

SPAIN



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NATIONAL POLICY

The Government of Spain considers terrorism as one of the priorities in its security strategy. Since the terrorist attacks committed in Barcelona and Cambrils on 17 August 2017, there have been no other attacks on national territory caused by international terrorism of a jihadist nature. However, Spanish citizens participating in different international peace missions have lost their lives in conflict zones, and others have been kidnapped by the different Al Qaeda franchises around the world.

At present, the ETA terrorist organization has declared, in a statement dated 20 October 2011, the "definitive cessation of its armed activity". Moreover, ETA's operational capacity is very limited and reduced. The main reason for this has been the firm and constant action of rule of law in Spain, which, respecting the Spanish Constitution and the rest of Spanish and EU legislation, and supported by international cooperation and the effectiveness of Spain's Security Forces, has led ETA to a liquidation process. This terrorist organization, which has caused a death toll of more than 850 victims in its 50 years of existence, has not committed any attack since July 2009.

LEGAL FRAMEWORK

General information

Since 2013, the following legislation affecting the fight against terrorism has been approved:

- Organic Law **2/2015**, of 30 March, which amends Organic Law 10/1995, of 23 November, of the Criminal Code, on terrorist crimes.
- Organic Law **13/2015**, of 5 October, amending the Criminal Procedure Act to strengthen procedural guarantees and regulate technological investigation measures.
- Organic Law **3/2018**, of 5 December, on the Protection of Personal Data and the guarantee of digital rights.
- Organic Law **1/2019** of 20 February 2019, which amends Organic Law 10/1995 of 23 November 1995 on the Criminal Code to transpose European Union Directives in the areas of finance and terrorism, and to address international issues.

- Organic Law **1/2020** of 16 September on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crimes.
- Organic Law **6/2021**, of 28 April, complementary to Law 6/2021, of 28 April, amending Law 20/2011, of 21 July, on the Civil Registry, amending Organic Law 6/1985, of 1 July, on the Judiciary and amending Organic Law 10/1995, of 23 November, on the Criminal Code.
- Organic Law **7/2021** of 26 May on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties.
- Organic Law **9/2022** of 28 July establishing rules to facilitate the use of financial and other information for the prevention, detection, investigation or prosecution of criminal offences, amending Organic Law 8/1980 of 22 September on the Financing of the Autonomous Communities and other related provisions, and amending Organic Law 10/1995 of 23 November on the Criminal Code.

Criminal law

Criminal Code Reform:

- Organic Law **2/2015**, of 30 March, which amends Organic Law 10/1995, of 23 November, of the Criminal Code, on terrorist crimes.

Its objective is to incorporate into Spanish law the terrorist actions referred to in detail in Resolution 2178 of the United Nations Security Council. It criminalises conduct organised around terrorist organisations or groups, including the phenomenon of individual terrorism and conduct that is currently the main concern of the international community, in line with the aforementioned Resolution.

Thus, the Chapter of the Criminal Code, which criminalises terrorist organisations and groups and terrorist offences, is structured as follows:

Section 1.a, entitled "Terrorist organisations and groups", establishes the definition of a terrorist organisation or group and the penalties applicable to

those who promote, constitute, organise or direct these groups or those who are members of them.

Section 2.a is entitled "Terrorist Offences" and begins with a new definition of a terrorist offence. The definition establishes that the commission of any serious offence against the legal assets listed in paragraph 1 constitutes a terrorist offence when it is carried out for any of the purposes specified in the same article: 1.) To subvert the order of law and order of the state, or to commit a terrorist offence for any of the purposes specified in paragraph 1. Subverting the constitutional order, or suppressing or seriously destabilising the functioning of the political institutions or the economic or social structures of the State, or forcing the public authorities to carry out an act or to abstain from doing so; 2nd) Seriously disturbing the public peace; 3rd) Seriously destabilising the functioning of an international organisation; 4th) Provoking a state of terror in the population or in a part of it.

It then establishes the penalty for each terrorist offence, on the basis that if the death of a person is caused, imprisonment will be applied for the maximum time provided for in the Criminal Code.

Furthermore, it establishes the criminalisation of all those conducts related to the deposit of arms and explosives, their manufacture, trafficking, supply or the mere placement or use of the same, when the aforementioned purposes are pursued. It includes, in particular, more severe penalty in the case of weapons, nuclear, radiological, chemical or biological substances or apparatus, or any other of similar destructive power.

