



"National students protest against the reform of education sector,
Barcelona, 6 February, 2013"
by Albert Macias

SPAIN

PRESENTATION

This country review is part of a larger study on **Freedom of assembly in the Euro-Mediterranean region** in the present time, presented in two parts: **I- Legislative review**, and **II- Practice of freedom of assembly**. Part I of the regional study was published in November 2013, and Part II will be published in 2014.

The full Regional study on Freedom of Assembly in the Euro-Mediterranean Region is available [here](#). It presents international standards protecting this fundamental right, and proceeds to analyzing the legal frameworks and their compliance to international human rights standards in 13 countries of the Mediterranean and the European Union: [the EU as region](#), [Spain](#), [the United Kingdom](#), [Algeria](#), [Egypt](#), [Israel](#), [Jordan](#), [Lebanon](#), [Libya](#), [Morocco](#), [Palestine](#), [Syria](#), [Tunisia](#) and [Turkey](#).

In order to develop the assessment of national legislations in comparison to international standards and the practical implications of legal provisions concerning freedom of assembly, objective indicators were used as a reference throughout this study, together with a gender-sensitive approach to detect whether women enjoy freedom of assembly to the same extent as men, or if they are more specifically affected by restrictions.

This study is based on a process of consultation and participation involving members of the Euro-Mediterranean Human Rights Network (EMHRN), which includes 80 organizations and institutions of human rights defense based in 30 countries as well as individual members. It thus reflects the efforts of a researcher recruited in the country, assisted by members of the EMHRN Working Group on Freedom of Association, Assembly and Movement, and the active involvement of other civil society organizations and experts.

Accordingly, the objective of this study is to provide Human Rights defenders and civil society organizations, international organizations and state institutions, with an analysis that allows them to assess national policies in their country and compare them to those of other countries and to international conventions, in order to advocate for relevant reforms and help improve the situation of freedom of assembly in the countries of the Euro-Mediterranean area.

Introduction

Two years ago, in a context of growing economic crisis since 2008, the movement of the so-called *indignados* (the outraged) occupied the squares of cities across Spain to demand a “real democracy”, pointing at the lack of legitimacy of the current political system and the discredit of the political class. Since then, socio-economic statistics show that what started as an economic crisis triggered by the bursting of a giant housing bubble has over the years turned into a social, political, institutional and territorial crisis: Spain’s unemployment rate rose to a new record of 27% in the first quarter of 2013, coupled with an alarming juvenile unemployment rate of 57%.¹ Besides, since the beginning of the property market crash, more than 350.000 families have been evicted from their homes in Spain.² In this context, social unrest in the country is growing proportionally to the discontent over welfare cuts and a never-ending succession of corruption scandals implicating the main State’s institutions. It is worth noting that austerity-driven social unrest is spreading through Europe as unemployment rates reach unprecedented levels in the EU, echoing demands massively chanted in Southern Europe.

Against this backdrop, only between January and October 2012, 36,232 demonstrations were held throughout the country, which almost doubles the number of protests staged in 2011.³ Whereas this tendency is not expected to reverse any time soon, peaceful protesters and movements such as the members of the Mortgage Victims’ Platform (PAH) face different types of restrictions on their right to freedom of assembly, being the imposition of administrative sanctions the most common. In addition, at the moment of writing the current Minister of Justice is promoting a draft law to reform the Penal Code that encloses harsher sanctions and new crimes intended to be applied to criminalise peaceful actions of protest.⁴ Among the reforms envisaged, the government wants to widen the scope of article 550 of the Penal Code (assault on the authority) to penalize all kinds of actions of disobedience, including any behaviour constituting nonviolent resistance. Another highly worrisome aspect of the reform is a new provision criminalising the dissemination of messages or slogans that may instigate the commission of crimes or disturbances to public order. The Minister of Justice stated that this provision was intended to suppress calls for “violent” demonstrations posted on Internet and social media.

