



REPORT OF THE COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE FOLLOWING HER VISIT TO SPAIN FROM 21 TO 25 NOVEMBER 2022

Comments by Spain

SUMMARY

Second paragraph. *“Spain has made significant efforts to advance the protection of social rights in recent years. However, access to social rights varies substantially throughout the country due to distributed competencies between the central government and regional authorities resulting in different regulations and systems for the delivery of benefits and services in the Autonomous Communities and the cities of Ceuta and Melilla. To address the existing inequality of substantial opportunities in the enjoyment of people’s social rights, the Commissioner calls on the authorities to allocate resources transparently and sustainably, and to adopt common standards to ensure, in close co-operation with all competent authorities at central and local levels, that the specific needs of the most vulnerable are met. The Commissioner also invites the authorities to proactively consult and involve civil society organisations at all stages of decision-making”.*

Spain would like to suggest the following reference at the end of the paragraph: “The Commissioner also invites the authorities to continue proactive consultation and involvement of civil society organisations at all stages of decision-making, by full development of article 67 of the Law 16/2003, of 28th of May, on the cohesion and quality of the National Health System (NHS) as proposed in the proposal of the Project of Law by which various regulations are modified to consolidate the equity, universality and cohesion of the National Health System, that is under discussion in the Parliament now”.

Fourth paragraph. *“With respect to the right to health, the Commissioner observes that more must be done to strengthen universal access to quality public healthcare for all throughout Spain. Regional differences are particularly notable in the provision of primary healthcare and specialised care due to factors such as the predominance of private clinics in some regions, amongst others [...]”.*

In this respect, Spain would like the following remark to be taken into account:

According to National Statistics Institute population projections, in 2023 there will be 47.8 million people living in Spain (available at the following link: <https://www.ine.es/jaxiT3/Datos.htm?t=36643>)

The database of the population covered by the National Health System shows a total number of 46.4 million people; 1.5 million are cared for by providers linked to the administrative mutual insurance system also financed by the public budget. It is important to take into account the universal coverage existing in Spain, which extends the right to health protection to foreigners (non-tourists) who, while living in the country, are not



registered or authorized as residents in Spain and do not have a third party obliged to pay. Other groups with the same right are also included, as is currently the case of the 100,000 people who make up the group from Ukraine.

Primary care is provided in 13,096 Health Centers and their peripheral clinics, close to the population, where 42,724 physicians (family doctors and pediatricians) and 38,016 nurses attend 367 million consultations per year, of which 3.5% are made at home. Emergency care represents an annual activity of about 30 million consultations.

According to the latest 2017 National Health Survey (available at the following link, <https://www.ine.es/jaxi/Datos.htm?path=/t15/p419/a2017/p02/10/&file=06001.px>), 98.8% of the Spanish population reported having public health coverage. Only 83.4% of the Spanish population has exclusively public health coverage, as 15.5% have, additionally and voluntarily, private health coverage. Thus, the figure of 98.8% of the population claiming to have public health coverage is fully in line with a legislative framework of universal public coverage (Law 14/1986, of April 25, 1986, on Health, Law 16/2003, of May 28, on the cohesion and quality of the National Health System, and Law 33/2011, of October 4, 2011, on Public Health), which has even been extended with the reforms of 2018 (Royal Decree-Law 7/2018, of 27 July, on universal access to the National Health System) and the bill to amend various regulations to consolidate the equity, universality and cohesion of the National Health System, which is now being debated in the Spanish Parliament.

“As regards primary health care, she finds that the levels of investment remains insufficient and that the employment conditions of health personnel who are, in many places, overwhelmed, exhausted and relying on short-term contracts, are concerning [...]”.

In this respect, Spain would like the following remark to be taken into account:

Public Employment Offer processes are being developed to stabilize current workers with short-term contracts (more than 85,000), a process that will end in 2024. On top of it, a negotiation process is being carried out with the regional authorities and trade union organizations for the modification of the basic legislation that regulates professionals in the public health sector.

“[...] regulate different forms of obstetric violence in childbirth, putting women’s right to informed consent at its centre”.

Spain does not agree with the term “obstetric violence” and believes that the expression “implement good practices” would be more appropriate.

Justification: The use of the term “violence” would not be acceptable in the context of health care in our National Health System. In particular, the term “obstetric violence” is inappropriate in this framework as it generates confrontation between health professionals and women. Therefore, the NHS opts for a constructive and positive model for women and their health through the development and implementation of good



practices and active policies to eradicate bad practices in the context of sexual and reproductive health. Furthermore, the concept of Violence in the reproductive field in the *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence* (Istanbul Convention) is limited to female genital mutilation, forced abortion and forced sterilization.

INTRODUCTION

Paragraph 10. “[...] *In this regard, she recommends developing systematic processes and outreach channels to engage with representatives of specific affected groups, such as older persons and/or their families, women, and marginalised communities, with a view to ensuring that their specific views, concerns, and interests are effectively considered in decisions affecting them and to redressing existing structural inequalities in their access to housing and health care*”.

Spain does not agree with the last part of this paragraph (“and to redressing existing structural inequalities in their access to housing and health care”).

Justification: Spain has a complete Universal Health Coverage (UHC), from the “*Royal Decree-law 7/2018, of July 27, on universal access to the National Health System*”, which puts Spain at the forefront of the health care systems of the 46 States of the Council of Europe, and which covers the entire Spanish and foreign population, including foreign citizens in an irregular administrative situation.

I. SOCIAL RIGHTS

A) Right to housing

It should be noted that the Commissioner’s report does not take into account the various amendments operated since 2018 in the Civil Procedure Act with the aim of addressing, in cases of evictions, situations of vulnerability. Without being exhaustive:

- Law 5/2018, of June 11, amending Law 1/2000, of January 7, of Civil Procedure, in relation to the illegal occupation of dwellings. This Law introduces in the Civil Procedure Law a new paragraph 1 bis of article 441, expecting that the illegal occupant is in a situation of social vulnerability. It regulates the obligation to transfer to the competent public services the communication on the situation of the occupant as long as he/she consents.

Additionally, the Law introduces a new paragraph 4 in the Article 150 of the Civil Procedure Law that generalizes this communication to the competent public services, seeking a rapid response from the public authorities when situations of special vulnerability are detected. Finally, the additional provision of Law 5/2018 establishes measures of coordination and cooperation of the competent public administrations to make these communications effective.

- Royal Decree-Law 7/2019, of March 1, on urgent measures in the field of housing and renting, also amends the Civil Procedure Law with the aim, among others, of



progressing in the fulfillment of our commitments with the international agreements on social rights (with specific mention, in its Explanatory Memorandum, of the Opinion of the Committee on Economic, Social and Cultural Rights of the Spanish Parliament), of the Opinion of the Committee on Economic, Social and Cultural Rights of the Economic and Social Council of the United Nations, adopted on June 20, 2017 in which, among other aspects, it urged the Government of Spain to ensure that its legislation and its application is in accordance with the obligations set forth in the International Covenant on Economic, Social and Cultural Rights). As stated in the Explanatory Memorandum, the Royal Decree-Law incorporates two modifications to the housing eviction procedure. The first one specifies that the exact day and time of the evictions must be fixed by the judicial body. The second, introducing the procedure of communication to the social services and, when vulnerable households are affected, establishing that the determination of the situation of vulnerability will cause the suspension of the procedure until the social services take the measures they deem appropriate for a maximum period of one month or three months when the claimant is a legal person. This clarifies the procedure, introducing greater legal certainty and specific measures to deal with situations that require greater social protection.

In addition to the above more general considerations, different observations on specific paragraphs are provided:

Paragraph 20. *“At the time of the visit of the Commissioner, the Spanish Parliament was discussing a bill establishing a legal framework regulating the right to housing at the national level [...]”.*

On 27 April 2023, Congress approved the new Housing Law which is currently being examined by the Senate. The Housing Law intends to develop the constitutional aim to decent housing. This new law will, among other measures, limit the rise in rental prices, increase protection against evictions and increase supply of social housing.

