

# **OSCE/ODIHR Submission of Information about an OSCE Participating State or Partner for Co-operation under Consideration in the Universal Periodic Review Process**

## **Participating State: Spain**

**UPR Working Group Session and Date of Review: 35<sup>th</sup> Session, 01-02/2020**

## **Background**

1. Spain has been a participating State in the former Conference on Security and Co-operation in Europe (CSCE) and the present Organization for Security and Co-operation in Europe (OSCE) since 1973 and 1994, respectively, and has thus undertaken and recently reaffirmed a wide range of political commitments in the human dimension of security, as outlined in relevant OSCE documents.<sup>1</sup>

2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Spain, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assistance activities as well as monitoring and providing assessments, advice and recommendations relating to the implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.

3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Spain and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Spain.

## **Election-related activities**

4. Following an invitation from the Permanent Mission of Spain to the OSCE, and based on the findings and conclusions of a Needs Assessment Mission (NAM), ODIHR deployed an Election Expert Team (EET) to follow the 2019 early parliamentary elections in Spain. The EET focused on the conduct of the election campaign and the role of the media in the election process.

5. The ODIHR EET Final Report from 10 July 2019 is available at <https://www.osce.org/odihr/elections/spain/425336?download=true>. It concludes that the elections were highly competitive and parties were able to present diverse political views. The campaign was generally peaceful, even though its tone was at times harsh and antagonistic. Candidates who were in detention were provided with some opportunities to campaign. All major parties made wide use of online and social media, as well as messaging

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<sup>1</sup> <https://www.osce.org/odihr/76894>; <https://www.osce.org/odihr/76895>.

applications in their campaign, with some parties relying almost exclusively on these means of communicating with their voters. The report recommends:

- a) Data-driven electoral campaigning based on segmentation and profiling of users should be further regulated in the law in order to ensure transparency, data protection, safeguard public trust and a level playing field for the electoral contestants. Existing regulations on the collection and use of personal data for electoral purposes should be updated to reflect the decision of the Constitutional Court and ensure that any use of personal data of voters is in line with EU policies.
- b) The principle of equality of the vote should be upheld, in accordance with the Constitution, OSCE commitments, other international obligations and standards and good international practice.
- c) As previously recommended, the authorities should address the shortcomings of postal voting and take steps to ensure all voters benefit from equal voting opportunities to the maximum extent possible.
- d) Consideration could be given to enhancing the regulation of online campaigning with the aim to ensure a level playing field for all contestants and voters' informed choice.
- e) To enhance transparency, the media should be required to publish accurate data on their ownership. In order to safeguard media pluralism, stricter media-ownership regulations could be further considered.
- f) Legislation could be reviewed to allow public media to rely on editorial discretion in their news coverage of election campaigns rather than a formula-based distribution of airtime, provided that all contestants are treated equally and are allowed genuine opportunity to present their platforms.
- g) The management of the public broadcaster should be appointed in line with the reformed procedures as soon as possible with a view to protecting it from political interference and ensuring standards of professionalism and editorial independence.
- h) Authorities could consider establishing an independent media oversight authority in order to ensure transparency and pluralism in the broadcast media, issue licenses, conduct media monitoring, including during electoral campaigns, and adjudicate complaints.
- i) Consideration should be given to reviewing legislation on media coverage of the elections to make it possible for parties not represented in parliament to participate in the debates.
- j) To enhance the voters' ability to make an informed choice, the authorities in consultation with civil society, the media and academic institutions could consider developing mechanisms to increase digital literacy among voters and other electoral stakeholders.

6. The 2019 EET final report assesses the follow-up of prior ODIHR recommendations from the final report on the 2015 parliamentary elections<sup>2</sup> as follows: recommendations 10 and 14 were implemented fully, recommendations 6 and 8 are mostly implemented, and recommendation 9 is partially implemented.

