fines de escolarización*), 8 July 2020.

In view of the COVID-19 situation, the Directorate-General issued the Instruction specifying certain cases related to the application of Article 188 of the Legal Act. The Royal Decree 557/2011, of 20 April, which approves the Regulations of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration (hereinafter Foreigners Regulation), regulates, in its **article 188**, the displacement of children to Spain for schooling reasons. Paragraph 3 states that the stay for studies of these children will have ended at the end of the academic year, at which point, unless exceptional reasons prevent it, they must return to their country: "3. The stay will end at the end of the academic year, at which time, unless exceptional reasons prevent it, the children must return to their country." (*El Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social (de aquí en adelante Reglamento de Extranjería), regula, en su artículo 188, el desplazamiento a España de menores por motivos de escolarización. En su apartado 3 establece que la estancia por estudios de estos menores habrá terminado al finalizar el curso académico, en cuyo momento, salvo que razones excepcionales lo impidan, deben regresar a su país: '3. La estancia acabará al finalizar el curso académico, en cuyo momento, salvo que razones excepcionales lo impidan, el menor deberá regresar a su país'*).

		<p><i>mínima vital</i>)<sup>104</sup>, and aim of making the procedures for the regularization of immigrants living in Spain more flexible. On 8 June, the <b>Directorate-General for Migration</b> (<i>Dirección General de Inmigración</i>) of the Ministry of Inclusion, Social Security and Migration sent three internal orders with guidelines to the Spanish Foreign and Alien Affairs Offices (<i>Oficinas de Extranjería</i>). The objective was to streamline the three main instruments available to foreigners to legalize their status: social roots, family reunification and renewals of</p>	<p>Spain, Head of State (<i>Jefatura del Estado</i>), <a href="#">Royal Decree-Law 20/2020 of May 29, establishing the minimum living wage</a> (<i>Real Decreto-ley 20/2020, de 29 de mayo, por el que se establece el ingreso mínimo vital</i>), 29 May 2020.</p>	
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<sup>104</sup> Spain, Ministry of Inclusion, Social Security and Migrations (*Secretaría de Estado de Migraciones, Ministerio de Inclusión, Seguridad Social y Migraciones*), Official Website, [All questions and answers on the Minimum Living Wage](#) (*Todas las preguntas y respuestas sobre el Ingreso Mínimo Vital*), Press release, 11 June 2020.

		<p>permits. These instructions were<sup>105</sup>:</p> <p>In <b>Spain</b>, the <b>Ministry of Health</b> (<i>Ministerio de Sanidad</i>) issued <a href="#">Order SND/421/2020</a> adopting <b>measures concerning the extension of stay, residence and/or work authorizations for foreigners</b> in Spain<sup>106</sup>. In order to avoid that, once the</p>		
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<sup>105</sup> Spain, Ministry of Inclusion, Social Security and Migrations (*Secretaría de Estado de Migraciones, Ministerio de Inclusión, Seguridad Social y Migraciones*), [Instructions DGM 6/2020 on initiated procedures relating to social roots in the context of COVID](#) (*Instrucciones DGM 6/2020 sobre los procedimientos iniciados relativos a arraigos sociales en el contexto del COVID*), 8 June 2020.

Spain, Ministry of Inclusion, Social Security and Migrations (*Secretaría de Estado de Migraciones, Ministerio de Inclusión, Seguridad Social y Migraciones*), [Instructions DGM 5/2020 on the renewal of residence and/or work permits in the context of COVID 19](#) (*Instrucciones DGM 5/2020 sobre la renovación de las autorizaciones de residencia y/o trabajo en el contexto del COVID 19*), 8 June 2020.;

Spain, Ministry of Inclusion, Social Security and Migrations (*Secretaría de Estado de Migraciones, Ministerio de Inclusión, Seguridad Social y Migraciones*), [Instructions DGM 4/2020 on easing the requirement of sufficient means in the processing of residence permits for family reunification](#) (*Instrucciones DGM 4/2020 sobre la flexibilización del requisito de medios suficientes en la tramitación de autorizaciones de residencia por reagrupación familiar*), 8 June 2020.

<sup>106</sup> Spain, Ministry of Health (*Ministerio de Sanidad*), [Order SND/421/2020 of 18 May adopting measures concerning the extension of authorizations for stay and residence and/or work and other situations of foreigners in Spain, in application of Royal Decree 463/2020 of 14 March](#) (*la Orden SND/421/2020, de 18 de mayo, por la que se adoptan medidas relativas a la prórroga de las autorizaciones de estancia y residencia y/o trabajo y a otras situaciones de los extranjeros en España, en aplicación del Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-199*), 18 May 2020.



		<p>state of emergency is lifted, foreigners may find themselves in an irregular status, as well as avoiding situations of legal uncertainty. Given the impossibility of submitting applications for renewal of residence and/or work permits, as absences from the Spanish territory caused by COVID-19, will not be taken into account for counting the continuity of residence, the duration of the automatic extension will be extended for three months following the end of the state of emergency.</p> <p>Given the impossibility of submitting applications for renewal of residence and/or work permits, the absences from the Spanish territory</p>	<p>Spain, Ministry of Health (<i>Ministerio de Sanidad</i>), <a href="#"><u>Order SND/421/2020 of 18 May adopting measures concerning the extension of authorizations for stay and residence and/or work and other situations of foreigners in Spain, in application of Royal Decree 463/2020 of 14 March</u></a> (<i>la Orden SND/421/2020, de 18 de mayo, por la que se</i></p>	
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		<p>caused by the situation of COVID-19 did not taken into account for counting the continuity of residence.</p> <p>In addition, the authorisation to reside and work were automatically extended for three months following the end of the state of emergency. <a href="#">The last extension of the state of emergency established was published on 6 June 2020</a><sup>107</sup> and set out the rules authorizing the extension of emergency status until 21 June 2020.</p>	<p><i>adoptan medidas relativas a la prórroga de las autorizaciones de estancia y residencia y/o trabajo y a otras situaciones de los extranjeros en España, en aplicación del Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19</i>), 18 May 2020.</p>	
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<sup>107</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree 555/2020, of June 5, extending the state of emergency declared by Royal Decree 463/2020, of 14 March, declaring the state of emergency for the management of the health crisis situation caused by COVID-19](#) (*Real Decreto 555/2020, de 5 de junio, por el que se prorroga el estado de alarma declarado por el Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19*), 5 June 2020.

	<p> Holders of visas issued based on the <a href="#">Visa Code</a> No. 810/2009 (as last amended by <a href="#">Regulation (EU) No. 2019/1155</a>) (Schengen visas)</p>	<p>The visa must be applied in person at the Mission Visas for relatives of citizens of the European Union, States party to the Agreement of the European Economic Area and Switzerland</p> <p>Third-country nationals who are relatives of Community citizens are beneficiaries of this Community scheme (<a href="#">Articles 2 and 2a of Royal Decree 240/2007</a>) and whenever they accompany the Community citizen.</p> <p>The processing of these visas will be referable. Visas will be issued free of charge.</p> <p>The maximum period for resolving short-term visa application files is 15 calendar days from the date of filing the application. This period</p>	<p>Spain, Head of State (<i>Jefatura del Estado</i>) <a href="#">Royal Decree 240/2007 of 16 February on the entry, free movement and residence in Spain of citizens of EU Member States and other States party to the Agreement on the European Economic Area</a> (<i>Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la UE y de otros Estados parte en el Acuerdo sobre el Espacio Económico</i>)</p>	<p>For those people stuck in Spain whose visa or right to stay expired, they were provided with 3 months extension of short stay visa (applicable from March 2020 to June 2020).</p> <p>If they reach the maximum stay without obtaining any legal extension, their stay in Spain become illegal. If they are identified, they may receive an expulsion order and/or they may be forcibly returned but most of them just stayed in the country.</p>
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		may be extended to a maximum of 45 calendar days in specific cases, if a more detailed examination of the application is necessary.	<i>Europeo</i> ), 16 February 2007.	
	<p>Visa-free TCN who reached the maximum of 90 days in any 180-day period under Article 4 of the <a href="#">Visa List Regulation</a> (Regulation (EU) 2018/1806)</p>	<p>A foreigner who has entered Spain for purposes other than work or residence - except in cases of holding a visa for job search - and is in the period of stay may request a short-term stay extension.</p> <p>In cases of entry with a visa, where the duration of the visa is less than three months, the stay may be extended, which in no case may exceed 90 days within any period of 180 days.</p> <p>In cases of visa-free entry, where there are circumstances of a humanitarian, family, health care, public interest, or other exceptional circumstance justifying it, a</p>	<p>Spain, Ministry of the Presidency (<i>Ministerio de la Presidencia</i>), <a href="#">Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, following their reform by Organic Law 2/2009</a> (<i>Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009</i>), 11 January 2000.</p> <p>Spain, Ministry of the Presidency (<i>Ministerio</i></p>	<p>For those people stuck in Spain whose visa or right to stay expired, they were provided with 3 months extension of short stay visa (applicable from March 2020 to June 2020).</p> <p>If they reach the maximum stay without obtaining any legal extension, their stay in Spain become illegal. If they are identified, they may receive an expulsion order and/or they may be forcedly returned but most of them just stayed in the country.</p>

		<p>foreigner may be allowed to stay in Spanish territory beyond three months.</p>	<p><i>de la Presidencia)</i>, <a href="#">Royal Decree 557/2011 of April 20, which approves the Regulations of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, following their reform by Organic Law 2/2009</a> (<i>Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009</i>), 20 April 2011.</p>	
	<p> Holders of long-term visas issued by the</p>	<p> These visas enable you to reside, reside and work, study</p>	<p> Spain, Ministry of the Presidency (<i>Ministerio</i></p>	<p> For those people stuck in Spain whose visa or right</p>

	<p>EUMS (under <a href="#">Regulation (EU) No. 265/2010</a> and beyond, under national law)</p>	<p>or research in Spain. All foreigners wishing to enter Spain to reside, reside and work or study need to have such a visa.</p> <p>The maximum period to resolve long-term visa application files is one month from the date of submission of the application, except for non-profit residence visas, where the maximum period shall be three months.</p> <p>In the event of issuance of the visa, it must be collected in person at the competent Diplomatic Mission or Consular Office within one month of notification of the concession.</p>	<p><i>de la Presidencia</i>), <a href="#">Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, following their reform by Organic Law 2/2009 (Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009)</a>, 11 January 2000.</p> <p>Spain, Ministry of the Presidency (<i>Ministerio de la Presidencia</i>) <a href="#">Royal Decree 557/2011 of April 20, which approves the Regulations of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and</a></p>	<p>to stay expired, they were provided with 3 months extension of short stay visa (applicable from March 2020 to June 2020).</p> <p>If they reach the maximum stay without obtaining any legal extension, their stay in Spain become illegal. If they are identified, they may receive an expulsion order and/or they may be forcibly returned but most of them just stayed in the country.</p>
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			<p><a href="#">their social integration, following their reform by Organic Law 2/2009</a>  <i>(Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009), 20 April 2011.</i></p>	
	<p> Holders of residence permits issued under <a href="#">Regulation (EC) No. 1030/2002</a> (as last amended by <a href="#">Regulation (EU) 2017/1954</a>)</p>	<p>The same rules apply as indicated under the general row.</p>	<p>Spain, Ministry of Justice (<i>Ministerio de Justicia</i>), <a href="#">Resolution of 27 March 2020, of the Directorate-General for Legal Security and Public Faith, agreeing to the resumption of</a></p>	

	<a href="#">laying down a uniform format for residence permits for third-country nationals</a>	<p>In <b>Spain</b>, the <b>Ministry of Justice</b> (<i>Ministerio de Justicia</i>) published a resolution extending the period for remedying <b>errors</b> in the processes of <b><u>granting Spanish nationality to Sephardic nationals originating in Spain until 1 September 2021</u></b>, relating to the Circular of 9 September 2019<sup>110</sup>. On 9 September, the Directorate-General, under the Ministry of Justice, already established a one-year period of re-execution from the date of the application that could in no case be submitted on 1 October 2019. That period of re-remedy was expected to</p>	<a href="#">the procedures for the acquisition of Spanish nationality regulated by Royal Decree 1004/2015 of 6 November approving the regulation governing the procedure for the acquisition of Spanish nationality by residence and Law 12/2015 of 24 June on the granting of Spanish nationality to the Sephardi from Spain</a> ( <i>Resolución de 27 de marzo de 2020, de la Dirección General de Seguridad Jurídica y</i>	
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<sup>110</sup> Spain, Ministry of Justice (*Ministerio de Justicia*), [Resolution of 27 March 2020, of the Directorate-General for Legal Security and Public Faith, agreeing to the resumption of the procedures for the acquisition of Spanish nationality regulated by Royal Decree 1004/2015 of 6 November approving the regulation governing the procedure for the acquisition of Spanish nationality by residence and Law 12/2015 of 24 June on the granting of Spanish nationality to the Sephardies originating](#) (*Resolución de 27 de marzo de 2020, de la Dirección General de Seguridad Jurídica y Fe Pública, por la que se acuerda la reanudación de los procedimientos de adquisición de la nacionalidad española regulados en el Real Decreto 1004/2015, de 6 de noviembre, por el que se aprueba el reglamento por el que se regula el procedimiento para la adquisición de la nacionalidad española por residencia y en la Ley 12/2015, de 24 de junio, en materia de concesión de la nacionalidad española a los sefardíes originarios de España*) 27 March 2020.



		<p>end on 1 September 2020 for the last files submitted. With the new resolution, it was extended until 1 September 2021, with the expectation that the term may be revised later, in the event of developments in the COVID-19 pandemic and its impact on administrative activity<sup>111</sup>.</p>	<p><i>Fe Pública, por la que se acuerda la reanudación de los procedimientos de adquisición de la nacionalidad española regulados en el Real Decreto 1004/2015, de 6 de noviembre, por el que se aprueba el reglamento por el que se regula el procedimiento para la adquisición de la nacionalidad española por residencia y en la Ley 12/2015, de 24 de junio, en materia de concesión de la nacionalidad española</i></p>	
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<sup>111</sup> Spain, Ministry of Justice (*Ministerio de Justicia*), [Resolution of 13 May 2020, of the Directorate-General for Legal Security and Public Faith, agreeing to extend the period for the rectification of applications for nationality under Law 12/2015 of 24 June on the granting of Spanish nationality to Sephardic persons originating in Spain and clarifying aspects of the processing of files](#) (*Resolución de 13 de mayo de 2020, de la Dirección General de Seguridad Jurídica y Fe Pública, por la que se acuerda la prórroga del plazo de subsanación de las solicitudes de nacionalidad en virtud de la Ley 12/2015, de 24 de junio, en materia de concesión de la nacionalidad española a los sefardíes originarios de España y se aclaran aspectos de la tramitación de los expedientes*), 13 May 2020.

			<p><i>a los sefardíes originarios de España),</i> 27 March 2020.</p> <p>Spain, Ministry of Justice (<i>Ministerio de Justicia</i>), <a href="#"><u>Resolution of 13 May 2020, by the Directorate-General for Legal Security and Public Faith, agreeing to extend the period for rectifying applications for nationality under Law 12/2015 of 24 June on the granting of Spanish nationality to Sephardic Jews from Spain and clarifying aspects of the processing of files</u></a> (<i>Resolución de 13 de mayo de 2020, de la Dirección General de</i></p>	
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			<p><i>Seguridad Jurídica y Fe Pública, por la que se acuerda la prórroga del plazo de subsanación de las solicitudes de nacionalidad en virtud de la Ley 12/2015, de 24 de junio, en materia de concesión de la nacionalidad española a los sefardíes originarios de España y se aclaran aspectos de la tramitación de los expedientes), 13 May 2020.</i></p>	
	<p>Holders of local border traffic permit under <a href="#">Regulation (EC) No. 1931/2006</a></p>	<p>Not relevant for Spain.</p>	<p>N/A</p>	<p>N/A</p>

	<p>Any other category of TCN not listed above.</p>	<p>The registration certificates (<i>cédulas de inscripción</i>) of undocumented foreigners were extended for a period of six months from the date on which the validity of the document had expired, if its validity expired during the state of emergency or within 90 calendar days prior to the date on which it was decreed<sup>112</sup>.</p> <p>The applicant for an invitation letter (<i>carta de invitación</i>), issued prior to the declaration of the state of emergency that could not be used to coincide with the expected date of entry with the validity of the letter of invitation, may request its cancellation</p>		<p>Spain, Ministry of the Interior (<i>Ministerio del Interior</i>), <a href="#">Measures relating to the extension of validity of certain documents issued by the Aliens and Borders Units, on the occasion of the emergency status declared by the COVID-19 health emergency</a> (<i>Medidas relativas a la prórroga de vigencia de determinados documentos expedidos por las Unidades de Extranjería y Fronteras, con ocasión del estado de alarma declarado por la emergencia sanitaria</i>)</p>
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<sup>112</sup> Spain, Ministry of the Interior (*Ministerio del Interior*), [Measures relating to the extension of validity of certain documents issued by the Alien and Border Units, on the occasion of the state of emergency declared by the COVID-19 health emergency](#) (*Medidas relativas a la prórroga de vigencia de determinados documentos expedidos por las Unidades de Extranjería y Fronteras, con ocasión del estado de alarma declarado por la emergencia sanitaria COVID-19*), 22 May 2020.

		<p>thereof, as well as the reimbursement of the fees for issuance of the letter and those processing fees for the issuance of the authorization.</p> <p>In Spain, the Head of State (<i>Jefatura del Estado</i>) issued <a href="#">Royal Decree-Law 13/2020 of 7 April adopting certain urgent measures on agricultural employment</a><sup>113</sup> to encourage the temporary recruitment of workers in the agricultural sector. The population benefiting from the standard are defined under its Article 2.1.c that refers to migrant workers whose work permits expire in the period between the entry into force of <a href="#">Royal Decree 463/2020 of 14</a></p>	<p>In Spain, the Head of State (<i>Jefatura del Estado</i>) issued <a href="#">Royal Decree-Law 13/2020 of 7 April adopting certain urgent measures on agricultural employment</a><sup>116</sup></p>	<p>COVID-19), 22 May 2020.</p>
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<sup>113</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 13/2020 of 7 April adopting certain urgent measures on agricultural employment](#) (*Real Decreto-ley 13/2020, de 7 de abril, por el que se adoptan determinadas medidas urgentes en materia de empleo en agrario*), 7 April 2020.

<sup>116</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 13/2020 of 7 April adopting certain urgent measures on agricultural employment](#) (*Real Decreto-ley 13/2020, de 7 de abril, por el que se adoptan determinadas medidas urgentes en materia de empleo en agrario*), 7 April 2020.

		<p><a href="#">March</a><sup>114</sup> and 30 June 2020. Its possible extension will be determined by instructions from the Secretary of State for Migration; d. Young third-country nationals, who have regular administrative status, and are between the ages of 18 and 21. Article 5.3 of the Royal Decree states that these categories are considered priority groups to cover the available employment offers in the towns and municipalities where the number of jobseekers exceeds it. It will be applicable until 30 June 2020.</p> <p><b>After the initial suspension, on 8 June 2020, the Ministry of the Interior (Ministerio del Interior)</b></p>		
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<sup>114</sup> Spain, Ministry of the Presidency, Parliamentary Relations and Democratic Memory (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*), 2020, [Royal Decree 463/2020 of 14 March, declaring the state of emergency for the management of the health crisis situation caused by COVID-19](#). (*Real Decreto 463/2020, de 14 de marzo, 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.

		<p>published an <a href="#">Informative Note</a><sup>115</sup>.</p> <p>With regard to the <b>validity of the documents</b> related to <b>applications for international protection</b>, all <b>documents</b> proving the status of an applicant for international protection (red card) that have expired before 14 March 2020 shall be automatically extended during the duration of the state of emergency, if the final resolution of their file has not been notified.</p> <p>The application certificate extends its validity by 9 more months, enabling the person to work six months after its issuance; the applicant status</p>		
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<sup>115</sup> Spain, Ministry of the Interior (*Ministerio del Interior*), [Answers to frequently asked questions about the situation of the international protection system during the state of emergency period](#) (*Respuestas a preguntas frecuentes sobre la situación del sistema de protección internacional durante el periodo de estado de alarma*), 8 June 2020.

		<p>document (red card) extends its validity by 7 more months, enabling the person to work six months after its issue without the need to obtain another new card; and the proof of a declaration of wishes (<i>Volante de manifestación de voluntad</i>) validity period is extended during its term and for the next 3 months. For documents that expired before 1 January 2020, the extension of their validity shall be subject, not only to the failure to notify the resolution of their file, but also to the fact that the persons concerned had an appointment granted for their renewal.</p> <p>With regard to the <b>validity of the documents</b> relating to the application for international protection, all <b>documents</b> proving the</p>		
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		<p>status of an applicant for international protection, the so-called red card (<i>tarjeta roja</i>), which expired before 14 March 2020, was automatically extended during the duration of the state of emergency, provided that the final resolution of their file had not been notified.</p> <p>The validity period for the asylum application certificate, "white certificate" (<i>resguardo blanco</i>), was extended for 9 more months, enabling the person to work six months after its issuance.</p> <p>The validity period for certification of being an applicant for international protection, the so-called red card (<i>tarjeta roja</i>), as well as certification of the application for statelessness, or 'green card' (<i>tarjeta verde</i>), was</p>		
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		<p>extended for 7 more months, enabling the applicant asylum seeker to work six months after the issue date without the need to obtain a new one; and the validity period for the proof of a declaration of wishes (<i>Volante de manifestación de voluntad</i>) was extended during its term and for the following 3 months.</p> <p>For documents that expired before 1 January 2020, the extension of their validity was subject, not only to failure to receive notification on the resolution of their file, but that the persons concerned had an appointment granted for their renewal.</p>		
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Notes:

TCN = third-country nationals

EUMS = EU Member State

# Chapter 5. Information society, privacy and data protection

## 1. Legal and political initiatives that have been implemented to support access to, and use of, personal data

**On 27 March 2020, the Spanish Data Protection Agency (Agencia Española de protección de datos, AEPD, in its Spanish acronym) and the Secretary of State for Digitalization and Artificial Intelligence, under the Ministry of Economic Affairs and Digital Transformation, promoted [the development of various actions to manage the health crisis caused by COVID-19](#)<sup>117</sup>. The [Order](#) did not establish any exception to the fundamental right to data protection, but rather expressly refers to the application of [Organic Law 3/2018 of 5 December on Personal Data Protection and Guarantee of Digital Rights](#) (*Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y Garantía de los Derechos Digitales*)<sup>118</sup>, adapting to Spanish legislation the European General Data Protection Regulation (GDPR)<sup>119</sup>. It **permits the geolocation of citizens during the COVID-19 health crisis**.**

**On 30 January 2020, the Spanish Data Protection Agency (Agencia Española de protección de datos, AEPD, in its Spanish acronym) approved its **Code of Ethics****<sup>120</sup>, included in its sustainability plan. The document set out the internal rules of conduct, values and principles that should govern the actions of the national agency's employees and managers. With its approval, the Agency complied with one of the commitments made in its [Social Responsibility and Sustainability Action Framework 2019-2024](#) (*Marco*

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<sup>117</sup> Spain, Ministry of Economic Affairs and Digital Transformation (*Ministerio de Asuntos Económicos y Transformación Digital*), [Order SND/297/2020 entrusting the Secretary of State for Digitalisation and Artificial Intelligence, of the Ministry of Economic Affairs and Digital Transformation, with the development of various actions to manage the health crisis caused by COVID-19](#) (*Orden SND/297/2020 por la que se encomienda a la Secretaría de Estado de Digitalización e Inteligencia Artificial, del Ministerio de Asuntos Económicos y Transformación Digital, el desarrollo de diversas actuaciones para la gestión de la crisis sanitaria ocasionada por el COVID-19*), 27 March 2020.

<sup>118</sup> Spain, Head of State (*Jefatura del Estado*), [Organic Law 3/2018 of 5 December on Personal Data Protection and Guarantee of Digital Rights](#) (*Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales*), 5 December 2018.

