

**RESPONSE OF THE GOVERNMENT OF SPAIN TO THE LETTER DATED FEBRUARY 15,
2023
OF THE SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY
AND PARTNERSHIP**

In response to the **letter of 15 February 2023** from the Special Rapporteur on the rights to freedom of peaceful assembly and of association, requesting input from Member States for the preparation of his **report on "specific technical and practical tools to assist law enforcement agencies in promoting and protecting human rights in the context of peaceful protests" for submission to the Human Rights Council at its 55th session**, the Government of Spain transmits the following information in relation to the issues raised:

- 1. Existing national legal framework and guidance related to the promotion and protection by law enforcement of human rights while facilitating peaceful assemblies:**

Basic regulatory standards

- **Spanish Constitution** -article 21-, of December 27, 1978.
- **Organic Law 4/2015, of March 30, on the protection of citizen security.**
- **Organic Law 4/1997, of August 4, 1997, regulating the use of video cameras by the Security Forces and Corps in public places.**
- **Organic Law 9/1983, of July 15, 1983, regulating the right of assembly.**
- **Royal Decree 596/1999, of April 16, 1999, approving the Regulations for the development and execution of Organic Law 4/1997.**

What to do to hold a meeting

The right of assembly may be exercised **without prior notification** to the governmental authority in the case of **the following meetings**:

- Those entered into by individuals in their own domiciles.
- Those celebrated by individuals in public or private premises for family or friendship reasons.
- Those held by political parties, labor unions, business organizations, civil and commercial companies, associations, corporations, foundations, cooperatives, communities of property owners and other legally constituted entities in closed places, for their own purposes and by means of a summons that exclusively reaches their members or other persons nominally invited.
- Those held by professionals with their clients in closed places for the purposes of their profession.
- Those held in military units, ships and enclosures, referred to in the Royal Ordinances of the Armed Forces, which shall be governed by their specific legislation.

No meeting shall be subject to the prior authorization regime.

The governmental authority shall adopt the necessary measures to protect meetings and demonstrations against those who try to prevent, disturb or undermine the lawful exercise of this right, preventing, likewise, the disturbance of public safety. However, the organizers of the meetings and demonstrations shall be responsible for the good order of the meetings and demonstrations, and shall adopt the measures necessary for their proper development.

Meetings subject to **Organic Law 9/1983, of July 15, 1983, regulating the right of assembly**, may only be promoted and called by persons in full exercise of their civil rights.

Participants in meetings or demonstrations who cause damage to third parties shall be directly liable for such damage. Subsidiarily, natural or legal persons, organizers or promoters of meetings or demonstrations, shall be liable for the damages caused by the participants to third parties, without prejudice to the possibility of repercussions against them, unless they have taken all reasonable means within their reach to avoid them. In the case of meetings in places of public traffic and demonstrations whose celebration has been previously communicated to the authority, the organizers or promoters will be considered to be the natural or legal persons who subscribe the corresponding written communication. Even if they have not subscribed or presented the aforementioned communication, those who in fact preside, direct or perform similar acts or those who by publications or declarations calling the meetings or demonstrations, by the speeches made and the printed material distributed during the same, by the slogans, banners or other signs displayed or by any other facts, can be reasonably determined to be the inspirers of the same, shall also be considered organizers or promoters.

Suspension and dissolution

The governmental authority shall suspend and, as the case may be, shall proceed to dissolve meetings and demonstrations in the following cases:

- When they are considered unlawful, in accordance with criminal laws.
- When disturbances of public order occur, with danger to persons or property.
- When paramilitary uniforms were used by the attendees.
- When they were organized by members of the Armed Forces or the Civil Guard in violation of the limitations imposed in Article 13 of Organic Law 9/2011, of July 27, 2011, on the rights and duties of members of the Armed Forces or in Article 8 of Organic Law 11/2007, of October 22, 2007, regulating the rights and duties of members of the Civil Guard.

Such resolutions shall be previously communicated to the attendees in the legally foreseen manner. The suspension or dissolution shall be carried out in accordance with the provisions of Organic Law 4/2015, of March 30, on the protection of citizen security.

The delegate of the governmental authority

The organizers and promoters of meetings included in the scope of application of Organic Law 9/1983, which are held in closed places, premises or enclosures, may request the presence of delegates of the governmental authority. The delegates of the governmental authority shall not intervene in the discussions or debates nor shall they use the floor to warn or correct the participants, all without prejudice to the provisions of the Law of Criminal Procedure.