### **Legislation reviewed by ODIHR**

7. Upon request by authorities of a participating State, an OSCE field operation or another OSCE institution, ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension commitments.<sup>3</sup>

#### *Opinion on Laws Regulating the Funding of Political Parties in Spain<sup>4</sup>*

8. The opinion was issued on 30 October 2017 following a request from the President of the Committee for Auditing Democratic Quality, the Fight Against Corruption and Institutional and Legal Reform of the Congress of Deputies of Spain. The opinion covered three laws that were submitted for review: the Political Party funding Law, the Electoral Law and the Law on Political Parties. There has been no subsequent development.

9. There remain areas of concern that should be enhanced in order to ensure that the relevant legislation effectively closes potential loopholes that could be used to circumvent regulations on party funding. No new legislation on funding has been adopted, thus the following key recommendations remain to be addressed.

10. Main remaining concerns:

- a) Ensure that the legal framework governing the financing of political parties is consistent and clear, in particular with regard to private donations, reporting deadlines and financial oversight.
- b) Consider reviewing the relevant legislation with a view to create an improved balance between public and private funding.
- c) Ensure that bigger parties are not placed at a disproportional advantage in the allocation of public funding and other forms of public support.
- d) Stricter regulation of donation of real estate.
- e) Ensure that foundations and other entities linked to or dependent on political parties are covered by the same regulatory legislation and bound by those financial requirements that political parties must adhere to.
- f) Require timely and accessible publication of campaign finance reports for an extended period of time.

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<sup>2</sup> <https://www.osce.org/odihr/elections/spain/224411>.

<sup>3</sup> Legal reviews and opinions at [www.legislationline.org](http://www.legislationline.org).

<sup>4</sup> [https://www.legislationline.org/download/action/download/id/7479/file/310\\_POLIT\\_ESP\\_30October2017\\_en.pdf](https://www.legislationline.org/download/action/download/id/7479/file/310_POLIT_ESP_30October2017_en.pdf).

- g) Ensure that infringements are efficiently sanctioned within their limitation period and that the Court of Audit has sufficient human and financial resources at its disposal to carry out investigations and initiate proceedings.
- h) Amend the Political Party Law to ensure that the Law allows dissolution of a political party only as a last resort in the gravest circumstances, which should be set out by law in a clear and precise manner.
- i) Consider establishing mechanisms to link public funds to the advancement of the political participation of women and persons with disabilities.

## **Tolerance and non-discrimination issues, including incidents of and responses to hate crime**

11. OSCE participating States have committed to promote tolerance and non-discrimination and to combat hate crime, and ODIHR supports states in their implementation of those commitments. ODIHR produces an annual report on hate crime<sup>5</sup> to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. ODIHR also helps participating States to draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States' criminal justice systems and their law-enforcement officials, prosecutors and judges; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports civil society efforts to monitor and report hate crimes.

### *Addressing hate crimes*

12. Information concerning Spain in the most recent (2017) edition of the annual hate crimes reporting<sup>6</sup> includes the following:

- Overview of officially reported data

13. Spain regularly reports hate crime data to ODIHR. Spain's Criminal Code contains general penalty-enhancement and substantive offence provisions. The Interior Ministry's State Secretariat of Security collects hate crime data from the Catalan Autonomous Police, the Autonomous Basque Police, Navarre Police, National Police Force and the Civil Guard. Spain publishes annual reports<sup>7</sup> on hate crimes.

14. In respect of the hate crime data collection mechanism in Spain, there is a unified system of crime statistics collection, called the Statistical Crime System (SEC). This system describes the rules and procedures on how to record statistical facts. All hate crimes are recorded, regardless of whether it is reported by the police or by the victim. In addition to their criminal qualification or alleged violation of administrative rules, members of law enforcement bodies must describe the criminal context when recording the crime. In this section, the Police must determine and mark one or more biases, as appropriate. There is also a Police Action Protocol for hate crimes and conduct that violates the legal rules on

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<sup>5</sup> <http://hatecrime.osce.org>.

<sup>6</sup> <http://hatecrime.osce.org/spain>.