B) Right to health

Paragraph 30. *“[...] However, certain obstacles remain, such as the requirement to prove presence in Spain for more than three months [...]”.*

In this respect, Spain would like the following remark to be taken into account:

The *Royal Decree-Law 7/2018, of 27 July, on universal access to the National Health System* does make an exception to provide health care to foreigners who are in a situation of stay (those who have entered Spain as tourists), which is defined in Article 30.1 of the *Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration* as the stay in Spanish territory for a period of time not exceeding 90 days, through the issuance of a report by the social services.

Thus, article 3 ter.3 of the *Law 16/2003, of 28 May, on the cohesion and quality of the National Health System*, as worded in *Royal Decree-Law 7/2018, of 27 July*, lays down the following:



"In those cases in which foreigners are in a situation of temporary stay in accordance with the provisions of the Organic Law 4/2000, of 11 January, on the Rights and Freedoms of Foreigners in Spain and their Social Integration, a prior favourable report from the competent social services of the Autonomous Communities will be mandatory".

It should be noted that European regulations already provide that, in order to issue a Schengen visa, which allows stays of up to 90 days, it is necessary to have a medical insurance. It is one of the requirements set out in *"Regulation (EU) 2019/1155 amending Regulation (EC) 810/2019 establishing a Community Code on visas (Visa Code)"* that the applicant is in possession of adequate and valid medical insurance (Article 15) with a minimum coverage of €30,000, where applicable, covering the period of the intended stay or, in the case of a multiple-entry visa, the period of the first intended visit.

It is important to consider that, since the entry into force of Royal Decree-Law 7/2018 of 27 July, nearly one million foreigners in an irregular administrative situation (foreign people not authorized or resident in Spanish territory) have accessed health care and it cannot be claimed that the more than 70 million foreigners who enter Spain each year for a temporary stay as tourists, who are in a legal administrative situation, have access to the National Health System at public expense.

In relation to family reunification, among the requirements for foreigners to reside legally in Spain by means of a residence permit for family reunification is the requirement to contract health care coverage, whether private or public, in accordance with articles 54.1 and 56.3.a.2º of the *Royal Decree 557/2011, of 20 April, which approves the Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, after its reform by Organic Law 2/2009.*

This is why foreigners with residence permits for family reunification residing in Spain already have compulsory health care coverage, whether public or private, and are not deprived of health care.

In this regard, the Council of Ministers approved on 14 June 2022, and sent to Parliament, the *"Bill amending various regulations to consolidate the equity, universality and cohesion of the National Health System"* which, among other measures, extends the right to health protection at public expense to ascendants reunited by their daughter or son entitled to health care in the National Health System who are dependent on them and provided that there is no third party obliged to pay for such care.

Paragraph 31. *"[...] The different ways in which Autonomous Communities have granted access to health for undocumented migrants, for instance, has led to legal uncertainty and confusion throughout the country and has consolidated health exclusions. Civil society actors report that the Ministry of Health does not always perform its role of coordinator and regulatory body to ensure greater access, efficiency, and fairness of the health care system".*

In this respect, Spain would like the following remark to be taken into account:

It is not correct to affirm that the Ministry of Health has not exercised its role of



coordinating the National Health System. In order to continue with the effective implementation of Royal Decree-Law 7/2018 and to guarantee homogeneity in the development of the procedure to accredit the right to publicly funded healthcare for foreigners who, being in Spain, do not have their legal residence in Spanish territory, the Ministry of Health, in collaboration with the Autonomous Communities, has drawn up a document of *“Recommendations for the application procedure, registration and issuance of the certifying document that accredits foreigners who are in Spain but are not legally resident in Spanish territory to receive healthcare”* published by Resolution of 20 June 2019 of the Directorate General of the Basic Portfolio of Services of the National Health System. In accordance with these Recommendations, the Autonomous Communities have established procedures for foreigners in an irregular administrative situation to receive health care with the same application criteria.

Paragraph 32. *“The Commissioner is further concerned by the negative impact on the right to health resulting from an increasing privatisation of the health care system [...]”.*

In this respect, Spain would like the following remark to be taken into account:

The above-mentioned *“Bill amending various regulations to consolidate the equity, universality and cohesion of the National Health System”* amends the *“Law 14/1986, of 25 April, General Health Act”* to preserve public health and direct management as the model to be followed in the National Health System. That is to say, health care provided through Public Administrations: or they are the entities that make up the state, regional and local institutional public sector, or through the creation of consortiums. From centres that are wholly publicly owned.

In addition, exceptions are established that enable indirect management under a complementary and supportive vision, and never as a substitute, always objectively motivated and only when direct management is not possible.

Consequently, in order to be able to manage indirectly, the Public Administrations must justify compliance with criteria such as: the optimal use of their own health resources, the insufficiency of their own resources to provide the services and benefits; and the need to resort to formulas other than direct public management. These criteria are established by the Interterritorial Council of the National Health System.

The proposed reform is based on the principles that the *General Health Act* incorporated into the National Health System: a model of organisation of health centres and services characterised, fundamentally, by direct management.

In relation to the high-tech equipment of the National Health System, on 30 June 2021, the Plenary of the Interterritorial Council of the National Health System approved the Plan for investment in high-tech equipment in the National Health System (INVEAT Plan) and the Agreement on criteria for the distribution of funds between the Autonomous Communities and the National Institute of Health Management (Instituto Nacional de Gestión Sanitaria - INGESA) charged to the budget of the Ministry of Health. It has a



budget of €796,100,000 and is part of component 18 "*Plan for investment in high-tech equipment in the National Health System*", of the Spanish Government's Recovery, Transformation and Resilience Plan (MRR).

The main objective of this INVEAT Plan is to increase people's overall survival and quality of life by diagnosing diseases in early stages, enabling rapid therapeutic intervention, with special attention to the pathologies with the greatest present and future health impact on the National Health System, such as chronic diseases, oncological diseases, rare diseases and neurological diseases. All of this, consolidating equity in access to high technology and improving the quality of care and the safety of patients and professionals. The specific objectives pursued are:

1. Reduce the obsolescence of the National Health System's high-tech equipment, guaranteeing the renewal of 100% of the equipment installed in publicly owned and managed and publicly operated centres that are 12 or more years old, and additionally, of linear accelerators and computerised tomography scanners that are 10-11 years old, in line with the recommendations of the Scientific Societies.
2. Raise the average density rate of high-tech equipment per 100,000 inhabitants by at least 15%, in order to improve equity of access throughout the national territory, bring the service closer to patients and progressively bring the National Health System in line with the European average.

Both objectives will result in increasing the diagnostic and therapeutic capabilities of the National Health System centres by improving the technical characteristics of the new equipment compared to those that are being renewed, thus allowing the technological band to be adapted to the current and future services of the health centres.

All users of the National Health System will have access to the catalogue of common benefits acknowledged in the Royal Decree 1030/2006, of 15 September, which establishes the catalogue of common benefits of the National Health System and its updating procedure, as long as there are clinical and health indications to this effect, in conditions of effective equal treatment, irrespective of whether or not a technique, technology or procedure is available in the geographical scope of residence. Any health services that cannot provide any of the techniques, technologies or procedures contemplated in this catalogue within their geographical scope will establish the necessary devices with which to channel and forward the applicant users to the centre or service where they may be accordingly attended, together with the health service providing the same. Access to the health services of the National Health System, described in the catalogue of common benefits established in this Royal Decree, will be guaranteed irrespective of where the system users are located in Spain.