<sup>119</sup> European Commission, [European Regulation 2016/679 by the European Parliament and Council of 27 April 2016 on the protection of individuals with regard to personal data processing and the free movement of data, repealing Directive 95/46/EC](#), 27 April 2016.

<sup>120</sup> Spain, Spanish Data Protection Agency (*Agencia Española de Protección de Datos*), AEPD approves its Code of Ethics (*Código Ético*, <https://www.aepd.es/sites/default/files/2020-01/codigo-etico.pdf>

de Actuación de Responsabilidad Social y Sostenibilidad 2019-2024)<sup>121</sup>. This initiative was part of a series of actions aimed at strengthening the institutional position and citizens' trust, based on transparency, good governance, integrity and accountability.

**On 5 March 2020**, the **Spanish Data Protection Agency** (*Agencia Española de protección de datos*, AEPD, in its Spanish acronym) published a [reporting model to help companies make Data Protection Impact Assessments](#) (*Evaluación de Impacto en la Protección de Datos, EIPD*, in its Spanish acronym) addressed to the public sector. The document compiles the aspects to be taken into account by the private sector in developing an **Impact Assessment (EIPD) report**, complementing the [Practical Guide for Data Protection Impact Assessments](#) (*Guía práctica para las Evaluaciones de Impacto en la Protección de Datos*) published by the Agency. The Agency also published an update to the [public administration-oriented model](#). This updated version was conducted in collaboration with the Ministry of Labour, Migrations and Social Security and the Information Security Centre of the Social Security IT Management Office (*Ministerio de Trabajo, Migraciones y Seguridad Social y el Centro de Seguridad de la Información de la Gerencia de Informática de la Seguridad Social*). The reporting model compiles all issues that need to be taken into account in designing an impact assessment report, including the description of processing, its purpose, its legal basis, the obligation to draft an EIPD, as well as measures for risk reduction, an action plan and a section of conclusions and recommendations.

**On 16 March 2020**, the **Spanish Data Protection Agency** (*Agencia Española de protección de datos*, AEPD, in its Spanish acronym), approved the [first binding corporate rules \(BCRs\)](#) under the General Data Protection Regulation (GDPR Recital 110)<sup>122</sup>, which was also one of the first to be approved at a European level. In the processing of these BCRs, the Spanish Data Protection Agency acted as a leading authority and received a **favourable report from the European Data Protection Committee**<sup>123</sup>. Binding corporate rules are data protection policies assumed by a controller or processor established in a member state to make international transfers of personal data to a controller or processor in one or more third countries,

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<sup>121</sup> Spain, Spanish Data Protection Agency (*Agencia Española de Protección de Datos*) (2019), [Framework for Social Responsibility 2019-2024](#) (*Marco de Responsabilidad Social 2019-2024*), 27 March 2019.

<sup>122</sup> Spain, Spanish Data Protection Agency (*Agencia Española de protección de datos*) (2020), [Approval Resolution regarding the Controller's Binding Corporate Rules of the Fujikura Automotive Europe Group \(FAE Group\) File: TI/00001/2020](#) (*Resolución De Aprobación De Las Normas Corporativas Vinculantes Del Grupo Fujikura Automotive Europe (Grupo Fae) Expediente: TI/00001/2020*), 16 March 2020.

<sup>123</sup> European Data Protection Board, [Opinion 6/2020 on the draft decision of the Spanish Supervisory Authority regarding the Controller's Binding Corporate Rules of Fujikura Automotive Europe Group \(FAE Group\)](#), 29 January 2020.

within a business group or a union of companies engaged in a joint economic activity.

**On 8 May 2020, the Spanish Data Protection Agency** (*Agencia Española de Protección de Datos*, AEPD, in its Spanish acronym) **published [a legal report](#)** in which it analysed the use of **facial recognition techniques for online examinations for biometric identification purposes**. It involves the processing of special data categories for which the Regulation requires enhanced guarantees. The legal report shows that consent by students can only be considered as freely provided and, therefore, valid, where an equivalent alternative was offered in terms of duration and difficulty. In addition, if the facial recognition of students were to be based on public interest, a rule with a range of law would be required to enable it and to establish specific guarantees for such processing<sup>124</sup>. The report allows an analysis of its implications and always requires a rigorous study of the risks involved in such processing and the safeguards necessary to protect the right to personal data protection, taking into account the principle of proactive responsibility, the need to carry out the pertinent risk analyses, data protection impact assessments and, if applicable, consulting the supervisory authority in advance.

**On 28 May 2020, the Spanish Data Protection Agency** (*Agencia Española de Protección de Datos*, AEPD, in its Spanish acronym) **analysed in [a report the use of facial recognition systems by private security companies](#)**. It concluded that facial recognition techniques for biometric identification purposes involve the processing of special data categories for which the Regulation requires enhanced safeguards. The legislation requires that there be an essential public interest contained in a regulation with a range of law that does not currently exist within the Spanish legal system. The National Agency rejected the legitimacy recognised for video surveillance systems that only capture and record images and sounds. Finally, the National Agency considered that there were exceptional circumstances where the use of facial recognition systems could be justified, if legislation provides for it<sup>125</sup>.

**On 1 June 2020, the Spanish Data Protection Agency** (*Agencia Española de Protección de Datos*, AEPD, in its Spanish acronym) **published the [Ex officio Inspection Plan for Social and Health Care](#)** (*Plan de Inspección de oficio de la atención sociosanitaria*), which analysed for the first time the

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<sup>124</sup> Spain, Spanish Data Protection Agency (*Agencia Española de protección de datos*) (2020), [a legal report in which it analyses the use of facial recognition for examinations, using facial recognition techniques for biometric identification purposes](#), Madrid, N/REF: 0036/2020, Spanish Data Protection Agency.

<sup>125</sup> Spain, Spanish Data Protection Agency (*Agencia Española de protección de datos*) (2020), [a legal report on the use of facial recognition systems by private security companies](#), Madrid, N/REF: 010308/2019, Spanish Data Protection Agency.

processing conducted in this field and investigated the suitability of data protection regulations. The **Spanish Data Protection Agency** (*Agencia Española de Protección de Datos*, AEPD, in its Spanish acronym) analysed **the level of compliance with data protection in the field of social and health care**, which was part of the actions envisaged in the [AEPD Strategic Plan](#)<sup>126</sup>. In particular, it dealt with actions that aimed to detect the processing and transfer of data carried out between the social and health sectors, seeking its adaptation to data protection legislation. The plan included recommendations addressed to public bodies, companies and institutions that may implement actions necessary for the proper application of the GDPR.

**On 16 June 2020**, the Spanish Government announced the creation of an Experts Group for the development of a Charter of Digital Rights<sup>127</sup>. The **Experts Group intended** to contribute to the development of a Charter of Digital Rights for the protection of these citizens' rights. It aimed to complete Title X of [Organic Law 3/2018 on Personal Data Protection and Guarantee of Digital Rights](#) (*Título X de la Ley Orgánica 3/2018 de Protección de Datos Personales y Garantía de los Derechos Digitales*). Its purpose is to regulate new digital rights, such as those related to the protection of vulnerable groups, new industrial relations and the impact of new technologies, such as artificial intelligence.

**On 5 June 2020**, the **Spanish Data Protection Agency** (*Agencia Española de Protección de Datos*, AEPD, in its Spanish acronym) signed a [Declaration of Teleworking and Innovation: 12 Commitments + 12 Causes](#)<sup>128</sup> and it became the first agency in the Spanish Administration to adhere to the initiative. It fell within the framework of the [Agency's Social Responsibility and Sustainability](#) (*Responsabilidad Social y Sostenibilidad de la Agencia*), and its Equality Plan, which included a firm commitment to this working method, also in the field of Public Administrations. [The AEPD Agency's Teleworking Programme](#) (*Programa de Teletrabajo de la Agencia*) reflected the AEPD's commitment to promote the reconciliation of its employees' personal, work and family lives, as outlined by its Equality Plan. Participation in this programme, which under normal circumstances permits 40% of the workday to be done via teleworking, was progressively increased until reaching 80% of the workforce by 2020. The initiative was promoted by two organizations, [Women in a Legal World \(WLW\)](#) and [50&50](#)

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<sup>126</sup> Spain, Spanish Data Protection Agency (*Agencia Española de protección de datos*) (2020), [Strategic Plan](#), Madrid, Spanish Data Protection Agency.

<sup>127</sup> Spain, Ministry of Economic Affairs and Digital Transformation (*Ministerio de Asuntos Económicos y Transformación Digital*), [El Gobierno pone en marcha el proceso de elaboración de una Carta de Derechos Digitales con la constitución de un grupo de expertos](#), Press release, 16 June 2020.

<sup>128</sup> Women in a Legal World, ['Declaración de teletrabajo e innovación: 12 compromisos + 12 causas'](#), Press release, 2 June 2020.

[GL](#), to establish reasonable foundations on teleworking. The COVID-19 crisis accelerated current processes, such as digitalization and teleworking. And the Declaration intended to respond to certain challenges, not only to maintain its dual functionality (in-office work and teleworking) structurally outside of exceptional circumstances, but to address a much more ambitious cultural and social transformation, benefiting from the latest advances made and implementing a new way of working that aligns and promotes the transformation of the economy and supports recovery from the crisis.

**In 2020**, the **Spanish Data Protection Agency** (*Agencia Española de protección de datos*, AEPD, in its Spanish acronym), created a particular section collect resources published by the AEPD with relation to COVID-19 to answer any doubts that arose due to the extension of the COVID-19 crisis.<sup>129</sup>

**On 16 September 2020**, the **Spanish Data Protection Agency** (*Agencia Española de Protección de Datos*, AEPD, in its Spanish acronym) published a technical note with recommendations to minimise the risks that monitoring online browsing activity may have for privacy. The document includes an infographic with the six most relevant points. It aimed to review some of the techniques most commonly used by websites and internet services to track the websites that users visit, such as: cookies or techniques based on unique advertising identifiers used on mobiles, tablets and smart TVs.

**On 30 September 2020**, the **Spanish Data Protection Agency** (*Agencia Española de Protección de Datos*, AEPD, in its Spanish acronym), the Ministry of Education and Vocational Training, the Ministry of Equality and FriendScreens (*Ministerio de Educación y Formación Profesional*, el *Ministerio de Igualdad y PantallasAmigas*), launched the campaign 'Control is yours; Don't let them control you' (*El control es tuyo, que no te controlen*) with the aim of helping children and adolescents detect harassment and digital gender violence. The campaign includes messages describing situations that young people can experience at their schools, among their groups of friends, or in their personal relationships. A partner asking for your passwords; controlling someone else's mobile phone; the constant sending of messages for hurting a classmate, or the dissemination of sexual, violent or humiliating images without the permission of the person who appears in them, are some of these situations. It particularly deals with a number of scenarios, such as 'Your life is on your mobile' (*Tu vida está en tu móvil*), 'Your mobile does weird things' (*Tu móvil hace cosas raras*), and 'They're harassing you. Ask for help' (*Te están acosando, pide ayuda*) and 'They've

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<sup>129</sup> Spain, Spanish Data Protection Agency (*Agencia Española de protección de datos*) (2020), [Report by the State Legal Service \(Detached Department of The SLS at The Spanish DPA\) on Processing Activities Relating to the Obligation for Controllers from Private Companies and Public Administrations to Report on Workers Suffering From Covid-19](#), N/REF: 0017/2020, Official Website, *Agencia Española de protección de datos*).



shared compromising images without your consent' (*Han compartido imágenes comprometidas sin tu consentimiento*).

**On 9 October 2020**, the **Spanish Data Protection Agency** (*Agencia Española de Protección de Datos*, AEPD, in its Spanish acronym) published the Default Data Protection Guide (*Guía de Protección de Datos por Defecto*)<sup>130</sup>, which offers a practical vision to help apply this principle to data processing. The objective of optimization was to analyse processing from the viewpoint of data protection, which involves applying measures related to the amount of data collected, the extent of the processing, its conservation and accessibility.

**On 22 October 2020**, the **Spanish Data Protection Agency** (*Agencia Española de Protección de Datos*, AEPD, in its Spanish acronym) published [Communication-GDPR Gap](#) (*Comunica-Brecha RGPD*), a tool that helps data controllers to make decisions due to the obligation to communicate a security breach of personal data to those affected. The purpose of Communication-GDPR Gap was to promote proactive transparency and accountability among those responsible, in an exercise that allows those affected by a security breach to know when such rights and freedoms may be at risk, so that they can take the measures they deem appropriate to safeguard them<sup>131</sup>.

**On 22 October 2020**, the **Spanish Data Protection Agency** (*Agencia Española de Protección de Datos*, AEPD, in its Spanish acronym) published a [Code of Conduct of Data Processing in Advertising](#) (*Código de Conducta de Tratamiento de Datos en la Actividad Publicitaria*), which was presented by the Association for the Self-Regulation of Commercial Communication (*Asociación para la Autorregulación de la Comunicación Comercial*, AUTOCONTROL, in its Spanish acronym)<sup>132</sup>. Its main contents refer to establishing an out-of-court system to process claims on data protection and advertising, which is agile, effective and free for consumers.

**In October 2020**, an **Advisory Resolution was published on the prevention of spreading hate speech in the digital space (161/001536)** (*Proposición no de Ley sobre la prevención de la*

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<sup>130</sup> Spain, Spanish Data Protection Agency (*Agencia Española de protección de datos*), La AEPD publica una guía para facilitar la aplicación práctica de la protección de datos por defecto, Press release, 9 October 2020.

<sup>131</sup> Spain, Spanish Data Protection Agency (*Agencia Española de protección de datos*), 2020, [La AEPD publica una herramienta para ayudar a los responsables a decidir si deben comunicar una brecha de seguridad a los afectados](#), Press release, 22 October 2020.

<sup>132</sup> Spain, Spanish Data Protection Agency (*Agencia Española de protección de datos*) (2020), La AEPD aprueba el primer Código de Conducta bajo el RGPD, Press release, 3 November 2020.

*propagación de discursos de odio en el espacio digital (161/001536))*<sup>133</sup> . It contained proposed legal changes to stop fake news and unfounded rumours on the internet. The dissemination of fake news and unfounded rumours as such is not criminal. However, there are no particular offences contained in the Criminal Code that may be applied. Its purpose is to ensure that users of technology companies have the precise information on how to report content that incites hatred. It also proposes that the mechanisms for reporting such messages be simplified, that the processing time of the content be minimised, that the operators of ICT companies have 24 hours to remove them from the digital space and, if the victim is a children, the period is reduced to one hour. Finally, the text calls for 'increasing cooperation between ICT business operators with tax and police authorities'.

**On 29 October 2020, the Spanish Data Protection Agency** (*Agencia Española de Protección de Datos, AEPD*, in its Spanish acronym) published the '[Ex officio inspection plan on remote procurement in telecommunication operators and energy marketers](#)' (*Plan de inspección de oficio sobre contratación a distancia en operadores de telecomunicaciones y comercializadores de energía*), which analyses data processing in these sectors and their adaptation to data protection regulations from the perspective of verifying the identity of the contractor and the contracted services. The analysis includes recommendations, conclusions and Ten Commandments for users with advice when hiring such services. With regard to keeping data, it also points out that the data collected to attract customers when they ultimately do not conclude in a commercial relationship should be deleted, unless they are kept on another legal basis.

**On 30 October 2020, the** Ministry of the Presidency, Parliamentary Relations and Democratic Memory (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) issued [Order PCM/1030/2020, of October 30, which publishes the Procedure for Action against Misinformation approved by the National Security Council](#) (*Orden PCM/1030/2020, de 30 de octubre, por la que se publica el Procedimiento de actuación contra la desinformación aprobado por el Consejo de Seguridad Nacional*)<sup>134</sup> . Its purpose is to comply with the requirements established by the European Union and to implement nationally the policies and strategies enacted in the field of combating misinformation. It identifies the bodies and authorities

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<sup>133</sup> Spain, National Congress (*Congreso Nacional*), [Advisory resolution on the prevention of spreading hate speech in the digital space. \(161/001536\)](#) (*Proposición no de Ley sobre la prevención de la propagación de discursos de odio en el espacio digital (161/001536)*).

<sup>134</sup> Spain, Ministry of the Presidency, Parliamentary Relations and Democratic Memory (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) Order PCM/1030/2020 of October 30, which publishes the Procedure for Action against Misinformation approved by the National Security Council (*Orden PCM/1030/2020, de 30 de octubre, por la que se publica el Procedimiento de actuación contra la desinformación aprobado por el Consejo de Seguridad Nacional*), 30 October 2020.

that make up the system, and the procedure for their actions. Its objectives also included proposing the framework and composition of an ad hoc working team for the development of a National Strategy to Combat Misinformation (*Estrategia Nacional de Lucha contra la Desinformación*).

## **2. Artificial intelligence and big data**

Please fill in the table below with any initiatives you may identify in your country:

MS	Actor*	Type*	Description	Are Ethical concerns mentioned? (yes/no)	Are Human Rights issues mentioned? (yes/no)	Reference
ES	Government/ Parliamentary	report/ study	<p>The document addresses the doubts posed by <b>artificial intelligence</b> in the context of data protection and recalls the most important aspects of the General Data Protection Regulation to be taken into account from the design phase.</p> <p>The adequacy of data processing incorporating parts of weak <b>artificial intelligence</b> is detailed by the regulation. It is characterized by developing solutions capable of solving a specific and limited lying problem.</p>	Yes	Yes (with a specific reference to fundamental rights such as: discrimination, data protection, and children's rights)	Spain, Spanish Data Protection Agency ( <i>Agencia Española de Protección de Datos</i> ) (2020), <a href="#">Adaptation to the GDPR of processing incorporating Artificial Intelligence: an introduction</a> ( <i>Adecuación al RGPD de tratamientos que incorporan Inteligencia Artificial. Una introducción</i> ), Madrid, Spanish Data Protection Agency.

		<p>The guide, aimed at controllers (<i>responsables</i>) who incorporate <b>artificial intelligence</b> components into their processing, as well as developers and processors who support such processing. It begins by introducing the relationship between <b>artificial intelligence</b> and data protection, since an <b>artificial intelligence</b> system could be processing personal data at different stages, and it would therefore have to comply with the obligations set out in the <b>GDPR</b>.</p> <p>It also sets out the conditions that these technologies must meet to ensure and demonstrate that the processing carried out is in line with the GDPR. It includes aspects such as legitimacy for processing, information, exercise of rights and the</p>			
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			<p>automated decision-making process.</p> <p>The document also addresses risk management of processing for rights and freedoms as part of the concept of active responsibility set out in the GDPR.</p> <p>The Guide concludes that the market launch of technologies that process data using AI requires quality and privacy assurances to be applied.</p> <p>It also recalls that compliance with the GDPR requires a certain level of maturity for AI models, so that the adequacy of processing and the existence of measures to manage their risks should be objectively defined.</p>			
<b>ES</b>	Government/	report/study	Report requested of the Legal Department, in relation to the processing of data resulting	No	Yes	Spain, Spanish Data Protection Agency ( <i>Agencia Española de Protección de Datos</i> ), <a href="#">Report on</a>

	Parliamentary		<p>from the current situation arising from the extension of the COVID-19 virus.</p> <p>The report <b>clarified that the rules on personal data protection</b> are aimed at safeguarding a fundamental right, whose entirety is applicable to the current situation, since there is no reason to determine the suspension of fundamental rights, nor has such a measure been taken.</p> <p>This <b>processing of health-related data for reasons of public interest</b> should not result in third parties, such as entrepreneurs, insurance companies or banks, processing personal data for other purposes.</p> <p>It recalled that Recital (46) of the GDPR already recognises</p>		<p>(with a specific reference to fundamental rights such as: data protection )</p> <p><a href="#">Data Processing with regard to COVID-19</a> (<i>Informe sobre los tratamientos de datos en relación con el COVID-19</i>), Madrid, Legal Department (<i>Gabinete Jurídico</i>) N/REF: 00 report on the processing of data resulting from COVID-19 situation, Spanish Data Protection Agency.</p>
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			that, in exceptional situations, such as an epidemic, the legal basis for processing can be multiple, based on both public interest and the vital interest of the data subject or other natural person.			
<b>ES</b>	Government/ Parliamentary	report/ study	<p>It is a brief analysis about certain technologies used to fight against COVID-19. It described the benefits they promise to bring to the fight against the pandemic and the costs they may entail for the privacy of individuals.</p> <p>It refers to: geolocation through the information collected by telecommunication operators; geolocation on social media; apps, websites and chatbots for self-testing or making appointments; apps for collecting infection information; contact tracking apps; digital</p>	Yes	Yes (with a specific reference to fundamental rights such as: discrimination, data protection )	Spain, <b>Spanish Data Protection Agency (Agencia Española de Protección de Datos)</b> , 2020, <a href="#">The use of technologies in the fight against COVID-19: A cost-benefit analysis</a> ( <i>El uso de las tecnologías en la lucha contra el COVID-19. Un análisis de costes y beneficios</i> ), Madrid, Spanish Data Protection Agency.

			immunity passports and infrared cameras.			
<b>ES</b>	Government/ Parliamentary	report/ study	In August 2020, a Report was published that was requested of the Legal Department, in relation to a number of questions regarding <b>the use of facial recognition techniques in carrying out online evaluation tests during the state of emergency</b> declared by Royal Decree 463/2020 of 14 March caused by the COVID-19 health crisis, which established the transfer of all teaching activities to online environments.	No	Yes  (with a specific reference to fundamental rights such as: discrimination, data protection )	Spain, Spanish Data Protection Agency ( <i>Agencia Española de Protección de Datos</i> ), <a href="#">Report on the Data Treatment in relation to COVID-19</a> ( <i>Informe sobre los tratamientos de datos en relación con el COVID-19</i> ), Madrid, Legal Department ( <i>Gabinete Jurídico</i> ) N/REF: 0036/2020, Spanish Data Protection Agency.
<b>ES</b>	Government/ Parliamentary	report/ study	In May 2020, the Spanish Data Protection Agency ( <i>Agencia Española de Protección de Datos</i> , AEPD, in its Spanish acronym) published a <b>technical note introducing an initial analysis of the privacy risks</b>	No	Yes  (with a specific reference to fundamen	Spain, Spanish Data Protection Agency ( <i>Agencia Española de Protección de Datos</i> ) (2020), <a href="#">Introduction to 5G technologies and their privacy risks</a> ( <i>Introducción a las tecnologías 5G y sus riesgos para la</i>

		<p><b>that 5G technologies</b> and its use may present.</p> <p>The purpose was to review the evolution of mobile technology since its implementation, explain the new possibilities of 5G technology and identify its risks, proposing a ten commandments of recommendations.</p> <p>The AEPD urged reflection on regulations and standards relating to the processing and keeping of data by the telecommunication operators, in particular with regard to georeferencing (<i>georreferenciación</i>).</p> <p>The implementation of this technology could increase the privacy risks already associated with previous generations of mobile phones, such as geolocation, profiling, or</p>	<p>tal rights such as: data protection )</p>	<p><i>privacidad</i>), Madrid, Spanish Data Protection Agency.</p>
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			<p>automated decision-making about people.</p> <p>It included references to providing particularly clear and understandable information on 5G-based applications and service users; carefully defining roles and areas of responsibility, clearly delimiting the obligations of developers, manufacturers, operators and agents in data protection; ensuring end-to-end encrypted communications; adapting the use of automated decisions to the provisions of the General Data Protection Regulation, and establishing the necessary guarantees for international data transfers.</p>			
<b>ES</b>	Business	report/study	<p>It highlighted a number of conclusions:</p> <p>1) In recent years, the acceleration of AI achievements and advances</p>	Yes	Yes (with a specific reference to fundamental rights	Google & ADEI Observatory (2020), <a href="#">Artificial Intelligence in Spain</a> ( <i>La Inteligencia Artificial en España</i> ), Madrid, ADEI Observatory.

