

# Spain's Public Safety Bill as "Administrative Law of the Enemy"

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A few days ago, the Spanish Congress approved by absolute majority (179 votes) a new [Public Safety Bill](#) (*Proyecto de Ley Orgánica de Seguridad Ciudadana*). This law, if it becomes enacted (which it certainly will), will give the Spanish government sweeping powers to crack down on peaceful demonstrations, to mention just one of several disturbing features of what seems to be a piece of "administrative law of the enemy".

The Public Safety Bill is a so-called "organic law". According to the [Spanish Constitution](#) (art. 81), organic laws are those that relate to the development of fundamental rights and public liberties, establish Statutes of Autonomy and the general electoral system, and other laws provided in the Constitution. To pass, amend or repeal them an absolute majority in Congress is required. The Senate has to decide within two months of receiving the text if it vetoes it or introduce amendments. The veto must be passed by an absolute majority (art. 91 of [Spanish Constitution](#)). However, the text will probably be approved unchanged by the [Senate](#), since the majority of the Popular Party in the [Senate](#) is the same as in Congress.

The [draft bill](#) proposes in its Preamble, as reasons for its enactment: a "perspective over time that shows the strengths and weaknesses of the legal rules, social changes in our country, the new forms of a safety risk and citizen's tranquillity, the new content that social demands included in this concept ..."

Nevertheless, the new perspective on the shortcomings of the [law](#) currently in force, the [Organic Law 1/1992, of Public Safety](#) (*Ley Orgánica 1/1992, de Seguridad Ciudadana, LOSC*) is not explained in the Preamble of the bill, as what social changes have occurred or to what new forms of citizen security and what the new risks to peace may be.

The Spanish Government is concerned about the increasing number of demonstrations and this legislative project aims to avoid them. It is obvious that the number of demonstrations against the government's political and economic policies has increased, but as long as these activities are held in accordance with the provisions of [Article 21 of the Constitution](#) and the [Organic Law 9/1983](#), they should be considered as a development of the exercise of the "fundamental right to shape public opinion" ([Constitutional Court Judgment No. 170/2008](#)). In this way, the European Court of Human Rights reiterates that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively. Any demonstration in a public place inevitably causes a certain level of disruption to ordinary life and it is important for public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see [Bukta and Others v. Hungary](#)).

Recently, this Court ruled that the imposition of administrative fines for the participation in a peaceful demonstration were disproportionate and not necessary for maintaining public order within the meaning of the second paragraph of Article 11 of the Convention. In the Court's view, the prosecution and conviction for the participation in a peaceful demonstration could have had a chilling effect and discouraged them from taking part in other similar meetings (case [Yilmaz Yildiz and Other v. Turkey](#), 14 October 2014).

And in the case that those demonstrations are no longer peaceful or illegal, the Spanish [Organic Law 1/1992, of Public Safety](#) (LOSC) already provides sufficient sanctions.

According to the [Spanish Ministry for Home Affairs Yearbook of 2012](#), the number of demonstrations that breached the [Organic Law 1/1992, of Public Safety](#) (Arts 23.c and 23.d) was slightly higher in 2012 (3461) than in 2011 (3173), while the number of penalties were multiplied by five: from 366 to 1722.

The [Spanish Ministry for Home Affairs Yearbook of 2013](#) shows that infringements of Articles 23.c and 23.d decreased in 1643, but the number of penalties did not decrease as much: 741. In addition to this, the number of

demonstrations prohibited by the public authorities increased by 472.11% in the year of 2013.

In conclusion, the current system contains the tools to subject infringements of public safety to a penalty and in recent years they have been applied with no problems whatsoever.

However, the [Public Safety Bill](#) (*Proyecto de Ley Orgánica de Seguridad Ciudadana*) approved by the [Spanish Congress](#) includes provisions that are proper, so to say, of what can be called an “Administrative Law of the enemy”, similarly to what professor Günther Jakobs calls *Criminal Law of the enemy*. The concept, as *Jakobs* propounded it, drew a distinction between a normal “criminal law for citizens or persons” and a “criminal law for enemies”. Criminal Law for the enemy implies the punishment of the conducts that have not yet injured public safety, include very serious penalties and certain procedural safeguards are reduced or suppressed.

Firstly, the [Public Safety Bill](#) approved by the [Spanish Congress](#) includes conducts that have not yet breached public safety. Some examples of this “preventive administrative law” are:

- a.- The punishment of the participation in a peaceful demonstration.
- b.- The punishment as a serious offense of any attempt to oppose the implementation of a judicial or administrative decision. It is irrelevant that the act of opposition is effective or not.
- c.- The subsequent loss of personal documentation occurred during a period of one year shall be punished as a minor offense.
- d.- The [Draft Law of Public Safety](#) includes the “[Greenpeace](#) offense”: it punishes “scaling buildings without authorization”.

The second feature of the “Administrative Law of the enemy” is to include very serious penalties. The [LOSC](#) already includes very high economic penalties: from 30,050.62 euros to 601,012.1 euros for very serious offenses, from 300.52 euros to 30,050.61 euros for serious offenses and up to 300.52 euros for minor offenses but the [Public Safety Bill](#) increases the minimum penalty for serious offenses to 601 euros and the maximum penalty for minor offenses to 600 euros.

In addition, this Bill

- a.- punishes with the same fine non-notified demonstrations and prohibited demonstrations close to critical institutions,
- b.- punishes behaviors whose punishment is absurd as the third and subsequent loss of personal documents,
- c.- does not include an alternative measure to the penalty for drug or narcotic that does include the [LOSC](#): the suspension of the penalty if the offender is subject to a treatment for addiction.
- d.- increases the number of minor offenses from 10 to 17; the number of serious offenses rises from 16 to 24.

Finally, the [Spanish Criminal Code](#) fines public order offenses with 120 euros while the [Public Safety Bill](#) includes fines of 600 to 30,000 euros for similar behaviors.

The third feature of the “Administrative law of the enemy” is that certain procedural safeguards are reduced or suppressed. The [Public Safety Bill](#) transforms criminal sanctions into administrative penalties, which are decided by the Administration itself and not by independent judges. Additionally, according to the [Law on Fees](#) in order to challenge an administrative penalty in court citizens are required to pay an administrative fee that may involve, in more severe penalties, 2,000 euros.

Finally, this [Public Safety Bill](#) includes an amendment that violates the constitutional right of asylum and, perhaps, European Union Law: immediately forcing migrants back into Morocco once they have made it onto Spanish territory is expressly prohibited, but the Spanish Government seeks to legalize on-the-spot deportations of illegal immigrants and according to the [Public Safety Bill](#) immigrants who are detected on the border line that demarcates Ceuta and Melilla territory, trying to cross the border unauthorized in a clandestine way, will be

rejected with the aim of preventing their illegal entry into Spain.

Overall, it seems that the [Spanish Congress](#) ignores the case-law of the European Court of Human Rights and the recommendations of the Secretary General of the Council of Europe whose report [State of democracy, human rights and the rule of law in Europe](#), May 2014, stated:

*Several member States, with the assistance of the Venice Commission, have made significant legislative improvements to guarantee the freedom of assembly. The most comprehensive domestic laws now require mere notification (rather than authorisation) of planned demonstrations, permit spontaneous and urgent assemblies and contain neither blanket restrictions nor excessive sanctions.*

*Member States should uphold the right to peaceful assembly and the principles of proportionality and non-discrimination. Governments should reverse legislation that does not follow these standards. The Council of Europe can play an important role in promoting these principles...*

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