



# SPAIN

Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Civil Law	Written	Yes	Single State	Monarchy

## 1. INTRODUCTION

### 1.1. Spain and Modern Slavery (Human Trafficking)

Spain has ratified international and EU conventions and agreements aimed at eradicating human trafficking. This has led to significant amendments of Spain's laws and public policies primarily to strengthen the prosecution and punishment of human trafficking crimes, as well as to guarantee victim protection and assistance.

Sexual exploitation is the most prevalent form of human trafficking. Consequently, Spain has undertaken a significant number of governmental initiatives to improve the protection of victims of sexual exploitation and to guarantee their access to specialized resources and services. NGOs and associations also are active in protecting and assisting victims.

Spain is a destination for victims mainly from Eastern Europe (primarily Romania), Africa (primarily Nigeria), Asia (primarily China), and South America (primarily Paraguay). Spain also is used as a transit to other European destinations, such as France and the United Kingdom.

In the past, the Spanish Ministry of Health, Social Services, and Equality and later the Ministry of Equality took the lead in defining and implementing programs and measures to fight trafficking for sexual exploitation. A Comprehensive Plan to fight against Trafficking in Women and Girls for Sexual Exploitation during the years 2009–2012 was approved, followed by a new plan for 2015–2018.

In addition, on 28 October 2011, the Ministries of Justice, Domestic Affairs, Employment and Social Security, and Health, Social Services and Equality, as well as the State Attorney General and the General Council of the Judiciary, agreed to a Framework Protocol for the Protection of Victims of Trafficking in Human Beings. This Framework Protocol aims, among other things, to promote coordination among the institutions involved in the detection, identification, support, and protection of human trafficking victims.

### 1.2. Spain's Policy and Legal Position

Since the approval of the Framework Protocol in 2011, Spain's approach to fighting human trafficking has become multidisciplinary, with a coordinated approach among institutions. The Framework Protocol also includes processes for communication and cooperation with organizations that have proven experience in providing comprehensive support to trafficking victims, and that are involved in public administration programs for victim support and protection.

The 2015–2018 Comprehensive Plan to fight against Trafficking in Women and Girls for Sexual Exploitation defines seven pillars of its mission:

- i. Human rights approach. Actions that support the assistance and recovery of victims are essential; those in turn require suitable mechanisms to detect and refer victims.

- ii. Gender approach. The objective is to provide information and raise awareness in the countries of origin to prevent the recruitment of possible victims, while at the same time raising social awareness to prevent trafficking in the countries of destination to decrease demand for services that feed on human trafficking.
- iii. Primacy of children’s best interests. Actions must focus on children’s physical and psychosocial recovery, their education, and a long-lasting solution to their situation.
- iv. Improving understanding. Obtaining reliable information is crucial for developing suitable and efficient strategies to prevent trafficking for sexual exploitation.
- v. Placing victims at the center of the entire process. The planning and programming of public policies to fight against trafficking for sexual exploitation must place the victims at the center of any action.
- vi. Prosecuting the crime. Investigating and prosecuting the crime of human trafficking is a priority. Special attention has led to criminal law amendments and a greater specialization of professionals among the police and the courts of justice.
- vii. Comprehensive approach, cooperation, and participation. The strategy to fight human trafficking requires the participation of all agencies and persons with responsibility in this area.

The Spanish Criminal Code (*Código Penal*) specifically protects victims of human trafficking.

## 2. OVERVIEW OF SPAIN’S LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

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### 2.1. Spain’s Regional and International Law Obligations

#### 2.1.1. *Fundamental human rights*

As an EU Member State and a Member of the Council of Europe, Spain must follow their legal framework targeting human trafficking and incorporate their legal principles into Spanish law where necessary.

Moreover, Spain was a member of the Human Rights Council from 2011 through 2013 and from 2018 through 2020.<sup>1</sup>

Spain is firmly committed to the promotion and protection of human rights. Spain’s legal system offers extensive protection for fundamental rights and freedoms, which are interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements that Spain has ratified. Spain has ratified, among others, the Universal Declaration of Human Rights, the European Convention of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination (ratified by Spain in 1968), the International Covenant on Civil and Political Rights (ratified by Spain in 1977), the International Covenant on Economic, Social and Cultural Rights (ratified by Spain in 1977), the Convention on the Elimination of All Forms of Discrimination against Women (ratified by Spain in 1984), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by Spain in 1987), the Convention on the Rights of the Child (ratified by Spain in 1990), and the Convention on the Rights of Persons with Disabilities (ratified by Spain in 2008).

<sup>1</sup> <http://www.exteriores.gob.es/Portal/en/PoliticaExteriorCooperacion/DerechosHumanos/Paginas/inicioHR.aspx>.

These human rights treaties and the Charter of Fundamental Rights of the European Union form part of Spain's legal system and complement the list of rights and freedoms guaranteed in the Spanish Constitution.

### 2.1.2. *Slavery and trafficking*

Spain has actively participated in creating the current international regulatory system dealing with human trafficking.

On 13 December 2000, Spain signed and later ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Supplementing the UN Convention of 12 December 2000 Against Transnational Organised Crime. Moreover, on 9 July 2008, Spain signed the Council of Europe Convention on Action against Trafficking in Human Beings of May 2005; this Convention led to the latest reforms in the Spanish legal system, particularly within the areas of criminal procedure and social policy.<sup>2</sup>

### 2.1.3. *Effect under Spain's law*

Spanish obligations under international treaties or other instruments have an automatic force-in-law once they are ratified by the national parliament and published in the Spanish Official Gazette (**BOE**). In certain cases, direct application of a treaty is not possible, and national laws developing the obligations set forth in the treaty are required.<sup>3</sup>

## 2.2. Supply Chain Reporting

Refer to Section 4.

## 2.3. Human Rights Protections Under Spain's Law

Title I of the Spanish Constitution concerning fundamental rights and duties, as well as Article 14 and the First Section of Chapter II, establish the principal framework of the fundamental human rights recognized under the Spanish legal system. These are further protected through the *recurso de amparo* (constitutional action to protect fundamental rights), regulated under Article 53.2 of the Spanish Constitution, which may be filed before the *Tribunal Constitucional* (Constitutional Court).

These fundamental rights require an Organic Law<sup>4</sup> in order to be legally effective. Several organic laws develop those rights, such as Organic Law 3/2007 (regarding effective equality between men and women), Organic Law 2/2006 (on education), Organic Law 6/2002 (regarding political parties), Organic Law 1/2002 (regarding freedom of association), and Organic Law 6/1984 (on Habeas Corpus).<sup>5</sup>

## 2.4. Criminalization of Modern Slavery

The Spanish Criminal Code sets forth the principal framework for the prohibition against modern slavery. While human trafficking used to be an aggravating circumstance of the offence of smuggling migrants of Article 318 bis, Organic Law 5/2010 of 22 June recognized human trafficking as a criminal offence by

<sup>2</sup> <https://d-nb.info/118630149X/34>.