<sup>7</sup> <http://www.interior.gob.es/documents/10180/7146983/ESTUDIO+INCIDENTES+DELITOS+DE+ODIO+2017+v3.pdf/5d9f1996-87ee-4e30-bff4-e2c68fade874>.

discrimination, which dictates operational actions and victims' care. Every year, a comprehensive report on hate crime incidents is prepared and published on the website of the Ministry of the Interior.

15. In 2017, Spain reported 1419 hate crimes recorded by the police. The figure includes 11 hate crimes motivated by “fear of the poor” and 446 hate crimes motivated by ideology. These categories fall outside of the OSCE concept of hate crimes and are not included in the following breakdown by bias motivation:

- Racism and xenophobia: 524
- Anti-Semitism: 6
- Bias against members of other religions and beliefs (this number represents all anti-religious crime, including motivated by bias against Christians and Muslims): 103
- Bias against other groups – Sex: 35
- Bias against other groups – People with disabilities (significant year-to-year decrease in disability hate crime is, according to the Spanish Government, due to updated methodological approach to computing the numbers, not by a change in incidence): 23
- Bias against other groups – Sexual orientation or gender identity 271

Total: 962

16. In respect of 2017, ODIHR concluded that Spain did not report to ODIHR the numbers of prosecuted hate crime cases and information on sentenced hate crime cases.

- National developments

17. In February 2016, the City Council of Valencia signed a memorandum of understanding with ODIHR to implement ODIHR's Training against Hate Crimes for Law Enforcement (TAHCLE)<sup>8</sup> program to train local law enforcement officers in recognizing, understanding and investigating hate crimes.

18. In April 2019, the Ministry of Interior of Spain has entered into a memorandum of understanding with ODIHR to implement TAHCLE across the whole country.<sup>9</sup>

- Overview of incidents reported to ODIHR by civil society

19. In 2017, 268 incidents in Spain were reported to ODIHR by civil society organizations. More than one-half of those were incidents with a bias against other groups – sexual orientation and gender identity. More than 2/3 of those were classified as violent attacks against people.

*Addressing racism and xenophobia (including national minorities and migrants)*

20. ODIHR notes the following, with regard to these supported recommendations:

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<sup>8</sup> See more at <https://www.osce.org/odihr/224961> and <https://www.osce.org/odihr/tahcle>.

<sup>9</sup> See also here: <http://www.interior.gob.es/documents/642012/3479677/Plan+de+accion+ingles/222063a3-5505-4a06-b464-a4052c6a9b48>.

- a) 131.38 Redouble its efforts in combating contemporary forms of racism, racial discrimination, xenophobia and related intolerance including criminalizing hate speech, and all forms of incitement to hatred and violence, A/HRC/29/8/Add.1 (para. 8), Malaysia), supported.
- b) 131.40. Continue efforts to enhance the work of departments in relation to hate crimes and discrimination, A/HRC/29/8/Add.1 (para. 8), Qatar), supported.
- c) 131.47. Continue to strengthen the combat against racial discrimination and intolerance in all manifestations and protect the legitimate rights of the migrants and minority groups, A/HRC/29/8/Add.1 (para. 8), China, supported.

21. For 2017, out of 1419 hate crimes reported to ODIHR by the Spanish authorities, 524 (37%) were motivated by racism and xenophobia. Other sources (civil society and intergovernmental organizations) reported to ODIHR 268 hate incidents, out of which 37 (14%) were motivated by racism and xenophobia. Among the latter, 23 (62%) were cases of violent attacks.

22. For 2016, out of 1272 hate crimes reported to ODIHR by the Spanish authorities, 416 (33%) were motivated by racism and xenophobia. Other sources reported 105 hate incidents, out of which nine (9%) were motivated by racism and xenophobia. Among the latter, five (56%) were cases of violent attacks.

23. For 2015, out of 1,328 hate crimes reported to ODIHR by the Spanish authorities, 505 (38%) were motivated by racism and xenophobia.