		<p>have been accompanied by a growing interest in the possibilities of this technique.</p> <p>2) The transformative potential of artificial intelligence also has many implications for the economy.</p> <p>3) One of the impact mechanisms of artificial intelligence on productivity is the replacement of humans with machines in routine tasks.</p> <p>4) Among the main challenges facing artificial intelligence in Spain are the promotion of generation, collection and access to data, and the recruitment of specialized human capital.</p> <p>5) In relation to the lack of specialized workers, it urges the need to recruit foreign human capital, offering tax</p>		such as: data protection )	
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			<p>benefits for AI specialists and increasing the number of visas for that target group. It would not be an obstacle for working towards the promotion of talent generation in artificial intelligence and associated knowledge areas in Spain.</p> <p>6) Recent studies have shown that data privacy regulations can create barriers to <b>artificial intelligence</b> development, especially among SMEs.</p>			
<b>ES</b>	Government/ Parliamentary	other projects	The Spanish Data Protection Agency ( <i>Agencia Española de Protección de Datos</i> ). Initiatives involving a high volume of personal data processing and especially sensitive data, such as health data, are being developed in the current health emergency arising from the	No	Yes  (with a specific reference to fundamental rights such as: Discrimination, Data	Spain, Spanish Data Protection Agency ( <i>Agencia Española de Protección de Datos</i> ), <a href="#">AEPD comunicó on Coronavirus self-assessment apps and websites</a> , Press release, 26 March 2020.

		<p>spreading of the COVID-19 virus.</p> <p>Its purpose was to recall the criteria that must be applied in order for the processing of personal health data to be lawful.</p> <p>According to the Spanish Data Protection Agency (<i>Agencia Española de Protección de Datos</i>) the criteria to be applied would be:</p> <ul style="list-style-type: none"> <li>-The foundations that legitimise/make possible such processing are the need to attend to missions carried out for public interest, as well as to guarantee the vital interests of the affected persons themselves or third parties.</li> <li>-The purposes for the data to be processed are only those related to epidemic control, including providing information</li> </ul>		<p>protection )</p>	
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			<p>on the use of self-assessment applications by public administrations or obtaining statistics with geolocation data aggregated to provide maps that report areas of higher or lower risk.</p> <p>The data that can be obtained and used must be those that the competent public authorities deem proportionate/necessary to fulfil those purposes.</p>			
<b>ES</b>	Government/ Parliamentary	other projects	<p>On 6 April 2020, the Spanish Government launched and made available to all the Autonomous Communities, an official mobile application for self-diagnosis and information called <a href="#">COVID-19 Assistance</a> (<i>Asistencia COVID-19</i>)<sup>135</sup>.</p>	Yes	Yes  (with a specific reference to fundamental rights such as: data	Spain, Presidency of the Government ( <i>Presidencia del Gobierno</i> ), 2020, The Official COVID-19 Self-diagnosis App, now available in five new autonomous communities ( <a href="#">La aplicación oficial de autodiagnóstico AsistenciaCOVID-19, disponible ya en cinco nuevas</a>

<sup>135</sup> For more information, see page 9 [Coronavirus COVID-19 outbreak in the EU: Fundamental Rights Implications](#), 19 April 2020.



		<p>It was available in several autonomous communities including Asturias; the Canary Islands; Cantabria; Castile-La Mancha, Madrid and Extremadura.</p> <p>It was established by the Secretary of State for Digitalization and Artificial Intelligence (<i>Secretaría de Estado de Digitalización e Inteligencia Artificial</i>), under the Ministry of Economic Affairs and Digital Transformation (<i>Ministerio de Asuntos Económicos y Transformación Digital</i>).</p> <p>The <b>objective</b> of this application was to decongest the health care phone lines in different autonomous communities, while providing official and reliable information to the public.</p>	<p>protection)</p>	<p><a href="#">comunidades autónomas</a>), Press release, 6 April 2020.</p> <p>Spain, Madrid Regional Government (<i>Comunidad de Madrid</i>), Official Website <a href="#">Do your COVID-19 self-assessment</a> (<i>Haz tu autoevaluación del COVID-19</i>), Madrid.</p> <p>Spain, Government of Catalonia (<i>Gobierno de Cataluña</i>), <a href="#">Digital Tools for Healthcare, Catalan Health System</a> (<i>Herramientas Digitales Para La Asistencia Sanitaria. Sistema de Salut de Catalunya</i>), Official Website.</p> <p>Spain, Basque Country Regional Government (<i>Gobierno Vasco</i>), <a href="#">APP COVID-19.EUS</a>, Official Website.</p>
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		<p><b>The tool could be used</b> via mobile phones or on the website and lets users perform self-diagnosis, access action recommendations and up-to-date information, and users can receive reminders to track regularly their health status. Its purpose was not to become a medical diagnostic, emergency care or prescription service for drug treatments.</p> <p>Its purpose was not to be a medical diagnosis service, emergency care or prescription of pharmaceuticals. The application, after requesting different identification and health data related to the symptoms experienced, provides recommendations and action guidelines.</p> <p>In addition, through the mobile phones' geolocation system via GPS, with users' permission, the</p>			
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			autonomous community can personalize responses according to the protocols of each one of them.			
<b>ES</b>	Government/ Parliamentary	other projects	Spain signed a <b>Joint G20 Declaration</b> seeking to promote the use of technological and digital solutions to combat COVID-19.	No	No	G20 Saudi Arabia 2020 (2020), <a href="#">G20 Leaders' Statement. Extraordinary G20 Leaders' Summit Statement on COVID-19</a> , Saudi Arabia, G20 Saudi Arabia 2020.
<b>ES</b>	Government/ Parliamentary	other projects	Emerging from the global crisis suffered by COVID-19 and the <b>restoration of a powerful national R&amp;D&amp;I system</b> were defined as urgent actions that need to be addressed after the last decade of difficulties.  The Strategy will be carried out <b>in two phases:</b>  In a <b>first phase from 2021 to 2023</b> , tasks will be focused on ensuring the strengths of the system, reinforcing the current	Yes	Yes  (with a specific reference to fundamental rights such as: discrimination, gender equality and data	Spain, Ministry of Science and Innovation ( <i>Ministerio de Ciencia e Innovación</i> ), 2020, <a href="#">Spanish Science, Technology and Innovation Strategy 2021-2027</a> ( <i>Estrategia Española de Ciencia, Tecnología e Innovación 2021-2027</i> ), Madrid, Ministry of Science and Innovation.

			<p>programming, infrastructures and human resources that will benefit from the design of a well-defined research career, which allows the necessary generational replacement.</p> <p>The <b>second phase from 2024 to 2027</b> will allow R&amp;D&amp;I to be positioned among the fundamental pillars of the National State and to consolidate its value as a tool for the development of a knowledge-based economy.</p>		protection )	
<b>ES</b>	Government/ Parliamentary	other projects	<p>Research project called <b>Certainty of Voice</b> (<i>Certeza de Voz</i>) promoted by the Andalusian Institute of Women (<i>Instituto Andaluz de la Mujer</i>, IAM, in its Spanish acronym), in collaboration with the <a href="#">Public Health Emergency Company</a> (<i>Empresa Pública de Emergencias Sanitarias</i>, EPES 061), which reports to the</p>	Not available	Yes (with a specific reference to fundamental rights such as: data protection	<p>Andalusian Institute of Women (<i>Instituto Andaluz de la Mujer</i>) (2020), <b>Certainty of Voice</b> (<i>Certeza de Voz</i>), Seville, Empresa Pública de Emergencias Sanitarias, EPES 061.</p> <p>Andalusian Institute of Women (<i>Instituto Andaluz de la Mujer</i>)</p>

		<p>Ministry of Health and Families (<i>Consejería de Salud y Familias</i>). The European Regional Development Fund and the National Funds for the State Pact against Gender-Based Violence (<i>Fondos del Pacto de Estado contra la Violencia de Género</i>) funded it.</p> <p>Artificial intelligence will be used as <b>a tool in prevention actions against sexist violence</b>. Its aim is early detection of alleged cases of gender-based violence through women's tone of voice calling to the <a href="#">Andalusian Centres for Emergency and Health Emergency Coordination</a> (<i>Centros de Coordinación de Urgencias y Emergencias Sanitarias</i>). After attending to these calls, an alert will be generated on suspicion of a case of gender-based violence.</p>		, children's rights, and gender equality)	<a href="#">Certeza de voz, un proyecto para detectar la violencia de género a través de la voz</a> , Press release, 15 September 2020.
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			It is <b>expected to be in place</b> by 2021 or early 2022.			
<b>ES</b>	Government/ Parliamentary	other projects	<p>On July 2020, the Spanish Government launched its <a href="#">Spain Digital Plan 2025</a> (<i>España Digital 2025</i>).</p> <p>It included a set of measures, reforms and investments that were articulated in ten strategic axes to align with the digital policies set by the European Commission for the new period. The Agenda's actions aimed to promote more sustainable and inclusive growth that is driven by the synergies of digital and ecological transitions, to reach society as a whole, to conciliate new opportunities offered by the digital world with respect for constitutional values, and to protect individual and collective rights.</p>	Yes	Yes  (with a specific reference to fundamental rights such as: discrimination, data protection and gender equality)	Spain, Ministry of Economic Affairs and Digital Transformation ( <i>Ministerio de Asuntos Económicos y Transformación Digital</i> ) (2020), <a href="#">Spain Digital Plan 2025</a> ( <i>España Digital 2025</i> ), Madrid, Ministerio de Asuntos Económicos y Transformación Digital.
<b>ES</b>	Government/ t/	other projects	On 2 December 2020, the <a href="#">National Artificial Intelligence Strategy</a> ( <i>Estrategia Nacional</i>	Yes	Yes	Spain, Ministry of Economic Affairs and Digital Transformation ( <i>Ministerio de</i>

	Parliamentary		<p><i>de Inteligencia Artificial</i>, ENIA, in its Spanish acronym) was officially presented.</p> <p>It is one of the fundamental proposals of for the Spain Digital Plan 2025 launched in July 2020 and one of the principal components of the Recovery, Transformation and Resilience Plan for the Spanish economy.</p> <p>It will have a public investment of 600 million euros for the 2021-2023 period. The aim of the <b>strategy</b> is to create an environment of trust with regard to the development of inclusive and sustainable <b>artificial intelligence (AI)</b> that places people at its heart.</p> <p>The strategy is built around six priorities: (a) Boosting scientific research, technological</p>	(with a specific reference to fundamental rights such as: discrimination, data protection and gender equality)	<p><i>Asuntos Económicos y Transformación Digital</i>) (2020), <a href="#">National Artificial Intelligence Strategy</a> (<i>Estrategia Nacional de Inteligencia Artificial</i>), Madrid, Ministerio de Asuntos Económicos y Transformación Digital.</p>
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		<p>development, and innovation in AI; (b) Fostering digital skills and the development of national talent, as well as the attraction of international talent in AI; (c) Developing data platforms and technological infrastructures that provide a support network for AI; (d) Integrating AI in the value chains to transform the economy; (e) Boosting the use of AI by the public sector; (f) Establishing an ethical and regulatory framework that guarantees the protection of individual and collective rights, with social welfare and sustainability as key elements.</p>			
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## Chapter 6. Rights of the child

### 1. Measures taken during the COVID 19 to ensure the well-being of children living in poverty and the protection of children from violence.

<p><b>Measures to address the specific vulnerabilities of children living in poverty</b></p>	<p>To illustrate the situations being implemented to alleviate the measures taken, such as poverty, or the limitations of these measures, several reports have been published, including: <b>in May 2020</b>, the Spain Childhood Platform (<i>Plataforma de infancia España</i>) published a report entitled <a href="#">Priority measures for children in the COVID-19 crisis</a> (<i>Medidas prioritarias para la infancia en la crisis del COVID-19</i>). It addressed several issues such as: the worsening living conditions for families at risk of poverty and social exclusion; the difficulties for many families in caring for their children and working after school closures; the negative consequences of school closures on education; the impact of confinement measures on children's health; the risk of increased violence against children in households; the situation of children in the protection system; the particularly vulnerable situation of unaccompanied migrant children; the absence of communicative action towards children. It would be of high interest to recall what the report mentioned on the limitations of the minimum living wage (<i>ingreso mínimo vital</i>). It refers to families with dependent children who may be granted the Guaranteed Minimum Income (<i>Renta Mínima de Inserción</i>) but not the dependent child benefit (<i>prestación por hijo a cargo</i>). In this case, families need to be provided with a bonus to meet care and food expenses. In addition, it contained a request for the faster processing of the Guaranteed Minimum Income files where there is priority social report and the payment must be made urgently<sup>136</sup>.</p> <p><b>In July 2020</b>, in order to support family and child poverty, the Spanish Government approved the distribution of a total of eighty-five million euros on</p>
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<sup>136</sup> Spain Childhood Platform (*Plataforma de infancia España*), 2020, [Priority measures for children in the COVID-19 crisis](#) (*Medidas prioritarias para la infancia en la crisis del COVID-19*), Madrid.

	<p>funding for the autonomous communities and the autonomous cities of Ceuta and Melilla for the implementation of a <b><u>Family Protection and Child Poverty Care Programme</u></b> (<i>Programa de Protección a la Familia y atención a la pobreza infantil</i>)<sup>137</sup>. It was distributed in two blocks: a first one of 45 million will be allocated to projects that contribute to improving the socio-labour situation of families with dependent children, and families suffering situations of severe material deprivation, or risk of poverty and/or exclusion. A second <b>block will be endowed with 40 million euros to be allocated to basic social services through local corporations</b><sup>138</sup>.</p> <p>Spain: Report on remote educational activities implemented during COVID-19</p> <p>The ministry with responsibility for education (<i>Ministerio de Educación y Formación Profesional</i>) published a <a href="#">report setting out the educational response</a> to the COVID-19 outbreak. The <a href="#">report</a> describes various policies and initiatives that were launched by the ministry between March and September 2020 in order to encourage and support remote learning. One example is the web portal '<a href="#">Learn from Home</a>' (<i>Aprendo en Casa</i>) which was developed to bring together educational resources, online training, and tools and apps for teachers, families and students.</p> <p><b>UNICEF Spain published a report entitled 'COVID-19: Protecting Health in Classrooms: Basic principles to ensure the right to health when reopening schools' (<i>COVID-19: Proteger la Salud en las Aulas. Principios básicos para asegurar el derecho a la salud al reabrir los centros educativos</i>)</b><sup>139</sup>. It addressed issues related to children's rights, right to education, emergency</p>
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<sup>137</sup> Spain, Presidency of the Government (*Presidencia del Gobierno*), [Distribución de los créditos del Programa de protección a la familia y atención a la pobreza infantil](#), 14 July 2020.

<sup>138</sup> Spain, [Budget Plan 2021](#) (*Plan Presupuestario 2021 Reino De España*), 15 October 2020.

<sup>139</sup> UNICEF Spain (2020), [COVID-19: Protecting Health in Classrooms: Basic principles to ensure the right to health when reopening schools](#) (*COVID-19: Proteger la Salud en las Aulas. Principios básicos para asegurar el derecho a la salud al reabrir los centros educativos*), Madrid, UNICEF.

	<p><b>action, right to health, and COVID-19</b> protection measures. <b>It was aimed at authorities and educational institutions, Primary Education teachers, Compulsory Secondary Education (<i>Educación Secundaria Obligatoria</i>, ESO, in its Spanish acronym), Baccalaureate and Vocational Training, educational centre management teams, municipal child technicians and families.</b></p> <p><b>In relation to ‘means of living’ requested of foreign children in order to access particular residence permits, more flexible criteria were introduced.</b> It refers to the minimum required income requested under Article 53 c) and d) of <a href="#">Royal Decree 557/2011</a><sup>140</sup>, for those who want to get a family reunification residence permit for a family member<sup>141</sup>. The criteria were modified to be more in line with the best interests of the child, in order to promote the reunification of children with their parents or representatives, regardless of the financial resources of the parents. The amounts required were reduced. It <b>concluded that several criteria</b> should be taken into consideration, such as: the best interests of the child; the circumstances of every case and, in particular, the foreigner’s relationship with the child, their age, their physical and emotional development, and the situation of the child (i.e. person with disability); a favourable interpretation for family life will always be made; and also the number of family unit members.</p>
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<sup>140</sup> Spain, Ministry of the Presidency (*Ministerio de la Presidencia*), [Royal Decree 557/2011 of April 20, which approves the Regulations of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, following their reform by Organic Law 2/2009](#) (*Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009*), 20 April 2011.

<sup>141</sup> Spain, Secretary of State for Migrations, Ministry of Inclusion, Social Security and Migrations (*Secretaría de Estado de Migraciones, Ministerio de Inclusión, Seguridad Social y Migraciones*), [Instructions DGM 4/2020 on easing the requirement of sufficient means in the processing of residence permits by family reunification](#) (*Instrucciones DGM 4/2020 sobre la flexibilización del requisito de medios suficientes en la tramitación de autorizaciones de residencia por reagrupación familiar*), 8 June 2020.

The measure responded to the situation handled by the Supreme Court, Contentious-Administrative Chamber Section Five, [Judgment No. 110/2019](#) (*Tribunal Supremo Sala de lo Contencioso-Administrativo, Sección Quinta Sentencia núm. 110/2019*)<sup>141</sup> which agreed to establish, as an interpretative criterion, that the financial means for the renewal of the non-profit residence permit of unaccompanied foreign children who turn 18 and apply for an initial authorization or its renewal cannot come from public allowances or benefits.

	<p><b>UNICEF</b> developed a new initiative in response to the COVID-19 health crisis by creating a <a href="#">blog addressing the support of children</a> and professionals working in the protection system. Several materials were published in several languages in response to the needs of migrant children under the guardianship of the public administration<sup>142</sup>.</p> <p><b>The NGO Save The Children</b> expanded its migrant childcare programs during the COVID-19 health emergency. It adapted and strengthened its programmes to support and protect the fundamental rights of migrant, refugee children and adolescents during the coronavirus crisis. The organization expanded the opening hours of its <a href="#">Helpline Service</a> to assist <b>migrants without family. It was implemented by telephone and online.</b> In addition, <b>it</b> addresses residential accommodation centre <b>staff, to offer</b> them proposals for <b>mediation, translation and conflict management services.</b><sup>143</sup></p> <p><b>In June 2020, the <a href="#">National Ombudsman (Defensor del Pueblo)</a> was appreciative that in 2020, the Secretary of State for Migrations (<i>Secretaría de Estado de Migraciones</i>) accepted two recommendations that were addressed to them in reference to the need to issue work permits for persons over 16 years of age.</b><sup>144</sup>.</p> <p><b>The <a href="#">Nous Cims Foundation (Fundación Nous Cims)</a> supported the <a href="#">ANAR Foundation</a> through investment in ANAR Helplines.</b> The Nous Cims Foundation provided computer systems, equipment and staff to be able to provide the service remotely, while guaranteeing the protection of children benefiting from the ANAR Helplines.</p> <p><b>On 22 November 2020, the National Spanish budget (<i>presupuestos generales del Estado</i>, PGE, in its Spanish acronym) incorporated an allocation of 27 million euros for the <b>support of unaccompanied migrant children</b></b></p>
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<sup>142</sup> UNICEF, Official Website, [UNICEF with Protection Centres \(UNICEF con los Centros de Protección\)](#)

<sup>143</sup> Save the Children, [Confinamiento: Save The Children Insta a que se Autorice la Salida de Adolescentes Tutelados](#), Press release, 28 April 2020.

<sup>144</sup> Spain, [National Ombudsman \(Defensor del Pueblo\)](#), [El Defensor del Pueblo Explica en el Congreso su Gestión en 2018 y 2019](#), Press release, 15 June 2020.

	<p><b>within the protection system.</b> Previously, there was an approved allocation of 10 million euros through the Vice-President of Social Rights and Agenda 2030 (<i>Ministerio de Derechos Sociales y Agenda 2030</i>)<sup>145</sup>. In addition, it also awarded 6.4 million to Ceuta and Melilla for the same purposes. The extraordinary funding to finance expenses also rose for the care and reception of unaccompanied children on the islands. This funding was supposed to have been received before the end of the year 2020 by the Government of the Canary Islands.</p> <p><b>On 22 December 2020</b>, the <a href="#">Royal Decree-Law 37/2020</a> was approved <a href="#">to set up social measures related to the suspension of evictions of vulnerable people</a> during the state of alarm. This allowed for the extraordinary suspension of evictions of tenants in situations of economic vulnerability<sup>146</sup>. It also protects households affected by usual residence release procedures (<i>procedimientos de lanzamiento</i>) that do not result from leases where dependents, victims of violence on women or dependents exist. Lastly, it ensures the supply of water and energy to vulnerable consumers.</p>
<p><b>Measures to protect children from violence</b></p>	<p><b>In March 2020</b>, the Ministry of Social Rights and Agenda 2030 (<i>Ministerio de Derechos Sociales y Agenda 2030</i>), published a <a href="#">Technical Document of Action Recommendations issued by the Public Protection System for Children and Adolescents during the Covid-19 Crisis</a> (<i>Documento Técnico de Recomendaciones de Actuación desde El Sistema Público de Protección a La Infancia y a la Adolescencia ante la Crisis por Covid-19</i>). It includes <b>recommendations for the child offenders care system</b><sup>147</sup>. In line with these recommendations, several</p>

<sup>145</sup> Spain, Ministry of the Social Rights and Agenda 2030 (*Ministerio de Derechos Sociales y Agenda 2030*) (2020), Real Decreto 1059/2020, de 1 de diciembre, por el que se regula la concesión directa de una subvención a la Comunidad Autónoma de Canarias para la atención y acogida de los niños, niñas y adolescentes migrantes no acompañados, 2 December 2020.

<sup>146</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 37/2020, of 22 December, on urgent measures to deal with situations of social and economic vulnerability in the field of housing and transport](#) (*Real Decreto-ley 37/2020, de 22 de diciembre, de medidas urgentes para hacer frente a las situaciones de vulnerabilidad social y económica en el ámbito de la vivienda y en materia de transportes*), 22 December 2020.

<sup>147</sup> Spain, Ministry of Social Rights and 2030 Agenda (*Ministerio de Derechos Sociales y Agenda 2030*), [Technical Document of Action Recommendations issued by the Public Protection System for Children and Adolescents during the Covid-19 Crisis](#) (*Documento Técnico de Recomendaciones de Actuación desde El Sistema Público de Protección a La Infancia y a la Adolescencia ante la Crisis por Covid-19*), Madrid, 31 March 2020.

autonomous communities issued particular **action protocols to handle** and protect offender children against COVID-19. This was the case in Andalusia<sup>148</sup>, where action protocols were established at the 16 detention centres for child offenders (*centros de internamiento de menores infractores*, CIMI, in its Spanish acronym)<sup>149</sup>. It entailed the suspension of external visits and established evaluation and follow-up working groups to assess and implement the necessary measures to be taken.

**In March 2020**, The Administrative Chamber of the Supreme Court (*Sala de lo Contencioso-Administrativo del Tribunal Supremo*) considered that [the 30-year period for the cancellation of registrations in the Central Register of Sexual Offenders](#) (*Registro Central de Delincuentes Sexuales*) is appropriate. It will apply when the sentence has been served out without getting involved in a crime again, and if the victim is a child and the convicted person is an adult, as established in Article 10 of the [Royal Decree 1110/2015, of December 11, regulating the Central Registry of Sex Offenders](#)<sup>150</sup>. The Sex Offender Registration is defined as an instrument of protection for the benefit of the child. It also added that its purpose is to contribute to the protection of children against sexual exploitation and abuse, irrespective of who is the perpetrator of the crime, by establishing a prevention mechanism to know whether those seeking access to and

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<sup>148</sup> Spain, Andalusian Regional Government (*Junat de Andalucía*), [Justicia establece protocolos de actuación para todos los centros de menores infractores ante el coronavirus](#), Press release, 13 March 2020.

<sup>149</sup> Spain, Andalusian Regional Government (*Junta de Andalucía*), [Order of 19 June 2020, adopting preventive public health measures in the Autonomous Community of Andalusia to deal with the health crisis caused by coronavirus \(COVID-19\), once the state of emergency has ended](#) (*Orden de 19 de junio de 2020, por la que se adoptan medidas preventivas de salud pública en la Comunidad Autónoma de Andalucía para hacer frente a la crisis sanitaria ocasionada por el coronavirus (COVID-19), una vez superado el estado de alarma*), 19 June 2020, Boletín Oficial de la Junta de Andalucía.