The Criminal Code also criminalises indoctrination and military or combat training as well as training in the handling of all kinds of weapons and explosives, including passive indoctrination and training. It includes a special mention regarding this activity carried out via the Internet or publicly accessible communication services, which requires a note of habituality (regularity). The finalist element is no other than carrying out these type of activities with the aim of joining a terrorist organisation, collaborating with it or pursuing its aims. This provision also criminalises the phenomenon of foreign terrorist fighters, i.e. those who travel abroad in order to join or collaborate with a terrorist organisation or to commit a terrorist offence.

The penalty is established for conduct related to the financing of terrorism, including anyone who, by any means, directly or indirectly, collects, acquires, possesses, uses, converts, transmits or carries out any other activity with property or securities of any kind with the intention that they should be used, or in the knowledge that they will be used, in whole or in part, to commit any of the terrorist offences. The criminalisation includes reckless forms of commission of the offence, such as negligent failure to comply with duties under money laundering and prevention of terrorist financing regulations.

It also includes the criminalisation and punishment of all its forms of collaboration with terrorist organisations, groups or elements, or which are aimed at committing a terrorist offence. Actions of recruitment and recruitment in the service of terrorist organisations or for terrorist purposes are specifically contemplated, with more severe penalties when they are targeting minors, persons in need of special protection or women who are victims of trafficking.

Public glorification or justification of terrorism, acts of discrediting, dishonour or humiliation of victims, as well as the dissemination of messages or slogans to incite others to commit terrorist offences are punishable. In the criminalisation of such conducts, special consideration is given to the cases in which such behaviour takes place through the dissemination of services or contents accessible to the public through the media, the Internet, or through electronic communication services or through the use of information technologies. Judges may also agree, as a precautionary measure, to remove these contents.

Provided that the circumstances listed in this provision are met, the penalties of absolute disqualification and the new penalty of special disqualification from teaching, sports and leisure activities for a period of between six and twenty years longer than the duration of the custodial sentence imposed in the sentence, if applicable, are included. In addition, the possibility of mitigating the sentence is envisaged for those who have voluntarily abandoned their criminal activities and collaborate with the authorities. It is also available in the event that the act is objectively less serious, taking into account the means used or the result produced.

Finally, in all terrorist offences, a conviction by a foreign judge or court will be treated in the same way as a sentence handed down by a Spanish judge or court for the purposes of applying the aggravating circumstance of recidivism.

- Organic Law **1/2019** of 20 February 2019, which amends Organic Law 10/1995 of 23 November 1995 on the Criminal Code to transpose European Union Directives in the areas of finance and terrorism, and to address international issues.

Among other issues, this organic law aims to transpose the Directive 2017/541/EU of the European Parliament and of the Council of 15 March 2017 on combating terrorism into our domestic legislation. Although the reform introduced by LO 2/2015 was notably ahead of the content of the Directive, some points made it necessary to introduce slight adjustments.

In terms of penalties, the maximum penalty for the leaders of a terrorist organisation or group was increased. The penalty of disqualification has also been changed to absolute disqualification.

- In the substantive part, falsified documentation is included among the terrorist offences. On the other hand, the concept of travel for terrorist purposes is extended. Finally, the criminal liability of legal persons is extended to the commission of any type of terrorist offence, which until now was only foreseen for terrorist financing offences.
- Organic Law **6/2021**, of 28 April, complementary to Law 6/2021, of 28 April, amending Law 20/2011, of 21 July, on the Civil Registry, amending Organic Law 6/1985, of 1 July, on the Judiciary and amending Organic Law 10/1995, of 23 November, on the Criminal Code.

It aims to complete the incorporation into our legal system of the content of Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by means of criminal law.

The offence of money laundering is already currently regulated in Articles 301 to 304 of the Criminal Code and includes those actions aimed at placing assets deriving from conduct constituting a criminal offence into legitimate financial systems. Given the above, the transposition of the directive into Spanish domestic law has only required a minimal regulatory intervention, relating to two cases of more severe penalty, as the main elements of the European standard have already been included in our criminal law.

- Organic Law **9/2022** of 28 July establishing rules to facilitate the use of financial and other information for the prevention, detection, investigation or prosecution of criminal offences, amending Organic Law 8/1980 of 22 September on the Financing of the Autonomous Communities and other related provisions, and amending Organic Law 10/1995 of 23 November on the Criminal Code.