<sup>3</sup> <https://app.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=96&tipo=2>.

<sup>4</sup> "Organic Law" is a law regulating matters constitutionally reserved to it, namely: the development of fundamental rights and public freedoms, the approval of the statutes of autonomy and the general electoral system, and other matters provided for in the Spanish Constitution. A reinforced majority is required for its approval.

<sup>5</sup> [https://www.upf.edu/dhes-alfa/en/informacio\\_drets\\_humans/espanya.html](https://www.upf.edu/dhes-alfa/en/informacio_drets_humans/espanya.html) (link needs to be copied and placed into a browser).

introducing a new Article 177 bis in the Spanish Criminal Code. Furthermore, this reform modified and reinforced other aspects of the Spanish Criminal Code, such as the liability of legal persons/entities (Article 31 bis); the seizure of crime-related proceeds (Article 127 *et seq.*); offences related to forced prostitution; and sexual exploitation of children.<sup>6</sup>

The Spanish Criminal Code exclusively regulates all criminal offenses relating to slavery, slavery-like conditions, and human trafficking. The Spanish Criminal Code takes the form of an organic law. The Spanish Constitution includes some rights that organic law must regulate, such as the laws for the development of Fundamental Rights and Public Freedoms (such as the Spanish Criminal Code).

Legally, these organic laws are at the same level as ordinary laws; they are binding throughout the country. The difference between organic and ordinary laws lies in the process for their creation (it is more restrictive in the organic laws) and the matters that are regulated.

## 2.5. Investigation, Prosecution, and Enforcement

### 2.5.1. Investigation and prosecution of criminal offenses

Criminal actions in Spain have a public nature (with certain exceptions), and, therefore, any person may bring them, according to Criminal Procedure Law (*Ley de Enjuiciamiento Criminal*). Normally, the Prosecutor Office initiates criminal proceedings based on police information.

### 2.5.2. Mutual assistance/international cooperation

As a party to the Council of Europe Convention on Action against Trafficking in Human Beings, Spain is subject to the monitoring and evaluation of the Group of Experts on Action against Trafficking in Human Beings (**GRETA**). GRETA is responsible for monitoring the parties' implementation of the Convention and for evaluating the measures taken by each party, including international cooperation.

In its latest evaluation concerning Spain (report published in June 2018),<sup>7</sup> GRETA described the numerous international cooperation initiatives implemented by Spain, including several Inter-American Conventions and various agreements on cooperation in combatting organised crime (including human trafficking) with a number of countries (including Cameroon, Serbia, Bosnia and Herzegovina, Croatia, Kazakhstan, Ivory Coast, Panama, Republic of Moldova, Uzbekistan, Saudi Arabia, Mexico, China, Chile, Georgia, Egypt, Mauritania, Niger, Andorra, and the Philippines).

In the absence of an agreement, international cooperation is based on relevant Council of Europe and EU conventions, such as the European Convention on Judicial Assistance in Criminal Matters or Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant.

<sup>6</sup> For more details, refer to Section 3.

<sup>7</sup> <https://rm.coe.int/greta-2018-7-frg-esp-en/16808b51e0>.

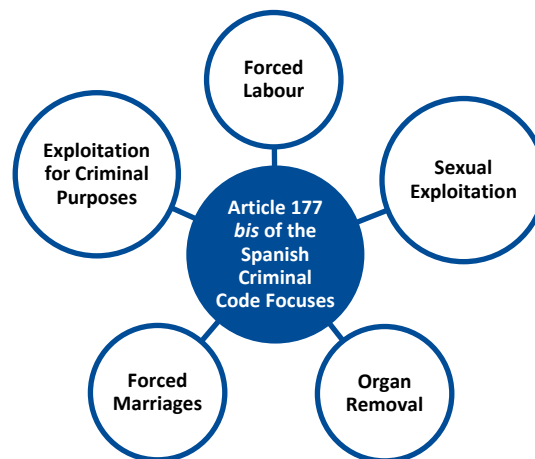
## 3. SPAIN’S FEDERAL CRIMINAL OFFENSES RELATING TO SLAVERY, SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

### 3.1. Overview of Criminal Offenses

Article 177 bis of the Spanish Criminal Code<sup>8</sup> defines human trafficking as:

*recruitment, transportation, transfer, harboring or reception of persons, including the exchange or transfer of control over such persons, when violence, intimidation or deception or abusing a situation of superiority or need or vulnerability of the national or foreign victim, or by giving or receiving payments or benefits to achieve the consent of the person who has control over the victim, with any of the following subsequent purposes:*

- (a) The imposition of forced labor or services, slavery or practices similar to slavery, servitude or begging.
- (b) Sexual exploitation, including pornography.
- (c) Exploitation for criminal purposes.
- (d) The removal of their bodily organs.
- (e) Forced marriages.



### 3.2. Slavery Offenses Under the Criminal Code

#### 3.2.1. General

According to Article 177 bis of the Spanish Criminal Code, human trafficking consists of:

- An act: Recruitment, transportation, transfer, harboring, or receipt of persons.

<sup>8</sup> In Spain, the “federal” government handles all offences relating to slavery and sexual servitude. Spain is not exactly a federal state, because it is divided into a system of autonomous communities.

- The use of certain means: Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim.
- A purpose: The exploitation of human beings, which includes exploiting the prostitution of others, sexual exploitation, forced labor, slavery or similar practices, and the removal of organs.

Spanish legislation differentiates between human trafficking and the illegal smuggling of migrants: In human trafficking there is never consent on the part of the victim and, if there is initial consent, it has taken place through coercion, deception, or abuse (of a situation of vulnerability). The crime of illegal smuggling of migrants, even if carried out in degrading or dangerous conditions, is always consensual. It does not always involve an illegal border crossing, and the victims of trafficking are not always foreigners in an irregular situation.

However, the smuggling of migrants does involve illegally crossing a border. Human trafficking always requires the intention to exploit the victims in order to obtain economic benefits; in contrast, smuggling of migrants transfers migrants from one country to another, without any other purpose. The crime of trafficking is personal and violates essential human rights; the illegal trafficking of immigrants violates the interest of the State (the protection of its borders). Nevertheless, human trafficking and smuggling are often connected crimes. Approximately 40% of the identified victims of trafficking are foreigners in an irregular situation.

Two fundamental facts influence Spain’s regulations for human trafficking:

- This harmful phenomenon especially affects women.
- There is a close relationship between human trafficking and migratory flows.

