

SPAIN 2019

ANNUAL REPORT **SPAIN**

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Jordi Sánchez and Jordi Cuixart, presidents of two pro-independence organizations in Catalonia, were among those sentenced for their role in the protests held in Barcelona on 20 September 2017 and for their involvement in the 1 October 2017 referendum on Catalan independence. The outcome of investigations into excessive use of force by police during the 2017 demonstrations remained pending. The Supreme Court upheld the convictions of eight people for their involvement in a 2016 attack on two off-duty police officers and their partners in Alsasua (Navarra), but rejected the aggravating factors on the basis of discrimination and reduced their sentences. Amid ongoing economic challenges, obstacles to access to housing and health care persisted. Despite recent reforms, migrants in an irregular situation continued to face obstacles in accessing health care. Hundreds of people continued to face forced eviction without access to alternative housing.

Trial of Catalan leaders

Between February and June, 12 Catalan leaders stood trial in connection with events in September and October 2017 surrounding a referendum on independence conducted by the Catalan regional government in defiance of several Constitutional Court rulings. In October, the Supreme Court found seven senior Catalan officials (six former members of the Catalan government and the former president of the Catalan parliament) and the presidents of two pro-

independence organizations, Jordi Sánchez and Jordi Cuixart, guilty of sedition. They were sentenced to prison terms of between nine and 13 years. Three other former members of the Catalan government were convicted of “disobedience”, fined and disqualified from public office.

While there was no evidence that the right to a fair trial of the 12 Catalan leaders had been violated, there are concerns that the crime of sedition, of which nine of them were convicted, is both vaguely defined in law and was broadly interpreted by the court in a way that disproportionately restricts the exercise of human rights.

In addition, the convictions for the crime of sedition of Jordi Sánchez and Jordi Cuixart, who had been held on remand since 16 October 2017, constituted an excessive and disproportionate restriction of their right to freedom of expression and peaceful assembly. Amnesty International therefore called for their convictions to be quashed and for their immediate release.

Excessive use of force

Following the Supreme Court ruling in October, several protests took place in Catalonia. Although most demonstrations were largely peaceful, there were several violent incidents during which hundreds of people were injured. This included 318 members of the security forces, one of whom was injured seriously. In a number of instances, the police used excessive force against protesters. At least 367 people needed medical assistance, four of whom reportedly lost sight in one eye after being hit by rubber bullets and balls fired by police to disperse protesters.

None of the investigations into reports of excessive use of force by police during the protests in October 2017 in Catalonia had resulted in prosecutions by the end of the year.

Freedom of expression and assembly

The authorities continued to use the Law on Public Security to impose administrative sanctions, including increasingly heavy fines, on protesters, human rights defenders and journalists. In some cases, this unlawfully restricted their rights to freedom of expression, peaceful assembly and access to information.

In April, journalist Mikel Saénz de Buruaga, who had been fined €602 in July 2017 for crossing police lines and endangering officers’ safety in Vitoria (Basque Country), was acquitted. The court found that the authorities failed to sufficiently demonstrate that his aim was to disobey police orders rather than pursue his journalistic activities.

At least three people were tried for expressing opinions that the authorities considered constituted “incitement to terrorism”, despite failing to demonstrate that the threshold of prohibited speech under international human rights law was reached. They were charged under counter-terrorism legislation that outlaws the “glorification of terrorism” and “humiliation of victims”. One

was acquitted, and two were convicted over comments posted on social media, which were regarded as a glorification of the armed organization Euskadi Ta Askatasuna (ETA).

At least two prosecutions were initiated for offences related to “publicly disparaging dogmas, beliefs, rites or public ceremonies”, causing offence to members of religious groups or “slander or defamation” against the Crown. In October, after a five-year trial, three women’s rights activists prosecuted for causing offence to religious feelings after participating in a feminist demonstration in Seville in May 2014 were acquitted. During the demonstration, they had carried a model of a vagina, used religious ornaments and used the format of prayer to express their opinions.

Torture and other ill-treatment

Legislation to provide adequate reparations to victims of torture and other ill-treatment faced continuing obstacles. In April, the Basque parliament passed a second law on recognition and reparation for victims of political violence. However, in September, the Constitutional Court declared admissible two appeals against this law lodged by the political parties Ciudadanos and the Partido Popular. A similar law passed in Navarra in March also remained subject to a constitutional challenge since September. A previous similar law of 2015 was declared unconstitutional.

In May, the UN Human Rights Committee found that Spain had violated the human rights of Gorka-Joseba Lupiañez Mintegi, a member of the armed organization ETA, by failing to carry out a thorough investigation into his allegations of torture. Gorka-Joseba Lupiañez Mintegi was arrested in December 2007 and, at his first hearing before the National High Court on 11 December 2007, had alleged that he had been tortured while held incommunicado. However, no investigation into his allegation was initiated until 2008, after he filed a complaint before an investigative judge. The case was subsequently closed for lack of evidence. The Committee urged Spain to end incommunicado detention as it can facilitate torture and other ill-treatment.