<sup>150</sup> Spain, Ministry of the Justice (*Ministerio de Justicia*), [Royal Decree 1110/2015, of December 11, regulating the Central Registry of Sex Offenders](#) (*Real Decreto 1110/2015, de 11 de diciembre, por el que se regula el Registro Central de Delincuentes Sexuales*), 11 December 2015.

carrying out professions, trades and activities involving regular contact with children lack a criminal record.<sup>151</sup>

The **Project for an [Organic Law for Comprehensive Protection of Children and Adolescents against Violence](#)** was approved by the Council of Ministers **on 9 June 2020**.<sup>152</sup> It responded to the urgent need to introduce into the legal system the commitments made by Spain for completely protecting children and adolescents against violence. The **aim** is that the law will involve the design of protocols against violence that will be compulsory in schools, as well as appointing a person responsible for welfare and protection, whose work will be supervised by the communities. It **establishes a very broad concept of violence** that encompasses any form of physical, psychological or emotional harm or abuse, including sexual assault and abuse, physical punishment, simple neglect and negligent treatment. Its purpose is to influence the importance of prevention and restoration of victims' rights, respecting the needs of each of them at the time of intervention. **Special reference is made to vulnerable groups such as children with disabilities, unaccompanied children, and victims of human trafficking.** The law will also emphasise that citizens, families and professional settings that may become aware of any known acts of violence must report them. All types of violence are punished, including those conducted via information and communication technologies. The **offences** will include, among others, the crime of human trafficking of children; a new catalogue of online crimes is included, including incitement to suicide, sexual offences and the promotion of eating disorders. The schools will have protocols for preventing, detecting and taking action against violence, as well as a welfare and protection coordinator to monitor their proper implementation. Protocols will also be developed in health fields, sports and leisure and the Security Forces will have specialised units for violence against children. It also envisages the

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<sup>151</sup> Spain, General Council of the Judicial Power (*Consejo General del Poder Judicial*), [El Tribunal Supremo considera ajustado a derecho el plazo de 30 años para cancelar la inscripción en el Registro de Delincuentes Sexuales](#), press release, 5 March 2020.

<sup>152</sup> Spain, Presidency of the Government (*Presidencia del Gobierno*), [Protección integral a la infancia y la adolescencia frente a la violencia](#), Press release, 9 June 2020.

launch of a **single information registry on children victims** (*registro único de información sobre menores víctimas*), which will make it possible to centralise all the statistical information concerning violence against children and adolescents. In terms of the **measures** envisaged to introduce a statute of limitations for the most serious crimes against children, the period will not begin until the victim turns 30 years old.

The [ANAR Foundation](#) stated that the confinement situation experienced because of the COVID-19 health crisis was affecting many children and adolescents. Therefore, the ANAR Foundation published a **document explaining Measures to prevent and combat violence against children during the period of confinement for the state of emergency**<sup>153</sup>.

The [ANAR Foundation](#) wants to ensure that children know about the existence of **childhood support channels and lines**, such as [ANAR Chat](#) (*Chat ANAR*). During the confinement period from 23 March to 3 May 2020, ANAR Chat assisted 1,441 requests for help. The [ANAR Foundation](#) warned that since 23 March 2020, the percentage of cases on violence against children and adolescents continued to grow from 36.1% on 23 March to 47.7% one and a half months later. Almost half of the cases attended by ANAR were based on violence suffered by children and adolescents.

**On 23 June 2020**, there was a [Case of Omorefe v Spain](#)<sup>154</sup> where the European Court of Human Rights declared that Spain violated Article 8 of the European Convention on Human Rights, which refers to the right to respect for one's private and family life. The case concerned the placement in foster care and subsequent adoption of a child and the inability of the biological mother to stay in contact with him. It also refers to the violation of Article 46, on the binding force and execution of judgments of the Convention. The European Court

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<sup>153</sup> ANAR Foundation (*Fundación ANAR*), [ANAR measures to prevent and combat violence against children during the period of confinement for the state of emergency](#) (*Medidas ANAR para prevenir y luchar contra la violencia hacia la infancia durante el periodo de confinamiento por el estado de alarma The current confinement situation can affect many children and adolescents*), Madrid, Fundación ANAR.

<sup>154</sup> European Court of Human Rights, [Case of Omorefe v Spain](#), Application 69339/16, 23 June 2020.



called on the domestic authorities to re-examine the situation of Ms Omorefe and her young son, and to envisage the possibility of establishing contact between them, taking into account the child's current situation and best interests<sup>155</sup>.

**On 31 July 2020, [Law 9/2020](#)<sup>156</sup> was issued, which amends the second book of the **Civil Code of Catalonia to foster the mediation procedures in the field of family conflicts**. It aimed to promote mediation as an alternative method to resolve conflicts at the family level, especially in those affecting children. It entered into effect on 4 November 2020.**

**The Department of Equality, Social Policies and Conciliation of the Andalusian Government and the Children's Observatory in Andalusia** (*Junta de Andalucía. Consejería de Igualdad, Políticas Sociales y Conciliación, Observatorio de la Infancia en Andalucía*) **published a report on [Figures and Data No. 16: Child Abuse](#)** (*Cifras y Datos nº 16: Maltrato infantil*).<sup>157</sup> It referred to cases in 2019. It concluded that in Spain, 236,7 notifications were recorded for every 100,000 people under the age of 18. The breakdown of the data by the typology negligence was: physical abuse (20.7%), sexual abuse (6.4%), negligence (67,4%), and emotional abuse (25.3%). In 2018, 34.1% of notifications were classified as severe and 65.9% are typified as mild-moderate. Notifications of abuse considered mild-moderate increased by 57% in the period 2014 (7,882) to 2018 (12,399). In reference to notifications concerning serious abuse, there was a 2% decrease between 2014 (6,531) and 2018 (6,402). However, there was a rebound from 2016-2018.

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<sup>155</sup> European Court of Human Rights, [Spain. Press country profile](#), July 2020

<sup>156</sup> Autonomous Community of Catalonia (*Comunidad Autónoma de Cataluña*), [Law 9/2020, of July 31, amending the second book of the Civil Code of Catalonia, concerning to the person and the family, and Law 15/2009, mediation in the field of private law](#) (*Ley 9/2020, de 31 de julio, de modificación del libro segundo del Código civil de Cataluña, relativo a la persona y la familia, y de la Ley 15/2009, de mediación en el ámbito del derecho privado*), 31 July 2020.

<sup>157</sup> Ruiz Benítez, Berta (2020), [Figures and Data No. 16: Child Abuse \(Cifras y Datos nº 16: Maltrato infantil\)](#). Granada, Junta de Andalucía. Consejería de Igualdad, Políticas Sociales y Conciliación, Observatorio de la Infancia en Andalucía.

## 2. Legal and policy measures or initiatives developed about criminal proceedings

<p><b>Legislative changes</b></p>	<p><b>No legislatives changes were recorded.</b></p>
<p><b>Policy developments</b></p>	<p><b>In September 2020</b>, the National Statistics Institute (<i>Instituto Nacional de Estadística</i>, INE, in its Spanish acronym) published the <a href="#">Statistics Report on Convictions: Adults / Statistics on Convictions: Childrens (ECA / ECM in its Spanish acronym) 2019</a>, (<i>Estadística de Condenados: Adultos / Estadística de Condenados: Menores (ECA / ECM) Año 2019</i>).<sup>158</sup> In 2019, 14,112 children (14 to 17 years old) were convicted by a final judgement. 79.1% of convicted children were male and 20.9% were female. There were 416 children convicted of sexual offences, 28.8% more than the previous year. 98.1% were male and 1.9% female. These convicted children committed 548 crimes of a sexual nature, 34.3% more than in 2018.</p> <p><b>In September 2020</b>, the <a href="#">2019 Public Prosecutor’s Office Annual Report</a> was published (<i>Memoria de la Fiscalía General del Estado 2019</i>)<sup>159</sup>. It mentioned the difficulty of providing statistical data for behaviours committed over the internet by children. There is no specific record for such figures and it is not possible to provide differentiated data on crimes such as: threat crimes, Articles 169 to 171 of the Criminal Code; crimes of coercion and harassment, Articles 172 and 172.3 of the Criminal Code; crimes against moral integrity, Article 173.1 of the Criminal Code; and crimes of discovery and disclosure of secrets, Article 197 of the Criminal Code. In general, it stated that there is still an increase in crimes not associated with marginality, but with poor education: crimes of domestic violence against parents and crimes against sexual freedom.</p>

<sup>158</sup> [Statistics on Convictions: Adults / Statistics on Convictions: Childrens \(ECA / ECM in their Spanish acronyms\) 2019](#), *Estadística de Condenados: Adultos / Estadística de Condenados: Menores (ECA / ECM) Año 2019*, 21 September 2020.

<sup>159</sup> Spain, Ministry of Justice (*Ministerio de Justicia*) (2020), [Public Prosecutor’s Office Annual Report 2019](#) (*Memoria de la Fiscalía General del Estado 2019*), Chapter VI, pp 922-963, Madrid, Ministry of Justice.

<p><b>Other measures or initiatives</b></p>	<p>The <b>National Ombudsman</b> (<i>Defensor del Pueblo</i>) in its <a href="#">Annual Report 2019</a>, published in 2020, set out several recommendations sent to the Ministry of the Justice in December 2019<sup>160</sup>. It details the work done related to the National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment in juvenile detention centres (<i>centros de internamiento de menores infractores</i>, CIMI, in its Spanish acronym) and to the deaths of two children in two of these establishments, in <a href="#">Melilla</a> and <a href="#">Almería</a>, after being restrained by mechanical fasteners. The <b>National Ombudsman</b> (<i>Defensor del Pueblo</i>) continued to pay close attention to the occurrence of such practices during the inspections conducted and requested information from autonomous communities on this matter. In 2020, the National Ombudsman made recommendations to abolish mechanical restraints at all juvenile detention centres throughout Spain. It was defined as 'unnecessary cruelty' (<i>crueldad innecesaria</i>). The <b>National Ombudsman</b> (<i>Defensor del Pueblo</i>) requested the Ministry of Justice to modify <a href="#">the Regulation on Children Criminal Liability</a> (<i>reglamento de responsabilidad penal de los menores</i>)<sup>161</sup>, the regulation that governs this measure. This concern was transferred to the Ministry of Justice and the Ministry reported that it had established a multidisciplinary working group to study the reform of mechanical restraints.</p>
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<sup>160</sup> Spain, National Ombudsman (*Defensor del Pueblo*) (2020), [Annual Report 2019](#) (*Informe Anual 2019*), Madrid, National Ombudsman; Spain, National Ombudsman (*Defensor del Pueblo*), [El Defensor Pide la Abolición de las Sujeciones Mecánicas en los Centros de Menores Infractores](#), Press release, 17 June 2020.

<sup>161</sup> Spain, Ministry of Justice (*Ministerio de Justicia*), [Royal Decree 1774/2004 of 30 July, approving the Regulations of Organic Law 5/2000 of January 12, regulating the criminal liability of Childrens](#) (*Real Decreto 1774/2004, de 30 de julio, por el que se aprueba el Reglamento de la Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores*), 30 August 2004.

# Chapter 7. Access to justice including crime victims

## 1. Victims' Rights Directive

The **Project for an [Organic Law for Comprehensive Protection of Children and Adolescents against Violence](#)** was approved by Council of Ministers **on 9 June 2020**.<sup>162</sup> **On 5 November 2020**, all the amendments were officially published.<sup>163</sup> It responded to the urgent need to introduce into the legal system the commitments made by Spain to completely protect children and adolescents against violence. The **aim** is for the law to include the design of protocols against violence that will be compulsory in schools, as well as appointing a person responsible for welfare and protection, whose activity will be supervised by the communities. It **establishes a very broad concept of violence** that encompasses any form of physical, psychological or emotional harm or abuse, including sexual assault and abuse, physical punishment, simple neglect and negligent treatment. Its purpose is to influence the importance of preventing and restoring victims' rights and respecting each of their needs at the time of intervention. **Special reference is made to vulnerable groups such as children with disabilities, unaccompanied children, and victims of human trafficking**. It also envisages the launch of a **single information registry on children victims** (*registro único de información sobre menores víctimas*), which will make it possible to centralise all the statistical information concerning violence against children and adolescents.

The **National Ombudsman** (*Defensor del Pueblo*) in its [Annual Report 2019](#), published in 2020, set out several recommendations sent to the Ministry of Justice in December 2019. It requested that the necessary measures be taken to ensure that **rapid trials adequately assess the risk of children living in households** with violence. It planned to suitably assess and take measures to suspend or monitor the visitation system for children related to victims of gender-based violence. At the time of writing the Annual Report 2019, a reply was received from the Secretary of State for Justice of the Ministry of Justice, which deemed a legislative amendment unnecessary, because it understood that current legislation was sufficient to decide on the visitation system<sup>164</sup>.

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<sup>162</sup> Spain, Presidency of the Government (*Presidencia del Gobierno*), [Protección integral a la infancia y la adolescencia frente a la violencia](#), Press release, 9 June 2020.

<sup>163</sup> Spain, National Parliament (*Congreso de los Diputados*), [Amendments and index of amendments to the articulated](#) (*Enmiendas e índice de enmiendas al articulado*), nº A-22-2, 5 November 2020.

<sup>164</sup> Spain, National Ombudsman (*Defensor del Pueblo*), 2020, [Annual Report 2019](#) (*Informe Anual 2019*), Claim no. (19015521), Madrid, National Ombudsman.

Equally, the **National Ombudsman** (*Defensor del Pueblo*) in its [Annual Report 2019](#), published in 2020<sup>165</sup>, pointed out that several of the proceedings initiated shown that the limited measures to suspend or monitor the schedule of **visitation rights established for the children of victims of gender-based violence** is based on the lack of comprehensive forensic assessment units in all courts. This means that public prosecutors are unable to have this evidence or forensic assessments to fully understand children's risk situation and act in accordance with their best interests.

To this end, a **Recommendation was made in December 2019<sup>166</sup> to the Ministry of Justice to implement urgently measures 143 to 150 of the State Pact against Gender-Based Violence** (*Pacto de Estado sobre violencia de género*)<sup>167</sup>. In particular, to provide the courts with the cases of gender-based violence that occurred in the territories within the competence of the forensic assessment units and the human and material means necessary to ensure that both prosecutors and judges can perform their functions with full guarantees. In addition, in **January 2020**, the administration responded, saying it will study the current situation and evolution of these units, with the aim of identifying dysfunctions and deficiencies, detecting potential areas of improvement and formulating action proposals (19015521).

**In April 2020**, the Head of State (*Jefatura del Estado*) issued [Royal Decree-Law 16/2020 of April 28, on procedural and organizational measures to deal with COVID-19 in the field of the Administration of Justice](#). (*Real Decreto-ley 16/2020, de 28 de abril, de medidas procesales y organizativas para hacer frente al COVID-19 en el ámbito de la Administración de Justicia*)<sup>168</sup>.

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<sup>165</sup> Spain, National Ombudsman (*Defensor del Pueblo*), 2020, [Annual Report 2019: Children and Adolescents in the 2019 Report](#) (*Informe Anual 2019. Los niños y adolescentes en el Informe 2019*), Madrid, National Ombudsman.

<sup>166</sup> Spain, National Ombudsman (*Defensor del Pueblo*) (2019), Claim (*Queja*) Number 19015521. [Suspension of the visitation system for victims of gender-based violence](#) (*Suspensión del régimen de visitas para imputados por violencia de género*), Madrid, National Ombudsman.

<sup>167</sup> Spain, Ministry of the Presidency, Parliamentary Relations and Democratic Memory (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (2017), [State Pact on Gender-Based Violence](#) (*Pacto de Estado sobre violencia de género*), Madrid, Ministry of the Presidency, Parliamentary Relations and Democratic Memory.

<sup>168</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree-Law 16/2020 of April 28, on procedural and organizational measures to deal with COVID-19 in the field of the Administration of Justice](#). (*Real Decreto-ley 16/2020, de 28 de abril, de medidas procesales y organizativas para hacer frente al COVID-19 en el ámbito de la Administración de Justicia*), 29 April 2020.

In 2020, [the Law on Criminal Procedure](#)<sup>169</sup> was under discussion for a [possible amendment by the Government](#)<sup>170</sup>. The aim is to modernise criminal proceedings. One of the main issues to be handled will be **the role of the Public Prosecutor**, which will become the sole authority responsible for coordinating and directing judicial investigations in its functions to investigate and prosecute terrorist offences. It may also affect the maximum legal period in which the investigation must be completed, as the present timeframe is up to 36 months for terrorist cases, which is questionably not enough in certain cases.

On 7 July 2020, a so-called [Shock Plan \(\*plan de choque\*\) for post-pandemic litigation and disability reform](#) was approved by the Spanish Government after receiving a resolution from the Ministry of Justice<sup>171</sup>. Its **purpose** was to alleviate the accumulation of litigation that occurred due to the COVID-19 health crisis. It caused many questions related to the effects on the guarantees of criminal proceedings because of telematic measures (so-called iProcess) in the field of basic procedural rights. The so-called telematic justice is planned for use for non-serious crimes as well, meaning crimes punishable by sentences no longer than five years of deprivation of liberty (Articles 13.1 and 33.2 [Criminal Code](#))<sup>172</sup>. The reduction of the rights of the defence due to the restriction of important procedural principles such as those of immediacy and publicity, given the new reorganisation of public access to courtrooms, are also established by Article 20 of [this legal disposition](#)<sup>173</sup>.

On 25 July 2020, the **action protocol for the police related to hate crimes was updated** by [Instruction 4/2020, by the Secretary of State for Security \(Ministry of the Interior\)](#), updating the Action Protocol for Security Forces for hate crimes and behaviours that breach legal rules on

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<sup>169</sup> Spain, Head of State (*Jefatura del Estado*), [Organic Law 4/1988 of 25 May on the reform of the Criminal Procedure Law](#) (*LO 4/1988, de 25 de mayo, de reforma de la Ley de Enjuiciamiento Criminal*), 25 May 1988.

<sup>170</sup> Spain, Ministry of Justice (*Ministerio de Justicia*), [Juan Carlos Campo anuncia la reforma de la Ley de Enjuiciamiento Criminal para modernizar la Justicia penal](#), press release, 17 February 2020.

<sup>171</sup> Spain, Head of State (*Jefatura del Estado*) [Royal Decree-Law 11/2020 of 31 March adopting urgent complementary measures in the social and economic sphere to deal with COVID-19](#). (*Real Decreto-ley 11/2020, de 31 de marzo, por el que se adoptan medidas urgentes complementarias en el ámbito social y económico para hacer frente al COVID-19*), 1 April 2020.

<sup>172</sup> Spain, Ministry of Justice (*Ministerio de Justicia*), [El Gobierno aprueba el plan de choque para hacer frente a la litigiosidad postcovid-19 y una reforma radical de transformación social en materia de discapacidad](#), Press release, 7 July 2020; Spain, Council of Ministers (*Consejo de Ministros*), [Summary of Shock Plan](#) (*resumen Plan de Choque*), Madrid.

<sup>173</sup> Rights International Spain, [Emergencia judicial ante la crisis sanitaria originada por el COVID-19](#), Press release, 11 May 2020.

discrimination<sup>174</sup>. One of the most relevant developments is that the updated protocol sets out the victims' right to protection, information, support, assistance, care and active participation in the process, so they must be informed of the existence of [Victim Support Offices](#) (*Oficinas de Asistencia a las Víctimas*).

**In September 2020**, the **Spanish Government issued [Law 3/2020 of 18 September on procedural and organisational measures to deal with COVID-19 in the field of the Administration of Justice](#)** (*la Ley 3/2020, de 18 de septiembre, de medidas procesales y organizativas para hacer frente al COVID-19 en el ámbito de la Administración de Justicia*). This Law has been **in force since 20 September 2020** and includes organisational measures to ensure safe distancing at public hearings, safeguarding in certain cases the criminal defendant or forensic medical examinations. It also encourages measures to incorporate **new technologies into procedural proceedings** in order to avoid, as much as possible, excessive concentrations of people at judicial offices.

**The Ministry of the Justice** supports a working group for the **review of the age determination procedure**. It relies on the participation of Save the Children. UNICEF also helps the process through the group created on the Children's Organizations Platform, (*Plataforma de Organizaciones de Infancia*, POI, in its Spanish acronym) because it has the same purpose. There has not yet been legislative change, but it is already close to having a technical proposal.

**On 13 October 2020**, the Committee on the Rights of the Child (CRC) stated that the **procedure for determining the age of unaccompanied migrant children in Spain** violated their human rights<sup>175</sup>. The Committee stressed that identity documents, once available, should be considered valid unless there is proof to the contrary, as recognised by Spain's own Supreme Court. It also called on Spain to take the best interests of the child as a primary consideration throughout the age determination process.

### **At a regional level**

**Basque Government: In February 2020**, the [Law-Decree was published implementing the procedure for the recognition and reparation of victims of human rights violations, which occurred in a context of politically motivated](#)

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<sup>174</sup> Spain, Ministry of the Interior (*Ministerio del Interior*), Instruction 4/2020, by the Secretary of State for Security, updating the [Action Protocol for Security Forces for hate crimes and behaviours that breach legal rules on discrimination](#)" (*Instrucción 4/2020, de la Secretaría de Estado de Seguridad, por la que se actualiza el "Protocolo de actuación para las Fuerzas y Cuerpos de Seguridad para los delitos de odio y conductas que vulneran las normas legales sobre discriminación*), July 2020.

<sup>175</sup> UNHR, [Spain's age assessment procedures violate migrant children's rights, UN committee finds](#), press release, 13 October 2020.

[violence](#), was approved<sup>176</sup>. This regulation was enacted in the context of cases in which the armed forces, National Police and Guardia Civil were sometimes prosecuted and convicted for torture offences for their treatment of suspected members of the terrorist group Basque Country and Freedom (*Euskadi Ta Askatasuna*, ETA, in its Basque acronym). Previously, the [Law on the Recognition and Reparation of Victims of Human Rights Violations in the Context of Politically Motivated Violence in the Basque Country between 1978 and 1999](#) was approved in 2016 by the Basque Parliament and reformed in 2019<sup>177</sup>. Initially it **sought** compensation **for** victims who may have suffered police abuses during the 'political persecution' of ETA. In July 2019 **an appeal was filed with the Constitutional Court<sup>178</sup> by the political parties, PP and Ciudadanos. When the law was reformed**, its title was changed to **Recognition and reparation of victims of human rights violations in the context of politically motivated violence**. However, **the text is still open to interpretations** and discussion and now members of the security forces argued that it could serve them and their families to ask for compensations, as they also consider themselves victims of the terrorist attacks during this period<sup>179</sup>.

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<sup>176</sup> Spain, Lehendakaritza, [Decree 20/2020 of 25 February, implementing the procedure for the recognition and reparation of victims of human rights violations, which occur in a context of politically motivated violence](#) (*Decreto 20/2020, de 25 de febrero, de desarrollo del procedimiento para el reconocimiento y reparación de las víctimas de vulneraciones de derechos humanos, producidas en un contexto de violencia de motivación política*), 5 February 2020.

<sup>177</sup> Spain, Lehendakaritza (*Gobierno del País Vasco*), [Law 5/2019 of April 4, amending Law 12/2016 of 28 July on the recognition and reparation of victims of human rights violations in the context of politically motivated violence, in the Autonomous Community of the Basque Country, between 1978 and 1999](#) (*Ley 5/2019, de 4 de abril, de modificación de La Ley 12/2016, de 28 de julio, de reconocimiento y reparación de víctimas de vulneraciones de derechos humanos en el contexto de la violencia de motivación política, en la Comunidad Autónoma del País Vasco, entre 1978 y 1999*), 4 April 2016.