It aims at strengthening security, improving the prosecution of financial crime, combating money laundering and terrorist financing, as well as preventing tax crime. To this end, there is an urgent need to improve access to information not only for FIUs, but also for public authorities responsible for the prevention, detection, investigation or prosecution of serious crime, as well as to enhance their capacity to conduct financial investigations and improve cooperation.

The law complements the regime of access to financial information and exchange of information in the fight against money laundering and terrorist financing; in addition, it will no longer be limited to this sphere of action, but will be extended to the prevention, detection, investigation and prosecution of serious criminal offences.

Procedural Rules

Since 2013, the following legislation affecting the fight against terrorism has been approved:

- Organic Law **13/2015**, of 5 October, amending the Criminal Procedure Act to strengthen procedural guarantees and regulate technological investigation measures.

Through this reform of the Criminal Procedure Act, a complete regulation of the interference in the right to privacy of the person under investigation in criminal proceedings has been carried out.

The interception and opening of written and telegraphic correspondence has been updated with new technologies while the maximum periods of duration and the exceptions to the need for judicial authorisation are regulated. This provision serves as a guideline for the other technological surveillance measures, to which the new common provisions apply.

Technological surveillance measures must satisfy the principles of speciality, suitability, exceptionality, necessity and proportionality, the concurrence of which must be sufficiently justified in the judicial authorising resolution, where the judge will determine the nature and extent of the measure in relation to the specific surveillance and the expected results.

The formal aspects of the request and the content of the enabling judicial decision are regulated.

In relation to the interception of telephone, on-line and new forms of communications, such as SMS, MMS, etc., are given their own substance.

A period of three months is established as the initial maximum duration of the interception, a period that may be extended and prolonged, following a reasoned request for successive periods of the same duration, up to a temporary maximum of eighteen months, provided that the reasons for the interception still exist. In order to ensure the authenticity and integrity of the hardware, software, hardcopies, etc., made available to the judge, the use of an authentication system or electronic signature is imposed to guarantee the information uploaded from the central system. The regulation is completed with a rule aimed at establishing the terms for the erasure and elimination of the original recordings, once the procedure is terminated.

The incorporation of electronic traffic or associated data into the judicial process is also regulated under the requirement of judicial authorisation for its transfer to the authorised agents, provided that it is data linked to communication processes.

The capture and recording of open oral communications through the use of electronic devices, the use of technical tracking and tracing devices, the recording of computer mass storage devices and the remote recording of computer equipment are also subject to regulation.

Finally, with regard to technological investigation proceedings, the reform contemplates as a security measure the data preservation order, the purpose of which is to guarantee the preservation of specific data and information of all kinds that are stored in a computer system until the corresponding court order is obtained for their transfer.

Closely related to the aforementioned technological investigation measures, the reform updates the provisions related to an undercover agent. Specifically, on the one hand, it provides for the possibility of undercover agents being able to obtain images and record conversations, provided that they specifically obtain judicial authorisation to do so. On the other hand, it regulates the undercover computer agent, who needs judicial authorisation to act in closed channels of communication (given that in open channels, by their very nature, this is not necessary) and who, in turn, will require special authorisation (either in the same judicial decision, with separate and sufficient grounds, or in a different one) to exchange or send illicit files due to their content in the course of an investigation.

- Organic Law **3/2018**, of 5 December, on the Protection of Personal Data and the guarantee of digital rights.

Its aim is to adapt our legal system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, on the protection of natural persons with regard to the processing of their personal data and the free movement of such data. In accordance with legal procedures, the principles of good regulation have been preserved, due to the necessary regulation for the adaptation of the Spanish legal system to the aforementioned European provision and proportional to this objective, its ultimate reason being to provide legal certainty.

- Organic Law **1/2020** of 16 September on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crimes.

It aims to implement Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

The processing of PNR data will improve the response to the threat of terrorism and serious crime by cross-checking such data against available and relevant databases for the purpose of the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and analysing and evaluating them using specific and regularly reviewable criteria, allowing the identification of persons who may be linked to such criminal activities, while minimising the risk of affecting innocent persons.

- Organic Law **7/2021** of 26 May on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties.

Its aim is to implement in our legal system the Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data.

Other relevant legislation

Witness protection

- Organic Law **19/1994**, of 23 December 1994, on the protection of witnesses and experts in criminal cases.