Accordingly, Spanish rules have a **gender perspective**, since the victims are mostly women and girls. Government initiatives related to human trafficking are proposed, approved, and evaluated in terms of gender-based violence policies. As the Spanish Government states, “Human trafficking is a crime that is not gender-neutral: trafficking in human beings affects women disproportionately, not only because most victims are publicly known, but also because the forms of exploitation to which they are subjected tend to be more severe, especially trafficking for the purpose of sexual exploitation. The National Strategy for the Eradication of Violence against Women (2013-2016), approved by the Council of Ministers on 26 July 2013 under Article 3 of LO 1/2004 of 28 December on Comprehensive Protection Measures against Gender Violence, incorporates, for the first time, measures aimed at advancing the eradication of all forms of violence against women, with particular emphasis on trafficking in women for the purpose of sexual exploitation, a form of violence that is particularly cruel and unacceptable. The Strategy proposes its actions from the policies of equality between men and women and the fight against discrimination.”

Similarly, Spanish legislation pays attention to the close relationship between human trafficking and migratory flows from Africa that cross the Mediterranean in extremely dangerous conditions towards Spain and the rest of Europe.

HUMAN TRAFFICKING PENALTIES IN SPAIN	Duration of imprisonment	Amount of the fine
Human trafficking offence without aggravating circumstances	5 to 8 years	
Attempt	2.5 to 5 years	

HUMAN TRAFFICKING PENALTIES IN SPAIN	Duration of imprisonment	Amount of the fine
The perpetrator committed the offence through an abuse as an official authority	8 to 12 years	Disqualification for any profession, trade or activity, involving contact with minors, for an additional 6 to 20 years
The offence was committed against a minor or a person in a situation of vulnerability or by threatening the victim's life	8 to 12 years	
The offence was committed by a criminal organization	8 to 12 years	Disqualification and a fine of 3 to 5 times the profit

### 3.2.2. Extraterritorial application

The Spanish act 13/2007,<sup>9</sup> of November 19, for the extraterritorial prosecution of illegal trafficking or clandestine immigration of people, introduced universal jurisdiction over these crimes. Trafficking in persons for the purpose of sexual exploitation is a form of human trafficking.

Prior to this reform in 2007, Spanish courts did not have jurisdiction to prosecute illegal migrants intercepted in international waters when there was no evidence of sexual exploitation. Spanish courts had jurisdiction over offenses committed by Spaniards or foreigners outside national territory only if the crimes related to prostitution or sexual exploitation.

## 3.3. Slavery-Like Offenses in Spain's Legal Order

### 3.3.1. Servitude

Spanish criminal law prosecutes servitude. Article 177 bis of the Spanish Criminal Code prohibits:

*“(a) The imposition of forced labor or services, slavery or practices similar to slavery, servitude or begging.”*

Also, as a member of the Convention for the Protection of Human Rights and Fundamental Freedoms, Spain is bound by the European Court of Human Rights' decisions.

Article 4 of the Convention states: *“1. No one shall be held in slavery or servitude.”* In *Siliadin v. France* (§ 124) the Court interpreted the term “servitude” as meaning an obligation to provide one’s services that is imposed by coercion. The use of coercion must be linked with the concept of slavery.

The Convention forbids a “particularly serious form of denial of freedom.” It includes *“in addition to the obligation to perform certain services for others ... the obligation for the ‘serf’ to live on another person’s property and the impossibility of altering his condition”* (*Siliadin v. France*, § 123).

Due to the case law of the European Court of Human Rights, servitude in Spain and all member states of the Council of Europe is an aggravated form of forced or compulsory labor. In fact, the fundamental features distinguishing servitude from forced or compulsory labor within the meaning of Article 4 of the European Convention on Human Rights are:

<sup>9</sup> <https://www.boe.es/buscar/doc.php?id=BOE-A-2007-19879>.

- The victim’s belief that the condition of servitude is permanent; and
- The situation is unlikely to change.

The Court underlined that domestic servitude is a specific offense, distinct from trafficking and exploitation. It involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance (*C.N. v. the United Kingdom*, § 80).<sup>10</sup>

### 3.3.2. *Forced labor*

The Spanish Criminal Code, as well as immigration law, prohibits forced labor.<sup>11</sup> According to Article 311 of the Spanish Criminal Code, those who impose on workers (by means of deception or exploitation of vulnerability) services and working conditions that impair social security are punished by imprisonment from six months to six years and a fine of six to 12 months of wages. Article 312 prohibits the smuggling of labor and the hiring of undocumented workers under working conditions below the permitted standards and punishes those offences with imprisonment of two to five years and a fine of six to 12 months. Under Article 313, those who incite people to migrate with false documents or other deceptions are also punished under Article 312.

Forced begging also is “a form of forced labor or service” as defined in ILO Convention No. 29, 1930, Forced Labour Convention.<sup>12</sup> Therefore, the exploitation of begging, including the use of a dependent trafficked person to beg, falls under the definition of human trafficking only when all elements of the work or service are forced. The validity of possible consent to perform such work or service must be evaluated on a case-by-case basis. However, a victim who is a minor cannot provide valid consent.

### 3.3.3. *Deceptive recruiting for labor or services*

Spain has no applicable laws.

### 3.3.4. *Early and forced marriage*

Article 172.1 bis of Spanish criminal law states: “Anyone who, by means of serious intimidation or violence, compels another person to marry shall be punished by a term of imprisonment of 6 months to 3 years and 6 months or a fine of 12 to 24 months, depending on the seriousness of the coercion or means used.”<sup>13</sup>

The penalty for forced marriage may be increased in cases where minors are forced to marry. The third paragraph of Article 172 bis of the Criminal Code for the offence of forced marriage states: “*The penalties shall be imposed in the upper half when the victim is a minor.*” This means that when the victim is a minor, the penalty will be 21 to 26 months of imprisonment or a fine of 18 to 24 months.

### 3.3.5. *Debt bondage*

Debt bondage is included within the crime of forced labor (mentioned in Article 311 of the Criminal Code, which is based on ILO Convention No. 29).<sup>14</sup> Forced labor may be for the purposes of commercial sexual

<sup>10</sup> [https://www.echr.coe.int/documents/guide\\_art\\_4\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_4_eng.pdf) at p. 7.

<sup>11</sup> Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration.

<sup>12</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029).

<sup>13</sup> The penalty of a fine shall consist of the imposition of a pecuniary sanction on the convicted person. The penalty of a fine shall be imposed, unless otherwise provided by law, by the day-fine system. The daily fee shall be EUR 2 to EUR 400.

<sup>14</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029).



exploitation or labor exploitation, which includes any working purposes other than sexual exploitation. The crime of forced labor covers slavery, practices similar to slavery, debt bondage, and also human trafficking, except for the purpose of organ removal, forced marriage, or illegal adoption, all of which are covered elsewhere.