<sup>178</sup> Spain, Constitutional Court (*Tribunal constitucional*), [Unconstitutionality Appeal No 4417-2019, against the first, second, third, fourth and sole additional provision of Basque Law 5/2019 of 4 April, amending Law 12/2016 of 28 July on the recognition and reparation of victims of human rights violations in the context of politically motivated violence in the Autonomous Community of the Basque Country between 1978 and 1999](#) (*Recurso de inconstitucionalidad n.º 4417-2019, contra el artículo primero, segundo, tercero, cuarto y disposición adicional única de la Ley del País Vasco 5/2019, de 4 de abril, de modificación de la Ley 12/2016, de 28 de julio, de reconocimiento y reparación de víctimas de vulneraciones de derechos humanos en el contexto de la violencia de motivación política en la Comunidad Autónoma del País Vasco entre 1978 y 1999*).

<sup>179</sup> Spain, Unified Police Trade Union (*Sindicato Unificado de Policía*), [Clarifications on the Right to Receive Economic Compensation, Contemplated in the Law on Recognition and Repair of Victims of Human Rights Violations in the Context of Politically Motivated Violence in the Autonomous Community of the Basque Country](#) (*Aclaraciones Sobre el Derecho a Percibir Compensación Económica, Contempladas en la Ley de Reconocimiento y Reparación De Víctimas de Vulneraciones de Derechos Humanos En El Contexto de la Violencia de Motivación Política, en la Comunidad Autónoma del País Vasco*), Press release, 11 February 2020.



## 2. Violence against women

**On January 2020**, the **National Ombudsman** asked the Government to make the fight against Gender Violence one of his priorities in this Legislature<sup>180</sup>. And particularly in order to improve the protection of the children, **the National Ombudsman** recommended that the Secretary of State for Security of the Ministry of the Justice should develop and implement a comprehensive monitoring system in cases of gender-based violence against children, which should be particular for them and appropriate for the type of risk that they are subjected to. **The National Ombudsman considered that** children have a special condition and a situation of vulnerability, which require a specific evaluation, with its own indicators. For the **National Ombudsman**, this system should make it easier for State Security Forces and Bodies to share the data of the situation in which children are with the public prosecutors as well as to the judicial authorities for them to be able to act, integrating the information and protection, monitoring and coordination actions carried out on behalf of these children. The **National Ombudsman** declared to be also aware of the important role that the family meeting points (*puntos de encuentro familiar*)<sup>181</sup> can play in detecting possible risk situations for the children. Actually, there is no homogeneous obligation in all Autonomous Communities to alert the competent authorities of the risks they detect when caring for families. The **National Ombudsman** considered that it should be an obligation for any public administration to alert about the danger they detect in their interventions. Because of that reason, the **National Ombudsman** recommended to the Government Delegate for Gender-based Violence to encourage the development of a common protocol requiring family meeting points (*puntos de encuentro familiar*) to report in those cases.

**On March 2020**, the Government issued Royal Decree [12/2020 of 31 March on Urgent Measures for the Protection and Assistance of Victims of Gender-Based Violence](#) (*Real Decreto-ley 12/2020, de 31 de marzo, de medidas urgentes en materia de protección y asistencia a las víctimas de violencia de*

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<sup>180</sup> Spain, National Ombudsman (*Defensor del Pueblo*), [El Defensor del Pueblo Pide al Nuevo Gobierno que la Lucha Contra la Violencia de Género sea una de sus Prioridades en esta Legislatura](#), Press release, 20 January 2020.

<sup>181</sup> Family Meeting Points (*puntos de encuentro familiar*, PEFs, in its Spanish acronym) are spaces that are designed to make it possible for children and parents without legal custody to meet. It is applied in cases where compliance with the visitation system may be difficult or conflicting. It is also used to facilitate encounters between children and their biological families. There is no physical meeting between the parents, and the visit is supervised by professionals at the facility. There are no national regulations to this end, but some autonomous communities regulate the issue, such as: Andalusia, Aragon, Asturias, Basque Country, Catalonia.

*género*)<sup>182</sup>. Since **victims of human trafficking for sexual exploitation** are considered part of this group, they were covered by the activities endorsed by the Royal Decree, so that the different groups working for the victims, promoting their support and protection can continue to provide their services, classified as essential. These services will be provided mainly by NGOs and by the public administrations themselves (as shown, the Madrid City Council has kept the phone lines active via which victims of trafficking and sexual exploitation can request **help. Programme #YouAreNotAlone Ask for help (#NoEstásSola Pide ayuda)**).

**In March 2020**, because of the measures taken because of the COVID-19 health crisis, **the Government of Spain and the Ministry of Equality**, decided to launch a [Contingency Plan against Gender-Based Violence during the COVID-19 Crisis](#) (*Plan de Contingencia*)<sup>183</sup>. It responded to the need to provide extraordinary protection for women who are victims of different types of gender-based violence. The **Contingency Plan** was developed in two phases. **Phase 1:** Measures to strengthen actions in the field of gender-based violence already being conducted to standardise them. These measures are related to domestic partners and former partners' records of violence, as well as for other types of sexual violence, declaring all services to assist female victims of violence as essential (including trafficking for sexual exploitation and sexual exploitation services). In this phase, other new measures were developed that were adapted to the added difficulties for women victims of gender-based violence aggravated by confinement. **Phase 2:** Additional measures taken to extend the first phase, through an **Urgent Action Plan for victims of trafficking for sexual exploitation, sexual exploitation and women in the context of prostitution**. **In May 2020**, the [Contingency Plan was extended](#) by the Ministry of Equality (*Ministerio de Igualdad*). It included additional measures aimed at victims of trafficking for sexual exploitation, sexual exploitation and women in contexts of prostitution.<sup>184</sup>

**The Ministry of Equality and the Government Delegation against Gender Violence launched an awareness raising campaign to prevent sexist violence** as an action to develop the [Contingency Plan against Gender-](#)

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<sup>182</sup> Spain, Head of State (*Jefatura del Estado*), [Royal Decree 12/2020 of 31 March on Urgent Measures for the Protection and Assistance of Victims of Gender-Based Violence](#) (*Real Decreto-ley 12/2020, de 31 de marzo, de medidas urgentes en materia de protección y asistencia a las víctimas de violencia de género*), 2 April 2020.

<sup>183</sup> Spain, Ministry of Equality (*Ministerio de Igualdad*), [Contingency Plan against Gender-Based Violence during the Covid-19 Crisis](#) (*Plan de contingencia contra la violencia de género ante la crisis derivada del Covid-19*), *Madrid*, Ministry of Equality.

<sup>184</sup> Spain, Ministry of Equality (*Ministerio de Igualdad*), [Extension of the Contingency Plan against Gender-Based Violence during the COVID-19 Crisis: additional measures aimed at victims of trafficking, sexual exploitation and women in contexts of prostitution](#), (*Ampliación del Plan de Contingencia contra la violencia de género ante la crisis del COVID-19: medidas adicionales dirigidas a víctimas de trata, explotación sexual y a mujeres en contextos de prostitución*).

[Based Violence during the COVID-19 Crisis \(Plan de Contingencia\)](#)<sup>185</sup>. The campaign aimed to move public opinion that gender-based violence is not a private matter, but a violation of human rights for the whole of society. Among the materials developed within the framework of the campaign are various posters and images to publish and disseminate on social networks with telephone numbers and assistance services in Spanish. These informative posters are also translated in the different co-official languages like English, French, Chinese, and Russian in order to inform the communities in neighbourhoods, municipalities, public transport, organizations, establishments, and pharmacies.

**In September 2020**, the **Minister of Equality** introduced the idea of an upcoming [National Strategy against Sexist Violence for 2021 to 2025](#) (*Estrategia Nacional contra las violencias machistas para el período de 2021 a 2025*). The strategy will promote public policies that guarantee the right of all women to a life free from violence, with an emphasis on prevention, comprehensive victim protection, and reparation and childcare<sup>186</sup>. It aims to provide an institutional response, which at present is still insufficient for many women suffering from violence, with a gap between victims and support services.

**The Ministry of the Interior** strengthened the protection of victims of gender-based violence and health workers with the [ALERTCOPS / S.O.S. BUTTON](#). This is a service provided through a free mobile app, to give a direct channel with State Security Forces and other Forces to communicate victim's cases or situations that a person may witness. The new functionality allows health workers and victims of gender-based violence to discreetly acquire immediate assistance from the State Security Forces. The intention is to identify and locate the victim and record 10 seconds of the occurring event in order to provide an immediate response from the Security Forces<sup>187</sup>.

The Delegation of Government against Gender-Based Violence (*Delegación de Gobierno contra la Violencia de Género*) has [updated the resources made available to victims of sexist violence](#) during the state of alarm caused by the COVID-19 disaggregated by every Autonomous Community and Cities.

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<sup>185</sup> Spain, Ministry of Equality (*Ministerio de Igualdad*), [Contingency Plan against Gender-Based Violence during the Covid-19 Crisis \(Plan de contingencia contra la violencia de género ante la crisis derivada del Covid-19\)](#), [Madrid](#), Ministry of Equality.

<sup>186</sup> Spain, Presidency of the Government (*Presidencia del Gobierno*), [Una de cada dos mujeres ha sufrido algún tipo de violencia machista en España](#), press release, 10 September 2020.

<sup>187</sup> Spain, Women's Institute and Equal Opportunities (*Instituto de la Mujer y para la Igualdad de Oportunidades*) (2020), [The gender perspective, essential in the response to #COVID19](#) (*La perspectiva de género, esencial en la respuesta a la #COVID19*), Madrid, IMIO.

# Chapter 8. Developments in the implementation of the Convention on the Rights of Persons with Disabilities

## 1. CRPD policy & legal developments

In March 2020, there was a [proposal for a Law to modify the Criminal Code](#)<sup>188</sup> for the eradication of forced or **non-consensual sterilisation of persons with disabilities** who are legally incapacitated. A vote was held in the Congress of Deputies (*Congreso de los Diputados*) and in March 2020 was forwarded to the Senate (*Senado*), although it is currently frozen, due to the COVID-19 health crisis. It was one of the outcomes of the **expert group to study the suppression of forced sterilization created by the Spanish Government** on February 2019. The expert group **plans** to start studying the prohibition of forced or non-consensual sterilisation of women with disabilities.

In May 2020, the **National Ombudsman** (*Defensor del Pueblo*) published a report in a separate section of its [Annual Report 2019](#) (*Informe Anual 2019*)<sup>189</sup> entitled **Supplement Residential Care Centres: People with Disabilities in the Annual Report** (*Las personas con discapacidad en el informe anual*). The **National Ombudsman** (*Defensor del Pueblo*) also referred to a policy for **real equality and non-discrimination because of disability**. The **National Ombudsman** stressed the need to address this issue and to provide planning for all possible regulatory changes in the area of public services, in order to extend the early retirement of workers with disabilities. The **National Ombudsman set out a possible** violation of [Articles 9.2 and 14](#) of the Spanish Constitution<sup>190</sup>, which refers to equal treatment and non-discrimination due to the absence of positive discrimination measures that facilitate the **labour integration of persons with disabilities. In terms of university staff**, the **National Ombudsman** declared that it would continue to conduct investigations to assess the legality and opportunity to establish a system to reserve places for temporary teaching staff (*personal interino*). It addresses public administrations with competences on education policies that did not establish any foresight or particularity in this regard or, even if they did

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<sup>188</sup> Spain, National Parliament Bulletin (*Boletín de las Cortes Generales*), [Proposal for a Law to modify the Criminal Code for the eradication of forced or non-consensual sterilization of persons with disabilities who are legally incapacitated](#) (*Proposición de Ley de modificación del Código Penal para la erradicación de la esterilización forzada o no consentida de personas con discapacidad incapacitadas judicialmente*), 6 March 2020.

<sup>189</sup> Spain, National Ombudsman (*Defensor el Pueblo*) (2020) [Annual Report 2019](#) (*Informe Anual 2019*), Madrid.

<sup>190</sup> Spain, Parliament (*Cortes Generales*), [Spanish Constitution](#) (*Constitución Española*), 29 December 1978.

establish it, included requirements that could limit the right to access public jobs on equal footing<sup>191</sup>.

**On 20 March 2020**, the **Ministry of Health** (*Ministerio de Sanidad*) published a ruling to authorise exemptions from freedom of movement and transport to drive on public roads and spaces accompanying persons with disabilities<sup>192</sup>. The decision is for persons with disabilities who have behavioural alterations, such as people diagnosed on the autism spectrum or with disruptive behaviours. It lets people perform support tasks and provide care to the elderly, children, and dependents, persons with disabilities or particularly vulnerable people.

**On 17 July 2020**, a [Draft Law was approved, reforming civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity](#) (*Proyecto de Ley por la que se reforma la legislación civil y procesal para el apoyo a las personas con discapacidad en el ejercicio de su capacidad jurídica*)<sup>193</sup>. Its purpose is to eliminate certain terms, such as 'judicial incapacitation' (*incapacitación judicial*), replacing it with recognition of 'disability' (*discapacidad*). The aim is to advance on respect for the rights of people with disabilities. It is based on the application of [Article 10 of the Spanish Constitution](#)<sup>194</sup>. It responds to the need to change the Spanish Civil Code disability system because of its lack of adaptation to the CRPD. It is committed to the prevalence of the wishes of the person concerned over any other legal provision. It tries to restrict situations as much as possible of substituting people with disabilities by people acting on their behalf, but against their wishes.

**In September 2020**, the Spanish Committee of Representatives of Persons with Disabilities (*Comité Español de Representantes de Personas con Discapacidad*, CERMI, in its Spanish acronym) appreciated the Government's plan to submit [the draft reform of Article 49 of the Spanish Constitution](#)<sup>195</sup> on people with disabilities to the National Parliament (*Cortes Generales*). The purpose is to align it with the current vision of disability as a human rights issue and to include terminology more in line with the perspective of the

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<sup>191</sup> Spain, National Ombudsman (*Defensor el Pueblo*) (2020) [Annual Report 2019](#) (*Informe Anual 2019*), Madrid, National Ombudsman. pp. 21.

<sup>192</sup> Spain, Ministry of the Health (*Ministerio de Sanidad*), [Instruction of 19 March 2020, by the Ministry of Health, establishing interpretative criteria to manage the health crisis situation caused by COVID-19](#) (*Instrucción de 19 de marzo de 2020, del Ministerio de Sanidad, por la que se establecen criterios interpretativos para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19*), 19 March 2020.

<sup>193</sup> Spain, National Congress (*Congreso nacional*), [Draft Law reforming civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity](#) (*Proyecto de Ley por la que se reforma la legislación civil y procesal para el apoyo a las personas con discapacidad en el ejercicio de su capacidad jurídica*), 17 July 2020.

<sup>194</sup> Spain, Parliament (*Cortes Generales*), [Spanish Constitution](#) (*Constitución Española*), 29 December 1978.

<sup>195</sup> CERMI, [El Cermi saluda que la primera reforma social de la Constitución Española comience por las personas con discapacidad](#), Press release, 9 September 2020.

International Convention on the Rights of Persons with Disabilities. The preparation of this constitutional reform was carried out by the Government and the National Parliament (*Cortes Generales*), in close collaboration with the [Spanish Committee of Representatives of Persons with Disabilities](#) (*Comité Español de Representantes de Personas con Discapacidad*, CERMI, in its Spanish acronym), which brought this matter to the political and legislative agenda. However, follow-up is still pending, due to the COVID-19 health crisis.

**From March to April 2020**, there were several legal dispositions issued **in response to the COVID-19 health crisis** concerning residential care homes for the elderly and social and health centres, which also applied to **specialised residential care centres for disabled persons**<sup>196</sup>.

**On 16 December 2020**, the Organic Law 2/2020 of 16 December was approved to amend the Penal Code for the Eradication of Forced or Non-Consensual Sterilization of Persons with Judicially Incapacitated Disabilities (*Ley Orgánica 2/2020, de 16 de diciembre, de modificación del Código Penal para la erradicación de la esterilización forzada o no consentida de personas*

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<sup>196</sup> Spain, Order SND 265/2020 of 19 March to take measures on residential care homes for the elderly and social and health centres, due to the health crisis caused by COVID-19 ([Orden SND 265/2020, de 19 de marzo, de adopción de medidas relativas a las residencias de personas mayores y centros socio-sanitarios, ante la situación de crisis sanitaria ocasionada por el COVID-19](#)); Order SND 275/2020 of 23 March, which establishes complementary measures of an organisational nature, as well as the provision of information in the field of residential social services centres for managing the health crisis caused by COVID-19 ([Orden SND 275/2020, de 23 de marzo, por la que se establecen medidas complementarias de carácter organizativo, así como de suministro de información en el ámbito de los centros de servicios sociales de carácter residencial en relación con la gestión de la crisis sanitaria ocasionada por el COVID-19](#)); Order SND 295/2020 of 26 March, adopting human resources measures in social services due to the crisis caused by the Covid-19 ([Orden SND 295/2020, de 26 de marzo, por la que se adoptan medidas en materia de recursos humanos en el ámbito de los servicios sociales ante la situación de crisis ocasionada por el COVID-19](#)); Resolution of 23 March 2020 by the Secretary of State for Social Rights, which publishes the Agreement of the Territorial Council of Social Services and the System for Autonomy and Service to Dependent People, which loosens the requirements for the hiring of temporary personnel at residences and other services: Personnel from other areas, staff without qualifications or degrees ([Resolución de 23 de marzo de 2020, de la Secretaría de Estado de Derechos Sociales, por la que se publica el Acuerdo del Consejo Territorial de Servicios Sociales y del Sistema para la Autonomía y Atención a la Dependencia, que flexibiliza las exigencias para la contratación de personal provisional en residencias y otros servicios: Personal de otras zonas. Personal sin Titulación](#)); Royal Decree-Law 11/2020 of 31 March, which adopts additional urgent and complementary measures in social and economic areas to deal with COVID-19 ([Real Decreto-ley 11/2020, de 31 de marzo, por el que se adoptan medidas urgentes complementarias en el ámbito social y económico para hacer frente al COVID-19](#)); [Order SND 322/2020 of 3 April, amending Order SND 275/2020 of 23 March and Order SND 295/2020 of 26 March and establishing new measures to address urgent needs](#) ([Orden SND 322/2020, de 3 de abril, por la que se modifican la Orden SND 275/2020, de 23 de marzo y la Orden SND 295/2020, de 26 de marzo, y se establecen nuevas medidas para atender necesidades urgentes de carácter](#)); [Covid-19 Health Crisis Management Measures: Health Measures \(58 To 103\)](#) (*Medidas De Gestión De La Crisis Sanitaria Covid-19. Medidas En Materia Sanitaria (58 a 103)*); [https://www.imserso.es/imserso\\_01/mas\\_informacion/covid19/norm/index.htm](https://www.imserso.es/imserso_01/mas_informacion/covid19/norm/index.htm)

*con discapacidad incapacitadas judicialmente*)<sup>197</sup>. The reform removes the second paragraph of article 156 of the Criminal Code, which, until now, decriminalized the non-consensual sterilizations of judicially incapacitated persons upon judicial authorization. In addition, the final provision states that the Government shall forward to the General Courts a draft law amending [Law 41/2002 of 14 November](#), which is a basic regulatory of patient autonomy and of rights and obligations in the field of clinical information and documentation, as well as the [Organic Law 2/2010, of 3 March, on sexual and reproductive health and voluntary termination of pregnancy](#)<sup>198</sup>, which reinforces that persons with disabilities who require human and material support, this includes technological ones, have the necessary information and clinical documentation in accessible formats or channels.

The [General State Budgets for the year 2021](#)<sup>199</sup> incorporates among its social measures the exemption from the pharmaceutical co-payment (*copago*) for the children under 18 years of age with a recognized degree of disability equal to or greater than a 33%.

## 2. CRPD monitoring at a national level

During 2020, the [Spanish Committee of Representatives of Persons with Disabilities](#) (*Comité Español de Representantes de Personas con Discapacidad*, CERMI, in its Spanish acronym) published **several communications to raise awareness about the situations and recommendations to guarantee the protection of people with disabilities from the impacts of the coronavirus crisis**. It pointed out that the COVID-19 pandemic revealed the widespread unawareness and scarce implementation of the International Convention on the Rights of People with Disabilities and of the human rights mandates in Spanish public policies. As a result, this pandemic revealed many shortcomings in caring for people with disabilities in exceptional situations, compromising fundamental rights such as life, education and health care<sup>200</sup>. **Due to the COVID-19 health crisis, there were complaints** about certain discriminatory practices which, in their view, resulted in the social exclusion

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<sup>197</sup> Spain, Head of State (*Jefatura del Estado*), [Organic Law 2/2020 of 16 December amending the Penal Code for the Eradication of Forced or Non-Consensual Sterilization of Persons with Judicially Incapacitated Disabilities](#) (*Ley Orgánica 2/2020, de 16 de diciembre, de modificación del Código Penal para la erradicación de la esterilización forzada o no consentida de personas con discapacidad incapacitadas judicialmente*), 16 December 2020.

<sup>198</sup> [Organic Law 2/2010, of 3 March, on sexual and reproductive health and voluntary termination of pregnancy](#) (*Ley Orgánica 2/2010, de 3 de marzo, de salud sexual y reproductiva y de la interrupción voluntaria del embarazo*), 3 March 2020.

<sup>199</sup> Spain, Head of State (*Jefatura del Estado*), [Law 11/2020 of December 30, on General State Budgets for the year 2021](#) (*Ley 11/2020, de 30 de diciembre, de Presupuestos Generales del Estado para el año 2021*), 30 December 2020.

<sup>200</sup> More information at [COVID Bulletin](#), 3 June 2020.

and lack of protection of people with disabilities. The most serious of these complaints concerns health care and accessibility to information and communication<sup>201</sup>.

**In February 2020, CERMI Women (CERMI Mujeres) published a report entitled [Study of the violence against children with disabilities in Spain. Legal and Social situation in Spain. Comprehensive Study \(La violencia contra las niñas y los niños con discapacidad en España. Situación jurídica y social. Estudio integral\)](#)**<sup>202</sup>.

**In March 2020**, the organisation Plena Inclusion published a report entitled [Practical guide for residential care centres for people with intellectual or developmental disabilities during the COVID-19 coronavirus pandemic](#)<sup>203</sup>. The document's purpose is to be a practical guide for professional staff members working at residential care centres that provide support for people with intellectual or developmental disabilities due to the epidemic situation. It can also be useful for professionals providing domestic or similar support services for people with intellectual or developmental disabilities who may be affected by COVID-19.

**In March 2020**, the **Spanish Committee of Representatives of Persons with Disabilities** (*Comité Español de Representantes de Personas con Discapacidad*, CERMI, in its Spanish acronym), drew up a [list of the main barriers they cope with in this emergency situation, along with some considerations, guidelines, practical solutions and recommendations](#). The recommendations were framed within the mandates of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and intended to make the general public aware that the **COVID-19 health crisis** was having a more intense impact on persons with disabilities<sup>204</sup>.

**In May 2020**, the **Spanish Committee of Representatives of Persons with Disabilities** (*Comité Español de Representantes de Personas con Discapacidad*, CERMI, in its Spanish acronym) **published** its [Annual National CERMI report on human rights and disability in Spain for 2019 \(Informe anual CERMI sobre derechos humanos y discapacidad en España correspondiente a](#)

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<sup>201</sup> More information at [COVID Bulletin. Spain](#), May 2020.

<sup>202</sup> Alonso Parreño, M.J (2020), [Study of the violence against children with disabilities in Spain. Legal and Social situation in Spain. Comprehensive Study \(Estudio la violencia contra las niñas y los niños con discapacidad en españa. situación jurídica y social. Estudio Integral\)](#), Madrid, CERMI Mujeres. Observatorio Estatal de la Discapacidad.

<sup>203</sup> Plena Inclusion (2020), [Practical guide for residential care centres for people with intellectual or developmental disabilities during the COVID-19 coronavirus pandemic \(Guía práctica para residencias de personas con discapacidad intelectual o del desarrollo ante la pandemia de coronavirus COVID-19\)](#), Madrid, Plena Inclusion.

<sup>204</sup> CERMI, 2020, [People with disabilities and their families in the coronavirus health crisis: a forecast of immediate needs for management of the pandemic](#), Madrid, Spanish Committee of Representatives of Persons with Disabilities.



