

Council of Europe contribution for the 35th UPR session (Jan-Feb 2020) regarding Spain

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Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

Report (including the executive summary) on the 2016 visit to Spain:



CPT_2017_34_Spain.pdf

Government's response:



CPT_Inf_2017_35_Spain_Govresp.pdf

The CPT has carried out its periodic visit to Spain in 2018, the report is not yet published.

Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.

Since 2014, the Commissioner has dealt with several issues regarding the human rights situation in Spain, in particular the rights to freedom of peaceful assembly and of expression, the rights of migrants and asylum seekers, the rights of persons with disabilities and the conduct of law enforcement forces.

Rights of persons with disabilities:

In July 2018, the Commissioner submitted a [third party intervention](#) to the European Court of Human Rights in the case Caamano Valle v. Spain, which deals with the right to vote of a person with an intellectual disability. The Commissioner stressed that it is not compatible with international human rights standards, in particular the UN Convention on the Rights of Persons with Disabilities, to deprive a person of the right to vote on the basis of disability, including following an assessment made by a judge of the person's cognitive capacity or mental health status. In October 2018, the Commissioner welcomed the adoption by the Spanish parliament of a new law recognising the right of all persons with disabilities to vote.



CommDH_2018_16_Spain.pdf

Right to freedom of expression and of peaceful assembly:

On 23 November 2018, the Commissioner published a [letter](#) addressed to the Spanish Parliament urging it to complete the review of the Law on Citizens' Safety with a view to eliminating all possibilities of disproportionate interference with the rights to freedom of expression and peaceful assembly.



CommHR_Letter_2018_Spain.pdf

Law enforcement:

On 9 October 2017, the Commissioner published a [letter](#) addressed to the Minister of the Interior of Spain calling for swift, independent and effective investigations into all allegations of police misconduct and disproportionate use of force in Catalonia on 1 October 2017. He also reiterated previous recommendations that Spain establish an independent complaints mechanism covering all law enforcement officials, either by enlarging the competencies of the national Ombudsman or by setting up a new body.



CommHR_2017_Spain.pdf

Human rights of migrants and asylum seekers:

Substantial work has been devoted since 2015 to the rights of migrants and asylum seekers, especially in the two Spanish enclaves of Ceuta and Melilla.

In January 2015, the Commissioner visited Melilla and Madrid following repeated allegations of push-backs of migrants at the borders of Ceuta and Melilla (see [Press release](#) of 16 January 2015). He stressed that while Spain has the right to establish its own immigration and border management policies, it must uphold its human rights obligations, in particular those assumed under the European Convention on Human Rights and the 1951 Convention Relating to the Status of Refugees. Therefore, he urged the authorities to refrain from amending the Aliens Act with a view to legalising push-backs of migrants arriving in Ceuta and Melilla.

In a [statement](#) of 13 March 2015, following the adoption by the Spanish Parliament of these amendments, the Commissioner reiterated his concerns that they fell short of providing clear guarantees against refoulement and collective expulsions, and of establishing adequate safeguards for the right of every person to seek and enjoy asylum, irrespective of the way they reach Spanish territory.

In July 2016, in a [letter](#) to the Minister of the Interior, the Commissioner reiterated his call on the authorities to adopt a procedural framework to ensure that border police in Ceuta and Melilla have clear instructions on how to handle mixed migration flows in full compliance with human rights.



CommHR_2016_Spain.pdf

In 2015, the Commissioner also submitted third party observations to the European Court of Human Rights in the case of N.D. and N.T. against Spain, in relation to two complaints concerning alleged summary returns of migrants from the Spanish city of Melilla to Morocco ([Written observations submitted to the Court on 9 November 2015](#)).



CommDH_2015_27_
Spain.pdf

As the Court subsequently decided, in 2018, that the case would be heard by the Grand Chamber, the Commissioner decided to provide the Court with an updated submission ([written observations to the Grand Chamber, 22 March 2018](#)).



CommDH_2018_11_
Spain.pdf

On 26 September 2018, the Commissioner intervened in the Grand Chamber hearing of the case ([submission of the Commissioner before the Grand Chamber](#)). She emphasised the need for protection against collective expulsions and for safeguards against violations of the principle of non-refoulement. She insisted that the practice of summary returns of migrants deprived them of the possibility of being identified, of having their individual situation duly assessed and of having access to an effective remedy. She reiterated that the challenges states meet in managing migratory flows cannot justify practices incompatible with their obligations under the European Convention on Human Rights.



CommDH_Hearing_
2018_Spain.pdf

Fight against racism and intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as "race", national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Fifth report on Spain (adopted on 5 December 2017 / published on 27 February 2018):



ECRI_2018_2_Spain
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Protection of minorities

Framework Convention for the Protection of National Minorities

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

The Advisory Committee on the Framework Convention adopted the 4th Opinion in respect of Spain on 3 December 2014.



ACFC_OP_IV_2014_S
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Resolution CM/ResCMN(2016)10 on the implementation of the Framework Convention for the Protection on National Minorities by Spain was adopted by the Committee of Ministers on 6 July 2016 at the 1262nd meeting of the Ministers' Deputies.



CM_ResCMN(2016)1
0E (1).pdf

European Charter for Regional or Minority Languages

The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals for recommendations.

The European Charter for Regional or Minority Languages entered into force in Spain in 2001. The authorities submitted their [5th periodical report](#) in September 2018. The on-the-spot visit took place in Spain in December 2018 and the evaluation report is due before the Committee of Ministers in October 2019.