Requirements for holding demonstrations

The holding of demonstrations, unlike meetings, must be **communicated in writing** to the corresponding governmental authority by the organizers or promoters of the same, and with a **minimum of ten days and a maximum of thirty days** in advance (only in *case of urgency* the communication may be made *24 hours in advance*).

The letter of communication shall state:

- Name, surname(s), address and official identification document of the organizer(s) or their representative, in the case of legal entities, also stating their name, nature and address.
- Place, date, time and expected duration.
- Object of the same.
- Planned itinerary, when circulation on public roads is foreseen.
- Security measures foreseen by the organizers or requested by the governmental authority.

The governmental authority shall notify the Town Council concerned of the information contained in the letter of communication, except in the case of an urgent call, so that it may report within a period of twenty-four hours on the circumstances of the proposed route. If the report is not received within said period, it shall be understood to be favorable. The report shall refer to objective causes such as the state of the places where the event is to be held, the concurrence with other events, the safety conditions of the places in accordance with the regulations in force, and other similar technical reasons. In any case, the report shall not be binding and shall be reasoned.

The governmental authority has the duty to protect the exercise of this right against those who attempt to prevent, disturb or impair it. Those who impede the legitimate exercise of the freedom of assembly or demonstration, or seriously disturb the development of a lawful assembly or demonstration, will be punished with a prison sentence of two to three years or a fine of twelve to twenty-four months if the acts are carried out with violence, and with the penalty of arrest for seven to twenty-four weekends or a fine of six to twelve months if they are committed by means of *de facto* means or any other illegitimate procedure (Article 514.4 of the Penal Code).

Prohibition or modification

If the governmental authority considers that there are well-founded reasons that public order may be disturbed, with danger to persons or property, it may **prohibit** the meeting or demonstration or, as the case may be, **propose the modification** of the date, place, duration or itinerary. The resolution must be adopted in a **reasoned manner** and notified within a maximum period of **seventy-two hours** from the communication provided for in article eight of Organic Law 9/1983, of July 15, regulating the right of assembly, in accordance with the requirements established in Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations.

If the organizers or promoters do not accept the prohibition or other proposed modifications, they may file a **contentious-administrative appeal** before the competent Audiencia within **forty-eight hours**, transferring a copy of said appeal, duly registered, to the governmental authority, so that the latter may immediately forward the file to the Audiencia.

In the Autonomous Communities that have assumed the effective exercise of powers in matters of public safety and the protection of persons and property, references to bodies of the Ministry of the Interior shall be understood to refer to the corresponding bodies of such Autonomous Communities.

The promoters or directors of any meeting or demonstration who call, hold or attempt to hold again a meeting or demonstration that has been previously suspended or prohibited, and provided that they intend to subvert the constitutional order or seriously disturb the public peace, shall be punished with imprisonment of six months to one year and a fine of six to twelve months, without prejudice to the penalty that may apply, if any, under the provisions of Article 514.5 of the Penal Code.

2. Promote and protect human rights while facilitating peaceful protests by law enforcement agencies.

Security Forces and Corps

The main Security Forces in charge of policing protests in Spain are the **National Police**, the **Civil Guard** and the **Autonomous Police of Catalonia and the Basque Country**. Within these police forces, there are specialized units to monitor the normal development of a demonstration, which receive specific training to perform this function. These Forces are equipped with protection material for the intervening police personnel. They are also provided with non-lethal means, used only in the case of violent demonstrations or when they violate the fundamental rights of other people.

The Delegate or Subdelegate of the Government in each Community or Province is in charge of the police surveillance of the protests. This Authority or the Chiefs of the Police Forces themselves are the ones who decide the police deployment to protect the development of the demonstration in the terms requested by the organizers.

The **Armed Forces** do not participate in surveillance, unless a state of exception is declared, as set forth in Organic Law 4/1981, of June 1, 1981, on States of Alarm, Exception and Siege.

Supervision, control and accountability are carried out through the country's **judicial authorities**, which are the ones that assess whether the actions of the police forces are in accordance with the national and international regulations in force.

Performance of the Security Forces and Corps

The Security Forces and Corps have established protocols and procedures for action depending on the type of demonstration taking place (festive, protest, strike, sports, etc.). In order to minimize the use of force, the FCSE carry out a collection of information on the demonstration to be held (background, violent social groups that may participate, actions that are usually carried out, etc.). Based on this information, the deployment of police forces is planned, making a deployment in force that avoids the possibility of violent groups attempting to exercise violence during the course of the demonstration.