In view of the crucial importance of freedom of assembly in a context of growing social inequality as means to channel the collective expression of demands for respect and promotion of individual and collective rights, the following review, which examines the laws that have a greater impact

1 Figures extracted from the Survey of the employment situation in Spain (Encuesta Población Activa) conducted quarterly by the National Institute of Statistics (INE), available at:

http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t22/e308_mnu&file=inebase&L=1

2 See BBC, *European court rules against Spanish eviction laws*, 14 March 2013, available at:

<http://www.bbc.co.uk/news/world-europe-21789650>

3 See *Público*, 2012, *El año en que la crisis empujó a los ciudadanos a la calle*, 12 January 2013, available at:

<http://www.publico.es/espana/448791/2012-el-ano-en-que-la-crisis-empujo-a-los-ciudadanos-a-la-calle>

4 See pp. 92-96 of the draft law, available in Spanish at: <http://www.juecesdemocracia.es/ActualidadMJU/2012/Anteproyecto%20de%20reforma%20de%20CP%202012.pdf>; for an in-depth analysis of the criminalisation of social protest with the intended reform: <http://ris.hrahead.org/areas-de-trabajo/Seguridad-y-derechos-humanos/analisis-juridicos/sydh-analisisdelanteproyectoodelreformadelcpilacriminalizaciondelaprestasocialenelanteproyecto>.

on the exercise of the right to assemble in the light of international human rights standards and good practices acquires major interest and relevance.⁵

1. General Legal Framework

The Spanish constitution was elaborated and approved in 1978 in a moment of democratic transition that came after a long period of drastic restrictions of public freedoms, and in particular freedom of assembly. The 1931 republican Constitution protected freedom of peaceful assembly in its article 38, but it was suspended in 1939 when Francisco Franco fully established its rule over Spain, ending the 4-year civil war. During the 39 years of dictatorship that followed, freedom of assembly was canceled.

The Spanish Constitution of 1978 has not been amended with regards to freedom of assembly since that date. It recognizes the right to peaceful, unarmed assembly, the exercise of which does not require prior authorization (art. 21.1).

Besides, art. 21.2 lays down that “*assemblies in places of public transit*” and “*demonstrations*” will be both subject to prior notice, and will be banned only when there are well-founded reasons of public order with a danger for persons or property.

The Organic Law Nr. 9/1983,⁶ which specifically regulates The Right of Assembly (hereinafter, Assembly Law), defines “assembly” as “*a concerted and temporal gathering of more than 20 people for a particular purpose*” (art. 1.2).⁷

The Assembly Law does not cover meetings of various kinds: meetings held by individuals at their homes, meetings of relatives or friends at private or public premises, meetings held by political parties, trade unions, business organizations, charities and other legal entities at closed places, where participation is constrained to the members and to other individuals invited by name and meetings of professionals with their clients. Those held in military facilities will be regulated by specific laws.

5 In order to carry out the present review, interviews and consultations were conducted in April-May 2013 with: Jaume Asens, lawyer, member of the Observatory of Economic, Social and Cultural Rights (Observatori DESC) and of Barcelona Bar Association’s Commission for the Defence of Individual’s Rights and of the Free Exercise of the Legal Profession; Gonzalo Boyé Tuset, lawyer; Andrés García Berrio, lawyer, member of the Network for the Prevention and Denounce of Torture (Coordinadora per a la Prevenció i Denúncia de la Tortura) and member of the Observatory on the Penal System and Human Rights (OSPDH); Ana M.G., member of the 15-M Legal Commission (Madrid) and member of the Free Association of Lawyers (ALA) and Benet Salellas Vilar, lawyer and activist.

6 Organic laws are those relative to the exercise of fundamental rights and public liberties, those adopting the Statutes of Autonomy of the Autonomous Communities, the electoral system and other issues provided for in the Constitution (art. 81 Spanish Constitution). Unlike ordinary laws, the approval process is more restrictive since it requires an absolute majority of the Spanish Parliament in a final vote on the entire bill.

7 For more information about the definition and features of freedom of assembly in Spain, see for instance judgment of the Constitutional Court no. 124/2005, 23 May 2005.

Other laws and regulations, primarily the Organic Law 1/1992 on the Protection of Public Safety (Public Safety Law), which regulates police powers and establishes administrative sanctions for behaviours undermining public order and safety, and the Penal Code, include provisions that directly affect the exercise of freedom of assembly.