2019)<sup>205</sup>. Several **conclusions** were drawn: the law on prisons in Spain contradicts the mandates of the Convention; forced hospitalisation for mental illness is stigmatised; coercive mental health practices remain in force in Spain; and Spanish prisons lack resources to care for people with mental health problems. In terms of action proposals to respond to the issues reported, the one on the Spanish Bioethics Committee that calls for the abolition of involuntary hospital stays for people with mental disorders could be highlighted.

**On 23 May 2020**, the **Spanish Committee of Representatives of Persons with Disabilities** (*Comité Español de Representantes de Personas con Discapacidad*, CERMI, in its Spanish acronym) published a report entitled [The impact of the coronavirus pandemic on the human rights of people with disabilities in Spain](#) (*El impacto de la pandemia del coronavirus en los derechos humanos de las personas con discapacidad en España*)<sup>206</sup>.

**In June 2020**, CERMI denounced the added difficulties that girls and young women with disabilities suffered in accessing education during the COVID-19 pandemic, because of the lack of support and shortages in terms of accessibility to online teaching platforms.<sup>207</sup>

**In July 2020**, CERMI also sent a complaint to the National Ombudsman on [the lack of accessibility for deaf and blind persons](#) to teaching materials broadcast on television during school closure that was published by the Ministry of Education<sup>208</sup>.

**In July**, the **CERMI Women's Foundation** (*Fundación Cermi Mujeres*, FCM, in its Spanish acronym), published its [2019 Annual Social Report](#) (*Memoria Social 2019*)<sup>209</sup>. In terms of the main issues addressed, violence against women with disabilities, in all its forms, including the fight against non-consensual sterilisations, remained the Foundation's key area of concern during 2019. Additionally, a specialised legal counselling service was launched for female victims with disabilities, and the mobile phone app '[Respect Me](#)' (*Me*

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<sup>205</sup> CERMI, 2020, [Annual CERMI report on human rights and disability in Spain for 2019](#) (*Informe anual CERMI sobre derechos humanos y discapacidad en España correspondiente a 2019*), Madrid, CERMI.

<sup>206</sup> CERMI, 2020, [The impact of the coronavirus pandemic on the human rights of people with disabilities in Spain](#) (*El impacto de la pandemia del coronavirus en los derechos humanos de las personas con discapacidad en España*), Madrid, Spanish Committee of Representatives of Persons with Disabilities.

<sup>207</sup> CERMI, [Niñas y jóvenes con discapacidad denuncian "falta de apoyos y de accesibilidad" en el acceso a la educación telemática durante la pandemia](#), Press release, 17 June 2020.

<sup>208</sup> CERMI, [Información de interés para personas con discapacidad sobre el Coronavirus](#), Press release, 8 July 2020.

<sup>209</sup> CERMI Women's Foundation (*Fundación Cermi Mujeres*, FCM), 2020, [2019 Annual Social Report](#) (*Memoria Social 2019*), Madrid, CERMI Women's Foundation.

[Respetas](#)) was developed, which aims to combat the bullying that teenage girls with disabilities may suffer.

**In July 2020**, the [ONCE Foundation](#), jointly with Citibeats, published a [COVID-19 Impact Report](#)<sup>210</sup>. It was an example of how technology and leaders can successfully team up to bring citizens into the decision-making process and produce positive change. **The purpose of the analysis** was to identify the barriers that Spanish citizens with disabilities face most frequently and what differences there are between groups. It was conducted in collaboration with Citibeats, and more than 300,000 opinions on Twitter were collected and analysed. An 'accessibility map' was created using Citibeats' technology as a social listening tool to capture and structure citizens' conversations on disability. Among the data collected, there was also a special focus on the impact of the pandemic and the role of video games and 3D printing on social inclusion. By structuring and viewing citizens' opinions, decision-makers may have a road map to better design programmes and initiatives that meet this population's greatest needs. The **study concluded** that citizens and their opinions are the best sensors to identify problems and social needs. This citizen social listening project served to identify and locate on the map the different barriers that groups of people with disabilities face<sup>211</sup>.

**On 25 July 2020, the action protocol for the police in relation to hate crimes was updated by [Instruction 4/2020, by the Secretary of State for Security \(Ministry of the Interior\)](#)**, updating the Action Protocol for Security Forces for hate crimes and behaviours that breach legal rules on discrimination<sup>212</sup>. References are included on the 'facilitator' (*facilitador*), which serves as support for persons with intellectual disabilities during police and judicial processes, at their different stages, and helps to activate the adaptation of judicial procedures under the Convention on the Rights of Persons with Disabilities.

**In September 2020**, the [Disability Support Office](#) (*Oficina de Atención a la Discapacidad, OADIS*, in its Spanish acronym) published a report containing the [Benefits and aids for people with disabilities](#) (*Beneficios y Ayudas para las*

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<sup>210</sup> ONCE Foundation and Citibeats (2020), [COVID-19 Impact Report: Special Public Administration Report](#), Madrid.

<sup>211</sup> Citibeats, [Project in collaboration with the Fundación ONCE on accessibility barriers](#), Press release, September 2020.

<sup>212</sup> Spain, Ministry of the Interior (*Ministerio del Interior*), [Instruction 4/2020, by the Secretary of State for Security](#), updating the [Action Protocol for Security Forces for hate crimes and behaviours that breach legal rules on discrimination](#) (*Instrucción 4/2020, de la Secretaría de Estado de Seguridad, por la que se actualiza el "Protocolo de actuación para las Fuerzas y Cuerpos de Seguridad para los delitos de odio y conductas que vulneran las normas legales sobre discriminación"*), July 2020.

*personas con discapacidad*)<sup>213</sup>. It covers issues such as employment, financial allowances and universities.

**On 21 September 2020**, the **UN Committee on the Rights of Persons with Disabilities** concluded that [Spain violated the right to inclusive education of a child with Down's syndrome](#) who was sent to a special school by the national authorities, despite his parents' objections<sup>214</sup>. In its [first decision on the right to inclusive education](#), the UN Committee concluded that Spain did not assess the specific requirements of the child and did not take reasonable steps that might have allowed him to remain within the ordinary education system. Thus, Spain failed to comply with its obligations under the Convention on the Rights of Persons with Disabilities<sup>215</sup>. His parents reported the abuse he suffered to the national judicial authorities, but no effective investigation was carried out. His parents unsuccessfully challenged the education authority's decision to enrol him in a special education centre. In addition, the authorities filed a criminal complaint against the parents for their refusal to send their child to a specialised school. In 2017, the family filed their case with the UN Committee. In the final decision, the UN Committee requested Spain to ensure that the disabled child be admitted to an inclusive vocational training programme and compensation should be allocated. An effective investigation into the allegations of abuse was also requested. Among other recommendations, the UN Committee also urged Spain to eliminate all educational segregation of students with disabilities, both in special education schools and in specialised units within ordinary schools, and to ensure that parents of students with disabilities are not criminally prosecuted for requiring their children's right to inclusive education.

**On 16 September 2020**, it was announced that the **Ministry of Social Rights and the 2030 Agenda would conduct** [research on the impact of the COVID-19 health crisis and its socioeconomic impact on persons with disabilities](#). It will be led by the Directorate-General for Disability Policies, and it aims to identify the main needs of people with disabilities in the context of the health crisis, as well as analysing the socioeconomic consequences and proposing possible lines of action. It will combine a quantitative and qualitative approach through [online micro-surveys](#) and the implementation of the Delphi method with professionals and experts<sup>216</sup>. Even though *the Ministry of Health*

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<sup>213</sup> Spain, Disability Support Office (*Oficina de Atención a la Discapacidad, OADIS*), 2020, [Benefits and aids for people with disabilities](#) (*Beneficios y Ayudas para las personas con discapacidad, OADIS*), Madrid, OADIS.

<sup>214</sup> CRPD, [España violó el derecho a la educación inclusiva de un niño con discapacidad, constata un Comité de la ONU](#), Press release, 21 September 2020.

<sup>215</sup> CRPD, [Dictamen aprobado por el Comité en virtud del artículo 5 del Protocolo Facultativo, respecto de la comunicación núm. 41/2017](#), CRPD/C/23/D/41/2017, 18 September 2020.

<sup>216</sup> OADIS, [Una investigación analizará el impacto del COVID-19 y sus consecuencias socioeconómicas en las personas con discapacidad](#), Press release, 16 September 2020.

responded that the Government guarantees health care for those affected by COVID-19 on an equal basis, according to the Director General of Disability Policy and Director of the Royal Board of Trustees on Disability, everything points to people with disabilities being one of the most affected groups during the pandemic and status of alarm.

**Since March and until October 2020**, the [ONCE Social Group](#) is working with the Secretary of State for Digitalization and Artificial Intelligence of the Ministry of Economic Affairs and Digital Transformation (*Secretaría de Estado de Digitalización e Inteligencia Artificial del Ministerio de Asuntos Económicos y Transformación Digital*) on an independent audit of the level of web accessibility to be achieved by the [Radar COVID app](#). It addresses the tool's lack of accessibility and possible discrimination against persons with disabilities. Finally, all accessibility issues were taken into account in complying with the required standards.

**In October 2020**, the organisation Living with Spasticity (*Convives con Espasticidad*) published a [Guide for Actively Coping with Disability](#) (*Guía para un Afrontamiento Activo de la Discapacidad*)<sup>217</sup>. The document shares reflections and experiences of people with disabilities and their families, along with recommendations on how to achieve the highest possible quality of life. It explains what it means to live with disabilities and gives advice and tips for these people to live full lives. The guide is part of the [Online Active Coping School](#) (*Escuela Online de Afrontamiento Activo*).

**On 14 October 2020**, the European Anti-Poverty and Social Exclusion Network (EAPN-ES) published a study entitled '[The State of Poverty, 10th AROPE Report: Monitoring the poverty risk and social exclusion indicator in Spain 2008-2019](#)' (*El estado de la pobreza, 10º Informe AROPE. Seguimiento del indicador de riesgo de pobreza y exclusión social en España 2008-2019*)<sup>218</sup>. The main conclusion of this report on disability was that persons with disabilities bear a much higher risk of poverty and/or exclusion than those without disabilities. This is not a conjectural issue, as the report points out, but shows a situation of risk of structural poverty. Data for 2019 indicated that the AROPE rate for persons with disabilities is 32.5% at risk of poverty and/or exclusion, the highest figure of the decade. The rate for people without disabilities is 22.5% (ten percentage points less).

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<sup>217</sup> Living with Spasticity (*Convives con Espasticidad*), 2020, "[Guide to Actively Cope with Disability](#)" (*Guía para un Afrontamiento Activo de la Discapacidad*), Madrid, Convives con Espasticidad.

<sup>218</sup> European Network to Combat Poverty and Social Exclusion (EAPN-ES) (2020), "[The State of Poverty, 10th AROPE Report: Monitoring the poverty risk and social exclusion indicator in Spain 2008-2019](#)" (*El estado de la pobreza, 10º Informe AROPE. Seguimiento del indicador de riesgo de pobreza y exclusión social en España 2008-2019*), Madrid, European Network to Combat Poverty and Social Exclusion.

**On 20 November 2020**, a new Law on Education known as 'Ley Celaa' was approved by the Spanish Government. It contains a particular provision planning that in ten years 'ordinary schools will have the resources needed to be able to best serve students with disabilities' (*los centros ordinarios **cuenten con los recursos necesarios para poder atender en las mejores condiciones al alumnado con discapacidad***). The Government seeks to improve inclusive education by preparing ordinary schools for the future transfer of students with disabilities. It includes a ten-year plan to advance the inclusion of students with disabilities. It intends to provide resource centres to develop adequate and sufficient support measures to provide answers tailored to the needs of each child.

**On 15 December 2020, the National Statistical Plan 2021-2024** approved by the Council of Ministers by Royal Decree expressly **incorporates the perspective of disability in statistical operations**<sup>219</sup>. The new plan considers it appropriate to incorporate a protocol of action to include the option of disability just like other factors such as gender, age or nationality. This allows for the inclusion of experiences in content of modules that can be incorporated into questionnaires and other options of capture through administrative means of information.

**In December 2020, the Spanish Lawyers Foundation published the '[Decalogue for the Protection of Human Rights in Pandemics](#)'** (*Decálogo para la protección de los derechos humanos en pandemias*). This document addresses everything from the impact of Covid-19 on vulnerable groups such as the elderly, dependents and persons with disabilities to the challenges in terms of cooperation and the environment. The document also states that an increase in exposure can violate people with disabilities' rights in critical situations such as emergencies and disasters and make them helpless. To avoid this it requires a strong response from the legal system through the adoption of vigorous legislation of comprehensive protection to avoid this. Unfortunately, Spain lacks these protections today.<sup>220</sup>

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<sup>219</sup> Ministry of Economic Affairs and Digital Transformation (*Ministerio de Asuntos Económicos y Transformación Digital*), [Royal Decree 1110/2020, of December 15, approving the National Statistical Plan 2021-2024](#) (Real Decreto 1110/2020, de 15 de diciembre, por el que se aprueba el Plan Estadístico Nacional 2021-2024), 15 December 2020.

<sup>220</sup> General Lawyers Council (*Consejo General de la Abogacía Española*), [La Abogacía presenta un Decálogo para la protección de los derechos humanos en pandemias](#), press reléase, 10 diciembre 2020.

# Annex 1 – Promising Practices

<b>Thematic area</b>	<b>EQUALITY AND NON-DISCRIMINATION</b> Please provide one example of a promising practice to tackle discrimination against older people or LGBTI people such as awareness raising campaigns or ethical codes for healthcare staff held in your country in 2020. Where no such examples are available, please provide an example of an awareness raising campaign held in your country in 2020 relevant to equality and non-discrimination of older people or LGBTI people, preferably one conducted by a national equality body.
Title (original language)	<a href="#">#NoSoloAmarillo</a>
Title (EN)	Not Only Yellow
Organisation (original language)	Sociedad Estatal de Correos y Telegrafos.
Organisation (EN)	National Postal and Telegraph Society.
Government / Civil society	Government
Funding body	National Post Office Agency
Reference (incl. url, where available)	<a href="#">#NoSoloAmarillo - Correos</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	June 2020
Type of initiative	Awareness raising campaign.

Main target group	LGTBI (Lesbian, Gay, Transgender, Bisexual and Intersex)
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>Launch of the first LGBTI official 1-euro stamp. It aimed at celebrating the LGBTI Pride Day on 28 June 2020. The idea behind was that although postal/mail is yellow, everyone can be the colour they want (in Spain, the National Post Office logo is yellow as well as the street mailboxes or its vans and labelling in general).</p> <p>The stamp also paid homage to the Begoña Passage in Torremolinos (Malaga), which it is a place of Historical Memory for the LGBTI Rights and Freedoms. Other additional actions were launched, such as the labelling of several mailboxes and some of the official post vans, and placing the rainbow flag in their mailboxes, vans and labels in some of its offices.</p> <p>In addition, It was created a "<a href="#">Pride Kit</a>", (12 euros), the perfect kit to join the celebration, which was composed of a stamp, a Pride flag, a prepaid postcard and a fan with the design of the rainbow.</p>
Highlight any element of the actions that is transferable (max. 500 chars)	The awareness raising campaign, not as an exceptional action or activity, but mainstream into a general public service, accessible and used across the whole country and by the general population.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	It is funded and developed by a public administration body and the stamp could be always used. It will be a tool not only designed for the occasion of the Pride Day on the 28 June, but also available anytime.
Give reasons why you consider the practice as having concrete measurable impact	It will be possible to access the final data on the number of stamps or objects finally labelled as such. Likewise, information about the total funding obtained after the selling of every product is always public and accessible.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	The Commission announced its intention to launch an LGBTI Equality Strategy. According to the initial work programme, published by the European Commission's on 29 January 2020.

	The Commission aims to improve the social acceptance of LGBTI people through awareness raising activities, and by setting the right example <sup>1</sup> , and by reaching citizens, fostering diversity and non-discrimination across the EU territory and all its Member States.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	Not available
Explain, if applicable, how the practice provides for review and assessment.	Not available

<b>Thematic area</b>	<b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE</b> Please provide one example of a promising practice to address racism and xenophobia in the context of the COVID-19 pandemic. Where no such practice exists, please provide one example of a promising practice related to combating racism, xenophobia and related intolerances.
Title (original language)	Observatorio de la Islamofobia en los Medios.
Title (EN)	Islamophobia Observatory in the Media.
Organisation (original language)	IEMED y Fundación Al Fanar para el Conocimiento Árabe.

<sup>1</sup>European Commission, [Final report 2015-2019 on the list of actions to advance LGBTI equality](#), May 2020



Organisation (EN)	IEMed & Al Fanar Foundation for Arab Knowledge. & Spanish Observatory on Racism and Xenophobia (OBERAXE)
Government / Civil society	Civil society & Government.
Funding body	European Institute of the Mediterranean (IEMed) & Ministry of the Inclusion, Social Security and Migration.
Reference (incl. url, where available)	<a href="http://www.observatorioislamofobia.org/">www.observatorioislamofobia.org/</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2017- Ongoing
Type of initiative	Media Observatory
Main target group	Journalist and Media in General
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>It is focused on how the media represent Islamophobia and how certain actions could address it Spain and across Europe. It documents and critically analyses Islamophobia narratives published in the media, through articles considered interesting to mark as positive or negative examples and also counter-Islamophobia narratives and related best practices. It seeks to raise awareness and proposals for a more inclusive and less Islamophobic language.</p> <p>Its main actions are Training, Awareness Raising, Reporting and Data Collection. In terms of reporting and data collection, it publishes a quarterly bulletin and since 2017 an annual activity report. The reports are the result of a quantitative and qualitative analysis of Spanish media, and additional contributions of journalists, analysts and experts.</p> <p>In terms of <a href="#">methodology</a>, it collects data published by certain Spanish media and articles and interviews. In terms of authorship, it covers only articles signed by staff journalists or</p>

	<p>the editorship of the newspaper. News published by national and international press agencies, and articles translated from other international newspapers are dismissed.</p>
<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	<p>It addresses questions of common interest such as: what is this universe related to Islam and especially Muslims in Europe? What is the image that Europeans have of the Muslims population who live amongst them?</p> <p>Initiatives, such as: a Toolkit guide entitled '<a href="#">Islam, Muslims and journalism</a>', which was designed to assist journalists working in the European Union when covering news related to Muslim communities.</p> <p>Its data and methodology could be a reference for other institutions and the basis for new policies and practices on how the media approach Islam.</p>
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>Because of the need of these type of tools to respond to Islamophobia as a common difficult and problematic reality across the European Union.</p> <p>Its partnership between civil society and public administration together with solid partners such as the European Institute of the Mediterranean (IEMed), founded in 1989, as a consortium comprising the Catalan Government, the Spanish Ministry of Foreign Affairs, European Union and Cooperation and the Barcelona City Council together with other civil society institutions such as Mediterranean universities, companies, organisations and prestigious and well-known personalities.</p>

<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>A concrete and measurable impact will be guaranteed through the data collected as well as the measures implemented by all the participant partners in the Observatory of Islamophobia in the Media project in the Mediterranean region as well as in other EU Member States.</p> <p>Because one of its guiding principles is that the direct outreach work and training with journalists has a positive impact that leads to change. In order to report more accurately on Islam, one needs to be aware of the situation and to seek solutions.</p> <p>The main partner institutions as well as the ones linked to them could contribute with their existing impact assessment tools already in place.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>The direct outreach work and training with journalists has a positive impact that leads to change. In order to report more accurately on Islam, one needs to be aware of the situation and to seek solutions.</p> <p>The Observatory responds to a common need across the European Union to face Islamophobia and to seek to change the cognitive frameworks from which Islam is discussed in the public debate. All Member States may benefit from a revision of the prisms through which information is filtered, and the scenarios where news is drawn.</p> <p>The partnership of the IEMed and the OBERAXE (Spanish Observatory on Racism and Xenophobia) will support the knowledge transfer to other EU Member States.</p>
<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>Not available.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>Not applicable.</p>

<b>Thematic area</b>	<p><b>ROMA EQUALITY AND INCLUSION</b></p> <p>Please provide one example of promising practice in relation to the legal and policy developments in regard to Roma/Travellers (or any group covered by this term as per the Council of Europe definition) in 2020 that relate to the (1) application of the EU Framework on national Roma integration strategies and (2) the preparations for the new post-2020 initiative on Roma equality, inclusion and participation or in relation to any measures in your country in 2020 to address Roma inclusion and prevent discrimination, hate crime and hate speech with a particular focus on COVID-19.</p>
Title (original language)	<a href="#">Promociona</a>
Title (EN)	Promote
Organisation (original language)	Fundación del Secretariado Gitano.
Organisation (EN)	Gypsy Secretariat Foundation
Government / Civil society	Civil society
Funding body	Ministry of the Health ( <i>Ministerio de Sanidad y Política Social</i> ), and co-financed by the European Social Fund
Reference (incl. url, where available)	<a href="https://www.gitanos.org/que-hacemos/areas/educacion/promociona.html">https://www.gitanos.org/que-hacemos/areas/educacion/promociona.html</a> ; <a href="http://www.gitanos.org/upload/32/21/Folleto_PROMOCIONA_FSG.pdf">http://www.gitanos.org/upload/32/21/Folleto_PROMOCIONA_FSG.pdf</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2009 – Ongoing
Type of initiative	Civil society.

Main target group	<p>The Promote Programme addresses Roma students (5th and 6th primary school year) as well as Secondary School students (1st to 4th year) who may need support to successfully finish their formal education.</p> <p>It aims at the different actors involved in the educational process of children: the students themselves, their families, schools and other educational and social agents. Although students and their families are the main actors in this programme, it also cooperates very closely with schools.</p>
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>The Programme aims at all young Roma to successfully complete the Compulsory Secondary Education and continue studying, thereby reducing early school dropout.</p> <p>Promociona-T helps to prevent the curriculum gap from Early Childhood Education Promoted +, supports Roma students in the access, permanence and completion of post-compulsory studies. A transformative programme, which produces generational changes and opens up a more promising future for Roma youth.</p> <p>In 2009, the Promociona-T initiative facilitated the work with 1,700 children in the child and primary education stages, to prevent and reduce school absenteeism, avoid the curriculum gap and facilitate the acquisition of curriculum skills.</p> <p>In 2019, the Promote+ post-compulsory curriculum supported 233 Roma students in accessing, permanence and completing post-compulsory studies.</p>
Highlight any element of the actions that is transferable (max. 500 chars)	<p>The Promote Programme shows that the school failure that highly affects Roma youth can be successfully addressed if appropriate measures are taken.</p> <p>The individualized actions within this programme may have a multiplier effect in the promotion of the whole community.</p> <p>In the Roma community across Europe there is a shortage of benchmarks with medium or higher training and with skilled jobs. The need to push these benchmarks forward is crucial to achieve the educational promotion of the entire Roma community.</p>

	Working with schools and other actors is a key acting principle of this project.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	<p>On October 2020, it celebrated its 10th anniversary.</p> <p>The programme is continuously evolving and incorporating new activities and actions that allow it to be always responding to actual needs through new tools and technologies.</p> <p>The programme has incorporated sub-programmes that allow produce generational changes and open up a more promising future for Roma youth.</p> <p>Currently the Promote Programme is already implemented in 49 cities in 13 Spanish Autonomous Communities.</p>
Give reasons why you consider the practice as having concrete measurable impact	Because the programme is implemented at three complementary levels: individual, group and socio-community level. In addition, it may benefit from the existing tools already in place to measure impact in every education centre and/or communities where the actions may be implemented.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	<p>Because its objectives fully go in line with the EU Framework for National Roma Integration Strategies up to 2020; and in line with the Roma integration strategies on a key area such as education.</p> <p>Because it is an initiative that serves to improve the educational success figures of Roma students. In addition, it responds to the working principle that education will change the future of Roma youth.</p>
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	Since this project operates with a comprehensive methodology, where both final beneficiaries and stakeholders work together throughout the implementation process. This project allows flexibility in terms of design and planning and it may be adapted in accordance with a wide range of circumstances. Evaluation and assessment are also shared practices between final beneficiaries and stakeholders, whereas the implementation of the practice depends on each particular institution.
Explain, if applicable, how the practice provides for review and assessment.	Through its Annual Technical and Financial Reporting.