### 3.3.6. *Any other relevant offenses*

Spain has no other relevant slavery-like offences.

### 3.3.7. *Extraterritorial application of the offenses*

Refer to Section 3.2.2.

## 3.4. Human Trafficking/Smuggling-Related Criminal Offenses

### 3.4.1. *International and domestic trafficking/smuggling of people*

Human trafficking in Spain has two prominent characteristics: the victims are predominantly female, and it is closely connected with illegal immigrants crossing the Mediterranean Sea from Africa. Also, human trafficking is one of the major sources of income for organized crime, and the Spanish authorities strongly link prostitution with human trafficking and mafias.

According to EUROPOL,<sup>15</sup> human trafficking in Spain is one of the main sources of “illicit” income from crime and corruption, second in line behind the drug trade. The Spanish Intelligence Center against Organized Crime (CITCO) estimates that about 45,000 women are involved in prostitution, accounting for approximately EUR 3.7 billion. Virtually all persons engaged in prostitution are women with serious social problems, according to the Report of the Presentation on prostitution in Spain (154/9), adopted at the meeting of 13 March 2007.

Almost all trafficking of women (95%) is for the purpose of sexual exploitation.

The majority of victims (65%) come from the EU, mainly Bulgaria, Romania, Holland, Poland, and Hungary. Victims of human trafficking from non-EU countries come from Nigeria, Brazil, China, Vietnam, and Russia.

It is very difficult to obtain reliable data on human trafficking because it is done secretly, across national borders, by organized crime networks.

In summary, the Spanish authorities, taking into account international legislation, UN protocols, and the recommendations and decisions of the EU and the Council of Europe, have adopted public policies to protect victims of human trafficking and to combat crime through national security forces, paying special attention to the gender and migratory component of this crime in Spain.

The most relevant legislative and governmental initiatives are:

#### 3.4.1.1. *Legislative initiatives*

- Approval by Parliament of the *“Proposal concerning the eradication of forced prostitution and trafficking of women and girls for the purpose of sexual exploitation.”* This proposal urges the government to *“Promote the adoption of a law to combat trafficking in women and girls for the purpose of sexual exploitation. This law will include measures for the prevention and prosecution of these crimes, as well as measures for the protection and comprehensive care of their victims, from a*

<sup>15</sup> <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings>.

*human rights perspective and with a gender perspective. In this regard, the law will offer special attention to minors.”*

Other proposals that are expected to be approved aim to eradicate human trafficking including all forms of exploitation for all victims, regardless of their nationality, and the creation of a Center on Trafficking in Human Beings.

- Introduction, in 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain Act and their social integration. Article 59 bis increases protection for vulnerable foreign victims in an irregular administrative situation. As a consequence of the protection of victims incorporated into the legislation on foreigners, particularly Article 140 of the Regulations of Organic Law 4/2000, of 11 January, the Ministries of Health, Social Services and Equality, Interior, Justice, Employment and Social Security, the Attorney General’s Office, and the General Council of the Judiciary signed, on 28 October 2011, a Framework Protocol for the Protection of Victims of Trafficking in Human Beings. This Protocol establishes formal communication systems and mechanisms for cooperation among the various government authorities. It also recognizes the work of non-profit organizations specializing in victim care.
- The Ministry of Employment and Social Care has approved a Protocol to detect and assist possible victims of human trafficking for the purpose of sexual exploitation.<sup>16</sup> It aims to promote coordinated intervention by the Ministry’s migration centers and centers managed by NGOs subsidized by the Ministry.
- Extending to 90 days the minimum time period of reinstatement and reflection, during which the victim may decide whether to cooperate with the authorities in the investigation of the crime and, where appropriate, in the criminal process, in accordance with the provisions of section 2 of Article 59 bis of 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain Act and their social integration.
- Bonuses for companies that hire victims of human trafficking: it modifies Law 43/2006, of 29 December, for the improvement of growth and employment, so that employers receive a monthly bonus for the employer’s social care quota (EUR 125/month for two years) for hiring an identified victim who has obtained residence and work authorization for exceptional circumstances.

#### **3.4.1.2. Government initiatives**

- Comprehensive plans to fight against trafficking in women and girls for the purpose of sexual exploitation and also against human trafficking for the purpose of labor exploitation. The plans are drawn up and implemented for three-year periods. The State Department carries out the plans. Two plans have been executed:

Plan 2009–2012 and Plan 2015–2018, with the implementation of a third plan planned for the near future. The priorities and objectives of the plan, in order of importance, are: (I) prevention and detection, (II) identification, protection, and assistance to victims, (III) knowledge and analysis of threats, (IV) active prosecution of mafia bosses, and (V) inter-institutional coordination and participation of society. The total budget implemented in the last plan, Plan 2015-2018, was over EUR 104 million.

- Creating particular standards for the National Security Forces in the fight against trafficking in human beings, including collaboration with organizations and entities with accredited experience in assisting victims.

<sup>16</sup> [https://www.policia.es/miscelanea/trata/protocolo\\_marco\\_trata.pdf](https://www.policia.es/miscelanea/trata/protocolo_marco_trata.pdf).

- Plans of the National Security Forces: Police Plan to Combat Trafficking in Human Beings, which began on 17 April 2013. The police have continued to develop the provisions of Directive 40/2009 to Combat Trafficking, dated 11 November 2009. Both instruments contemplate, among other objectives, to actively pursue members of criminal gangs, protect victims, and increase their cooperation.
- EMPACT Project (EUROPOL). Fifteen Operational Action Plans for Trafficking in Human Beings have been developed and one led together with FRONTEX.
- In 2016, there were 2,586 administrative inspections against human trafficking for sexual exploitation, and 4,582 administrative inspections against human trafficking for labor exploitation. A total of 538 persons were arrested.

Several private organizations combat human trafficking, such as “ACCEM,” the White Cross Foundation, and the Network against Human Trafficking. The Government assists these private associations with their plans. In addition, the Government, through the police and social services, makes existing shelters and assistance programs available to victims of human trafficking. Joint publicity campaigns aim to raise public awareness of the problem of human trafficking. A communication channel allows anonymous reporting of human trafficking.

### **3.4.2. *International and domestic trafficking in children***

The law has given greater protection to minors as victims of trafficking, following the terms described in the UN Protocol 2000 to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.<sup>17</sup>

The Spanish Criminal Code paragraph 2 of Article 177 bis, makes the consent of a minor irrelevant. Consequently, the recruitment, transfer, or receipt of a minor “for the purpose of exploitation” is a crime, without the need to prove deceptive, violent, intimidating, or abusive means.