MIN_LANG_2018_PR
5_Spain.pdf

Action against trafficking in human beings (GRETA)

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

GRETA evaluation report (2nd evaluation round):



GRETA_2018_7_Spain.pdf

[Press release](#)

Preventing and combating violence against women and domestic violence (GREVIO)

The Council of Europe Convention on preventing and combating violence against women and Domestic violence (**Istanbul Convention**, [CETS No. 210](#)) is the most far-reaching international treaty to tackle this serious violation of human rights. It aims at zero tolerance for such violence and is a major step forward in making Europe and beyond safer. Preventing violence, protecting victims and prosecuting the perpetrators are the cornerstones of the convention. It also seeks to change the hearts and minds of individuals by calling on all members of society, in particular men and boys, to change their attitudes. In essence, it is a renewed call for greater equality between women and men, because violence against women is deeply rooted in the inequality between women and men in society and is perpetuated by a culture of intolerance and denial.

The Council of Europe Istanbul Convention provides for two types of monitoring procedures:

1. a country-by-country evaluation procedure;
2. and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention.

GREVIO, the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

Documents available in the context of the first baseline evaluation procedure in relation to [Spain](#) (on-going):

1. [State report](#) (received on 18 February 2019)



GREVIO_Inf_2019_5
_Spain.pdf

Protection of children against sexual abuse (Lanzarote Convention)

The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as "[the Lanzarote Convention](#)", requires criminalisation of all kinds of sexual offences against children. It sets out that states in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators.

The "Lanzarote Committee" (i.e. the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse) is the body established to monitor whether Parties effectively implement the Lanzarote Convention. To do so, the Committee evaluates the information which has been provided by the national authorities and other sources in their replies to questionnaires developed by the Committee itself. This monitoring procedure is divided by rounds, each round concerning a theme; starting with sexual abuse in the circle of trust.

As to the 1st monitoring round on the "Protection of children against sexual exploitation and sexual abuse in the circle of trust", Spain was urged to:

- review its legislation to ensure effective protection of children from situations where abuse is made of a recognised position of influence (R1, 1st implementation report);
- take the necessary legislative or other measures to set up or designate mechanisms for data collection or focal points at national or local level and in collaboration with civil society, for the purpose of observing and evaluating in terms of quantitative data collection the phenomenon of the sexual exploitation and sexual abuse of children in general and child sexual abuse committed in the circle of trust, in particular (R13, 1st implementation report);
- to take the necessary legislative or other measures to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care (R30, 1st implementation report).

Fight against corruption (GRECO)

The 'Group of States against Corruption' ([GRECO](#)) monitors all its 49 members through a peer review evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

GRECO will adopt a 4th Round Evaluation compliance report in June 2019.

Execution of judgments and decisions of the European Court of Human Rights

Statistical data

At 31 December 2018, there were 20 cases against Spain (31 cases at 31.12.2017) pending before the Committee of Ministers ("CM") for supervision of their execution. Among these cases, 14 cases were "leading cases" evidencing more or less important general problems (19 leading cases at 31.12.2017).

In 2018, the CM was seized by 3 new leading cases (7 new leading cases in 2017) and the amount of just satisfaction awarded was € 78,071 (€ 822,031 awarded in 2017). In 2018, 14 cases (17 cases closed in 2017) were closed by the adoption of a Final Resolution.

Main cases / groups of cases under the Committee of Ministers' supervision

The main cases presently under the CM supervision cover notably the issues highlighted below. For fuller overview of the situation see the [Country Factsheets](#) available on the website of the Department for the Execution of Judgments of the European Court of Human Rights and in the [Committee of Ministers' Annual Reports](#) on its supervision activity. More detailed information on the status of execution in individual cases can be found through [Hudoc-EXEC](#).



EJECHR_Spain_Fact
sheet.pdf

Migration

A.C. and Others (Lack of an effective remedy with suspensive effect, against decisions to remove the applicants to their country of origin), Application No. 6528/11, judgment final on 22/07/2014, Case under enhanced supervision

Saber and Boughassal, Application No. 76550/13, judgment final on 18/03/2019;

Protection against ill-treatment

Beristain Ukar, Application No. 40351/05, judgment final on 08/06/2011;
Otamendi Eiguren, Application No. 47303/08, judgment final on 16/01/2013;
B.S., Application No.47159/08, judgment final on 24/10/2012;
Group Ataún Rojo, Application No. 3344/13, judgment final on 07/01/2015;
Portu Juanenea and Sarasola Yarzabal, Application No. 1653/13, judgment final on 13/05/2018;

Freedom of expression

Group Rodriguez Ravelo, Application No. 48074/10, judgment final on 12/04/2016;
Stern Taulats and Roura Capellera, Application No. 51168/15, judgment final on 13/06/2018;

Fair Trial

Atutxa Mendiola and Others, Application No.41427/14, judgment final on 13/09/2017;
Arrozpide Sarasola and Others, Application No. 65101/16, judgment final on 23/01/2019;

Private and family life

Rubio Dosamantes, Application No. 20996/10, judgment final on 21/05/2017;
Vicent del Campo, Application No. 25527/13, judgment final on 06/02/2019;

Social and Economic Rights (ECSR)

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.



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Venice Commission

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

*Since 2014 the Commission adopted one Opinion on the Law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court of **Spain** ([CDL-AD\(2017\)003](#)). Another opinion concerning Spain on the Citizens' Security Law is expected to be adopted by the Commission by the end of 2019.*



CDL-AD_2017_003_Spain.pdf