On the other hand, the Ministry of Health, together with the Autonomous Communities, is developing the Reference Centres, Services and Units (CSUR) project. The main objective of the designation of CSUR is to guarantee equity of access and quality, safe and efficient care for people with pathologies, including rare and complex diseases



(oncology included) which, due to their characteristics, require highly specialized care that requires concentrating the cases to be treated in a reduced number of centres. In this way, access is facilitated and guaranteed for all users to the specialized services they require and at the appropriate level of care.

Paragraph 33. *“The Ministry of Health has acknowledged the need to bridge some of these gaps. In 2022, a bill aimed at consolidating the equity, universality and cohesion of the National Health System was proposed at the Congress of Deputies [...]”.*

In this respect, Spain would like the following remark to be taken into account:

The aforementioned *“Bill amending various regulations to consolidate the equity, universality and cohesion of the National Health System”* extends the right to health care at public expense to ascendants reunited with their daughter or son who are entitled to health care in the National Health System; as well as to Spanish nationals and persons residing abroad during their temporary movements to Spanish territory and their family members. Also included in this right are foreign applicants for international protection, applicants for and beneficiaries of temporary protection and victims of human trafficking or sexual exploitation, who already have this right recognized, through various regulations from various Ministries, but not by health legislation.

In the same way, homogeneity is guaranteed in the effectiveness of the right to health care protection for foreigners who are not registered or authorised as residents in Spain, who may prove that they meet the requirements by submitting a responsible declaration, and it is also established that health care will be provided at public expense from the moment the application is submitted.

Even foreign tourists, who are in a “temporary stay” situation and which is, for administrative purposes, similar to a regular situation, can have access to publicly funded health care, as mentioned in paragraph 30.

With regard to direct management in the National Health System, this has been answered in paragraph 32.

Paragraph 37. *“Investment in primary health care is reportedly insufficient in Spain [...]”.*

In this respect, Spain would like the following remark to be taken into account:

With a view to increasing funding for Primary Care, the *Primary Care Action Plan*, approved in December 2021, included, as its first objective, the provision of a finalist budget both in the different Autonomous Communities and in the Ministry of Health for the full implementation of the reforms included in it.

It should also be noted that Spain has official data on health spending in primary care (<https://www.sanidad.gob.es/estadEstudios/estadisticas/docs/EGSP2008/egspPrincipalesResultados.pdf>).



Paragraph 38. *“The Commissioner was informed that the Interterritorial Council of the National Health System approved a Primary and Community Care Action Plan for 2022-2023 in December 2021, recognising that “primary care is a fundamental pillar to achieve the right to health of the population and is key to the welfare state, as well as to ensure comprehensive and equitable care”. The Commissioner regards as positive that in October 2022, the Health Ministry allocated more than 446 million euros for the deployment of measures within this Action Plan. The allocation of funding to primary care remains a competence of the Autonomous Communities. Civil society actors have expressed concern about the lack of evaluation of the implementation of the Action Plan by the central government”.*

In this respect, Spain would like the following remark to be taken into account:

The Primary Healthcare Action Plan is being implemented for the period 2022-2023. The Central Government has dedicated a budget of over 1,000 million euros to this Plan, which are being transferred to the Autonomous Communities. Furthermore, the regional governments, responsible of the management of the primary healthcare system, will take advantage of this economic injection that they will allocate, together with their own investments, to make a joint effort for the strengthening and modernization of the primary health care system.

The Central Government has dedicated budget lines to finance the Primary Healthcare Plan on the financial years of 2022 and 2023, which implies more than 1,000 million euros for the primary healthcare system. Essentially, this amount is intended to three aspects: 579 million euros to improve the infrastructure and equipment of Primary Healthcare centres; 230 million euros for the digital transformation and modernization of Primary Healthcare services; and 112 million euros to consolidate and improve oral health care, guaranteeing equal access to oral health in all regions of the country.

Of this total amount, just over 20% is financed by European funds and 80% by the national budget.

Spain suggests the inclusion of an additional paragraph after the last sentence of paragraph 38 (*“Civil society actors have expressed concern about the lack of evaluation of the implementation of the Action Plan by the Central government”*): *“The Action Plan for Primary Care was approved in December 2021 and the funds distributed in the second half of 2022. The Ministry of Health in February 2023 has started the evaluation of the Action Plan. The results will be available in the first semester”.*

The Primary Care Reform is part of component 18 of the Recovery, Transformation and Resilience Plan. This included the approval of a Primary Care Action Plan that would subsequently be adapted in each Autonomous Community through their respective Integrated Regional Projects, a requirement that has been essential for the decentralisation of the 2022 funds.



The Ministry of Health is currently evaluating the implementation of the Action Plan and the Integrated Regional Projects for the year 2022, which will be presented to the Interterritorial Council of the National Health System. The implementation of the funds transferred in 2022 is also being evaluated as a prerequisite for the decentralisation of funding in 2023.

Paragraph 39. *“In addition, it is reported that the number of health personnel in public health care facilities remains vastly insufficient [...]”.*

In this respect, Spain would like the following remark to be taken into account:

Although occasionally a health professional may be overloaded or feel exhausted, according to statistic information the ratio patients per day and General Practitioner was 31.6 in 2021: (available at the following link: https://www.sanidad.gob.es/estadEstudios/estadisticas/docs/siap/Resumen_grafico_SIAP_Datos_2021.pdf.)

In relation to the number of professionals, Spain is the fourth OECD country with the highest number of doctors (available at the following link: https://read.oecd-ilibrary.org/social-issues-migration-health/health-at-a-glance-europe-2022_507433b0-en#page181)

It is true that Spain has a number of nurses below the OECD average, but the data are not comparable since Spain does not include data on nursing assistants.

Therefore, Spain does not consider that the number of health professionals is “vastly insufficient”, although they may be inadequate distributed and in the coming years retirements may cause stress in the health system, especially in Primary Care.

Concerning short-term contracts, the Royal Decree-Law 12/2022, July 5th, which modifies Law 55/2003, of December 16th, of the Framework Statute of the statutory personnel of the health services promotes the stabilization of employment and avoids temporary contracts in the future. In parallel, Public Employment Offer processes are being developed to stabilize current workers with short-term contracts (more than 85,000), a process that will end in 2024. On the other hand, a negotiation process is being carried out with the regional authorities and union organizations for the modification of the basic legislation that regulates professionals in the public health sector.

Finally, it should be noted that health professionals in Spain prefer public practice instead of private practice.

Paragraph 41. *“Privatisation of health services in poor areas or small villages has also led to inhabitants, who are not privately ensured, turning to primary health care services for any kind of healthcare service, overwhelming this first-line of assistance. In addition, rural areas, where the population comprises mainly older persons with increasing needs of care, face a growing shortage of doctors”.*



Spain does not understand the meaning of this paragraph and would like to request further details about it.

Paragraph 43. “[...] *According to Amnesty International, the authorities failed to put in place adequate measures to guarantee everyone’s right to health during the pandemic, highlighting that older persons, people with chronic illnesses and those with mental health conditions faced the greatest difficulties in accessing care and treatment.*”

In this respect, Spain would like the following remark to be taken into account:

The NHS in Spain was able to cover an important part of the needs to respond to COVID. It identified weaknesses in relation to the vulnerability of nursing homes, social vulnerability (housing, unemployment, etc.) and the difficulty in regular assistance for acute and chronic health problems in the hardest moments of the pandemic due to the collapse of healthcare. The Autonomous Communities have the competence to provide health and social services. The Commissioner could delve into this situation with the Autonomous Communities. Spain would like to know what this generalized consideration “the authorities failed to put in place adequate measures to guarantee everyone’s right to health during the pandemic” is based on or if the document refers to any particular Autonomous Community.