In all authorized demonstrations there are **organizers** with whom the security forces meet in order to facilitate the development of the demonstration, even in unauthorized demonstrations they usually try to have a dialogue in order to avoid a confrontation with the police forces. The forces in charge of the surveillance of the demonstrations receive psychological training in order to abstract themselves from the possible insults that they may receive in order to provoke the police forces to use force.

The **use of force is authorized by the Government Delegate** and usually occurs when in the exercise of the demonstration the fundamental rights of other persons are violated, for example, in roadblocks or blocking of entrances to workplaces. Force may also be

used when the physical integrity of the intervening police forces or of the general public, or of private property, is endangered in the course of the demonstration. The use of force is proportional to the violence exercised by the demonstrators, trying at all times to avoid an escalation of the response of the demonstrators and to guarantee the rights and freedoms of the rest of the citizens.

3. Preventing and minimizing the use of force and reducing tension and violence in the context of protests

The disciplinary laws of both the National Police and the Civil Guard severely punish any conduct involving abuse of authority that causes serious harm to citizens. Likewise, article 5 of **Organic Law 2/1986, of March 13, 1986, on Security Forces and Corps**, establishes as **basic principles of action among the security forces and corps**, to prevent, in the exercise of their professional actions, any abusive, arbitrary or discriminatory practice involving physical or moral violence. These basic principles of action of the Security Forces and Corps are the fundamental axes around which the development of police functions revolves.

Following the lines set out by the **Council of Europe**, in its "Declaration" on the police, and by the **United Nations General Assembly**, in the "**Code of Conduct for Law Enforcement Officials**", these basic principles of action are established as a true "**Code of Ethics**", which binds the members of all police groups, imposing, among others, respect for the Constitution, permanent service to the Community, the adequacy between ends and means, as a guiding criterion for their actions, respect for the honor and dignity of the person and responsibility in the exercise of the function.

For its part, the Secretariat of State for Security has taken a series of measures to guarantee the fundamental rights of citizens in connection with the free exercise of their rights and freedoms, including the right of assembly and demonstration:

1) Constitution of the **National Office for the Guarantee of Human Rights (ONGADH)**, created by Instruction 1/2022 of the Secretariat of State for Security and integrated in the IPSS, under the General Directorate for Coordination and Studies (DGCE). This office constitutes a mechanism of supervision of police activity, in relation to the recording, control, monitoring and exploitation of the Computer Application of the National Human Rights Plan. In this sense, any complaint about facts and actions that may reveal an alleged violation of the fundamental rights of individuals on the occasion of a police action of the FCSE, must be recorded in the aforementioned computer application.

2) **Documentary control of all police actions** carried out on persons subject to identification and persons deprived of their ambulatory liberty, a control that constitutes a true integral follow-up of the action with sequential and temporal recording of all the events that may occur.

3) **Control and monitoring of all incidents** resulting in death, serious injury or suicide attempts of citizens in the premises of the FCSE or outside them on the occasion of a police action, including identifications on public roads. In this regard, Instruction 5/2015, on the organization and functions of the IPSS, establishes that the General Directorates of the Police and the Civil Guard, respectively, must communicate to the IPSS within a maximum period of 24 hours all the events described in the previous paragraph.

With regard to the promotion and protection of human rights in the police forces, in the National Police (PN) and the Civil Guard (GC), organizational units have been created in recent years (Human Rights and Equality Area, in the National Police, and Human Rights, Equality and Diversity Area, in the Civil Guard) specifically dedicated to promoting respect for human rights and offering legal security in their actions to police officers.

In addition to promoting and facilitating knowledge of police ethics, all these units have, among their functions, to promote training activities in relation to their areas of action, frequently holding specialized seminars and conferences on the subject.

4. To train and ensure the welfare of law enforcement officers.

Introduction

CEPOL is an agency of the European Union dedicated to developing, implementing and coordinating training for police officers. Since 2016, CEPOL has been officially renamed "**European Union Agency for Police Training**". CEPOL contributes to making Europe safer. To this end, it facilitates cooperation and knowledge sharing among law enforcement officers from EU Member States - and to some extent from third countries - on issues relating to EU priorities in the field of security; in particular, from the EU policy mix against serious and organized crime.