According to the Organic Law 4/2000 on the Rights and Freedoms of Foreigners and their social integration in Spain, foreigners enjoy the right to assembly in the same conditions as the nationals of Spain (art. 7).⁸

2. Restrictions

Freedom of assembly may be curtailed on public order grounds when danger for persons or property exists. The Assembly Law specifies that if authorities appraise that well-founded reasons exist to believe that disturbances to public order may occur jeopardizing persons or property, they will be allowed to *“ban the assembly or demonstration or, when appropriate, suggest the modification of date, place, length or itinerary”* (art. 10). This wording falls short of the proportionality principle since it does not subordinate the most grievous measure (banning) to the less burdensome (modifying conditions). To this regard, it needs to be noted that the Assembly Law does not explicitly require that restrictive measures are governed by the proportionality principle.⁹ However, the Spanish Constitutional Court, upholding the presumption in favour of holding assemblies and the need for any interference with freedom of assembly to be based on well-founded and compelling reasons, has stated that authorities, before *“taking the extreme decision of prohibiting the exercise of this fundamental right”*, have to propose the adequate modifications in order to accommodate the exercise of the right to assembly with the other rights at stake.¹⁰

In the course of demonstrations, the Assembly Law foresees in article 5 that the authorities can suspend or dissolve assemblies and demonstrations: 1) when they are rendered illegal according to Penal Laws; 2) when disturbances to public order endangering persons or goods occur; 3) when paramilitary uniforms are used by demonstrators.

According to the Assembly Law, will be illegal those assemblies defined as such by the penal laws. This definition is found in article 513 of the Penal Code, which establishes that those assemblies and demonstrations which are held in order to commit an offence and those attended by persons bearing weapons, explosive devices and other blunt or dangerous items will be considered illegal.

⁸ Originally, in the law, as passed by the Parliament, foreigners without residence permit were not recognized the exercise of this freedom, but the Constitutional Court quashed this disposition through judgment no. 236/2007.

⁹ See for instance, judgment no. 301/2006 of the Constitutional Court.

¹⁰ Ibid.

The Constitutional Court has construed that any assembly naturally causes nuisances to bystanders and to road traffic. Therefore, only in those cases where the provision of essential services for the safety of persons and goods, such as medical emergency services, firemen, or police may be disrupted, the aim of guaranteeing public order will be legitimately alleged to interfere with freedom of assembly.¹¹

3. Procedures

Manifestations and meetings in places of public transit are to be notified between the 30th and the 10th calendar day preceding the assembly. A shortened deadline of 24 hours is foreseen if “*extraordinary and serious reasons justify the urgent gathering*” (art. 8 Assembly Law). The 24 hours deadline was thought to enable the celebration of gatherings as a matter of *urgency*. However, the Assembly Law precludes the holding of *spontaneous* assemblies when the requirement of prior notice, including the shortened one, is impracticable.

This prior notice scheme is, thus, not suitable to accommodate the peaceful spontaneous exercise of freedom of assembly pursuant to international human rights standards.¹² To the contrary, any improvised or unpremeditated manifestation of this freedom may encompass the imposition of severe sanctions on organizers and promoters according to what the Public Safety Law foresees for *all* assemblies held without prior notice.

Against this backdrop, activists and lawyers argue that the Assembly Law needs to be amended to effectively guarantee the exercise of freedom of assembly by allowing for the holding of spontaneous assemblies, bearing in mind the increased possibilities for social mobilization and quick reaction granted the extensive use of internet and social media, as well as the features of social movements such as the *15-M* movement (or *indignados*).

Regarding the content of the notice, it must include details on the following aspects: contact information of the organizer(s), time, place, date and itinerary of the assembly. Besides, organizers need to set out security measures foreseen by the organization of the event or those requested to the authorities (art. 9.1. (e) Assembly Law). The latter, that is, listing the measures to guarantee the order and safety of the assembly, without assessing the circumstances case by case, constitutes a troublesome element if the peaceful character of the assembly is to be presumed. Fears grow when noting that if organizers fail to comply with this particular requirement the assembly can be banned or organizers can incur in

¹¹ See judgments no. 90/2006 and 59/1990 of the Constitutional Court.

