HUMAN RIGHTS AND POLITICAL REPRESSION

Europe at the crossroads: unprecedented threats to human rights exacerbated by the pandemic

Amnesty International



A demonstrator faces riot policemen during clashes as part of the Climate Change protest, on September 21, 2019 in Paris. Photo by Zakaria ABDELKAFI / AFP via Getty Images

EIn Amnesty International's yearly analysis on the human rights situation around the world, Europe [1] has been gaining unprecedented attention in recent years, in relation to issues that not long ago aroused little or no concern. Some of the trends that have taken a turn for the worse relate to essential issues of political freedom, freedom of assembly, right to protest and freedom of expression, all of which are fundamental rights and pillars of democracy.

1. Political repression and human rights in Europe: main trends

The outlook is concerning, with several trends arising. The first one is located at the heart of Europe and in two countries: Poland and Hungary, members of the European Union (EU), which have long been actively trying to undermine the independence of the judiciary to avoid accountability, as well as to pass regressive human rights legislation on issues such as women's rights, LGBT rights or migration and refugees.

The EU continues outsourcing border control, raising serious human rights risks: tens of thousands of people remain exposed to conflict, violence, torture and an uncertain future in miserable conditions at the gates of Europe. There is a very worrying shift in this trend: those who oppose these immigration and border control policies (individual activists or NGOs) often suffer smear campaigns, harassment and even administrative and criminal penalties, in the persecution of solidarity that can be seen in countries such as France, especially around the border with Italy and on the Strait of Dover, as well as Spain and Italy, with threats to ships and maritime rescue operations run by civil organisations. A growing number of human rights defenders, activists and independent media channels are therefore being intimidated and prosecuted. Those who help are persecuted.

Too often, governments respond to expressions of dissent in the street by adopting restrictive measures and an excessive use of force against protesters by law enforcement bodies. In such a general context of intolerance and discrimination, minorities and those who try to defend their rights are met with violent reactions, deepening the stigma attached to some communities.

The founding values of the EU are now being directly challenged from within the Union. In Poland, the independence of the judiciary, an essential component in the rule of law, is threatened as the ruling party takes more drastic measures to control members of the judiciary and the courts. This reactionary move in Poland clearly illustrates the change in values taking place in Europe. Signs can be seen across Europe, from the structural consolidation of immigration policies that always put the protection of borders ahead of the protection of human lives, to measures repressing popular dissent and peaceful public protest, which often lead to abuse by law enforcement bodies and officials. Intolerance against ethnic, religious and sexual orientation minorities frequently results in violence and discrimination.

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Although it is already evident that many European States do not guarantee the human rights of all people within their borders, there is no shortage of brave people who, at whatever personal cost, dare to come out in defence of those rights and try to hold the authorities accountable. In recent years, we have witnessed a real surge of protests and demonstrations in Europe. France, Germany, Poland, Belarus, Spain (especially in Catalonia) and other countries have seen people take to the streets in large numbers to demand and claim rights. These essentially peaceful popular movements are an unequivocal appeal to European governments to react and accept their responsibilities, not only at home but also in light of global challenges such as climate change. Their mobilisation around these issues sheds some hope to the future.

2. Main rights and groups affected

2.1. Migration

The idea that the best way to manage migration and border control is to "outsource it" continues to prevail, although it remains in the hands of countries with a dubious human rights record. Thus, EU countries seem to find it acceptable to contain migrants and asylum-seekers in abysmal conditions at the periphery of the EU or just outside its borders.

The abuse of the human rights of migrants and asylum-seekers who attempt to cross the Mediterranean reaches new heights when we speak about Libya. In addition to torture and arbitrary detention, these people suffer shelling and direct attacks by the warring factions in the North African country, with hundreds of deaths. Despite the deteriorating security situation and continuing evidence pointing to systematic human rights violations in Libya's detention centres, European countries continue to incomprehensibly cooperate with Libya to contain migrants and asylum-seekers there. In November 2019, the Italian government extended its migration agreement with Libya for a further three years.

Cooperation with Libya went hand in hand with the policy of "closed ports" established by the Italian government. Under this policy, NGO ships were denied a safe port after rescuing people at sea and were forced to wait for weeks while the Mediterranean states argued amongst themselves about where to disembark them. The policy ended after a change of government in Italy and the fall of the heavy-handed politics promoted by Lega and Salvini, which created the conditions required for a temporary agreement between France, Germany, Italy and Malta. It was a small, tentative step forward, but it ensured minimum coordination between the four countries to disembark and relocate those rescued at sea.

Despite consistent condemnation from human rights organisations, the 2016 EU-Turkey Deal continued to shape the migration policy of the EU in the Eastern Mediterranean. Reports of grave human rights violations against asylum-seekers and refugees in Turkey did nothing to deter the continued use of Turkey as an EU partner on migration.

In 2019, Greece saw the biggest increase in sea arrivals since 2016. This led to unprecedented overcrowding in the camps on the Aegean islands. More than 38,000 people were held in facilities with a capacity for little more than 6,000. In November 2019, confronted with the ever-growing protection needs of asylum-seekers, refugees and migrants in the country, Greece's newly installed government rushed to introduce new legislation featuring accelerated asylum procedures, increased detention measures and returns to Turkey. These followed trends in Austria, Finland, and Germany, which have restricted the rights of asylum-seekers and placed greater focus on detention and deportations.