Paragraph 54. “[...] *An official record of the names of staff objecting to performing abortion care has also been established in each Autonomous Community. The reform of the 2010 Law also ensures that no person who in the previous three years has expressed conscientious objection can be appointed to take part in health committees that review requests for abortion care for medical reasons after the 22nd week of pregnancy.*”

Spain believes that the following wording would be more accurate: “An official registry of the names of staff objecting to performing abortion care will also be established in each Autonomous Community. The reform of the 2010 Law also ensures that no person who in the previous three years has expressed conscientious objection can be appointed to take part in health committees that review requests for abortion care for medical reasons after the 22nd week of pregnancy.”

Justification: Organic Law 1/2023, of 28 February, which amends Organic Law 2/2010, of 3 March, on sexual and reproductive health and the voluntary termination of pregnancy.

Nineteen. A new Article 19b is added, which reads as follows:

Article 19 ter. Registers of conscientious objectors.

“1. For organisational purposes and for the adequate management of the service, a register shall be created in each autonomous community and in the National Institute for Health Management (INGESA) of health professionals who decide to object for reasons of conscience with respect to direct intervention in the practice of voluntary termination of pregnancy.”



Paragraph 55. “[...] *in some Autonomous Communities, abortion care is not available at all in some public hospitals. The 2010 Law specifies that a woman may be referred to a private medical centre in exceptional circumstances when public health services are unable to undertake the procedure in time. The Commissioner notes that this has, however, become the rule in most cases: the majority of abortions in Spain are carried out by subsidised private clinics, free of charge for women, and not all public hospitals provide clear information as to whether abortion services are offered in the facility [...]*”.

In this respect, Spain would like the following remark to be taken into account:

Royal Decree 1030/2006, of 15 September, which establishes the catalogue of common benefits of the National Health System and its updating procedure, expressly includes voluntary interruption of pregnancy in the common portfolio of services in all legal cases. The catalogue of common services will only be provided by centers, establishments and services of the National Health System, own or concerted, except in life-threatening situations.

Paragraph 56. “*The Commissioner was made aware that migrant women, including pregnant migrant women, face a series of barriers to the enjoyment of their sexual and reproductive health and rights due to requirements that stem from Royal Decree-Law 7/2018, of 27 July, on universal access to the National Health System and different implementing regulations by the Autonomous Communities in this respect (see above para. 30 and 31). Those women who do not meet the specific requirements of the Autonomous Community they live in for accessing the National Health System might not, for example, access publicly funded abortion care*”.

In this respect, Spain would like the following remark to be taken into account:

All foreign women not registered or authorized (foreign women in an irregular administrative situation, a situation that is acquired after 90 days of stay in Spanish territory when they do not have a legal residence permit) have the right to health care protection and to health care under the same conditions as people with Spanish nationality, as indicated in article 3 ter of the *Law 16/2003, of May 28, on cohesion and quality of the National Health System*.

With regard to foreign women tourists who are in Spain in a “temporary stay” of less than 90 days, as indicated in paragraph 30, they can access the National Health System by means of a report issued by the social services of the Autonomous Communities.

The new Organic Law 1/2023, which modifies Organic Law 2/2010, on sexual and reproductive health and on the voluntary interruption of pregnancy, expands from the perspective of guaranteeing fundamental rights, the gender approach and non-discrimination, and the scope of application is specified in more detail, noting in particular that the law is applicable to all persons who are in Spain, regardless of their nationality or their administrative status as foreigners (article 3).

Paragraph 57. “*During the visit, the Commissioner was informed of large regional disparities in the area of access to modern contraception [...]*”.



In this respect, Spain would like the following remark to be taken into account:

The National Health System finances hormonal contraceptives, with more than 80 presentations of oral contraceptives, including both progestin-only contraceptives and combinations of oestrogen and progestin (2nd, 3rd and 4th generation progestin-based contraceptives). Furthermore, there are eight presentations of contraceptive rings also included in the pharmaceutical provision (vaginal ring with progestin and oestrogen), three presentations of progestogen intrauterine device (levonorgestrel), one subcutaneous implant of progestin (etonogestrel), and one intramuscular injection of progestin (medroxyprogesterone).

In Spain, for a medicine to be financed, it has to be prescribed with a medical prescription. To avoid barriers in accessing the emergency contraceptive since they will have to go to a doctor, it was decided that they were made without a prescription, which does not mean that the Health Services or other public bodies can dispense them free of charge.

Paragraph 58. *“For the first time in Spain, a provision on menstrual health care is introduced in legislation, including by introducing a leave from work in certain cases and the free availability of feminine hygiene products in certain settings.”*

Spain suggests to use the term “reinforcing” instead of “introducing” as follows, as the leave from work was foreseen in the previous Spanish legislation, before the approval of the Organic Law 1/2023: “For the first time in Spain, a provision on menstrual health care is introduced in legislation, including by reinforcing a leave from work...”

Paragraph 59. *“[...] Before the reform of the 2010 law, Education Councils of each Autonomous Community and the schools themselves could decide whether and to what extent comprehensive sexuality education would be provided to pupils. In a positive move, the reform makes comprehensive sexuality education mandatory in the curriculum of some schools levels and requires that it be provided by trained professionals”.*

Spain believes that the following wording would be more accurate: “Before the 2020 reform of the Organic Law 2/2006 on Education and its implementing legislation, Education Councils of each Autonomous Community and the schools themselves could decide whether and to what extent comprehensive sexuality education would be provided to pupils. In a positive move, the reform makes comprehensive sexuality education mandatory in the curriculum of the different education stages and requires that it be provided by trained professionals”.

Justification: the report attributes the amendments to make sex education compulsory to Organic Law 1/2023 of 28 February, which amends Organic Law 2/2010. However, Spain understands that the reform referred to is Organic Law 3/2020, of 29 December, which modifies Organic Law 2/2006, of 3 May, on Education and the Royal Decrees on the development of planning and minimum teaching, approved last year.

Spain considers this to be deduced from the Organic Law 1/2023 itself, and the references in this Law to support the aforementioned are set out below. All of this is



without prejudice to what has been dealt with or discussed in the meeting with the Commissioner.

Organic Law 1/2023, of 28 February, which amends Organic Law 2/2010, of 3 March, on sexual and reproductive health and the voluntary termination of pregnancy.

Preamble III: "[...] *Within the framework of what has been established in the recent regulation of the educational system, affective-sexual education is contemplated at all educational stages, adapted to the age of the pupils and contributing to their comprehensive development [...]*".

Article 5. Objectives and general guarantees for action by the public authorities.

"1. The public authorities, in the development of their health, education and vocational training, and social policies, shall guarantee:

[...]

c) The treatment of affective-sexual education and the detection and tackling of abusive and violent behaviour, under the terms established in Organic Law 2/2006, of 3 May, on Education, in Organic Law 3/2022, of 31 March, on the organisation and integration of Vocational Training, in the relevant regional laws and in the curricula of the different educational and training stages provided for in both regulations".

Article 9. Training on sexual and reproductive health in the educational system.

[...]

"2. Affective-sexual education, in all its dimensions, forms part of the curriculum throughout compulsory education, and shall be taught by staff who have received appropriate training for this purpose, in accordance with Organic Law 3/2020, of 29 December, which amends Organic Law 2/2006, of 3 May, on Education".

Article 10bis. Education for the prevention of sexual violence.

"The educational administrations, within the scope of their competences, shall include, under the terms established in Organic Law 3/2020, of 29th December, and in the provisions that develop it and establish the curricula of the different educational stages, affective-sexual education, equality between women and men and education in human rights, as measures aimed at guaranteeing sexual freedom and preventing sexual violence, including that which may occur in the digital sphere. These measures will also be included, with the corresponding scope, in the vocational training offers provided for in Organic Law 3/2022 of 31 March".