¹² See European Court of Human Rights, *Bukta and Others v Hungary*, 17 July 2007, para. 36, Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (Special Rapporteur on FPAA), Human Rights Council, 20th session, A/HRC/20/27, para. 29 and OSCE/ODIHR *Guidelines on freedom of peaceful assembly*, 2010, Warsaw, 2nd edition, section A, Guidelines, para. 4.2.

administrative or even criminal responsibility since, at it will be underlined below, according to the Assembly Law, organizers are responsible for maintaining the “good order” in assemblies and demonstrations.

According to article 10 of the Assembly Law, if the governmental authority considers that there are well-founded reasons to be feared that the assembly is liable to cause disturbances to public order endangering persons or property, it should, first, impose conditions as to the date, place, time, or itinerary of the assembly, as argued above, and, if not possible, ban the assembly.¹³ The authority has to issue its reasoned resolution in 72 hours after the receipt of the notification. If the organizer disagrees with the imposition of conditions or the banning, a complaint can be lodged to the competent administrative court within 48 hours and, at the same time, organizers must transfer a copy of the request duly registered to the governmental authority with the aim that the authority refer the whole file immediately to the court (Art. 11 Assembly Law).

The Constitutional Court has highlighted that the requirement of prior notice does not constitute a petition for authorisation, but just a “*petition of acknowledgment*” or announcement that should enable authorities to adopt measures to facilitate the free exercise of the right to assemble and the protection of others.¹⁴ However, members of social movements and civil society organizations are critical of the current legal framework regulating the requirement of prior notice because, first, they argue that the law should not subordinate an essential freedom such as freedom of assembly to prior notification, since it can happen to display the same functions as an authorization;¹⁵ secondly, they allege that since the law does not clearly recognize a presumption in favour of peaceful assemblies, such framework can be used to impose abusive or disproportionate prior restraints, or to further widen the scope of organizers’ responsibility.

4. Protection

The Assembly Law specifically declares that the governmental authority will protect freedom of assembly against those who try preventing, disrupting or undermining the legitimate exercise of this right.¹⁶ Moreover, pursuant to the case law of the Constitutional Court, advance notification is only required in order for the competent authorities to undertake the adequate measures to facilitate the exercise of freedom of assembly and protect the rights and properties of non-participants.¹⁷

13 The lawyer Jaume Asens notes as well the significant role of limitations on the use of public space foreseen in local ordinances.

14 See judgment of the Constitutional Court no. 59/1990.

15 As pointed out by Andrés García Berrio, “*article 3 of the Assembly Law clearly establishes that no assembly will be subject to prior authorization; therefore, no restrictions should be adopted against spontaneous assemblies and, in any case, the liability of organizers of peaceful assemblies should be narrowly limited*”.

16 Article 3.2 Assembly Law.

17 Judgment of the Constitutional Court no. 42/2000.

However, article 4 of the Assembly Law prescribes that organizers will be responsible for maintaining the good order of demonstrations and that, to fulfil this aim, they will have to adopt the appropriate measures (art. 4.2). Furthermore, they may incur in individual liability for material damages caused by participants to third parties if they did not intend to avoid it by all reasonable means at their disposal (art. 4.3).¹⁸

Assigning organizers the duty to maintain order is likely to blur the limits of the core obligation of the state, pursuant to international human rights law, that is, to protect the peaceful exercise of this freedom by providing adequate policing if any incident occurs, particularly when the organizers of the event could not reasonably foresee it happening. Thus, with the current legal framework, organizers of peaceful assemblies are likely to be imposed a too heavy burden, since they may be held liable if an assembly degenerates into public disorder due to the disruptive behaviour of individual participants or for the action of non-participants or *agents provocateurs* (not always distinguishable) that do not act in accordance with the terms of the event.¹⁹ Activists and lawyers warn on the inhibiting effect for the exercise of freedom to assemble of such provisions in practice.

Use of force by law enforcement officers

Article 5.2 of the Organic Law on the State Security Forces and Corps lays down that, among the basic principles that police officers need to follow in their relations with the community, congruence, opportunity and proportionality when using the means at their disposal are to be observed. Besides, it is foreseen that the use of weapons should be constrained only to situations where a rationally grave danger for the lives and physical integrity of police officers, or the physical integrity of third persons, exist, or in those circumstances that may entail a grave danger for public safety.