The Agency brings together a network of training centers for Member States' law enforcement officers, which it supports by providing front-line training on security priorities, police cooperation and information exchange. It also works with EU bodies, international organizations and third countries to ensure a collective response to the most serious security threats.

At the national level, **Royal Decree 146/2021**, in its Article 5 bis, paragraph 9, establishes, among other functions, that the **General Directorate for Coordination and Studies of the Secretariat of State for Security** will act as the National Unit of the European Union Agency for Police Training (CEPOL).

Training provided to law enforcement commanders and professionals on the facilitation of assemblies, including protests

Within the training for access to the different scales and categories, as well as for the improvement and specialization of the police forces, aspects directly linked to the protection, respect and awareness of human rights and the use of force are developed. CEPOL provides a wide range of training, in line with the EMPACT priorities of the European Union and the training needs established in the multiannual report *European Union Strategic Needs Assessment* (EU STNA). For more specific subjects, an *Operational Training Needs Assessment* (OTNA) is produced, which assesses needs on a specific subject.

With regard to the interest of the consultation, for the year 2023 there are plans for classroom training courses that are directly or indirectly related to the interest of the Special Rapporteur, such as: courses called "*Community Policing*", "*Workshop for Heads of Riot Unit*", "*Public Order and Crowd Management-Security during Major Events*", a course called "*Public Order in State of Emergency*", a course called EMPEN (*European Medical and Psychological Expert's Network for Law Enforcement*)-*medical emergency response*. All of the above within the framework of an eminently operational training. Within the framework of training oriented to the defense of human rights, he will

give the following training courses: "*Fundamental Rights*", "*Hate Crime*" and "*Victim Protection*".

In the area of online training, there is a wide range of online courses, modules and *webinars that law enforcement officers can access autonomously once they have registered on the online training platform called Law Enforcement Education (LEEd)*. In the training repository which can be accessed and which is grouped by subject matter, in terms of the subject of interest, there are training areas such as the following: "*Fundamental Rights*" or "*Public Order and Prevention*" or in the *Webinar Catalogue* repository, you can access areas of "*Fundamental Rights*" where there are topics such as: "*Hate crime, Racism and Discrimination*", "*Victim Protection and Victims Rights*" or "*Protection of Journalists*", or *Public Order and Prevention* area, where to find topics such as "*Crowd control: policing demonstrations*".

Who teaches it

Each national police institution has among its structural bodies training departments that instruct on the subject. The National Police, in particular, has established a Center for Updating and Specialization, which is responsible for planning, coordinating and directing the educational activities aimed at the permanent training for the updating and specialization of the officers of the National Police Corps. The Center for Operational Practices is responsible for organizing the teaching activities for the tactical-operational training of police units.

For its part, CEPOL, not having a physical infrastructure in the form of an academy, brings together a network of Member States' training centers for police officers and will be linked in each Member State to a single national unit within the network. CEPOL carries out the learning activities in cooperation with the network of Member States' training centers in accordance with the financial rules applicable to CEPOL.

Specialized training or training included in general law enforcement training

CEPOL provides specialized training for law enforcement officers who are already professionals in their respective Member States and have passed their national curricula.

Frequency of refresher training provided

The members of the Police Intervention Units of the National Police, upon joining them, must pass psychophysical and knowledge tests, and subsequently pass professional courses to join the different Units. Within these, they are obliged to complete some Permanent Training Days and others of Updating-Recycling.

On the part of the Civil Guard, students entering the Officers' Scale receive training in actions related to serious threats to public safety, treatment of meetings and demonstrations and maintenance and restoration of public safety in meetings and demonstrations. Students entering the Non-Commissioned Officers Scale receive training on freedom of expression, assembly and demonstration as basic freedoms, in accordance with the Organic Law for the Protection of Citizen Security. The rest of the training is aimed at determining what is understood by meetings or associations contrary to the law and how to sanction their material expression by means of the corresponding procedure and, if necessary, subsequent sanction, which is the subject matter of the subject taught, "*Citizen Security*". The students of access to the Scale of Corporals and Guards receive sessions with subjects on Human Rights, citizen security, Instruction and Training and Operational Intervention.

Likewise, whenever new equipment is provided, teachers and instructors are first trained and then provide training to students. The training material is reviewed in advance at the beginning of each school year and every time there is a change in the legislation of the applicable regulations.

Also in the area of advanced training, the Centro de Adiestramientos Especiales offers the ARS Specialist/Mass Control Courses. This training is a specialized training, and is aimed at personnel who will later be integrated into the Reserve and Security Group (ARS).