The reference to "implementing legislation" in the proposal would be to:



Royal Decrees to regulate the curriculum for Early Childhood Education, Primary Education, Compulsory Secondary Education and Baccaureate (RD 95/2022¹, RD 157/2022², RD 217/2022³ and RD 2⁴43/2022) have been approved. Among their objectives is the promotion of effective equality between men and women. All areas of knowledge at the different educational levels, incorporate contents on comprehensive sexuality education.

Paragraph 60. *“In the area of maternal health care, the Commissioner notes that different national strategies have been developed by the Ministry of Health to ensure women’s access to quality care. However, she was informed that these are not always implemented in Spanish hospitals. Civil society actors and some gynecologists stress that in various phases of women’s sexual and reproductive health care, including during pregnancy and delivery at hospital, women are not duly informed about the procedures that will be performed on their bodies, and their autonomy is not respected. The information they receive is often insufficient and inadequate. The Commissioner understands that, in certain hospitals, women’s “Birth Plans” (Plan de Parto), where women can indicate their preferences, wishes, needs, and expectations during delivery and childbirth to the medical team, are refused or not complied with”.*

Paragraph 61. *“In some, mainly private, hospitals, there are concerns relating to the “scheduling” of childbirths by doctors to fit in their agenda. Inductions and other interventions to speed up labour are reportedly used to ensure that births take place when the practitioner is present and able to take charge. This results in the excessive use of synthetic oxytocin, instrumental births and C-sections (official data for 2020 shows that 34,7% of births in private hospitals and 21,8% in public hospital are performed as C-sections), often without women being duly informed. The Commissioner also notes that certain manoeuvres that are not recommended by the WHO are used in both public and private health care to accelerate childbirth. 18 The lack of precise data from private health entities on practices around childbirth care is also an issue”.*

In this respect, Spain would like the following remark to be taken into account:

The protocols and contents of the sexual and reproductive health strategy (ESSyR) are being implemented, as well as the recognized good practices in these matters (https://www.sanidad.gob.es/estadEstudios/estadisticas/docs/Informe_Atencion_Perinatal_2010-2018.pdf).

Paragraph 62. *“The Commissioner is concerned by consistent reports of women facing gender stereotypes by health personnel during pregnancy and childbirth, based on the unjustified belief that women are not capable of rational thought or able to make a responsible decision while pregnant. In this respect, the Commissioner notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) recently issued three decisions calling on Spain to compensate women for the physical and psychological health damages suffered*

¹ <https://www.boe.es/buscar/doc.php?id=BOE-A-2022-1654>

² <https://www.boe.es/buscar/act.php?id=BOE-A-2022-3296>

³ <https://www.boe.es/buscar/act.php?id=BOE-A-2022-4975>

⁴ <https://www.boe.es/buscar/act.php?id=BOE-A-2022-5521>



during their childbirth, also known as obstetric violence, suffered in 2009 and 2012. 19 The Commissioner was informed that to date, the three women concerned have not been compensated.”

In this respect, Spain would like the following remark to be taken into account:

The three aforementioned CEDAW decisions have not had the supervision of the events in the Autonomous Community where they occurred. Spanish health regulations have a system for repairing proven damage caused by health care.

Paragraph 63. “[...] *The reform, nonetheless, does not refer to certain types of practices as “gynaecological and obstetric violence”, despite calls by civil society actors and health practitioners to do so.*”

In this respect, Spain would like the following remark to be taken into account:

Talking about gynecological and obstetric violence presupposes malpractice and intentional damage by “all” health professionals. Spain would like to request a review of this statement or provide data to support it.

The remark on page 2 should be taken into account: the use of the term “violence” would not be acceptable in the context of health care in our National Health System. In particular, the term “obstetric violence” is inappropriate in this framework; as it generates confrontation between health professionals and women. Therefore, the NHS opts for a constructive and positive model for women and their health through the development and implementation of good practices and active policies to eradicate bad practices in the context of sexual and reproductive health. Furthermore, the concept of Violence in the reproductive field in the *Istanbul Convention* is limited to female genital mutilation, forced abortion and forced sterilization.

Paragraph 64. *“In line with the Commissioner’s Issue Paper on the right to health and its twelve recommendations on how to strengthen the right to health through inclusive and resilient health care systems, the Commissioner recommends that Spain adopt further measures to promote universal health coverage with primary health care as its foundation with a view to delivering high-quality preventive, promotive and curative care to all, throughout people’s lives and without exposing them to financial hardship. She also stresses the need to support strong emergency health preparedness and response systems and to strengthen capacities at national and regional levels. In particular, she urges the authorities to allocate further financial investment into primary health care. The Commissioner also recommends the prompt adoption of the 2022 bill aimed at consolidating the equity, universality and cohesion of the National Health System. It is also important to continue close cooperation with health personnel and civil society actors to ensure that the bill guarantees universal access to health for all”.*

See comments on paragraphs 37 and 38.

Paragraph 66. *“The Commissioner stresses the need to ensure a comprehensive, coherent approach to health and social policy making, including by implementing measures to promote national and regional health commitments to reducing health inequalities throughout the*



Autonomous Communities”.

In this respect, Spain would like the following remark to be taken into account:

At present, there are already coordination bodies of the Interterritorial Council of the National Health System, such as the Commission for benefits, insurance and financing, the Committee for the Designation of Centers, Services and Reference Units of the National Health System and the Commission for the Monitoring of the Health Cohesion Fund, where the different administrations responsible for the management of health benefits are represented.

Paragraph 67. *“The Commissioner calls on the authorities to ensure that the right to health of persons belonging to particular groups facing legal and practical barriers to access, including women, LGBTI persons, older persons, people arriving in Spain for family reunification and those belonging to marginalised or disadvantaged groups, such as undocumented migrants in their first 90 days in Spain, is effectively safeguarded.”*

Spain does not agree with the content of this paragraph and would like the following remark to be taken into account:

In relation to undocumented migrants, such as those arriving by sea, from day one they are considered as not registered or authorized foreigners in Spanish territory and, therefore, according to article 3 ter of the *Law 16/2003*, of May 28, on cohesion and quality of the National Health System they have the right to health care protection and health care under the same conditions as people with Spanish nationality.

Paragraph 71. *“The Commissioner welcomes the adoption of a set of legislations that advance the protection of sexual and reproductive health and rights in Spain and urges the central government to coordinate the prompt implementation of these new measures by the regional and local authorities. It is important that Spain addresses inequalities in access to health between regions”.*

Paragraph 72. *“In particular, the Commissioner calls on the authorities to ensure that high-quality sexual and reproductive health care is fully accessible in public health services throughout Spain for all those in need, including with respect to abortion care in line with the World Health Organisation’s 2022 abortion care guideline”.*

In this respect, Spain would like the following remark to be taken into account:

In Spain, the universality of health care is guaranteed by the NHS. The Care Quality Plan of the NHS is based on reinforcing the relationship of trust between doctor and patient. Therefore, quality and trust are inextricably linked. To favour this climate it is essential, among other factors, to reduce as much as possible the conflicts between the medical-health professionals, on the one hand, and patients and users, on the other. It is obvious that such reduction necessarily happens through the establishment of strategies aimed at preventing avoidable errors and failures in healthcare practice. This topic is of special importance when it comes to sexual and reproductive health issues. For this reason,



The European Court of Human Rights, on the occasion of the examination of cases related to the complaint of violation of freedom of expression (Art. 10 of the Convention) in the face of the imposition by the Spanish courts of criminal sanctions for crimes of expression ("common" libel and slander, or "qualified" libel and slander such as glorification of terrorism and humiliation of victims, incitement to hatred, insults to the Crown....) has come to endorse the compatibility of the regulation contained in the Penal Code with the provisions of the European Convention on Human Rights, without prejudice to the fact that on occasions Spain has been condemned for considering that its application by the courts in specific cases has been disproportionate.

