

(Original received in French)

Strasbourg, 15 May 2015

Mr Matjaz GRUDEN
Director
Directorate of Policy Planning Council
of Europe

Dear Director,

Concerning the alert issued on 7 April by the Council of Europe's Platform for the protection of journalism and safety of journalists, submitted by European Federation of Journalists, I herewith, have the honour to present the response of the competent authorities of Spain in order to make it public on the Internet website of the Platform.

Sincerely Yours,

Javier Gil Catalina

In response to the alert issued by the Council of Europe's Platform for the protection of journalism and safety of journalists, concerning Spain's Organic Law (OL) 4/2015 for the protection of citizen security and referring to the amount of fines imposed on those who would record images of members of the Spanish security forces (FCSE) in the exercise of their duties, it is stated as follows:

The Act only sanctions the misuse of images, used to harm the physical integrity or privacy of members of FCSE or when the safety of the police or the success of an operation is jeopardised, all without undermining the right to inform.

Article 36 (and not 26, to which the Platform refers) lists clearly and concisely in which circumstances the penalty provided by law shall be applied:

- When the personal safety of officers or their families may be threatened
- When the safety of security facilities may be endangered
- When the success of an operation may be threatened

Moreover the Article 36.23 of the Act specifically emphasises the fundamental right to inform.

Similarly, it should be recalled that the Spanish Constitution, in Article 20 of the Fundamental Rights and Public Freedoms Section, states the following:

1. It recognises and protects the right:
 - a) to freely express and disseminate thoughts, ideas and opinions through words, in writing or by any other means of reproduction;
 - b) to literary, artistic, scientific and technical production and creation;
 - c) to academic freedom;
 - d) to freely communicate or receive truthful information by any means of dissemination whatsoever. The law shall regulate the right to the clause of conscience and professional secrecy in the exercise of these freedoms.
2. The exercise of these rights cannot be restricted by any form of prior censorship.
3. The law shall regulate the organisation and parliamentary control of the mass communication media under the control of the State or any public agency and shall guarantee access to such media by the significant social and political groups, respecting the pluralism of society and of the various languages of Spain.
4. These freedoms are limited by respect for the rights recognised in this Part, by the legal provisions implementing it, and especially by the right to honour, to privacy, to the own image and to the protection of youth and childhood.
5. The seizure of publications, recordings and other means of information may only be carried out by means of a court order.

Under Article 18.1 of the Constitution, the right to honour, to personal and family privacy and to personal reputation, are fundamental rights and are highlighted in the Constitution to the point that

Article 20.4 stipulates that respect for such rights is a limit to the exercise of freedom of expression and that the provision itself recognizes and protects in the same fundamental character.

Notwithstanding the foregoing, we must remember that, since no standard can violate the Spanish Constitution, in the case of an alleged violation of the right to freedom of expression, with the only limit that it respects the rights recognised by the Spanish Constitution itself, especially, the right to honour, to privacy, to personal reputation and to the protection of youth and childhood, there is always the possibility to appeal to the Courts of Justice.