



24.7.2020

## NOTICE TO MEMBERS

**Subject: Petition No 0441/2020 by Sergio Santamaria Santiagosá (Spanish) on limitation of the information rights during the Corona Virus crisis**

### 1. Summary of petition

The petitioner is complaining about a regression in the exercise of the fundamental rights of Spanish citizens during the state of alarm decreed by the Government, because of Covid-19. He criticise the limitations on the right to free movement, with the strict confinement of citizens in their homes and a series of unjustified decisions that affect the transparency and good governance regulations in force within the Union and its Member States. The Spanish executive has decreed the closure of the Transparency Portal, which makes it difficult to control and understand the actions it is carrying out and be informed on the evolution of the health crisis. In addition, the activity of the democratic parliamentary control of the Government has been severely limited, with only one session of control of the executive. The press has been limited: in the press conferences of the Prime Minister, the questions were censored by limiting them and condition them to the prior assessment process by the Secretary of State for Information. This unexpected limitation is contrary to the state of liberties in force in Spain, incompatible with article 11 of the Charter of Fundamental Rights of the European Union and article 3 of the Treaty on European Union.

### 2. Admissibility

Declared admissible on 4 June 2020. Information requested from Commission under Rule 227(6).

### 3. Commission reply, received on 24 July 2020

Democracy, the rule of law and fundamental rights are founding values of the European project.

The right to move freely within the territory of the Member States, the right to freedom of

expression, which includes the right to be informed, and the rights to privacy and to protection of personal data are enshrined in Articles 45, 11 and 7 and 8, respectively, of the EU Charter of Fundamental Rights (the Charter).

Over the past weeks, several governments took emergency measures to address the health crisis caused by the outbreak of the coronavirus.

The Commission has made clear from the outset that the response to this crisis must fully respect the fundamental principles and values as set out in the Treaties. Emergency measures must be limited to what is necessary, strictly proportionate, clearly restricted in time, and in line with constitutionally enshrined safeguards, as well as European and international standards. Moreover, governments must make sure that such measures are subject to regular scrutiny, fully respecting democratic checks and balances.

The Commission is closely monitoring the emergency measures taken in all Member States, including in Spain, and their impact, in particular, on the rule of law, on fundamental rights, and on other principles and rules of EU law.

With specific regard to the alleged violation of the right to move freely within one's country, the Commission recalls that, according to its Article 51(1), the Charter applies to Member States only when they are implementing EU law.

The rules restricting the movement within Member States' territory fall under the sole competence of the Member States. In such cases, it is for Member States, including their judicial authorities, to ensure that fundamental rights are effectively respected and protected, in accordance with their national legislation and international human rights obligations.

Restrictions on the free movement of persons between Member States can be justified on grounds of public health, provided they comply with the safeguards of EU law. The Commission has continuously highlighted that any such restrictions should be based solely on public health considerations and should be designed in a proportionate and non-discriminatory manner. Given the positive epidemiological developments, Member States have started announcing plans to lift these restrictions in line with the Commission's Communication "Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls"<sup>1</sup>.

With respect to the view that the right to access information was affected by the measures that Spain took to provide for online participation in regular press briefings and for access to the transparency portal in the context of the current health emergency, the Commission President has been clear that democracy cannot work without free and independent media. Respect for freedom of expression is essential. It is more important than ever that journalists are able to do their job freely and precisely, so as to counter disinformation and to ensure that citizens have access to crucial information.

The crisis has made it important to curb the spread of disinformation. The COVID-19 ('Coronavirus') pandemic has been accompanied by an unprecedented flood of false or inaccurate information about the virus that can create confusion and distrust, undermine an

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<sup>1</sup>[https://ec.europa.eu/info/files/covid-19-towards-phased-and-coordinated-approach-lifting-internal-border-controls-and-restoring-freedom-movement\\_en](https://ec.europa.eu/info/files/covid-19-towards-phased-and-coordinated-approach-lifting-internal-border-controls-and-restoring-freedom-movement_en)

effective public health response and have a negative impact on our democratic institutions. On 10 June 2020, the Commission and the High Representative/ Vice-President, supported by the European External Action Service, adopted a joint Communication ‘Tackling Covid-19 disinformation – Getting the facts right’<sup>2</sup>, providing an overview of the actions taken to combat the spread of disinformation, as well as outlining immediate future actions.

The COVID-19 crisis has shown the importance of promoting information from authoritative sources, based on advice from scientists and health professionals. This does not mean that there should be restrictions on the plurality of information or the existence of a “Ministry of Truth”. This is a false dilemma. Democracy cannot work without free and independent media, an essential service that provides citizens with reliable, fact-checked information and enables them to make informed decisions based on critical thinking. The Commission will continue working with online platforms, fact-checkers, researchers and civil society organisations to ensure that citizens are able to access reliable and credible information. The fight against disinformation should not and may not reduce our democratic values, including the possibility to have a fair democratic debate where different voices can be heard, and the possibility for citizens to hold the authorities to account.

As mentioned above, the Commission is monitoring in all Member States how measures taken in the emergency context are being applied in practice and what their impact is on EU law and values. It is also monitoring the impact of such measures on free and fair elections and on a fair democratic debate.

The Commission notes that on 21 April 2020 the Chief of the Civil Guard clarified that the fight against disinformation was not about seeking to minimise criticism of the government’s management of the crisis. This was confirmed on 23 April 2020 by the Minister of Home Affairs.

According to the information available to the Commission, in Spain the state of emergency was declared on 14 March 2020. This declaration was immediately communicated to the parliament. The parliament discussed this declaration, and voted and approved the extension of the state of emergency six times – on 25 March 2020, 9 April 2020, 22 April 2020, 6 May 2020, 20 May 2020 and 3 June 2020.

The Commission reiterates that the oversight of emergency regimes and measures by the parliament is key for the respect of the rule of law and will continue to follow the situation in all Member States in this regard.

As regards the use of mobile applications to control the spread of the virus, on 8 April 2020 the Commission adopted a Recommendation setting out principles to ensure the respect of fundamental rights, and in particular the rights to privacy and personal data protection and the prevention of surveillance and stigmatisation<sup>3</sup>. It was followed by a common EU toolbox developed by the Member States with the support of the Commission, and complemented by Commission guidance on the respect of privacy and data protection<sup>4</sup>. The Commission guidance relates to key elements such as: the installation of an app on a user’s device should be voluntary; if proximity data is used, it should be stored on an individual’s device and only shared at the

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<sup>2</sup> JOIN(2020) 8 final.

<sup>3</sup> C(2020) 2296 final.

<sup>4</sup> C(2020) 2523 final.

initiative of the user; for contact tracing, there should be no use of geolocation data, only proximity data based on Bluetooth; the identity of the user of the app should not be disclosed to other users; the personal data should not be kept for longer than necessary; the apps should be only used during the crisis and be deactivated at the latest when the pandemic is over; data protection authorities should be fully involved and consulted in the development of an app and should keep its deployment under review.

On 21 April 2020, the European Data Protection Board (EDPB) adopted detailed guidelines on geolocation and other tracing tools in the context of the COVID-19 outbreak, which correspond to and complements the guidance issued by the Commission.

### Conclusion

The Commission will continue monitoring developments in all Member States until all COVID-19-related emergency measures are lifted. In the current phase, where certain measures taken to protect public health are being gradually relaxed, the general states of emergency with exceptional powers granted to governments should gradually be removed or replaced by more targeted and less intrusive measures.

The Commission will remain very vigilant on how emergency measures which affect the rule of law, fundamental rights and democratic values are phased out in the Member States.