Thus, in the Decision of 18 October 2022 in the *Mas Gavarró v. Spain* case, the Court notes that in the Spanish criminal system –articles 205 et seq. of the Penal Code–, the offenses of insult and slander are subject to a particularly high intentional element, the legislator having decided to criminalize "only certain serious forms of insults and misrepresentation, and not all forms of defamation or damage to a person's reputation".

For its part, in the judgments handed down in the cases of *Stern Taulats v. Spain* and *Otegi Mondragón v. Spain*, the Court upheld the possibility that the reputation of the Head of State may be protected in criminal proceedings through the criminalization of defamatory conduct against him or her, although without considering in principle the imposition of a prison sentence to be appropriate in such cases, or that the reputation of the Head of State should be subject to privileged criminal protection. Therefore, it is not incompatible with the Convention, per se, that the conduct of insulting or slandering the Crown is a criminal offense. The compatibility with the Convention of the imposition of criminal penalties in specific cases will ultimately depend on the weighing of each case by the courts of justice.

With regard to the actions of the courts of justice and the way in which they have been applying the crime of insulting the Crown (arts. 490 and 491 of the Penal Code), it was explained to the Committee of Ministers in the "Action Report" corresponding to the execution of the case of *Stern Taulats v. Spain*, how, following the judgment handed down by the Court, the number of criminal proceedings for these crimes has been drastically reduced, with most of the cases opened for this cause having been closed. According to the report, only on four occasions has a conviction been imposed for these offenses in the period under review: in none of the cases was the sentence imposed custodial, and in all these cases there were circumstances of particular gravity of the conduct that determined that the sanction was in accordance with the doctrine of the ECHR.

In addition to the above more general considerations, different observations on specific paragraphs are provided:

Paragraph 76. “[...] *These factors have resulted in the imposition of arbitrary sanctions, the criminalisation of peaceful protesters, journalists, and social movements, and a worrying chilling effect on freedoms of expression and peaceful assembly.*”

In Spain there is a broad national legal framework related to the promotion and protection of human rights in the context of peaceful protests and the actions of the State Security Forces and Corps, culminating in a deontological regulation of these bodies. This allows intervention measures for the maintenance or restoration of public security at meetings and demonstrations to be gradual and proportionate to the circumstances.



Paragraph 88. “[...] Accordingly, he urged the authorities to implement a set of recommendations to address these concerns”.

In Spain, there is no rule prohibiting videotaping or taking photos of police officers while they are working. Filming the police, in itself, is not an action that constitutes a crime or any administrative offence.

Regarding the data on penalties under Organic Law 4/2015, of 30 March, on the protection of public safety, they are obtained from a computer application managed by the Ministry of Territorial Policy. The data provided to the Ministry of the Interior does not include the profession exercised by the person proposed for sanction, which is why nothing can be provided in this regard.

On the other hand, in Spain, the regulation of the use of force obliges it to be exercised progressively, always under the principle of the least possible harm and of opportunity, congruence and proportionality.

Paragraph 89. “In 2017, the Commissioner’s predecessor addressed the Spanish authorities following allegations of police misconduct and disproportionate use of force during the events of 1 October 2017 in Catalonia [...]”.

Police actions in matters of public order, like the rest of police activity, are subject to strict administrative and judicial control in our country.

From the internal point of view, the State Security Forces and Corps have Disciplinary Regime Units in charge of investigating and, where appropriate, proposing sanctions for allegedly unlawful conduct of a criminal and administrative nature that may be committed.

In addition, the Internal Affairs Units of the security forces are also responsible for carrying out investigations into any allegedly unlawful acts committed by police officers.

As a further guarantee, the Inspection of Security Personnel and Services, through its National Office for the Guarantee of Human Rights, within the structure of the Ministry of the Interior, is responsible for inspecting, monitoring, investigating, highlighting and responding to any possible unlawful or disproportionate conduct committed by any police officer.

Specifically in the *Policía Nacional*, the police force to which they refer in their letter, the Equality and Human Rights Area was created, which includes the Human Rights Office, set up to prioritise and promote the subject, and which constitutes one of the strategic lines of this police force, focused on defining policies, criteria and actions, facing the multiple contexts in which police work is carried out.

Finally, the judicial authorities are responsible for investigating and prosecuting any allegedly illegal or disproportionate police activity that may have taken place in the events in Catalonia referred to. As a result of this respect for the institutions of the State and the aforementioned separation of powers, we must await any judicial decisions that may be taken in this matter.



Paragraph 92. “[...] *Rubber bullets were reportedly also used in 2014 against migrants who attempted to swim to the shores of Tarajal beach (Ceuta)*”.

The Criminal Division of the Supreme Court, in its ruling of 22 May 2022, rejected the cassation appeal lodged against the dismissal order of 27 July 2020, issued by the Provincial Court of Cadiz in relation to these facts, thus confirming the dismissal of the case.

Paragraph 94. “*Furthermore, civil society actors reported that no law enforcement units in Spain provide for public access to protocols, guidelines for action or internal instructions regulating the use of force, tools and weapons. This lack of transparency [...]*”.

In Spain, police actions are subject to continuous control through institutional, judicial or administrative mechanisms, including through the media, where police actions are continuously published and observed.

Similarly, in Spain there are specialised units with specific training that adapt their actions to the different circumstances they face, always with the utmost respect for human rights.

The use of riot control equipment does not occur in peaceful demonstrations and, moreover, must be authorised by the governmental authority.

Of the 68,076 demonstrations or rallies that have taken place in Spain between 2016 and 21 November 2021, the State Security Forces and Corps has only been forced to resort to the use of riot control equipment in 108, barely 0.16% of the total.

Paragraph 96. “*The Commissioner was informed of the persistence of the problem with impunity for police abuses [...]*”.

The Security Forces and Corps, by the very nature of their functions, assume the leading role in this protection and respect for human rights, a task of recognized complexity insofar as the actions themselves sometimes require limiting the same or other fundamental rights.

Likewise, one of the existing Control Mechanisms in Spain acts as the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NPM).

Paragraph 101. “*The Commissioner reiterates the urgency to bring the Law, which has been in place for more than seven years now, fully in line with European and international human rights standards [...]*”

The Plenary of the Constitutional Court has endorsed the constitutionality of the Organic Law 4/2015, of 30 March, on the protection of public security (LOPSC) in its ruling of 19 November 2020, except for the need for authorisation for the "unauthorised use of images or data of authorities or members of the State Security Forces and Corps" provided for in art. 36.23 of the Law.

Paragraph 103. “[...] *In this respect, the Commissioner also draws attention to the Council of Europe 2016 Recommendation on the protection of journalism and safety of journalists and other media actors*”.



The Ministry of the Interior, the Federation of Spanish Journalists' Associations and the National Association of Press and Television Graphic Informers, in order to facilitate the work of information professionals who carry out their activity in places and events where situations of risk or conflict occur, signed a collaboration agreement in 2011, and signed another one in 2020, updating the previous one, with a four-year validity.

Paragraph 108. *“As concerns the use of rubber bullets in the context of assemblies, the Commissioner reiterates that it presents a clear danger for the safety of demonstrators. Because of their imprecise and indiscriminate effect, they should not be used against large numbers of persons, including assemblies [...]”.*

In Spain, according to art. 5 of Organic Law 9/1983, of 15 July, which regulates the right to assembly, the cases of dissolution are specified, among others, when disturbances of public order occur, with danger to people or property.

In accordance with Organic Law 4/2015, of 30 March, on the protection of public safety, this dissolution is a last resort and must be preceded by prior notice.

Paragraph 110. *“[...] The Commissioner looks forward to receiving further information about the work of the Office and its practical functioning, in particular as to the type of follow-up and concrete measures that it can propose to the Ministry of the Interior to address human rights violations”.*

In accordance with State Secretariat for Security Instruction 1/2022, the functions assigned to this office include checking and evaluating compliance with the instructions of the State Secretariat for Security, following up incidents involving citizens, monitoring the computer application of the National Human Rights Plan, ensuring the appropriate handling of complaints and disseminating good practices in the field of human rights.