It needs first to be stressed that each police force has its own regulations: the National Police Force (Cuerpo Nacional de Policia), the Civil Guard (Guardia Civil), regional police forces such as the Mossos d'Esquadra (in Catalonia), Ertzaintza (in the Basque Country), Policía Foral (in Navarra) and the local police at municipal level. In this setting, rules and regulations on the policing of assemblies, including the use of force and special equipment in the context of crowd management operations, are to be found in the police forces' manuals, protocols and circulars, particularly those regulating the tasks of anti-riots police officers, which are not always accessible to the public. Moreover, rules are not systematically compiled in a single regulation and the thoroughness of regulations on the use of weapons is in doubt, as the European Committee for the Prevention of Torture, referring in that case to the police

18 On the limited responsibility of organizers, see Report of the UN Special Rapporteur on FPAA, Human Rights Council, 23rd session, A/HRC/23/39, paras. 57 and 7; see also OSCE/ODIHR *Guidelines on freedom of peaceful assembly*, 2010, Warsaw, 2nd edition, Section B, Explanatory notes, paras. 185-198.

19 As argued by the European Court of Human Rights in the judgment of the case *Ezelin v France*, 26 April 1991, para. 53, "[i]t is not "necessary" in a democratic society to restrict those freedoms in any way unless the person in question has committed a reprehensible act when exercising his rights".

force of Catalonia and the alarming use of projectile-firing weapons,²⁰ pointed out in the latest visit to Spain.²¹

In short, the current regulatory framework on the use of force in the context of assemblies and demonstrations is insufficiently clear, accessible and systematic; subsequently, as civil society organizations and political parties have expressed, there is an urgent need for common standards and procedures regulated *by law*. Currently, the framework for policing operations in the context of assemblies would fall short of the principle of legal certainty and, thus, doubts can be casted on the existence of a system with adequate and effective safeguards against arbitrary or abusive practices, namely an excessive use of force causing serious injuries or even death.²²

There are no negotiation mechanisms between law enforcement officials and organizers or participants prescribed by law. As regards the use of prior warnings, article 17 of the Public Safety Law establishes that before breaking up assemblies, police units dispatched will have to warn participants of their intent to disperse. The same article exempts officers from providing prior warning if disturbances to public safety with arms or other violent means occur. Benet Salellas, a well-known human rights lawyer, states that *“there is a need to enact laws setting out the need for law enforcement officers to systematically engage in mediation strategies to de-escalate conflict before employing force; the latter should truly be a last resort and laws should set clear consequences when this rule –exceptional use of force– is infringed”*.

5. Sanctions

As said, organizers account for the maintenance of the good order of assemblies and demonstrations (art. 4.2 Assembly Law). Such clause encompasses several burdensome consequences. Pursuant to article 4.3 of the Assembly Law, natural or legal persons organizing or promoting assemblies or demonstrations are liable, subsidiarily, for damages caused by demonstrators to third parties, unless they had taken all reasonable means at their disposal to avoid such damages. Secondly, organizers that fail to take measures to maintain the order, as well as those that refuse to break up the demonstration and those overlooking the requirement of prior notice, may incur administrative liability according to article 23 (c) and (d) of the Public Safety Law. Such behaviours are qualified as “grave infractions” and the law provides for a sanction ranging from 300.52 Euros to 30,050.61 Euros, as long as the unlawful act is not considered a penal offense, as the law sets out (in that

20 Only in the period 2009-2012, seven people were reported to have lost an eye in Catalonia due to the impact of plastic bullets fired by the police on occasion of assemblies (figures extracted from the 2013 report of the association “Stop bales de goma”, available in Spanish at: http://stopbalesdegoma.org/wp-content/uploads/2013/07/informe-SBG2013_ES.pdf).

21 Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 12 June 2011, Strasbourg, 30 April 2013, CPT/Inf (2013) 6, para. 107, available here: <http://www.cpt.coe.int/documents/esp/2013-06-inf-eng.htm>.

22 See 2013 report of “Stop bales de goma”, *supra* note 13, p. 16.

case, the criminal jurisdiction would take over).²³ In this context, organizers increasingly fear being at the forefront when notifying assemblies –also taking into consideration that usually there is not one single and distinguishable organizer- and, in the end, they prefer to ignore this requirement contending that information on the events is already being disseminated through Internet sites and social media.