*Addressing anti-Semitism and intolerance against Muslims, Christians and other religions*

24. Every two years, ODIHR publishes Holocaust Memorial Days: An overview of remembrance and education in the OSCE region<sup>10</sup> to highlight good practices that participating States regarding Holocaust commemoration and education. For the 2015 edition, Spain responded to ODIHR's questionnaire but did not respond for the 2018 edition.

25. ODIHR collects data on anti-Semitic hate crimes and launches an annual online report on 16 November, covering information from the past calendar year. ODIHR also helps participating States draft legislation that effectively addresses hate crimes, education about the Holocaust, and addressing anti-Semitism. In all fields, ODIHR provides training that builds the capacity of participating States', raises awareness and supports the efforts of civil society.

26. Information concerning Spain in the most recent (2017) edition of the annual hate crimes reporting<sup>11</sup> includes the following: In the official report from 2017, Spain registered six anti-Semitic hate crimes. Civil society organizations reported seven anti-Semitic hate incidents; all of them were attacks against property.

27. ODIHR notes the following, with regard to these supported recommendations:

<sup>10</sup> <https://www.osce.org/odihr/hmd2018>.

<sup>11</sup> <http://hatecrime.osce.org/spain>.

- 131.107. Guarantee that the right to worship of minorities, including Muslims, is fully respected in practice, A/HRC/29/8/Add.1 (para. 8), Iran (Islamic Republic of), supported.

28. For 2017, out of 1419 hate crimes reported to ODIHR by the Spanish authorities, 103 (7%) were motivated by intolerance against other religions or beliefs. Other sources (civil society and intergovernmental organizations) reported 268 hate incidents, out of which 52 (19%) were motivated by intolerance against Christians. Among the latter, 46 (88%) were cases of attacks against property.

29. For 2016, out of 1272 hate crimes reported to ODIHR by the Spanish authorities, 47 (4%) were motivated by intolerance against other religions or beliefs. Other sources (civil society and intergovernmental organizations) reported 105 hate incidents, out of which 44 (42%) were motivated by intolerance against Christians. Among the latter, 39 (89%) were cases of attacks against property.

30. For 2015, out of 1328 hate crimes reported to ODIHR by the Spanish authorities, 70 (7%) were motivated by intolerance against Christians and other religions.

*Women's rights and gender equality in the context of tolerance and non-discrimination*

31. For 2017, 35 hate crimes motivated by bias against a person's sex, all of unspecified nature, were reported to ODIHR by Spanish authorities. One hate incident (violent attack against people) with such bias was reported by civil society organizations.

32. Spain also reported 271 hate crimes motivated by bias based on sexual orientation and gender identity – all of them of unspecified nature. Civil society organizations reported 142 hate incidents motivated by this bias – most (105) of them being violent attacks against people, 28 threats and nine - attacks against property.

33. For 2016, Spain reported 41 hate crimes motivated by bias against sex, out of which most (31) of unspecified nature, eight - physical assault and two - threats/threatening behaviour. ODIHR received no information on hate incidents motivated by this bias from civil society organizations. Spain also reported 230 hate crimes motivated by bias based on sexual orientation and gender identity, out of which most (117) were of unspecified nature, 60 physical assault, 40 threats/threatening behaviour, seven - theft / robbery and six - damage to property. Civil society organizations reported 25 hate incidents with this bias, 20 of them being violent attacks against people, four threats and one attack against property.

34. For 2015, no official data for hate crimes motivated by bias against a person's sex is available and no data on hate incidents motivated by these biases is available from civil society organizations. Spain has reported 169 hate crimes motivated by bias based on sexual orientation and gender identity, out of which most (67) were of unspecified nature, 40 physical assault, 29 threats/threatening behaviour, 29 vandalism and five damage to property, five theft/robbery and one homicide. Civil society organizations for the year of 2015 have reported eight hate incidents motivated by this bias, out of which seven were violent attacks against people and one threat against people.