Victim support system

- Law **29/2011**, of 22 September, on the Recognition and Comprehensive Protection of Victims of Terrorism.
- Royal Decree **671/2013**, of 6 September, adopting the Implementing Regulations of Law 29/2011, of 22 September, on the Recognition and Comprehensive Protection of Victims of Terrorism.
- Law **4/2015**, of 27 April, on the Standing of Victims of Crime

Prevention of financing of terrorism

- Organic Law **9/2022**, of 28 July, establishing rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of criminal offenses.
- Law **10/2010**, of 28 April, on the Prevention of Money Laundering and Terrorist Financing.
- Law **12/2003**, of 21 May, on Prevention and Freezing of Terrorist Financing.
- Royal Decree **413/2015**, of 29 May, adopting the Regulations of the Commission for the Surveillance of Terrorist Financing Activities.
- Royal Decree **304/2014**, of 5 May, adopting the Regulation of Law 10/2010, of 28 April, on the Prevention of Money Laundering and Terrorist Financing.

Countering Violent Extremism and Radicalisation

- National Strategic Plan to Fight Violent Radicalization, of 30 January 2015.

INSTITUTIONAL FRAMEWORK

National Authorities

The **Intelligence Center against Terrorism and Organized Crime**, also known by its acronym CITCO, is the intelligence organization in Spain responsible for the management and analysis of all strategic information related to terrorism, organized crime and violent radical organizations.

This agency was created on October 15, 2014, by virtue of Royal Decree **873/2014**, of October 10, amending Royal Decree 400/2012, of February 17, which develops the basic organic structure of the Ministry of the Interior.

It has been the result of the merger of the National Anti-Terrorism Coordination Center (CNCA) and the Intelligence Center Against Organized Crime (CICO), both under the Secretariat of State for Security of the aforementioned ministry to optimize efforts and leverage economic resources in the face of the growing threats and the increasingly close linkage established between extremist organizations of a violent nature, terrorism and organized crime.

This new body, with the organic level of general sub-directorate, directly dependent on the Secretary of State for Security, has taken over the functions that have been exercised by the CNCA and the CICO. It is made up of members of the National Police Corps (CNP), the Civil Guard, the Customs Surveillance Service, officials from Penitentiary Institutions, members of the Armed Forces and personnel from the National Intelligence Center (CNI).

Its purpose is to promote and coordinate the integration and assessment of all information and operational analysis available to the State Security Forces and Corps in the field of terrorism, organized crime and violent radicalism, development of strategic criminal intelligence, the establishment of criteria for action and operational coordination between concurrent agencies along with the design of global strategies to combat these phenomena.

INTERNATIONAL CO-OPERATION

Spain gives an especially high profile to international cooperation as a means to combat crime, and consequently, terrorism. Therefore, Spain has for years been developing an international cooperation policy including bilateral and multilateral instruments.

Mutual assistance in criminal matters and extradition

Since 2013, the following bilateral conventions affecting MLA in criminal matters and extradition have been adopted:

Treaty on Mutual Legal Assistance in Criminal Matters between the Kingdom of Spain and the Republic of Ecuador, done at Madrid on 18 December 2017.

- Entry into force: 27/11/2020
Publication in the official journal: 07/11/2020

Treaty on mutual legal assistance in criminal matters between the Kingdom of Spain and the Socialist Republic of Vietnam.

- Done at Madrid on 18 September 2015
Publication in the official journal: 03/07/2017
Entry into force: 08/07/2017

Treaty on mutual legal assistance in criminal matters between the Kingdom of Spain and the Federal Republic of Nigeria, done at Madrid on 3 June 2022.

Treaty on Extradition between the Kingdom of Spain and the Federal Republic of Nigeria, done at Madrid on 3 June 2022

Treaty on transfer of sentenced persons between the Kingdom of Spain and the Federal Republic of Nigeria, done at Madrid on 3 June 2022

Measures at international level

Bilateral Instruments

Since 2006, Spain has continued to establish bilateral collaboration agreements with third States to combat organized crime. Terrorism is considered one of the most serious aspects of organized crime, which is why most of these agreements include clauses specifically related to terrorism. At present, this bilateral cooperation extends to more than 20 countries, among them: Albania, Algeria, Brazil, Bulgaria, Cameroon, Cape Verde, China, Côte d'Ivoire, Croatia, Cyprus, France (2), Israel, Jordan, Latvia, Lithuania, Poland, Romania, Russia, Senegal, Serbia, Slovakia, Turkey, United States of America, and Ukraine.

Other agreements are more specific, such as those signed with the United States (on scientific and technological cooperation of interest to national security), with France (concerning counter-terrorism cooperation) and with Morocco (on cross-border police cooperation).