Trafficking in children is punishable by five to eight years of imprisonment. If the children are foreign minors who do not meet the requirements for entering or remaining in Spanish territory, it is the exploitative purpose of trafficking that establishes the difference with the crime of Article 318 bis. When the trafficking also violates the State’s control of migration by encouraging the illegal entry or stay of foreigners in Spanish territory, the offence of Article 318 bis CP (illegal trafficking of human beings) applies.

### **3.4.3. *Victim harboring***

Article 177 bis of the Criminal Code defines human trafficking as: “*recruitment, transportation, transfer, harboring or reception of persons, including the exchange or transfer of control over such persons.*” Therefore, Spanish law makes victim harboring a crime.

### **3.4.4. *Extraterritorial application of human trafficking and smuggling offenses***

Refer to Section 3.2.2.

### **3.4.5. *International and domestic organ trafficking***

Human organ trafficking is the illegal extraction or obtaining of organs, and also the preparation, preservation, storage, transport, transfer, reception, importation, or exportation of illicitly extracted organs. This crime is detailed in Article 156 bis of the Spanish Criminal Code.

<sup>17</sup> <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>.

Those who request or receive remuneration for proposing or capturing a donor or an organ recipient are also punished, as well as those who offer or deliver compensation to health personnel or public or private officials.

A recipient of an organ who consents to the transplant knowing the organ's illicit origin will also be punished. The penalties may be reduced by one or two degrees, taking into account the circumstances of the act and the culprit.

Other punishable offences relate to whether the victim's life or physical or psychological integrity is endangered with this illegal action, whether the victim is a minor, and whether the victim is in a vulnerable situation.

### 3.5. Online Exploitation of Children Offenses

The Spanish Criminal Code addresses online exploitation. Article 183 applies when online means are used to exploit children. The punishment for this conduct is one to three years of imprisonment.

### 3.6. Child Sex Tourism Offenses

Child sex tourism is not a specific criminal offence, but it is within the scope of Article 188 of the Spanish Criminal Code: *“The one that induces, promotes, favors or facilitates the prostitution of a minor or a person with a disability in need of special protection, or profits from it, or otherwise exploits a minor or a person with a disability for these purposes, will be punished with penalties of two to five years and a fine of twelve to twenty four months. If the victim were under sixteen, the prison sentence of four to eight years and a fine of twelve to twenty four months shall be imposed.”*

Note that prostitution is not the only punishable offence; any kind of child exploitation for sexual purposes also is punished.

## 4. SPAIN'S SUPPLY CHAIN REPORTING LEGISLATION

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No supply chain reporting legislation obligates private businesses to control their supply chain to hinder human trafficking. Nonetheless, some initiatives do exist, at an EU and Spanish level, which may influence companies to manage their supply chains to protect human rights.

On 16 June 2011, the United Nations approved the “Guiding Principles on Business and Human Rights”<sup>18</sup> as an international instrument to address corporate standards of responsibility and accountability for human rights. Although not legally binding, the UN principles establish a globally applicable standard of conduct for all companies.

The UN Guiding Principles, together with the call of the European Commission to promote their national implementation among member states, prompted the Spanish Government to create and approve the “National Plan of Business and Human Rights” (**National Plan**),<sup>19</sup> adopted on 28 July 2017.

The National Plan embodies Spain's commitment to protect human rights in the conduct of business. It also contributes to strengthening the competitive advantage of Spanish companies in the global market by offering an optimal framework for their business operations.

<sup>18</sup> <https://www.ohchr.org/SP>.

<sup>19</sup> <http://www.exteriores.gob.es>.

The Government further agreed to promote a corporate internal assessment and action procedure to avoid adverse human rights consequences from corporate activity. Another potential measure is to provide incentives for business enterprises of all sizes to adopt and carry out human rights policies. These incentives may be economic, commercial, visibility and image, or otherwise.

In addition, the National Plan takes into account the 2030 Agenda for Sustainable Development<sup>20</sup> (United Nations General Assembly resolution 70/1), which invites companies to align their corporate business strategy with development objectives, contribute to strengthening the competitive advantage of Spanish companies in the global market, and enhance their capability to prevent and mitigate human rights-based risks.

EU Directive 2014/95/EU<sup>21</sup> on the disclosure of non-financial and diversity information by certain large enterprises requires the management report of these enterprises to include a financial statement containing information related, *inter alia*, to human rights. This Directive also mandates the “due diligence” obligation by large enterprises. In this regard, they must take anticipatory measures to identify, prevent, and mitigate existing and potential adverse impacts. This “due diligence” obligation applies not only to the company itself but also to its subsidiaries and supply chains.

Through Royal Decree-Law 18/2017 of 24 November (**RD-Law 18/2017**),<sup>22</sup> Spanish law incorporated the principles of Directive 2014/95/EU. RD-Law 18/2017 further amended the Spanish Commercial Code (*Código de Comercio*) published by virtue of the Royal Decree of 22 August 1885, the Capital Companies Act approved by Royal Legislative Decree 1/2010 of July 2, and Audit Law 22/2015, of July 20 (**Audit Law**).

Also derived from RD-Law 18/2017, Law 11/2018<sup>23</sup> of December 28 (**Law 11/2018**) amended the Spanish Commercial Code, the revised Capital Companies Act, and the Audit Law, in regard to non-financial information and diversity. Law 11/2018 increases the number of companies required to report on non-financial information, including human rights.

Law 11/2018 also provides greater specificity on the required non-financial information. The non-financial information report must describe, among other issues, the markets in which the corresponding enterprise operates, its objectives and strategies, including its due diligence procedures and risk measures, and the results achieved from implementing those policies, including key indicators of relevant non-financial performance. In addition, this non-financial report must include significant human rights information, such as the establishment of a human rights infringement risk procedure to mitigate, manage, and repair potential abuses.

<sup>20</sup><http://www.exteriores.gob.es/portal/es/politicaexteriorcooperacion/nacionesunidas/paginas/objetivosdesarrollodelmileno.aspx>.

<sup>21</sup> <https://eur-lex.europa.eu>.

<sup>22</sup> [https://noticias.juridicas.com/base\\_datos/Fiscal/608813-rdl-18-2017-de-24-nov-modifica-codigo-de-comercio-texto-refundido-de-la.html](https://noticias.juridicas.com/base_datos/Fiscal/608813-rdl-18-2017-de-24-nov-modifica-codigo-de-comercio-texto-refundido-de-la.html).

<sup>23</sup> [https://noticias.juridicas.com/base\\_datos/Fiscal/634832-l-11-2018-de-28-dic-modifica-el-codigo-de-comercio-el-texto-refundido-de.html](https://noticias.juridicas.com/base_datos/Fiscal/634832-l-11-2018-de-28-dic-modifica-el-codigo-de-comercio-el-texto-refundido-de.html).