CEPOL's training catalogs are updated on an annual basis and are offered throughout the year, grouped in quarters.

New equipment training

The programs of the CEPOL courses are defined by the "*Activity Managers*" that each Member State nominates to present their candidacy to the competitive process to receive the "*Grants*" that finance the organization of each specific activity, so the contents of the subjects are different in each edition, and it is up to the organizer to include some subjects or others. These programs are evaluated by CEPOL's *Training and Research Unit* for approval.

However, in previous editions, sessions on unit organization, equipment, non-lethal weapons and resources were included, as well as case study analysis sessions and comparison of regulatory and operational tables on the use of force in the different Member States participating in the training activity, within the scope of good practices and lessons learned, given that the specific training of this type of units is the responsibility of each Member State for its national units.

Frequency of review of training material

The catalog of activities to be provided by CEPOL is reviewed, structured and approved annually. However, the strategic lines on training needs at EU level for law enforcement officers are defined in the EU-STNA (*European Union Strategic Training Needs Assessment*) report, which is a collective and EU-wide effort involving the Member States, the European Commission, key experts and stakeholders such as the European Agency for Police Co-operation (EUROPOL), the European Police Agency (ECHA), the European Commission, key experts and stakeholders such as the European Police Co-operation Agency (EUROPOL), the European Agency for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Police Training Agency (CEPOL), the European Commission, key experts and stakeholders such as the European Agency for Police Cooperation (EUROPOL), the European Border and Coast Guard Agency (FRONTEX) and other EU Justice and Home Affairs (JHA) agencies in the EU, for the prioritization of training needs at EU level in the field of law enforcement. The coordination of the EU-STNA exercise, which serves as a multi-year strategic analysis of training needs, is part of CEPOL Agency's core mandate to support, develop, implement and coordinate training for law enforcement officials. The EU-STNA was launched in 2017 and the first EU-STNA Report was published in 2018, listing the training needs and recommended training guidelines at EU level for the period 2018-2021, having been considered useful as a strategic guideline and consultation tool, helping to align the planning of internal training delivered to Member States, whereby the EU-STNA findings are translated into the work programs of the JHA (Justice and Home Affairs) agencies and guide with more detailed training needs analyses for the configuration of their training portfolios.

In order to define the strategic and training priorities, at EU level, for law enforcement officers for the next 4-year cycle (2022-2025), drawn from the *EMPACT-European Multidisciplinary Platform Against Crime Threats*, the CEPOL Agency launched the new EU-STNA assessment in 2020 to identify knowledge, skills and competency gaps and corresponding training needs. The EU-STNA assessment as a process, and therefore this Report, focuses only on the training dimension in the context of homeland security and its external aspects, without mapping and prioritizing crime areas. The report presents the findings of the second EU-STNA exercise conducted during the year 2021, providing an overview of the horizontal and thematic areas and listing the Member States' capabilities and corresponding law enforcement training needs for the period 2022-2025 in order of priority. The findings are based on the review of strategic and policy documents, as well as consultations with practitioners, experts and stakeholders. Ultimately, the list of training needs identified at EU level was prioritized by Member States, who also indicated the volume of training required, and then shared with potential EU training providers to guide them in building their training portfolio, thus supporting effective, coordinated and efficient training, thus supporting an effective, coordinated and coherent police training offer at EU level. Available at: <https://www.cepola.europa.eu/publications/european-union-strategic-training-needs-assessment-2022-2025>

Ways to ensure the safety, health and welfare of law enforcement officers in the context of protests.

From the point of view of the security, health and welfare of law enforcement officers in the context of protests, there is no specific area of training, since these attentions or coverage are the responsibility of the respective Member States for their national officers. However, Member States, within the scope of the training and possibilities offered by CEPOL, have the tool of *webinars* as a way to address topics of regional or national interest, which in coordination with CEPOL's *e-Learning* Unit, can provide dissemination at European or national level of a topic of special interest; in this sense, in the 2022 edition, a *Webinar* called "*Mental health problems among police*" was given, whose objective was to better equip law enforcement officers to deal with mental health problems in the context of their work. At the end of the *webinar*, the audience was expected to be able to:

- Explain the origin and possible mental health problems that may arise in the context of police work.
- Describe measures of how they can support colleagues with mental health issues that arise in the context of their work.
- List the possibilities for supporting police officers with mental health problems in the context of their work.