At present, the Ministry of the Interior is physically accredited with Counsellors and Attachés in 56 countries, and their accreditation extends to another 46 countries.

The information services of the State Security Forces, as well as the CITCO, have strengthened and maintained bilateral cooperation with their counterpart services.

Multilateral Instruments

Spain has been extremely active in all the international forums of which it is a member (European Union, Council

of Europe, United Nations, OSCE, etc.), as well as informal such as the Global Counter Terrorism Forum and the Global Coalition to Defeat Daesh, backed by its wide-ranging experience in this field, in order to contribute to enhancing cooperation in the fight against the terrorism on the international level.

European Union

Within the framework of the European Union, Spain participates actively in all the groups, forums and institutions which deal with aspects relating to counter-terrorism, presenting initiatives, making contributions and implementing them once the mechanisms and instruments agreed by the 27 Member States have been approved. In this regard, there are noteworthy instruments, such as the Council Framework Decision on combating terrorism, the Council Framework Decision on European arrest warrants and the surrender procedure between Member States, and the Council Framework Decision on joint investigation teams, all adopted in 2002.

Council of Europe

Within the framework of the Council of Europe, Spain has ratified the following Conventions:

- European Convention on Extradition and its First and Second Protocols;
- European Convention on the Suppression of Terrorism;
- European Convention on Mutual Assistance in Criminal Matters and the First Additional Protocol;
- European Convention on the Transfer of Proceedings in Criminal Matters;
- European Convention on the Compensation of Victims of Violent Crimes;
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;
- Convention on the Prevention of Terrorism;
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

Relevant Council of Europe conventions – Spain	Signed	Ratified
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism [CETS No. 198]	20/02/2009	26/03/2010
Council of Europe Convention on the Prevention of Terrorism [CETS No. 196]	16/05/2005	27/02/2009
Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism [CETS No. 217]	22/10/2015	
Convention on Cybercrime [ETS No. 185]	23/11/2001	03/06/2010
Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems [ETS No. 189]	27/11/2013	18/12/2014
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime [ETS No. 141]	08/11/1990	06/08/1998
European Convention on the Compensation of Victims of Violent Crimes [ETS No. 116]	06/08/2000	31/10/2001
European Convention on the Suppression of Terrorism [ETS No. 90]	27/04/1978	20/05/1980
Protocol amending the European Convention on the Suppression of Terrorism [ETS No. 190]	10/09/2003	16/10/2014
European Convention on the Transfer of Proceedings in Criminal Matters [ETS No. 73]	30/05/1984	11/08/1988
European Convention on Mutual Assistance in Criminal Matters [ETS No. 30]	24/07/1979	18/08/1982
Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [ETS No. 99]	12/04/1985	13/06/1991
Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [ETS No. 182]	09/10/2015	26/03/2018
European Convention on Extradition [ETS No. 24]	24/07/1979	05/07/1982
Additional Protocol to the European Convention on Extradition [ETS No. 86]	10/06/1983	11/03/1985
Second Additional Protocol to the European Convention on Extradition [ETS No. 98]	10/06/1983	11/03/1985
Third Additional Protocol to the European Convention on Extradition [CETS No. 209]	27/11/2013	18/12/2014
Fourth Additional Protocol to the European Convention on Extradition [CETS No. 212]	09.09.2014	01.11.2017

Relevant United Nations conventions – Spain	Signed	Ratified
Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963)	27/07/1964	25/12/1969
Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague, 1970)	17/03/1971	29/11/1972
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971)	15/02/1972	26/01/1973

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1988)	02/03/1988	06/08/1989
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 1973)	26/07/1985	07/09/1985
International Convention against the Taking of Hostages (New York, 1979)	09/03/1984	25/04/1984
Convention on the Physical Protection of Nuclear Material (Vienna, 1979)	07/04/1986	06/10/1991
Amendment to the Convention on the Physical Protection of Nuclear Material (Vienna, 2005)	25/10/2007	08/05/2016
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 1988)	28/09/1988	01/03/1992
2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (London, 2005)	12/02/2007	28/07/2010
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 1988)	28/09/1988	01/03/1992
2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (London, 2005)	12/02/2007	28/07/2010
Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1991)	05/04/1993	21/06/1998
International Convention for the Suppression of Terrorist Bombings (New York, 1997)	1/05/1998	23/05/2001
International Convention for the Suppression of the Financing of Terrorism (New York, 1999)	8/01/2001	9/05/2002
International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 2005)	14/09/2005	07/07/2007