## 5. FORCED LABOR: OVERVIEW OF SPAIN'S APPLICABLE EMPLOYMENT AND MIGRATION LAWS

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### 5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

Spanish employment law is based on free and voluntary work (Article 35 of the Spanish Constitution and Article 1 of the Worker's Statute). The last remnants of slavery ended, at least formally, with the freeing of the 30,000 slaves remaining in Cuba in 1880.

Spanish employment law provides several rights for victims of forced labor and remedies against perpetrators. Since 2010, human trafficking for the purpose of forced labor has been defined as a criminal offence punishable under Article 177 bis of the Spanish Criminal Code. Additionally, Articles 311 to 318 of the Spanish Criminal Code define a series of offences that refer to the workforce (both Spanish and foreign nationals), working conditions, Social Security, and requirements for foreigners.

Victims of forced labor, either nationals or foreigners, may take part in the criminal proceedings, be heard, be compensated for the damages suffered, request injunctions against the infringer, or be exempted from punishment for criminal offences or administrative liability. Moreover, victims may seek other remedies, like employment status.

### 5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

A victim of forced labor and trafficking is likely to fall under the scope of Articles 177 bis and 311 to 318 of the Spanish Criminal Code.

The crime of forced labor or trafficking requires proof of:

- Recruiting, transporting, transferring, sheltering, receiving, or accommodating the victim.
- Using violence, intimidation, or deception, or abusing a position of superiority or the victim's vulnerability (proof of this type of misconduct is not required for victims who are minors).
- Imposing forced labor or services, slavery, practices similar to slavery or servitude, or begging.

Victims of forced labor or trafficking are entitled to bring criminal claims against the perpetrator, whether a natural or legal person.

### 5.3. Statutory Rights

Employees' statutory rights can serve as a basis to assess whether a person is the subject of forced labor and as a basis for tort claims by victims of traffickers.

#### 5.3.1. *Rights to minimum wages, entitlements, and other applicable minimum standards*

According to Article 35 of the Spanish Constitution, all Spaniards have the duty to work and the right to work, to free choice of profession or trade, to promotion through work, and to sufficient remuneration to meet their needs and those of their families, without discrimination on the basis of sex.

Employers and employees are free to negotiate the terms and conditions of their employment status. However, employees have various minimum rights under the law (Article 4 of the Worker's Statute). These include:

- A right to a minimum wage, which the government revises and sets each year. For 2020, it was EUR 950 per month if the salary is paid in 14 instalments.
- A right to a maximum number of working hours. Full-time workers in Spain must average a maximum of 40 hours per week of work, calculated on an annual basis.
- Rest time. Workers are entitled to a minimum weekly rest time of one-and-a-half uninterrupted days, which generally includes Saturday afternoon or, where applicable, Monday morning, and the whole day Sunday.
- Paid time-off. Workers may take paid time-off for several reasons (for example, birth of a child, residence move, and holidays, among others).
- Health and safety rights. The employer shall take the necessary measures to ensure that the use of the workplace does not create risks to the health and safety of its employees or, if this is not possible, it shall at least minimize these risks.

### **5.3.2. Claims available in relation to misrepresentations and “sham” arrangements**

It is a crime to recruit people or cause them to leave their jobs by offering misleading or false employment or working conditions, or to encourage the emigration of any person to another country by using a sham contract or placement or other similar deception. The punishment is imprisonment for two to five years and a daily fine of six to 12 months.

A sham employment contract is a social security fraud. It is punished as a very serious offence that can lead to a penalty of EUR 6,521 to EUR 187,515, depending on the degree of seriousness.

It is a very serious (non-criminal) infraction to create a sham employment relationship with a foreigner, when such conduct is carried out for profit or with the purpose of unduly obtaining rights recognized by law, provided that such acts are not sufficiently serious to constitute a criminal offense. Penalties range from EUR 10,001 to EUR 100,000.

Finally, victims may seek the recognition of the employment relationship and its fulfillment and claim damages.

### **5.3.3. Claims available in relation to unlawful deductions, loans, and debt bondage**

Unlawful deductions, loans, and debt bondage would be considered criminal offences under Article 177 bis of the Spanish Criminal Code, provided that the requirements of that article are met.

### **5.3.4. Remedies**

Remedies vary depending on the circumstances. Victims of forced labor are entitled to bring criminal claims against the perpetrator, seek damages, and seek an award of employment status, among other remedies.

Additionally, foreigners may ask for residence and work permits, health assistance, or to be returned to their country of origin.

### **5.3.5. The well-being of workers: Preventing work-related psychosocial risks**

Spain does not have specific legislation on psychosocial risks. However, occupational safety and health rules cover all risks to health arising from work, and there are no exceptions. Thus, the general obligations to assess, manage, and mitigate risks apply.

In July 2012, a guide was published to promote a risk assessment of psychosocial factors in organizations. Measures to identify and prevent risks are preferred over measures to protect workers from ongoing risks.

### **5.3.6. *The well-being of workers: Promotion of workers' health***

According to Article 40.2 of the Spanish Constitution, public authorities shall ensure health and safety at work and guarantee the necessary rest time, by limiting working hours, providing regular paid holidays, and promoting appropriate facilities.

Likewise, pursuant to Article 19 of the Worker's Statute, workers shall have the right to occupational safety and health.

Finally, Law 31/1995, of 8 November, on the Prevention of Occupational Risks, developed a policy of protecting the health of workers through the prevention of risks arising from their work.

### **5.3.7. *The well-being of workers: Rest time***

Rest time is a constitutional right (Article 40.2 of the Spanish Constitution).

Workers are entitled to a minimum weekly rest time of one-and-a-half uninterrupted days, which generally includes Saturday afternoon or, where applicable, Monday morning, and the whole day Sunday (Article 37 of the Worker's Statute).

At least 12 hours must elapse between the end of one working day and the start of the next working day. When a working day exceeds six hours, the employer must allow a rest period of at least 15 minutes (Article 34 of the Worker's Statute).

Workers under 18 years old must receive rest time for a minimum of 30 minutes when the working day exceeds four-and-a-half hours (Article 34 of the Worker's Statute). They also must have weekly rest time of at least two uninterrupted days (Article 37 of the Worker's Statute).

### **5.3.8. *The well-being of workers: Freedom to change jobs and right to leave***

The Spanish Constitution gives everyone the right to work. Everyone is free to choose their profession. Spanish law gives workers freedom to change and leave jobs. Workers are free to terminate their employment, provided they send notice (Article 35 of Spanish Constitution and Article 4 of the Workers' Statute).