III. THE HUMAN RIGHTS OF REFUGEES, ASYLUM SEEKERS AND MIGRANTS

Regarding border rejections at the Melilla fence or "hot returns", the report urges the authorities to provide border authorities with clear and mandatory guidance on how to act when intercepting migrants at the borders of Ceuta and Melilla, including an "explicit prohibition of summary expulsions and refoulement".

In this regard, it should be recalled, on the one hand, that the ECHR has dismissed the complaints filed for this type of refoulement in the three cases that have been decided against Spain: *ND and NT* (Grand Chamber), *Doumbe Nabuchi* and *Balde and Abel*.

On the other hand, in its analysis of the constitutionality of the second additional provision of the Organic Law on Citizens' Security, the Plenary of the Constitutional Court made a conforming interpretation, concluding that border rejections are in accordance with the Constitution as long as they are carried out with the guarantees that are recognized for foreigners by international norms, agreements and treaties ratified by Spain, and that the procedures for legal entry into Spanish territory must be real and effective. In particular, police action must be carried out with "special attention" with respect to migrants with a "vulnerable" profile, such as minors, pregnant women or elderly people (v. STC 172/2020, of November 19, 2020).



Finally, the Venice Commission carried out an examination of the aforementioned Organic Law on Citizens' Security, whose conclusions do not impose the need for regulatory reform⁷, in line with the interpretation of the ECHR and the Constitutional Court.

In addition to the above more general considerations, different observations on specific paragraphs are provided:

Paragraph 112. *“UNHCR reports that in 2022, there have been 31,763 arrivals in Spain [...]”*

Spain believes that this figure refers to irregular entries. Not to be confused with the data on applicants for international protection in 2022, which was 118,842.

Paragraph 124. *“[...] This was also acknowledged by the Spanish prosecutor investigating the incident of migrants climbing the fences in Melilla on 24 June 2022 [...]”*

Regarding the assault of 24 June 2022, the Ombudsman decreed the end of the proceedings that he had initiated in this regard. Likewise, on 22 December 22, the Public Prosecutor's Office ordered the investigation proceedings to be closed, as there were no elements that determined that the agents of the State Security Forces and Corps who acted were guilty of any criminal offence, either in their general actions during the course of the assault or subsequently at the time of the rejection at the border.

Paragraph 126. *“[...] According to the preliminary conclusions of the National Ombudsman [...]”*

The Ombudsman ordered the termination of the proceedings he had initiated in this regard.

Paragraph 129. *“Following this high number of arrivals at Ceuta's borders, the Commissioner notes that, in August 2021, the Ministry of the Interior initiated return procedures for those unaccompanied minors who had arrived in Ceuta...”*

In relation to this matter, each and every one of the measures adopted by the General State Administration have guaranteed the effective protection and guardianship of the rights and interests of the minors and after having carried out an exhaustive analysis of their personal and family circumstances.

In any case, it should be pointed out that the Spanish legal system contemplates all the mechanisms inherent to a State governed by the rule of law to assess and judge the actions of the Administration. Precisely for this reason, there have already been judicial pronouncements on this matter, which are currently pending a final decision by our highest court, the Supreme Court, which has admitted an appeal for cassation. The Ombudsman himself, in compliance with his constitutional mission of supervising the actions of the Administration (and to whom all the information he has requested has been sent during this time), has recently communicated that he is suspending the proceedings on this matter until the Supreme Court reaches a decision.

⁷ [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)004-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)004-e)



It is therefore appropriate at this stage to await the final judicial decision.

Paragraph 132. *“The Commissioner was informed that asylum seekers are faced with serious obstacles in accessing the asylum procedure throughout Spain [...]”.*

Spain supports the proposals for possible projects aimed at strengthening the solidarity mechanism within the negotiation of the EU Immigration and Asylum Pact: Project aimed at co-financing the capacity to improve the asylum system in Morocco.

On the other hand, the Asylum and Refuge Office of the Ministry of the Interior is working together with the National Police to improve access to the asylum procedure.

The striking increase in the numbers of asylum developments in Spain may explain the issues raised in the report, in particular the difficulties of access.

From January 2012 to 31 December 2022, 523,569 applications for international protection have been registered in Spain, of which 390,701 proposed decisions have been submitted to the Interministerial Commission for Asylum and Refuge (CIAR), i.e. 74.6% of the registered intake has been resolved and 132,868 are still pending processing.

Specifically, in the period 2019-2022, 391,596 requests were registered and 342,361 decisions were raised to the CIAR; numerically, these figures mean that in the last four years the OHR has resolved 87.4% of the registered intake in that period, with a net stock of 49,235 pending resolution.

During this period 2019-2022:

- 74.8% of the registered applications have been received (391,596 vs. 523,569) and 87.6% of the raised resolutions (342,361 vs. 390,701) have been processed since 2012.
- The 1992 "Relación de Puestos de Trabajo" has been increased with 231 posts (191 in administrative group A2 and 40 in administrative group C1).
- Training and specialisation in international protection has been provided to new career and interim civil servants.

Paragraph 133. *“Asylum seekers reportedly receive no adequate information or legal assistance when they try to access the asylum procedure [...]”.*

Spanish legislation offers different possibilities to apply for admission to the national territory, either by applying for a visa or by requesting international protection at border posts and diplomatic and consular representations, thus facilitating real and effective protection of migrants' rights, in accordance with the legal requirements of the ECHR in Strasbourg.

P. 133. *“[...] The Group of Experts on Action against Trafficking In Human Beings of the Council of Europe (GRETA) raised a number of issues relating to the early identification of victims of trafficking, their assistance and protection, including obstacles in obtaining international protection [...]”.*

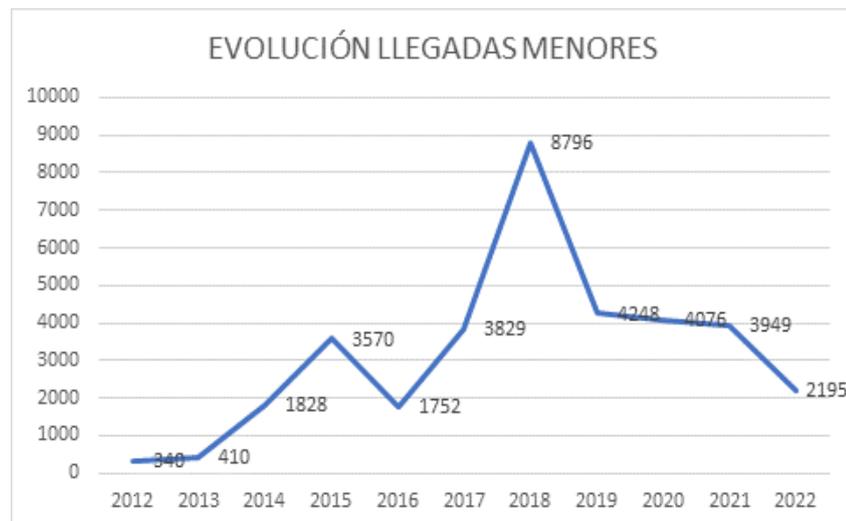


The assistance and protection resources contemplated by the Framework Protocol for the Protection of Victims of Human Trafficking and the National Police's Police Plan against Human Trafficking are reinforced by Instruction 6/2016 of the Secretary of State for Security, which creates the figure of the Social Interlocutor with the aim of optimising and maximizing cooperation with non-governmental organisations.