Organizers or promoters can be sentenced to three years in prison, according to article 514.1 of the Penal Code, if they led an unlawful assembly aiming to commit an offence or if they did not attempt to prevent others bearing “*weapons, explosive devices, blunt objects or any other dangerous item*” at the assembly, *by all the means available to them*. Besides, those attending an assembly or demonstration bearing weapons or other equally dangerous items themselves can be punished with a sentence of imprisonment from one to two years and a fine from six to twelve months,²⁴ i.e. less than the ones who did not attempt to prevent them in doing so (art. 514.2).

Even more problematic might be that those who commit acts of violence (against the authorities, their agents, persons and public or private property), *on occasion of an assembly or demonstration*, should be punished with the penalty to which the relevant offence is subject, *in its upper half* (art. 514.3).

Finally, the Penal Code threatens organizers or leaders of any assembly or demonstration who again call, hold or attempt to hold any assembly or demonstration that had previously been suspended or prohibited, and always in case they intended to subvert the constitutional order or to seriously alter the public peace, with imprisonment of six months to one year and a fine from six to twelve months, without prejudice to the punishment to which they may be subject as appropriate pursuant to the other paragraphs of article 514.

Facts show that most of the criminal proceedings started against demonstrators do not punish organizers or participants on such grounds, but rather on the basis of ordinary crimes against public order and authorities, most commonly: assault on the authority (550 CP), active resistance or grave disobedience against authorities (556 CP), public disorders (557 CP) and, as misdemeanour, lack of due respect and consideration for the authority or

23 Other infractions extensively used against demonstrators: Article 23 (h) [provocation of reactions that may alter public safety], (n) [serious disturbances in the ways, public spaces or premises or causing serious damages to public property]. Also slight infractions (until 300,51 Euros) are used, article 26 [disobey the mandates of the authorities or agents, alter collective security or cause disorders to the ways, public spaces or premises]. Participants in demonstrations and rallies are increasingly being fined on account of their attendance to non-notified gatherings, to this aim in numerous cases police officers have massively demanded the ID of protesters, when identification is only requested on suspicion of a crime to be committed (Information provided by Andrés García Berrio and Ana M.G). See also *Público*, 10 May 2013, available at: <http://www.publico.es/455122/cifuentes-multo-a-mil-manifestantes-desde-el-comienzo-del-15-m>

24 A fine is a pecuniary penalty, but according to article 50(1) of the Penal Code it is calculated using the “day-fine” system (*sistema dias-multa*). In the case of the fine foreseen in article 514(2), the convicted would be sentenced to pay a daily quota from 2 to 400 euros for a term ranging six to twelve months, depending on the gravity of the offence and the financial situation of the convict (see article 50(3-4) of the Penal Code).

its agents, or slight disobedience (634 CP). As said by Gonzalo Boyé, prominent lawyer, offences, such as the one punishing resistance or grave disobedience (556 CP), are vaguely defined and, subsequently, they leave the door open for an eventual arbitrary use against demonstrators.

This battery of sanctions and penalties is strikingly harsh for organizers and promoters of assemblies that bear wide responsibility for unlawful acts perpetrated by any person attending the event. Particularly worrisome is the provision of the Public Safety Law considering as grave infraction, *without any exception*, the failure to notify in advance the celebration of an assembly. In practice, this provision is used indiscriminately to clamp down on peaceful assemblies, especially in the framework of spontaneous assemblies, as contended by Ana M.G., which argues that “*individuals are being fined only for their participation in assemblies not formally communicated to the authorities*”.²⁵

In sum, there is a wide array of possibilities in the Public Safety Law and in the Penal Code to hold accountable organizers of assemblies and participants, and none of such provisions take into account the particular relevance and circumstances surrounding the freedom at stake nor the presumption in favour of holding assemblies peaceful assemblies;²⁶ to the contrary, aggravating circumstances, such as the one seen in article 514.3, or having faces covered, are foreseen and applied, as lawyers confirm, in the context of assemblies. Therefore, it seems that demonstrators, including students and trade unionists, are being targeted and even labelled as “criminals”²⁷ for peacefully expressing dissent due, partly, to the existence of vague or onerous legal provisions.