Refugees and migrants

Between January and December, 118,264 people claimed asylum, 53,723 of them women. There was continuing concern about the increasing backlog of pending asylum decisions; between January and December, the number of people awaiting decisions on their applications rose from 85,185 to 133,015. Delays in receiving decisions had a negative impact on asylum-seekers’ right to adequate reception conditions.

Spain failed to fulfil its 2015 pledge to relocate 15,888 asylum-seekers from Greece and Italy under the European Union emergency relocation scheme, as only 1,359 were relocated by April 2018 when the scheme ended. Since 2016, Spain had resettled only 2,040 of the 3,464 refugees it promised to resettle under a separate procedure from countries outside the European Union.

Hundreds of people were expelled to Morocco under the 1992 Readmission Agreement, under accelerated proceedings which in certain circumstances may have failed to ensure access to asylum. A Grand Chamber ruling of the European Court of Human Rights remained pending on Spain's appeal against a 2017 first ruling of the same Court that the immediate return to Morocco of migrants attempting to enter Spanish territory in Melilla in 2014 amounted to a collective expulsion (case N.D. & N.T v Spain).

Investigations into racially motivated attacks on unaccompanied children in Catalonia between February and March were continuing at the end of the year. In December, bomb-disposal experts detonated a hand grenade that had failed to explode after it was left in the patio of a youth shelter for unaccompanied children in Madrid by unknown assailants. This was later found to be a grenade used for training purposes.

Counter-terrorism and security

In October, the Supreme Court upheld the conviction of eight people for their involvement in an attack on two off-duty Civil Guard officials and their partners in Alsasua (Navarra) in 2016. However, the Supreme Court rejected the imposition of heavier penalties for aggravating circumstances by the National High Court (Audiencia Nacional) on the grounds that the attack was

motivated by ideological discrimination and reduced their sentences. The Supreme Court found that, in terms of discrimination constituting an aggravating circumstance, the Civil Guard could not be regarded as a vulnerable group facing discrimination.

Violence against women

55 women and three children were killed by their partners or former partners.

In June, the Supreme Court convicted five men of rape in the so-called "Wolf Pack" case. The ruling overturned previous judgments by the Navarra courts, which had found the men not guilty of rape, due to a lack of evidence of violence or intimidation of the victim (and had instead convicted them for the lesser offence of sexual abuse).

Widespread protests in 2018 in reaction to the Navarra courts' judgments had led the government to announce that laws would be amended in 2020 to make clear that sex without consent is rape.

According to official data, 11,587 complaints of sexual violence were filed with the police between January and September 2019. Victims of sexual violence faced obstacles when seeking justice and a lack of adequate protection, assistance and support measures.

Right to housing

Between January and September, there were 40,492 evictions of people who were unable to pay their mortgages (10,673), rent (26,962) or for other reasons (2,857). In March, the government adopted Royal Decree Law 7/2019 improving protection for tenants, but this contained insufficient measures to strengthen protection from forced evictions or ensure access to affordable housing. In October 2019, the UN Committee on Economic, Social and Cultural Rights (CESCR) found that Spain violated a family's right to housing by failing to take into account their vulnerability in an eviction and without a court considering the proportionality of the measure. More than a hundred cases regarding housing rights remained pending before the CESCR.

Right to health

Austerity measures adopted in 2012 affecting access to health care were not reversed during 2019. Many of these changes continued to have a disproportionate impact on people on lower incomes, especially those with chronic health conditions or disabilities, older people and those seeking mental health care. The UN Committee on the Rights of Persons with Disabilities asked Spain to ensure the accessibility and availability of healthcare services for all persons with disabilities.

In June, a Supreme Court ruling prevented access to health care to a Cuban woman who had legally been reunited with her daughter in Spain on the grounds that a temporary residence permit for a family member of European Union citizens does not imply the automatic existence of this right. The decision contravened UN and Council of Europe recommendations to Spain to ensure equal access to health care without discrimination.

Migrants in an irregular situation continued to face obstacles in accessing health care such as administrative barriers due to the ambiguity of the July 2018 Royal Decree Law 7/2018 on universal access to the National Health System.

Impunity

In October, the remains of former ruler Francisco Franco were exhumed from the Valle de los Caídos cemetery and taken to a private family vault in Madrid, as recommended by UN human rights bodies.

Victims of human rights violations committed under his regime continued to be denied their right to truth, justice and reparation. No investigations were initiated into crimes under international law committed during the Civil War (1936-1939) and the Franco regime, such as enforced disappearances and torture. Efforts to locate and identify the remains of victims were still mainly undertaken by families and organizations, without state support.

Individuals affected by the so-called “stolen babies” cases continued to face obstacles and difficulties in finding out the truth about their identity and the whereabouts of their relatives.