## **5.4. Rights to a Safe Workplace and Compensation Associated With Injuries or Illness**

According to Article 40.2 of the Spanish Constitution, public authorities shall ensure health and safety at work and guarantee the necessary rest time by limiting working hours, providing regular paid holidays, and promoting appropriate working facilities.

Employers who fail to prevent workplace risks face administrative liability and, where appropriate, criminal and civil liability for damages.



## 5.5. Access to Justice and Practical Issues Associated With Enforcing Social Legislation

Victims of trafficking are entitled, among others rights, to free legal assistance, without the need to prove that they have insufficient resources to litigate (Royal Decree-Law of 3/2013 of 22 February, which amends rules in the field of judicial administration and the free legal aid system). They also have the right to the assistance of a translator.

Although many victims of forced labor and trafficking in Spain are likely to have strong claims, the vast majority of victims do not know about the legal assistance available to file those claims. Spanish employment law and litigation procedures are complex, and it is difficult for any person to commence proceedings without legal assistance. This is particularly true for those victims of trafficking or forced labor who do not speak Spanish and who are poorly educated.

According to GRETA (Group of Experts on Action against Trafficking in Human Beings), Spain does not have enough labor inspectors in remote rural areas. Also, inspectors cannot enter private households without a court order. This creates a situation where it is possible and profitable to exploit trafficked labor. The National Plan does not cover this form of human trafficking, and there is a lack of research and data on it. The difficulties in investigating and prosecuting cases of forced labor, along with lack of experience and awareness, explain the absence of judgments for this form of human trafficking.

## 5.6. Interaction Between Employment Law and Migration

### 5.6.1. *Employment rights affected where employment is unlawful under migration law*

According to Article 20 of Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, all foreigners have the right to effective judicial protection.

According to Article 177 bis of the Spanish Criminal Code, victims of trafficking are exempt from punishment for criminal offences committed because of their exploitation, provided that there is adequate proportionality between that situation and the criminal act committed.

Pursuant to Article 59 of Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, foreigners who are illegally in Spain and are victims or witnesses of an act of human trafficking, illegal immigration, labor exploitation, illicit labor trafficking, or exploitation in prostitution are exempt from administrative liability and expulsion if they denounce the perpetrators or cooperate with government authorities by providing essential information or testifying.

### 5.6.2. *Rights/remedies available under applicable migration law and regulations*

Refer to Section 7.

## 5.7. Employment Laws and Child Labor

Child labor in Spain is officially “anecdotal” and, therefore, there are no statistics or reports. However, organizations such as Save the Children, UNICEF, and the Children’s Platform warn that the official figures do not include minors engaged in prostitution. Also, the family is an “obstacle to visibility,” because child labor often takes place in family businesses or agricultural work.

The Spanish Criminal Code punishes anyone who employs a minor who does not have a work permit (Article 311 bis).

## 6. GOVERNMENT PROCUREMENT RULES

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Government procurement falls under Law 9/2017, of 8 November, on Public Sector Contracts.

Article 71 of Law 9/2017, of 8 November, on Public Sector Contracts, excludes those who have been convicted of crimes of human trafficking (among other crimes) from participating in the government procurement process.

## 7. RESTITUTION AND VICTIM COMPENSATION

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### 7.1. Overview

Victims of human trafficking have several rights provided by international and national regulations.

In general, they have the rights to compensation, reparation, and restitution.

### 7.2. Spain's Legal Framework

The first Spanish rules that began to regulate, recognize, and protect the rights of victims of human trafficking were (i) Law 35/1995, of 11 December, on Aid and Assistance to Victims of Violent Crime and Sexual Freedom, developed by Royal Decree 738/1997 of 23 May; (ii) Organic Law 1/1996, of January 15, on the Legal Protection of Minors; (iii) Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures against Gender-Based Violence; and (iv) Law 4/2015 of 27 April on the Statute of the Victim of Crime, which transposed Directive 2012/29/EU.

Law 4/2015 is the first Spanish regulation that recognizes the right to information, restitution, reparation, and compensation specifically for human trafficking victims.

In line with European legislation, this law recognizes the dignity of victims, and it regulates the defense of their material and moral well-being and the material and moral well-being of society as a whole. It brings together in one law the catalogue of victim's rights under European Union Directives and Spanish law. It prescribes the ways for victims to obtain economic compensation, and it obligates prosecutors to seek economic compensation for the victim from the defendant.

Organic Law 1/2015 of 30 March on Criminal Code further defines the concept of vulnerability of victims of human trafficking in accordance with EU Directive 2012/29/EU.

Because most trafficking victims are foreign women, Organic Law 4/2000, of 11 January, on the rights and freedoms of foreign women in Spain and their social integration, also often applies.

#### 7.2.1. *Law 4/2015 of 27 April on the Statute of the Victim of Crime*

The Law regulating the Victim's Statute (**Law 4/2015**) follows European legislation in recognizing the dignity and rights of human trafficking victims. In a single legislative text, Law 4/2015 sets out the catalogue of victim's rights, in accordance with Directive 2012/29/EU of the European Parliament and of the Council, October 25, 2012, which prescribes minimum standards on the rights, support, and protection of crime victims.

According to Article 3 of Law 4/2015, every victim has the right to protection, information, support, assistance, and care. They also have the right to participate in criminal proceedings and to receive respectful, professional, individualized, and non-discriminatory treatment from government authorities or officials at all times.

By virtue of Article 5 of Law 4/2015, every victim has the right, from the first contact with the Spanish authorities (including the time before the filing of the complaint), to receive, without delay, the necessary information regarding the victim's personal circumstances, the crime committed, the damage suffered, the right to economic compensation, and, where appropriate, the procedure to claim compensation.

Article 14 of Law 4/2015 (reimbursement of expenses) establishes that a victim who has participated in the criminal proceedings shall have the preferential right to obtain reimbursement of the victim's costs and expenses arising from that participation.

Article 16 of Law 4/2015 (free justice) gives victims the right to free legal aid. They may apply to the Victim Assistance Offices of the Administration of Justice, which will forward it to the appropriate Bar Association.

According to Article 17 of Law 4/2015, victims who live in Spain may file complaints with the Spanish authorities for criminal acts that have been committed in other countries of the European Union.

Finally, according to Article 18 of Law 4/2015, human trafficking victims have the right to obtain without delay, in accordance with the Criminal Procedure Act, the return of their property seized in the process.

Despite these compensation and restitution rights under Spanish law, in practice, human trafficking victims face numerous obstacles to access these rights, either because they cannot obtain necessary information or because they do not have the financial or educational means to make a claim.

Moreover, as reflected in the study of the Spanish General Council of Judicial Authority<sup>24</sup> (*Consejo General del Poder Judicial*) on Human Trafficking, compensation for civil liability is possible only where there is a judicial condemnatory criminal conviction.