The situation is not expected to improve soon with the intended reform of the Penal Code (see Introduction of this chapter). In addition to the modifications already highlighted, the draft law establishes a new offence that provides prison sentences for those who occupy the offices of public or private legal entities, which means that those who hold actions of peaceful protest inside the companies’ buildings might face prison terms ranging from 3 to 6 months. The reform includes also an offence providing penalties to two years imprisonment for those who disrupt public transport services. There is a public outcry against this reform since it would bring about the imposition of disproportionate and, thus, illegal restrictions on freedom of assembly, among other rights affected by the reform.

25 To denounce the massive imposition of sanctions, in Madrid a campaign has just been launched with the slogan “no more sanctions in demonstrations”. More information: [http://www.ub.edu/ospdh/pdf/portada/INFORME%20cast_6juny%20\(1\).pdf](http://www.ub.edu/ospdh/pdf/portada/INFORME%20cast_6juny%20(1).pdf); an example of the harmful effects of the Public Safety Law provisions can be found in the repression of actions undertaken by the Mortgage Victims’ Platform (PAH). The Public Safety Law, among others, has been object of criticism by the Observatory of the Penal System and Human Rights (Observatori del Sistema Penal i els Drets Humans) in the report submitted to the CPT: [http://www.ub.edu/ospdh/pdf/portada/INFORME%20cast_6juny%20\(1\).pdf](http://www.ub.edu/ospdh/pdf/portada/INFORME%20cast_6juny%20(1).pdf).

26 The Special Rapporteur on FPAA in his latest report warns against sanctions exerting a deterrent effect on individuals wishing to exercise their right to freedom of assembly (Report of the UN Special Rapporteur on FPAA, Human Rights Council, 23rd session, A/HRC/23/39, para. 81 (d)).

27 See *El País*, 30 March 2012, available at: http://ccaa.elpais.com/ccaa/2012/03/30/catalunya/1333100176_261470.html; also *El País*, 11 April 2012, available at: http://politica.elpais.com/politica/2012/04/11/actualidad/1334147016_538948.html.

1. Amend the Organic Law Nr. 9/1983 (Assembly Law) with a view to establishing the presumption in favour of holding assemblies and enshrine the proportionality principle in line with the Spanish Constitutional Court case law;
2. Review the Assembly Law in order to modify the current prior notice scheme to 1) shorten the deadline for the notification's submission 2) include an exemption for the celebration of spontaneous assemblies pursuant to international bodies' recommendations 3) require only contact details of the organizer/s and information regarding the date, time, duration and location or itinerary of the assembly;
3. Repeal or amend article 4 paragraphs 2 and 3 of the Assembly Law in order to limit the responsibility of organizers and uphold the State's positive obligations to protect peaceful demonstrators;
4. Review the laws on the policing of assemblies and demonstrations so as to include clear provisions on the use of force and weaponry according to the principles of progressivity, proportionality and necessity, particularly setting out strict limits for the use of "non-lethal weapons" such as plastic bullets including the need to provide adequate prior warning;
5. Review the law as to include that authorities must keep open to dialogue and be contactable at all times on a voluntary basis by people seeking to assemble, as a way to prevent violence from escalating and reduce the use of force by the police; in this sense, security forces should be trained and develop the skills of mediation, negotiation and conflict resolution;
6. Provide for a clear injunction and, if necessary, disciplinary sanctions, to ensure that Police officers wear identification badges *at all times*;
7. Ensure that law enforcement personnel are held accountable for unlawful actions, including the arbitrary or excessive use of force and weapons, in the context of assemblies. To this aim, independent-police complaints or oversight mechanisms should be established to monitor the compliance of law-enforcement officials with human rights standards, notwithstanding judicial investigations opened;
8. Repeal article 23 (c) of the Organic Law 1/1992 on the Protection of Public Safety, in particular the part that qualifies as grave infraction failing to comply with the prior notice requirement;
9. Amend the Penal Code in order to remove provisions including as aggravating circumstances the participation in assemblies or demonstrations, such as article 514 (3).