Paragraph 140. *“As regards migrant children, according to UNHCR, in 2021, some 4,173 children were estimated to have arrived by sea, a 7% increase compared to 2020 (3,890) [...]”.*

The evolution of irregular arrivals of minors in Spain that have been intercepted in the period 2012-2022 are:

YEAR	MINORS
2012	340
2013	410
2014	1828
2015	3570
2016	1752
2017	3829
2018	8796
2019	4248
2020	4076
2021	3949
2022	2195



Paragraph 143. *“In 2021, UNICEF found that regional and local authorities in the Canary Islands had made great efforts to improve the adequacy of reception conditions for unaccompanied migrant children [...]”.*

All National Police actions with minors are inspired by the principle of the best interests of the minor in accordance with international (Declaration of the Rights of the Child-1959) and national regulations (Instructions of the Secretary of State for Security and the Instructions and Circulars of the State Attorney General's Office).

In July 2022, the General Directorate of Children's Rights and the Autonomous Communities agreed on a *Model for managing migratory contingencies for unaccompanied children and adolescents*. This Model is composed of three main pillars: capacity building, information system, and response plan for transferring unaccompanied children from territories that do not have sufficient resources to guarantee their protection and are under disproportionate pressure to mainland communities in order to support and aim at building a solidarity mechanism with a child rights-based approach. The first Response Plan for unaccompanied migrant children 2022-2023 is active since July 2023 and pretends to transfer 774 children, 682 from the Canary Islands and 92 from Ceuta.

Paragraph 147. *“[...] In this respect, she underscores the importance of cooperating with UNHCR and relevant civil society organisations working on the protection of refugees and asylum seekers to ensure a human rights compliant approach in migration management”.*



The communication of the Asylum and Refugee Office of the Ministry of Interior with UNHCR and NGOs is constant and fluid.

Paragraph 152. *“The Commissioner recommends that the Spanish authorities improve current processes of identifying and assisting vulnerable people in need of special protection. She urges the authorities to pay particular attention to the specific needs of victims of violence and human trafficking, in particular women and children, including unaccompanied children, and to ensure that the protection provided is fully in line with the European Convention on Human Rights and the Council of Europe Convention on Action against Trafficking in Human Beings and related recommendations by GRETA. In this respect, she welcomes the proposal of a bill providing better protection of victims of trafficking”.*

The Asylum and Refugee Office of the Ministry of the Interior has a dedicated service for vulnerable people.

Spain is establishing various mechanisms to enhance the detection capabilities of vulnerable people and victims of human trafficking. The Information Provision Protocol, prepared in collaboration with the European Asylum Agency, is implemented in all Humanitarian Care program centers and Migrant Temporary Stay Centre (CETIs) to encourage early detection of possible cases of vulnerability.

A specific protocol on vulnerability is being developed in collaboration with the entities of the humanitarian assistance program and with the European Asylum Agency that leads to the timely referral of this type of cases. The implementation of the Secretary of State for Migration's protocol on human trafficking has been reinforced following the latest GRETA report. A specific working group has been created, consisting of representatives of all involved agents, to ensure early detection of cases. Training on human trafficking is provided to all the agents involved, including national authorities, NGOs and service providers, who play a key role in the centers. At present, a specific working group has been created made up of representatives of all these agents, which ensures early detection of cases.

Collaboration with the Public Prosecutor's Office is being done through specific Protocols to establish comprehensive care from specialized social entities:

- Protocol for the detection and action in possible cases of trafficking in human beings for the purpose of sexual exploitation, effective since January 2015.
- Referral procedure for potential victims of human trafficking applicants for international protection at the Madrid-Barajas airport, active since October 15, 2019.
- Procedure for the prevention, detection, care, and referral of possible victims of human trafficking in the reception, care and referral centers (CREADE) of the General Directorate for the Management of International and Temporary Protection Programs.



- Protocol of action against violence against women in the International and Temporary Protection Reception System, signed in 2021 to establish common guidelines for the detection, action and prevention of cases of domestic or gender violence that is exerted on women, their minor children and/or minors subject to their guardianship, or guardianship and custody, or other people who depend on their care, within the International and Temporary Protection Reception System, in order to promote homogeneous treatment in the devices of the System.
- SEMilla Project, in collaboration with UNHCR and the entities of the system to establish a network platform to reinforce prevention, mitigate risks and eliminate any manifestation of violence against women in the field of affective relationships

Paragraph 154. *“The Commissioner observes the difficulties in accessing housing and, for some groups of migrants, also health services. She calls on the authorities to continue efforts to improve reception conditions throughout the territory, including in the Canary Islands and the Autonomous Cities of Ceuta and Melilla. She urges the authorities to effectively protect the right to adequate housing and right to health of those migrants, asylum seekers and refugees who are no longer accommodated in reception centres, including by pursuing cooperation with the Autonomous Communities, with a view to addressing the shortcomings in the implementation of relevant instruments, and to avoid homelessness, destitution, and social exclusion”.*

Spain implements the Humanitarian Attention Program, in relation to the Reception System. The program provides aid to immigrants who are in a situation of vulnerability and arrive on the Spanish coast or by land to Ceuta and Melilla.

The program has 13 entities that provide shelter with a total of 8,730 places (3,081 emergency) in addition to two CETIs (1,300 places). In addition, some new public centers for first arrivals.

Likewise, the fifth investment of Component 22 of the Recovery, Transformation, and Resilience Plan aims to create 5,700 new places in the state reception system while also rehabilitating and improving existing centers, which includes 4 Refugee Reception Centres (CARs) and 2 CETIs. In this sense, upon completion of the Plan, the number of publicly owned places is expected to increase from 400 in 2019 to 6,100 in 2024. There are currently 17 centers in the pipeline throughout the national territory. which will also enable us to fulfill our commitment to serve those territories with the greatest migratory pressure.

In 2022 and 2023, Spain has implemented measures to enhance the capacity and to improve the quality of the reception system and make the services more accessible, these measures include:

- Measures implemented in 2022 and 2023 to increase the capacity, improve the quality of the reception system, and make services more accessible. These measures have resulted in the creation of 15,000 new places, bringing the total to over 36,000 places and daily performances.
- There has been a significant increase in places managed in public centers, with more than 5,000 new places created. In 2022, Spain established four new Reception,



Care, and Referral Centers (CREADE), and plans to establish 15 new International Protection Reception Centers (CAPI) throughout the country in 2024 and 2025.

- To increase the capacity and improving the quality of the reception system, the government has also implemented measures to alleviate the pressure on the system by collaborating with other ministries, Autonomous Communities, and local entities. This collaboration includes financing the spending of people with temporary protection in areas such as health, education, universities, care for minors, and people with disabilities. The government has also established subsidies for the Autonomous Communities to provide direct aid to Ukrainian families who are outside the reception system. This aid is expected to reach around 13,000 families and consists of 400 euros per month, plus an additional 100 euros per minor in charge. These measures are aligned with the 2030 Agenda and promote the government's commitment to social rights.
- The government has also established a project to establish a system of standards, indicators, and quality mechanisms necessary for the continuous improvement of professionals and resources within the reception system. This system is designed to ensure that the system is always improving, and that professionals have the necessary resources to provide high-quality services to beneficiaries.
- To finance the services and actions of the reception system, the government has introduced a new system of financing through concerted action with entities for management. This system is financially sustainable and provides budgetary stability to the system to consolidate the services and places that are currently provided.
- The government is also taking specific measures to facilitate access to housing for recipients of the reception system. This includes collaborating in the preparation of the National Strategy for the Fight against Homelessness in Spain 2023-2030, which aims to promote the autonomy of applicants and beneficiaries of international and temporary protection. The government is providing economic aid, social, psychological, legal, and cultural support, as well as supporting language teaching, social, and labor advice to help beneficiaries achieve autonomy. Instruments such as the TECHO application have been established to facilitate access to housing by SAPIT recipients. These measures are part of the government's commitment to promoting social rights and improving the quality of life for beneficiaries of the reception system.