<b>Thematic area</b>	<b>INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION</b> Please, provide one example of a promising practice related to any of the topics addressed in the chapter – i.e. in relation to data protection, and/or artificial intelligence systems - in 2020.
Title (original language)	Por todo lo que hay detrás.
Title (EN)	For everything behind it.
Organisation (original language)	Agencia Española de protección de datos (AEPD).
Organisation (EN)	Spanish Data Protection Agency.
Government / Civil society	Government.
Funding body	Spanish Data Protection Agency ( <i>Agencia Española de Protección de Datos</i> ) and the European Regional Development Fund.
Reference (incl. url, where available)	<a href="https://www.aepd.es/canalprioritario/">https://www.aepd.es/canalprioritario/</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	28 January 2020 – in place
Type of initiative	Awareness raising Campaign.

Main target group	<p>The campaign addresses not only the people who at some point may be victims of the dissemination but also all those who are aware of the situation and who also have the possibility to report it to the National Agency.</p> <p>It also addresses those who may contribute to the dissemination on the Internet of these contents, and may incur in not only an administrative responsibility, but also disciplinary, civil and criminal responsibility.</p>
Indicate level of implementation: Local/Regional/National	National.
Brief description (max. 1000 chars)	<p>The National Agency introduced a national awareness raising campaign to prevent the dissemination of sexual or violent content on the Internet.</p> <p>It promotes the use of the priority <a href="#">AEPD Priority Channel</a> to request the removal of sensitive content. It aimed at promoting the use of the <a href="#">National Agency's priority channel</a> to report the dissemination on the Internet of sexual or violent content published without the permission of the people who appear. It pays particular attention to the cases of child harassment or sexual violence against women.</p> <p>The percentage of withdrawal of this type of content sent by the National Agency exceeds 90%, while the remaining 10% is in process. This campaign tries to show the story behind a simple forwarding, to show also the serious consequences of sensitive images, videos or audios being broadcast on the Internet.</p>
Highlight any element of the actions that is transferable (max. 500 chars)	<p>The idea is that the Internet cannot serve as a vehicle for certain type of content to be disseminated without any consequences and that certain actions are essential for citizens to know that they have ways and channels to report it and to try to stop digital violence.</p> <p>A proactive attitude to the implementation of the precautionary measures against the dissemination of sexual or violent content on the Internet.</p>
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	<p>It is a National mechanism that will be supported by the official databases where all data referred to the actions and cases will be collected and analysed.</p> <p>The Spanish Protection Agency received the <a href="#">Internet Users Association Award</a> (<i>Premio de la Asociación de Usuarios de Internet</i>) because of being qualified as the best institutional</p>



	<p>online advertising campaign. The objective of those awards was to recognize those initiatives, people or organizations that stood out and have a record on the promotion, innovation or facilitation of the proper use of the Internet and new technologies.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>It is a National campaign that will be supported by the official databases where all data referred to the demands and cases will be collected and analysed.</p> <p>It is an initiative with a strong social impact: withdrawing violent or sexual content that spreads on the Internet without the permission of the people who appear on them.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>Because all elements of the action could be transferable as EU citizens need rapid responses to exceptionally sensitive situations, such as those that refer to the dissemination of sexual or violent content and urgent measures that limit the dissemination and access to personal data.</p> <p>The European Regional Development Fund (ERDF) could equally fund it.</p> <p>Because despite the advantages of the new technologies, it is a common reality to all Member States to face the fact that they provide infrastructures that can serve as a channel to seriously damage people's privacy or may provoke the public humiliation of victims. Therefore, Member States constantly are in seek of new solutions and protective measures.</p>
<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>Not available.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>Not available.</p>

<b>Thematic area</b>	<b>RIGHTS OF THE CHILD</b> Please provide one example of a promising practice relating to the topics addressed in this chapter.
Title (original language)	Centro especializado de Intervención en abuso sexual infantil (CIASI)
Title (EN)	Specialized Child Sexual Abuse Intervention Centre
Organisation (original language)	Comunidad Autónoma de Madrid. Consejería de Políticas Sociales, Familias, Igualdad y Natalidad.
Organisation (EN)	Madrid Autonomous Community. Counselling of Social Policies, Families, Equality and Natality.
Government / Civil society	Government
Funding body	Regional Government of the Madrid Autonomous Community.
Reference (incl. url, where available)	<a href="http://www.madrid.org/cs/Satellite?c=CM_ConvocaPrestac_FA&amp;cid=1354293115547&amp;noMostrarML=true&amp;pageid=1331802501674&amp;pagename=PortalCiudadano/CM_ConvocaPrestac_FA/PCIU_fichaConvocaPrestac">http://www.madrid.org/cs/Satellite?c=CM_ConvocaPrestac_FA&amp;cid=1354293115547&amp;noMostrarML=true&amp;pageid=1331802501674&amp;pagename=PortalCiudadano/CM_ConvocaPrestac_FA/PCIU_fichaConvocaPrestac</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2006- Ongoing
Type of initiative	Residential Specialized Centre.
Main target group	Children victims of sexual abuse as well as sex offenders who are children too.
Indicate level of implementation: Local/Regional/National	Regional.
Brief description (max. 1000 chars)	Centre aims at assisting minor victims of sexual abuse, as well as intervening with children who were qualified as sex offenders. The intervention has a psychological, social and legal approach and is coordinated with other health, social, police, judicial and educational care devices.

	<p>Among its main objectives are: to help sexually assaulted minors by providing them with psychological and legal assistance; to support the family and the child's social network to address the problem; to care for underage aggressors, initiating therapeutic intervention as soon as possible; to conduct a credibility assessment of the child's testimony in cases of suspicion.</p> <p>The access to the Centre takes place institutionally, at the request of the Regional Social Services, or the health Services, or the `police Services, or the bodies of the Justice Administration, and/or the Educational Centres.</p>
Highlight any element of the actions that is transferable (max. 500 chars)	The promotion of its social awareness function against child sexual abuse. In addition, the experiences gained from the implementation by the Specialized Child Sexual Abuse Intervention Centre of prevention programmes within school centres and other facilities that serve at-risk populations.
Give reasons why you consider the practice as sustainable (as opposed to `one off activities`)	<p>According to the last National "<a href="#">2018 Report on crimes against freedom and sexual indemnity</a>"<sup>2</sup> (<i>Informe sobre delitos contra la libertad e indemnidad sexual, 2018</i>) published in 2019 by the Ministry of the Interior, Madrid (1,195) is the second Autonomous Community with the higher number of cases of arrests and registered investigations (children offenders and adults incl.) behind Andalusia (1,597) on crimes against freedom and sexual indemnity.</p> <p>And in Madrid, on 2018, 975 victims of crimes against freedom and sexual indemnity were recorded, 802 girls and 173 boys, according to <a href="#">Children in Data</a> (<i>Infancia en datos</i>), the statistical portal of the Ministry of Health, Consumer and Social Welfare (<i>Ministerio de Sanidad, Consumo y Bienestar Social</i>).</p>
Give reasons why you consider the practice as having concrete measurable impact	It would be possible to gather information of direct and indirect beneficiaries, number of activities, trainings organized.

<sup>2</sup> Spain, Ministry of the Interior (*Ministerio del Interior*), [2018 National Report on crimes against freedom and sexual indemnity](#) (*Informe sobre delitos contra la libertad e indemnidad sexual, 2018*), Madrid.

	According to the Official Bulletin of the Madrid Assembly ( <i>Boletín Oficial de la Asamblea de Madrid</i> ) since the creation of the CIASI in 2006 until the 21 January 2020, 5.435 files were registered.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	It does address an issue of common interest in all Member States, as is to facilitate the support and protection of children accused and/or with a final sentence after a criminal procedure. The fight against child sexual abuse and exploitation is a priority for the EU. The Commission is working on a new EU strategy to tackle this issue. It will focus on preventing the abuse from happening in the first place; law enforcement; and supporting the victims. There was a dramatic increase in child sexual abuse instances detected in the EU in the past few years: from 23,000 in 2010 to 830,000 in 2019.  The Madrid Regional Government may support the sharing of practices and information with other Member States.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	Not available
Explain, if applicable, how the practice provides for review and assessment.	Not available

<b>Thematic area</b>	<b>ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS</b> Please provide one example of a promising practice relating to the topics addressed in this chapter.
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Title (original language)	Fundación Víctimas del Terrorismo
Title (EN)	<a href="#">Victims of Terrorism Foundation</a>
Organisation (original language)	Fundación Víctimas del Terrorismo
Organisation (EN)	<a href="#">Victims of Terrorism Foundation</a>
Government / Civil society	Civil Society
Funding body	Several Ministries, Regional Governments and private companies and/or foundations, such as: ICO Foundation, Telefonica, BBVA, Red Electrica España, Montemadrid Foundation, Ramon Areces Foundation; Ministry of the Interior ( <i>Ministerio del Interior</i> ), Ministry of the Health ( <i>Ministerio de Sanidad</i> ), Ministry of the Consumer and Social Welfare, Ministry of the Education and Training ( <i>Consumo y Bienestar Social, Ministerio de Educación y Formación Profesional</i> ); Cantabria, Navarra, Madrid, Castilla y León, Regional Governments.
Reference (incl. url, where available)	<a href="https://fundacionvt.org/">https://fundacionvt.org/</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2001- Ongoing.
Type of initiative	Support network.
Main target group	The victims of terrorism or their families that are not supported by the public administrations. The network addresses all type of terrorism's victims, such as ETA victims, jihadism victims, GRAPO victims, and other terrorist groups' victims.
Indicate level of implementation: Local/Regional/National	National.

Brief description (max. 1000 chars)

The Foundation is a support **network** that includes a myriad of support organisations<sup>3</sup>. It is an umbrella Civil Society organization dated from 2001. Its **objective** is to be a channel of communication for a better understanding of the situation of the victims of terrorism in Spain. It also aims at promoting and disseminating democratic values, the defence of human rights, the plurality and freedom of citizens.

It has a support system aimed at directly addressing the needs of victims of terrorism or their families that are not previously supported by public administrations. It address all types of terrorism´s victims, such as: ETA victims, jihadism victims, GRAPO victims, and other terrorists groups victims.

It provides support through a.) support allowances that aim at promoting the well-being of the victims and at compensating the personal and economic constraints that may arise as a result of a terrorist attack; b.) support assistance and legal representation that intends to accompany the victims and their families, in the field of criminal proceedings.

<sup>3</sup> such as: the [Association Victims of Terrorism](#) (*Asociación de Víctimas del Terrorismo*, AVT, in its Spanish acronym), [Association 11-M Affected Terrorism](#) (*Asociación 11-M afectados por el Terrorismo*), [Association of Support to Victims of 11-M](#) (*Asociación de Ayuda a las Víctimas del 11-M*), Association Dignity and Justice (*Asociación Dignidad y Justicia*), [Association Corps and Forces of State Security Victims of Terrorism](#) (*Asociación Cuerpos y Fuerzas Seguridad del Estado Víctimas del Terrorismo*, ACFSEVT, in its Spanish acronym) [Collective of Victims of Terrorism](#) (*Colectivo de Víctimas del Terrorismo*, COVITE, in its Spanish acronym), [Association of Ertzainas and Relatives Victims of Terrorism](#) (*Asociación de Ertzainas y Familiares Víctimas del Terrorismo*), [Federation of Autonomous Associations of Victims of Terrorism](#) (*Federación de Asociaciones Autonómicas de Víctimas del Terrorismo*), [Andalusian Association Victims of Terrorism](#) (*Asociación Andaluza de Víctimas del Terrorismo*, AAVT, in its Spanish acronym), [Catalan Association of Victims of Terrorist Organizations](#) (*Asociación Catalana de Víctimas de Organizaciones Terroristas*) (ACVOT), [Extremaduran Association of Victims of Terrorism](#) (*Asociación Extremeña de Víctimas del Terrorismo*, Asexvite, in its Spanish acronym), Canary Association of Victims of Terrorism (*Asociación Canaria de Víctimas del Terrorismo*, ACAVITE, in its Spanish acronym), [Rioja Association of Victims of Terrorism](#) (*Asociación Riojana de Víctimas del Terrorismo*, ARVT, in its Spanish acronym), [Association of Victims of Terrorism of Castilla y León](#) (*Asociación de Víctimas del Terrorismo de Castilla y León*, AVTCYL, in its Spanish acronym), [Association of Victims of Terrorism of the Valencian Community](#) (*Asociación de Víctimas del Terrorismo de la Comunidad Valenciana*, AVTCV, in its Spanish acronym), [Association Platform to Support Victims of Terrorism](#) (*Asociación Plataforma de Apoyo a las Víctimas del Terrorismo*, APAVT, in its Spanish acronym), [Association SOS Victims Spain](#) (*Asociación SOS Víctimas España*, Zaitu Association (for those threatened, persecuted and exiled because of ETA) (*Asociación Zaitu*), [Navarre Association of Victims of Terrorism of ETA](#) (*Asociación Navarra de Víctimas del Terrorismo de ETA*, ANVITE, in its Spanish acronym), [Foundation against Terrorism and Violence Alberto Jiménez-Becerrí](#) (*Fundación contra la Violencia y el Terrorismo Alberto Jiménez-Becerril*), [Foundation Fernando Buesa Blanco Fundazioa](#) (*Fundación Fernando Buesa Blanco Fundazioa*), [Tomás Caballero Foundation](#) (*Fundación Tomás Caballero*), [Professor Manuel Broseta Foundation](#) (*Fundación Profeso Miguel Broseta*), [Miguel Ángel Blanco Foundation](#) (*Fundación Miguel Ángel Blanco*), [Gregorio Ordóñez Foundation](#) (*Fundación Gregorio Ordoñez*), [Manuel Giménez Abad Foundation](#) (*Fundación Manuel Giménez Abad*), [Rodolfo Benito Samaiego Foundation](#) (*Fundación Rodolfo Benito Samaiego*), Luis Portero García Foundation (to give and feel life) (*Fundación Luis Portero García (para dar y sentir vida)*) and Victims of Terrorism for Peace. (*Víctimas del Terrorismo por la paz*).

<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	<p>It does address an issue of common interest related to terrorism and access to justice and protection for the victims of terrorist actions addressing one of the most difficult and problematic issues globally and internally in the European Union.</p> <p>Long professional record in Spain where the terrorism phenomena due to ETA and GRAPO terrorist groups acted for many years. These victims' support organizations emerged and were developed in response to the changing reality.</p>
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>It has already been running for almost 20 years. It includes a wide and quite comprehensive range of member organizations what facilitates its updated responses and a strong outreach.</p> <p>It responds to the protection needs of the terrorism's victims taking into account the particular needs of every person and taking into account the changing nature of the terrorist acts and groups.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>It would be possible to gather data on number of direct and indirect beneficiaries, number of activities, trainings organized.</p> <p>The Annual Reports, both issued by the network and by its partner organisations, serve to measure the impact of its actions.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>Terrorism is a problematic issue at both global and European level and therefore considered of crucial importance in every Member State's political agenda.</p> <p>This type of initiatives could be defined as a counter terrorism tool that could be implemented in other Member States. In particular, the capacity building aspects of the network and the partner member organizations as a tool to share information and experiences as well as to provide responses and support to the victims.</p>
<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>Not available.</p>

Explain, if applicable, how the practice provides for review and assessment.	Annual Reports of the umbrella organization itself but also through the corresponding Annual Reports of each one of its representative member organizations.
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<b>Thematic area</b>	<b>DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)</b>  Please provide one promising practice example of projects or programmes implementing the CRPD or furthering the rights of persons with disabilities.
Title (original language)	Accesibilidad.
Title (EN)	Accesibilidad.
Organisation (original language)	Fundación ONCE y Patronato sobre Discapacidad.
Organisation (EN)	ONCE Foundation and the Board of Trustees on Disability.
Government / Civil society	Government & Civil society
Funding body	Ministry of Social Rights and Agenda 2030 ( <i>Ministerio de Derechos Sociales y Agenda 2030</i> ).
Reference (incl. url, where available)	<a href="https://accessibilidad.es/">https://accessibilidad.es/</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	June 2020/Ongoing



Type of initiative	Online Platform.
Main target group	This online platform is aimed specifically at anyone whose professional practices may have an effect on the accessibility of spaces. It explains that any person and institution interested in contributing to universal design may benefit from it.
Indicate level of implementation: Local/Regional/National	National.
Brief description (max. 1000 chars)	<p>It is a digital platform designed to improve the universal design of spaces, goods and services and therefore aimed at people and institutions interested in the same goal.</p> <p>It has sections such as News, Courses and Conferences, Support Products, Guides, Manuals and Studies or Success Stories, which show examples of well-understood and correct applied accessibility tools. It also intends to inspire organizations and individuals who take their first steps in this area. It also allows the download of 3D support product designs.</p> <p>In addition, the online platform has a private area aimed at public administrations, universities and non-profit organizations operating across Spain.</p> <p>It provides access to the Spanish's technical regulations (<i>Una Norma Española</i>, <a href="#">UNE</a> in its Spanish acronym) on accessibility and facilitates the access to specialized forums attended by experts, as well as the broadcasting events related to universal accessibility and design for all people.</p>
Highlight any element of the actions that is transferable (max. 500 chars)	<p>All elements of the action could be transferable, as EU citizens do need rapid responses to situations where the disability aspects would be essential.</p> <p>The online platform supported and managed by a specialized institution is equally transferable. It does provide a tool and methodology in line with the new technologies and social networks rapidness and guarantees the legitimacy and impact of decisions taken and actions developed based on the shared data and information.</p>
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	<p>Awareness campaigns are launched on a regular basis by the ONCE Foundation.</p> <p>All of them can be found in the Campaigns section of the ONCE Foundation website and its partner organizations.</p>

	<p>Furthermore, it is an activity in line with the principles and objectives agreed by the Spanish Government within its Social Policy on Disability issues and its Action Plan of the Spanish Disability Strategy 2014-2020 (<i>Plan de Acción de la Estrategia Española sobre Discapacidad 2014-2020</i>), which falls under the competence of the Ministry of Health, Consumer Health and Welfare (<i>Ministerio de Sanidad, Consumo y Bienestar</i>).</p> <p>Likewise, the improvement of the level of accessibility to public and private places is a constant concern of the general population.</p>
Give reasons why you consider the practice as having concrete measurable impact	All the data, publications, activities, tools and additional resources developed and shared may have particular impact assessment tools such as number of participants, or number of documents shared, and/or number of inflows or outflows in the website.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	Because it provides with a useful and comprehensive tool that may be used by a wide range of stakeholders. It would be equally flexible to be updated and adjusted to the particular needs of every Member State and/or stakeholder that should always take into consideration the disability aspects before developing new policies or practices.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	Not applicable.
Explain, if applicable, how the practice provides for review and assessment.	Not available.

# Annex 2 – Case Law

<b>Thematic area</b>	<b>EQUALITY AND NON-DISCRIMINATION</b> Please provide one high court decision addressing discrimination against older people or against LGBTI people. Where relevant, always highlight any relevance or reference to multiple or intersectional discrimination in the case you report.
<b>Decision date</b>	1 September 2020
<b>Reference details</b>	Spain, Contentious Administrative Litigation of the Catalonia High Court of Justice ( <i>Contencioso Administrativo del Tribunal Superior de Justicia de Cataluña</i> ), <a href="#">Special Appeal for judicial protection of the fundamental rights of the person against the Sectoral Plan</a> , 1 September 2020.
<b>Key facts of the case</b> (max. 500 chars)	Residence Coordinator 5 +1 brought this special appeal against the <a href="#">Management of SARS-CoV-2 coronavirus infection in the residential area. Sectorial Plan</a> . The appeal intended to restore certain rights of the elderly persons, their dignity, and their rights to be able to live enjoying the company of their loved ones. The Sectoral plan agreed to restrict access to user’s family members in residential care centres, as well as to limit user’s mobility and freedom to leave the centres. Therefore, the elderly were forced to remain isolated in the care centres.
<b>Main reasoning/argumentation</b> (max. 500 chars)	The consequences of the enormous physical and mental deterioration suffered by the older people were questioned. References were included to certain expert’s reports in relation to the physical and psychological impact of the isolation on residents.  It was argued that those measures did not serve to protect the residents, since the root problem was the absolute lack of proper medical protection equipment, of COVID-19 tests disposal, of health care, as well as a questionable behaviour of both public authorities and private institutions.

<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>Right to equality, discrimination based on age and place of address Article 14 of the Spanish Constitution.</p> <p>Right to life and physical and moral integrity, Human and degrading treatment in residences (Article 15 of the Spanish Constitution).</p> <p>Right to personal freedom (Article 17.1 of the Spanish Constitution).</p> <p>Free of movement, prohibition of free movement (Article 19 of the Spanish Constitution).</p> <p>The limitation or suspension of some fundamental rights and public freedoms through the measures adopted without prior declaration of a state of alarm or exception.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>It requests the suspension of the validity of provisions of a general nature of the Sectoral Plan (Article 134 of the Law of Contentious-Administrative Jurisdiction (<i>Ley de la Jurisdicción Contencioso-administrativa</i>, LJCA, in its Spanish acronym).</p> <p>It requests the precautionary suspension of articles 135 (concurrency of circumstances of special urgency) and 136 (the precautionary measure will be adopted unless it is appreciated with evidence that the anticipated situations do not occur) of the LJCA.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p>"In this case, what is truly important is that the approval of the aforementioned sectoral plan by the Department of Health and the Catalan Health Service of the Catalonia Region Government is carried out without the previous declaration of the states of alarm or exception" (<i>En el presente caso lo verdaderamente importante es que la aprobación del referido plan sectorial por parte del Departament de Salut y el Servei Català de la Salut de la Generalitat de Catalunya, se realiza sin haber sido declarado estados de alarma o excepción</i>).</p>

<p><b>Thematic area</b></p>	<p><b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE.</b> Please provide the most relevant high court decision concerning the application of <u>either</u> the Racial Equality Directive <u>or</u> the Framework Decision on racism and xenophobia, addressing racism, xenophobia and other forms of intolerance more generally.</p>
<p><b>Decision date</b></p>	<p>11 December 2020</p>

<b>Reference details</b>	Spain, Supreme Court, Criminal Chamber ( <i>Tribunal Supremo, Sala de lo Penal</i> ), <a href="#">Judgment No. 675/2020</a> , Nº of Appeal: 462/2019 ( <i>Sentencia núm. 675/2020, Nº Recurso: 462/2019</i> ), 11 December 2020.
<b>Key facts of the case</b> (max. 500 chars)	<p>Sabadell's Instructional Court initiated an Abbreviated Procedure in 2018, which followed a previous court proceedings dated from 2011, which were referred to as the Barcelona High Court (Audiencia Provincial) that ruled a judgment on 8 November 2018.</p> <p>On 30 October 2010, in Sabadell (Catalonia), a concert took place in which two music groups known as "Más Que Palabras" and "Batallón de Castigo" performed. Two marketing companies, "Soportes Sonoros SI" and "Distribuciones Serigraficas El Dso SI", took part in the organization of both music groups in the concert. They also helped with the creation of both bands' blogs and Facebook profiles as well as You Tube videos. Members of both music groups appear as legal representatives or employees of the companies.</p> <p>Both bands performed several songs that contained messages favouring the supremacy of the white race. Their songs extended messages of hatred and violence toward people who do not belong. Consequently, it promoted xenophobia and anti-Zionism feelings to the people in attendance.</p> <p>Publications and other content on the website were related to their music and other music groups with similar sentiments. The material had messages referring to the supremacy of the white race, which therefore, discriminated against people who do not belong to that race. This extended hatred and violence due to the xenophobia and anti-Zionism material implied. As a result, it provoked and propagated similar feelings to those who have access to such material.</p>
<b>Main reasoning/argumentation</b> (max. 500 chars)	Freedom of expression cannot provide coverage for the so-called "hate speech". There was a reference to the <a href="#">Constitutional Court Judgement STC 235/2007 of 7 November 2007</a> , which reviewed the right to freedom of expression. The ECtHR doctrine was also referred to in the judgment of <a href="#">Ergogdu and Ince v. Turkey on 8 July 1999</a> . It was argued that the jurisprudence doctrine was applicable to the case at issue because both are drafted before and after the Criminal Code reform by <a href="#">the Organic Law. 1/2015</a> .