In many cases, victims decide not to claim compensation because they have returned to their home countries or are afraid of possible reprisals by criminal organizations.

According to the report of the General Council of the Judicial Authority, compensation should take into account the moral damage caused, the age of the victim, the family situation of the victim, duration of the crime, and other personal circumstances of the victim.

In Spain, victims of human trafficking are formally protected by the status of "protected witnesses" (witnesses whose testimony is determined to be essential to the successful prosecution of a criminal case and in which the witness's life or the lives of the witness's family are at risk). However, in practice the procedural rights are not ideal for victims since these criminal proceedings (where, among other issues, multiple questions of international law are raised) are still not very developed in Spain and are very long processes. As a result, it could be said that this lack of protection can cause further harm to the victim.

### 7.3. Public Protection Measures: Ministry of Health and General Council of the Judicial Authority

The Ministry of Health has developed measures to protect children, including the training of professionals from different child and adolescent care and protection services.<sup>25</sup> The Ministry's training programs also aim to improve the detection and assistance of victims who have been trafficked for exploitation purposes.

<sup>24</sup> GENERAL COUNCIL OF JUDICIAL AUTHORITY (*CONSEJO GENERAL DEL PODER JUDICIAL*. "Estudio de investigación en materia de trata de seres humanos, que se presenta a la comisión de igualdad del Consejo General del Poder Judicial," Febrero 2016.)

<sup>25</sup> MINISTRY OF HEALTH (*MINISTERIO DE SANIDAD, SERVICIOS SOCIALES E IGUALDAD*. *Plan Integral de lucha contra la trata de mujeres y niñas con fines de explotación sexual 2015–2018*.)

The General Council of the Judicial Authority has continued to promote the training of the judiciary related to human trafficking. In 2018, it developed a “*Guide to criteria of judicial action against Human Trafficking*,” with the participation of specialized personnel from various government administrations and social institutions.

Finally, in the framework of the *Justice at Last Project*, two Spanish entities (*Proyecto Esperanza*<sup>26</sup> and *SICAR cat*) are actively working to protect trafficking victims. Among other actions, in 2019, they gave recommendations to Spanish political leaders to advocate for access to justice and effective compensation for victims.

## 8. SPAIN’S MULTIDISCIPLINARY/INTERAGENCY COOPERATION APPROACH

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### 8.1. Overview

The Framework Protocol for the Protection of Victims of Trafficking in Human Beings (**Framework Protocol**), agreed on 28 October 2011, introduced a multidisciplinary approach by the Spanish Ministries of Justice, Domestic Affairs, Employment and Social Security, and Health, Social Services and Equality, as well as the State Attorney General and the General Council of the Judiciary.

### 8.2. National Institutional Coordination

#### 8.2.1. *Framework Protocol for the protection of victims of trafficking in human beings*

The Framework Protocol establishes operational guidelines for the detection, identification, support, and protection of victims of human trafficking. To foster coordination among the government institutions, it defines the mechanisms and communication processes for the relationship among the responsible authorities, particularly those that provide comprehensive support and are involved in public administration programs for victim support and protection.

The Framework Protocol aims to:

- a) Define the procedure to identify victims of human trafficking and to coordinate action by responsible authorities and institutions.
- b) Establish guidelines to evaluate the alleged risks to victims and to establish protection measures.
- c) Prescribe the reporting of alleged offences and notification of the judicial authorities.
- d) Define the elements required to provide victims with appropriate information about their rights and the services and resources available to them.
- e) Establish criteria for the proper evaluation of victim needs and provide appropriate support.
- f) Include foreign victims of trafficking in voluntary return programs.
- g) Detail, in the case of foreign victims without the necessary legal documents, the procedure for granting the rehabilitation and reflection period and, as applicable, either the procedure for

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<sup>26</sup> <https://www.proyectoesperanza.org>.

exemption from liability and granting of residency and work permits, or the procedure for assisted return.

- h) Establish specific actions in the case of victims who are legal minors.
- i) Define the involvement of organizations with proven experience in assisting victims of trafficking, in particular those providing comprehensive assistance and those involved in public administration programs for victim support and protection.

The Framework Protocol also develops the provisions set out in Article 140 of the Regulation for Organic Act 4/2000, on the rights and liberties of foreigners in Spain and their social integration, following the reforms provided by Organic Act 2/2009 and Organic Act 10/2011.

The responsible institutions and public administrations shall respect a number of principles:

- a) Guarantee that victims are familiar with their rights and receive appropriate specialist information.
- b) Adapt the support and protection mechanisms in accordance with the age, gender, and needs of the trafficking victims, considering the particular vulnerability of victims.
- c) Provide multidisciplinary support, by agents with appropriate training and the involvement of civilian organizations.
- d) Provide access for all victims to support and protection systems, irrespective of their cooperation in the investigation of the offence.
- e) Avoid secondary victimization, limit the suffering and damage caused to victims, and support their recovery and prevent traumatic experiences, in particular during criminal proceedings.
- f) Guarantee their recovery and physical, psychological, and social rehabilitation.
- g) Protect the privacy and identity of victims.

The Framework Protocol applies to all human trafficking victims, without any discrimination on the basis of gender, nationality, or legal status in the case of presumed foreign victims.

The Framework Protocol applies to all regions of Spain, without the need for regional or local approval.

### **8.2.2. *Inter-institutional relations***

- a) Communications. The Judicial Police units are responsible for providing information at all times to the Courts, the Public Prosecution Office, and, where applicable, the Crime Victims Support Offices, regarding any incidents that could affect the content or scope of the protection measures provided to victims.

The Court shall notify the Law Enforcement Agencies responsible for the region or, as applicable, the centralized reception points designated in each region, along with the Public Prosecution Office, of any rulings ordering interim remedies or other protection or security measures for victims, or the lifting and modification of those remedies or measures.

- b) Coordination Meetings. Each province must hold a working meeting at least twice per year to monitor actions related to detected situations of trafficking, so as to ensure appropriate inter-

institutional coordination. The effectiveness of the measures adopted for the support, protection, and safety of victims shall likewise be analyzed.

The Public Prosecution Office is responsible for calling and organizing the meetings. The meetings shall be attended by the Public Prosecution Office, senior police officers specializing in the investigation of the offence of human trafficking, a representative on behalf of the Employment and Social Security Inspectorate or an equivalent regional body, and another representing the Government's Regional Delegation Office or Deputy Office.

The Chairmen of the Supreme Courts of Justice, the Chairmen of the Provincial High Courts, Senior Judges, and the regional public administration also may attend by prior invitation.

Depending on the issues to be discussed, the Public Prosecution Office may invite organizations with proven experience in assisting trafficking victims, particularly those providing comprehensive support with an established presence in the region.

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