<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>Crime of discrimination under Article 510.1 of the Criminal Code. Facts committed before the reform introduced on the Criminal code by the organic Law 1/2015 and problems with its retroactive implementation. "Hate speech" and limits to the fundamental right to freedom of expression, which does not protect outrageous and discriminatory messages. Crime of abstract danger (<i>peligro abstracto</i>): the expressions used imply a potential danger, and are ignominious to coexistence, to democracy as a whole and are not justified by the freedom of expression. Criminal responsibility to the distributors of the songs who were also engaged with the merchandising and sale of their own products.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Judgment was issued by the Seventh Section of the Barcelona High Provincial Court (<i>Audiencia Provincial de Barcelona</i>) and was confirmed in full. Plus, the imposition of the respective trial costs that were caused by the appeals. One year of prison together with the special disqualification for the exercise of the right of passive suffrage for the duration of the sentence. Along with a fine of six months with a daily fee of ten euros and subsidiary personal liability in case of the non-payment of the fine of one day of deprivation of liberty for every two unmet instalments. Finally, with the confiscation of the websites: <a href="http://www.bicefala.com">www.bicefala.com</a> and <a href="http://www.44x2.com">www.44x2.com</a> and certain items and products identified at the registration such as flags, shields, bracelets, caps, T-shirts, badges, and stickers.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p>Article 510.1 of the Criminal Code, an offence of abstract risk and mere activity, ... the only elements requested for its consideration are, one objective... the emission of the provocative, discriminatory, hateful, violent message, ..., and other subjective... the will to issue it, ....., for the consummation of which... the potential danger of the message issued is enough, ... it is sufficient that the conduct deployed is appropriate to provoke a discriminatory activity. (<i>art. 510.1 CP un delito de riesgo abstracto y mera actividad... los únicos elementos que precisa para su apreciación son, uno objetivo...la emisión del mensaje provocador, discriminatorio, de odio, violento, ....., y otro subjetivo...la voluntad de emitirlo, ....., para cuya consumación... basta simplemente el potencial peligro que conlleve el mensaje emitido, ...basta que la conducta desplegada resulte idónea para incitar a la actividad discriminatoria</i>).</p>

<p><b>Thematic area</b></p>	<p><b>ROMA EQUALITY AND INCLUSION</b> Please provide the most relevant high court decision addressing violations of fundamental rights of Roma and Travellers.</p>
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<b>Decision date</b>	30 January 2020.
<b>Reference details</b>	Spain, Ciudad Real Criminal Court, Judgement 00038/2020, 30 January 2020. (Not available on online)
<b>Key facts of the case</b> (max. 500 chars)	<p>On 24 September 2016, three young men wanted to enter a nightclub in Puertollano (Ciudad Real) and one of the bouncers told them "You can't enter because my boss tells us off by letting gypsies get through." (<i>No podéis pasar porque mi jefe nos echa la bronca al dejar pasar a gitanos</i>). The young men asked for a complaint sheet and the bouncers responded, "We don't give it to you for being gypsies" (<i>No os la damos por ser gitanos</i>) adding that "If you call the police you're going to be in trouble" (<i>Si llamáis a la policía vais a tener lío</i>).</p> <p>The claimants contacted a specialized NGO, the Gypsy Secretariat Foundation that accompanied the victims throughout the legal and judicial process. In addition, the complaint was filed before the Ciudad Real Provincial Public Prosecutor's Office for Hate crimes and discrimination.</p> <p>The Court took a statement to the victims, investigated the case and referred the proceedings to the Ciudad Real Criminal Court for trial.</p>
<b>Main reasoning/argumentation</b> (max. 500 chars)	<p>The complaint was filed with the Public Prosecutor's Office for an offence of discrimination referred to in <b>Article 512 of the Criminal Code</b>; <a href="#">specifically</a> the denial of access to goods and services in the private sphere</p> <p>The claim was based on an offence against the exercise of the individuals' Fundamental Rights, since it affects the right to equality and dignity of individuals, as set out in <a href="#">Articles 14 (equality before the law) and 10 (legal guarantees of Fundamental rights and duties) of the Spanish Constitution</a>.</p> <p>The victims' testimony neither satisfied the credibility's condition nor the persistence of the concur as they were defined as ambiguous and contradictory.</p>
<b>Key issues (concepts, interpretations) clarified</b>	Accompaniment to victims, as key factor in the fight against discrimination. It is defined as essential to inform victims of their rights; of how to identify discrimination; of how to act to report or file complaints; and as an empowerment instrument for many Roma people. The

<p><b>by the case</b> (max. 500 chars)</p>	<p>strategic litigation as one of the fundamental avenues in defending the rights of the Roma population.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The trial was held and the three defendants, the two bouncers and the nightclub owner were acquitted. The case was appealed before the Provincial High Court (<i>Audiencia Provincial</i>). At the moment of writing this report, the claimants were awaiting a new resolution.</p> <p>In terms of the implications of the case, it not only intended to give justice to young people who were discriminated, but to raise citizens' awareness in the impact these facts may have on the victims.</p> <p>Even though a conviction was not achieved after the first judgement, the claimants and the NGO FSG considered a victory the fact that the trial was held. It was defined as a case for strategic litigation, it was considered strategic to represent this case judicially, after considering that it is one of the most repeated behaviours in different locations.</p> <p>The Gypsy Secretariat Foundation (<i>Fundación Secretariado Gitano</i>, FSG, in its Spanish acronym), argued that in many cases the files related to the denial of access to goods and services ends without any investigation. The fact that people responsible for a leisure venue sit on the dock because of this type of behaviour managed to release a very clear social message.<sup>1</sup>.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p>"...not established ... that the cause or reason ... was motivated by discrimination on the grounds of belonging to the Roma ethnic group..." (<i>no ha resultado acreditado... que la causa o motivo ..., esté motivada por discriminación por razón de pertenencia a la etnia gitana</i>).</p> <p>"...insufficient evidence or suspicion in this case to conclude the participation of those prosecuted in the facts..." (<i>...meros indicios o sospechas insuficientes para concluir la participación de los encausados en los hechos enjuiciados...</i>).</p>

<sup>1</sup> The Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*), [A raíz de la Sentencia absolutoria en el caso de denegación de acceso a una discoteca de jóvenes gitanos en Puertollano \(Ciudad Real\)](#), press release, 7 February 2020; The Gypsy Secretariat Foundation (*Fundación del Secretariado Gitano*), [Juicio contra los porteros y el encargado y co-propietario de una discoteca por no dejar entrar a tres jóvenes gitanos](#), press release, 16 January 2020.



<b>Thematic area</b>	<b>INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION</b> Please provide the most relevant high court decision related to the topics addressed in the chapter, i.e. in relation to data protection, and/or artificial intelligence systems.
<b>Decision date</b>	22 June 2020
<b>Reference details</b>	Spain, Supreme Court ( <i>Tribunal Supremo</i> ), <a href="#">Judgement of the Contentious-Administrative Chamber of the Supreme Court nº 839/2020. Nº appeal 2134/2019</a> ( <i>Sentencia de la Sala de lo Contencioso-Administrativo del Tribunal Supremo Nº: 839/2020. Nº: 2134/2019</i> ), 22 June 2020.
<b>Key facts of the case</b> (max. 500 chars)	<p>JuasApp is a telephone practical joke application that lets users select from a list of predefined pranks to send by phone to anyone the users choose. JuasApp was unique because the pranks can be recorded and shared on social media.</p> <p>JuasApp’s website provides testimonials from some of the butts of these types of jokes. “I liked it a lot. You laugh a lot, it’s super fun” and “It’s well done and no one realizes that it’s a joke” are some of the comments. However, not all of the victims feel the same.</p> <p>In April and May 2016, four individuals filed two claims with the Spanish Data Protection Agency (AEPD) alleging that they were recorded without their consent.</p> <p>On 18 January 2018, the AEPD issued a sanctioning procedure imposing a penalty of EUR 6,000 on an infringement of Article 6.1 of <a href="#">Organic Law 15/1999 of 13 December</a>, defined as a serious crime in Article 44(3).b of that rule. The App’s enterprise (Miraclia Telecomunicaciones S.L) filed an appeal. In addition, the Administrative Litigation Chamber of the National High Court delivered a ruling on 31 January 2019, stating the dismissal of the appeal brought.</p> <p>The AEPD took a cassation appeal before the Supreme Court on 14 June 2019.</p>

<p><b>Main reasoning/argumentation</b> (max. 500 chars)</p>	<p>The main claimants arguments were: 1) that the Miraclia's activity is excluded from the scope of protection of the <a href="#">Organic Law 15/1999 of December 13 on Protection of Personal Data</a> insofar as it is carried out at home (<i>ámbito doméstico</i>); 2) that it does not process personal data; 3) that Miraclia's legitimacy for the possible data processing was based on Miraclia's legitimate interest, and on the need to execute a contract between the provider and the user.</p> <p>The Supreme Court recalled that voice recordings are personal data because they are linked to other data, such as phone numbers. In addition, the application's owner stored and processed the telephone numbers and voices of the jokes' recipients. Those data that make the affected person perfectly identifiable.</p> <p>The Supreme Court stressed that the victims' voice recordings were recorded without prior consent It was only once the recording of the pranks is complete that the calls' recipients were asked for consent to process their data. The passive consent given in a negative way, i.e., as non-opposition to a question posed by phone could be considered a consent that fulfils the requirements under data protection regulations.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>The Supreme Court established case-law in this regard stating that:</p> <ol style="list-style-type: none"> <li>1. The processing of data carried out by a company in the context of its commercial activity cannot be excluded from data protection just because they are exclusively personal or domestic activities.</li> <li>2. The recording of the voice associated with other data such as the telephone number must be considered a personal data subject to the regulations.</li> <li>3. The commercial interests of a company responsible for a data file must be in line with the legitimate interest of the data subject in the protection of the data.</li> </ol>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The AEPD fined the application's owner €7,500. The Spanish Supreme Court upheld the AEPD's fine.</p> <p>The denial of the cassation appeal brought by the procedural representation of the mercantile society MIRACLIA TELECOMUNICACIONES, S.L. against the judgment of First section of the Administrative Chamber of the National Court on 31 January 2019.</p>

**Key quotation in original language and translated into English with reference details** (max. 500 chars)

the passive consent given in a negative way, i.e., as non-opposition to a question posed by phone at the end of a surprise call such as the jokes in the circumstances in the case” (*el consentimiento pasivo otorgado de forma negativa, esto es, como no oposición a una pregunta solicitada telefónicamente al cabo de una grabación sorpresiva como lo es una broma en las circunstancias que concurren en el caso*) could be considered consent that fulfils the requirements under data protection regulations.

“data that no doubt make the affected person perfectly identifiable” (*datos que conjuntamente sin duda hacen que la persona afectada sea perfectamente identificable.*)

<b>Thematic area</b>	<b>RIGHTS OF THE CHILD</b> Please provide the most relevant high court decision relating to the topics addressed in this chapter.
<b>Decision date</b>	11 February 2020
<b>Reference details</b>	Spain, Supreme Court ( <i>Tribunal Supremo</i> ), <a href="#">Judgement 47/2020. nº appeal 1391/2018</a> ( <i>Sentencia 47/2020, nº recurso 1391/2018</i> ), 11 February 2020.
<b>Key facts of the case</b> (max. 500 chars)	<p>The defendant was reported by his ex-wife on 12 February 2016. His ex-wife stated that on 5 January 2016 while she was with their daughters standing next to the defendant and to her in a festival on the street in the city of Almeria, the accused reacted to a comment made by the youngest child by giving her a smack in her mouth, without hurting her.</p> <p>His ex-wife stated in her complaint that also on 3 December 2015, 7 and 29 January and 3 February 2016, the defendant beat the younger daughter, first at the family home, and secondly in a mobile phone shop by shaking the child, and thirdly in another occasion by grabbing her ears, after the child refused to kiss him; and the last time, when he picked them up from school, grabbed her youngest child's neck.</p> <p>On 7 July 2017, the defendant was condemned as criminal and civilly responsible author of the crime of habitual abuse aggravated in the field of gender-based violence, as defined by Article 173.22 and Article 32 of the Criminal Code and as a criminal perpetrator responsible for the crime of mistreatment, considered as family violence, punishable by Article 153.22 of the Criminal Code.</p> <p>The defendant then brought an appeal before the Almeria Provincial High Court that on 9 March 2018 issued a new judgement that dismissed the appeal and confirmed the judgement issued on 7 July 2017. Then, the defendant entered a new appeal before the Supreme Court.</p>
<b>Main reasoning/argumentation</b> (max. 500 chars)	The Supreme Court applied the doctrine of the Supreme Court <a href="#">Judgment 654/2019</a> to resolve complaints about the absence of a desire to injury, the fact that it was a socially appropriate conduct and the principle of minimum intervention.

	<p>However, the Supreme Court ruled on a question not discussed in the previous judgment. The question not previously discussed was the one related to the possibility of qualifying for a criminal sanction also where the act under discussion did not give rise to medical assistance.</p> <p>The Supreme Court argued that the jurisprudence makes it clear that beating and mistreating without causing injury can also be a criminal act. The Supreme Court stated that although there may be "very light-natured" situations that do not have a criminal penalty, the mere mistreatment of mere disagreement with a child would be described as a conduct under Article 153 of the Criminal Code, as a reaction and devoid of any other purpose.</p> <p>The Supreme Court recalled that the appellant was also convicted of an offence of aggravated abuse in the field of gender-based violence under article 173.2 and 3 of the Criminal Code, and therefore it was necessary to recognize the child victims of gender-based violence.</p> <p>The Supreme Court stated that it would be applied with the aim of making visible this form of violence.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>It deals with the concurrence of the crime of de facto mistreatment (<i>maltrato de obra</i>) of Article 153 of the Criminal Code, which stated that cohabitation is not required for the spouse or person linked by an analogous relationship of affection, nor for their own children or those of the spouse or cohabiting partner, who are subject to the power, guardianship, curatorship, fostering or de facto safekeeping of the spouse or partner.</p> <p>This Judgement implied a relevant change of judgment of the Supreme Court which, until then did follow the <a href="#">judgment 201/2007</a><sup>2</sup> that considered that in the case of descendants, ancestors or brothers, coexistence was required to apply Article 153 of the Criminal Code.</p> <p>The Supreme Court noted that although the slap that the father tips was devoid of any need, justification or proportionality.</p> <p>The Supreme Court took into consideration that:</p>

<sup>2</sup> Spain, Supreme Court (Tribunal Supremo), [Judgement nº 201/2007. Nº appea 10667/2006](#) (Sentencia Nº: 201/2007. Nº: 10667/2006), 16 March 2007.

	<ul style="list-style-type: none"> <li>- Although the right of correction (<i>derecho de corrección</i>) was expressly repealed from Article 154 of the Civil Code, its existence and legitimacy is allowed in the Supreme Court case-law as a concept integrated into the rest of the duties imposed on parents by the Civil Code.</li> <li>- The right of correction does not legitimize the use of physical violence, in accordance with Article 153 of the Criminal Code.</li> <li>- The right of correction and the sanction granted by Article 153 of the Criminal Code to "strike and mistreat by deed without causing injury behaviour" (<i>golpear y maltratar de obra sin causar lesión</i>), may present conflict zones that will require an analysis of each case.</li> </ul>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The appeal was dismissed. The Court dismissed the child's father's appeal after being convicted by a criminal court, the conviction was upheld on appeal based on a mistreatment offence in the field of family violence as contained under Article 153.2 of the of the Criminal Code.</p> <p>The costs of legal proceedings were charged to the plaintiff.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p>... It becomes questionable, the right of correction that involves violence on the child, however minimal; and even if in certain circumstances the very slight violence does not entail a criminal penalty, if it includes mere mistreatment simply because of a simple discrepancy with the child; in no way escapes its penal-type status for a criminal sanction... (<i>...Deviene cuestionable, el derecho de corrección que comporta violencia sobre el menor por mínima que sea; y aun cuando en determinadas circunstancias la de muy liviano carácter no conlleve sanción penal, si integra mero maltrato por simple discrepancia con el menor; en modo alguno escapa a su condición típica acreedora de reproche penal...</i>).</p>

<b>Thematic area</b>	<b>ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS</b> Please provide the most relevant high court decision relating to the topics addressed in this chapter.
<b>Decision date</b>	16 June 2020.
<b>Reference details</b>	Spain, Supreme Court ( <i>Tribunal Supremo</i> ), <a href="#">Judgement 307/2020. nº appeal 2629/2019</a> ( <i>Sentencia 307/2020, nº recurso 2629/2019</i> ), 16 June 2020.
<b>Key facts of the case</b> (max. 500 chars) 998	<p>Mamadou (the child) was born on 14 November 1999 in Bamako (Mali). On 2013, he left his country. On 2 December 2014, at the age of 15, he entered Melilla and on February 2015, he was transferred to the Spanish peninsula as an adult.</p> <p>He entered a reception centre managed by the Raices Foundation that detected that he was a child. Documentation was requested at the Mali Embassy in Madrid. On 2015, the Foundation requested the Children’s Prosecutor’s Office the recognition of his minority of age, and his inclusion into the Child Protection system.</p> <p>However, the Prosecutor’s Office did not give validity to the original documentation issued by the Malian Embassy and issued a Decree stating that Mamadou was 18 years old. In addition, the Madrid Regional Government denied his guardianship.</p> <p>The Foundation took the case before a Madrid First Instance Court and on 20 October 2016, a judgment was issued confirming previous decisions.</p>
<b>Main reasoning/argumentation</b> (max. 500 chars)	<p>The judgment of 20 October 2016 was appealed before the Madrid Provincial Court that ruled on 11 October 2018 stating that the appeal was dismissed although leaving the child in a helplessness situation with a passport in one hand that proved that he was 16 years old and a Prosecutor Decree in the other, stating that he was 18 years old.”</p> <p>The Foundation filed a Cassation Appeal before the Supreme Court.</p> <p>The reasoning under discussion was to what extent could be considered as decisive elements for suspecting the majority age, issues such as: the possible initial declaration of age when</p>

	<p>entering Spanish territory and/or the criterion of physical appearance neither the refusal to submit to a test to determine the age.</p> <p>The Supreme Court made also reference to the doctrine that was repeated in several previous judgments since 2014 and 2016.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>The Judgement clarified the procedure for age determination of unaccompanied foreigner children arriving in Spain. The Public Prosecutor should review its actions on the identification, age determination and protection of them.</p> <p>Documents provided by a child such as a national identity letter, a birth certificate, consular office certificate and/or passport serve to prove their identity and age. They are not undocumented</p> <p>The criteria of the best interest of the child should be prioritised when being alone in Spain, as this is a circumstance that makes him especially vulnerable.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Supreme Court recognized the foreigner as a child.</p> <p>It uphold the extraordinary action for procedural infringement and the appeal brought and to annul previous judgments.</p> <p>It uphold the action brought and declare that when the Head of the Children Area Protection of the Madrid Community (<i>Jefa de Área de Protección de Menores de la Comunidad de Madrid</i>) issued a negative resolution on 8 October 2015, stating that the plaintiff was a child and should have been under the protection provided by the law to unaccompanied children.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars) 554</p>	<p>"An immigrant whose passport or equivalent identity document imply his minority of age cannot be considered an undocumented foreigner to be subjected to additional tests for age determination..." (<i>...El inmigrante de cuyo pasaporte o documento equivalente de identidad se desprenda su minoría de edad no puede ser considerado un extranjero indocumentado para ser sometido a pruebas complementarias de determinación de su edad...</i>).</p> <p>"Refusal to undergo testing cannot be regarded as a decisive criteria for suspecting the majority of age" (<i>La negativa a someterse a las pruebas no puede considerarse como un criterio decisivo para sospechar la mayoría de edad</i>).</p>



<b>Thematic area</b>	<b>Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)</b> Please provide the most relevant high court decision making reference to the CRPD or employing the CRPD in their reasoning.
<b>Decision date</b>	19 February 2020
<b>Reference details</b>	Spain, Supreme Court ( <i>Tribunal Supremo</i> ), <a href="#">Judgment of the Supreme Court 156/2020- nº appeal 2927/2017</a> ( <i>Sentencia del Tribunal Supremo 156/2020 -Nº de Recurso: 2927/2017</i> ), 19 February 2020.
<b>Key facts of the case</b> (max. 500 chars) 911	<p>On 24 June 2014, the Benjamin (a worker) was awarded with a total permanent disability pension for his usual profession by decision of the National Institute of Social Security.</p> <p>On 14 July 2014, the Benjamin (a worker) requested recognition of the degree of disability. On 12 November 2014, the Murcia Institute of Social Action recognized the plaintiff a degree of disability of 12%. The worker made an initial administrative complaint against this decision, which was rejected on 18 March 2015.</p> <p>The IMAS represented by the Murcia Region Autonomous Community’s lawyer brought an appeal before the Murcia nº7 Social Court that was dismissed on 10 November 2015. The case was brought then before the Social Chamber of the Murcia High Court of Justice that again dismissed the appeal on 15 February 2017.</p> <p>Likewise, the Murcia Region Autonomous Community decided to make an appeal before the Social Chamber of the Supreme Court stating that it intended to achieve a unification of doctrine.</p>
<b>Main reasoning/argumentation</b> (max. 500 chars)	It referred to the Convention on the Rights of Persons with Disabilities (CRPD).  The Supreme Court insisted on declaring that when <a href="#">Article 4.2 of the Royal Decree 1/2013 approving the General Law on the Rights of Persons with Disabilities and their Social Inclusion</a> ( <i>Texto Refundido de la Ley General de derechos de las personas con discapacidad y de su inclusión social</i> ) when it gives general effectiveness to the declaration of 33% disability, it exceeded in its legislative competence and it is not legally effective. It limits the disability declaration to 33% only for the purposes contained in that law.

	<p>This Article 4.2 does not applied to the procedure followed to state a disability degree certificated established by the <a href="#">Royal Decree 1971/1999 of 26 December, Procedure for Recognition, Declaration and Qualification of the Degree of Disability</a> (<i>Real Decreto 1971/1999, de 23 de diciembre, de procedimiento para el reconocimiento, declaración y calificación del grado de minusvalía</i>).</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>To be considered a person with a disability, the recognition must be equal to or greater than 33% degree of disability as established by the <a href="#">Royal Decree 1971/1999 that establishes the regulation of the percentage of disability</a>. Disability recognition is an essential prerequisite to have access to certain social support allocation funds.</p> <p>The Supreme Court reiterated that the recognition of a total, absolute or even permanent disability allowance (pension) does not entitle the automatic recognition of 33% of disability. It declared that the matching to 33% disability is for the sole purposes of that law only, and not in all areas. If a worker was recognised as permanently disabled and receives a Social Security pension, it should not be automatically recognised with a 33% disability certificate.</p> <p>The Supreme Court stated that to reach that matching, it must be evaluated by the public Administration professionals as established by the <a href="#">Royal Decree 1971/1999</a>.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The appeal was uphold for the unification of doctrine. There were judgments handed down in lower courts that were contradictory. The Supreme Court had to reinforce its position and reach a unification of doctrine.</p> <p>The Supreme Court quashed that judgment and exonerates the Murcian Institute of Social Action (<i>Instituto Murciano de Acción Social, IMAS</i>, in its Spanish acronym) from the requests of the application brought by the plaintiff.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><a href="#">Article 4.2 of Royal Decree 1/2013 of 29 November</a> was not legally effective when granting general effectiveness to the declaration of 33% disability, ... the Royal Decree exceeded the legislative delegation, ... as maintained in the plenary judgments of 29-11-2018, (<i>art. 4.2 RDL 1/2013, de 29 de noviembre carecía de eficacia jurídica, al conceder eficacia general a la declaración del 33% de discapacidad, ... Real Decreto Ley excedió la delegación legislativa, ...como hemos mantenido en las sentencias de pleno de 29-11-2018</i>)</p>