Land arrivals via the Greece-Turkey land border increased, accompanied by serious and consistent allegations of pushbacks and violence on the Greek side. Those who managed to avoid pushbacks continued their journey through the Balkan Peninsula. According to reports, more than 30,000 people transited along this route after leaving Greece and

Bulgaria. Over 10,000 remained stranded in squalid camps in Bosnia and Herzegovina and Serbia, unable to continue their journeys due to persistent and systemic collective expulsions and violence by the Croatian police. Despite overwhelming evidence of human rights violations at the Croatian border, in October 2019 the European Commission recommended Croatia's full integration into the Schengen Border Area.

One year later, in November 2020, the European Ombudsman announced that it was opening an investigation into the possible failure of the European Commission to ensure that the Croatian authorities respect fundamental rights in their EU-funded border operations against refugees and migrants. Amnesty International and other organisations have been documenting numerous human rights violations for years, including beatings and torture, against migrants and asylum-seekers by the Croatian police, whose salary is paid using EU funds. The announcement of this investigation by the European Ombudsman is the first important step towards addressing this blatant abuse and ensuring accountability.

By continuing to fund border operations and giving the green light to Croatia joining the Schengen Area, the Commission has failed in its obligation to monitor how EU aid funds are used and sent the dangerous message that flagrant human rights violations can continue without anyone asking questions. The complaint filed by Amnesty International in September 2020, which launched the investigation, argued that the Commission was looking the other way over reports of persistent abuse. It also revealed that the Commission had not established an independent monitoring mechanism to ensure that the measures taken by Croatia at its borders, many of them financed through the EU's emergency aid instrument, are compatible with fundamental rights.

2.2. Human rights defenders

Many individuals and civil organisations continued to oppose these anti-migration policies, standing up as defenders of human rights, providing concrete support and solidarity to migrants and asylum-seekers. They rescued people from the sea and in the mountains, providing transport, food and medicines to those in need all over the continent.

The response of many European countries to these acts of humanity was to give free rein to criticism, intimidation, harassment, fines and even prosecution of human rights defenders. In Greece, Italy and France, the governments have often treated rescue activities as human trafficking and the actions of human rights defenders as threats to national security, prompting the adoption of supposedly urgent, much more restrictive laws. The Spanish authorities have misused administrative regulations to restrict the rescue operations of NGO ships, threatening them with fines of almost one million euros. It is shameful that insensitive authorities who are determined to close their borders at all costs are attacking those who defend human rights, including human lives.

The lack of clarity in EU legislation leaves ample scope for States to interpret it in a draconian manner nationally, which has a paralysing effect on the work of human rights defenders. Many people and NGOs are increasingly reluctant to undertake solidarity

actions for fear of their consequences. Laws such as the Law on Citizen Security (LOSC), known as the “Gag Law” and in force in Spain since 2015, function as real barriers against activism and citizen mobilisation, discouraging protest.

2.3. Freedom of expression

Human rights defenders are not alone in facing challenges to their work. In many parts of the region, journalists investigating cases of corruption, organised crime and war crimes continued to be subjected to threats, smear campaigns, intimidation and in some cases physical violence as was the case in Croatia, Serbia and Bosnia and Herzegovina. While too often the authorities fail to condemn such attacks or carry out effective investigations, in Bulgaria it was the authorities themselves who brought charges against investigative journalists who had exposed corruption scandals potentially implicating senior government officials.

In Spain, there has been an abuse of the glorification of terrorism offence in the Criminal Code, following the 2015 reform, which has led to the prosecution of many social media users, but also musicians, journalists and even puppeteers. The combination of the crime of glorifying terrorism together with that of insulting State institutions, especially the monarchy, is proving very damaging to the freedom of expression of artists and must be removed as it fails to comply with international human rights standards on freedom of expression. Resorting to the Criminal Code with the purpose or effect of inhibiting legitimate criticism of institutions, as has been happening in Spain in recent years, violates the freedom of expression. In the future reform of the Criminal Code, these offences must be removed and it must be ensured that none of its provisions unduly criminalises artistic expressions or creations protected by the right to freedom of expression.

2.4. Freedom of assembly

In Europe, people protested and took to the streets to demonstrate against austerity measures and in support of social justice, but also against corruption and about the independence of the judiciary. Protests and strikes urging governments to take measures against climate change became frequent in major European cities in recent years. The emergence of COVID-19 has also caused many people to protest against health measures or mobility restrictions.

In response, many States often opt for measures that breach the rights to freedom of peaceful assembly and expression. In France, Austria, Holland and Spain (in Catalonia, due to protests following the sentencing of Catalan politicians and social leaders for the 2017 independence referendum), hundreds of people have been injured during protests. In Spain, prison sentences imposed in October 2019 on Jordi Sànchez and Jordi Cuixart, leaders of two civil organisations, and seven other high-ranking Catalan political officials, are a result of the vaguely defined crime of sedition in the Spanish Criminal Code and the Supreme Court’s excessively broad and dangerous interpretation. This interpretation meant the criminalisation of legitimate acts of protest and poses a clear risk to actions of this type

being excessively restricted in the future, clearly impacting the right to freedom of assembly and demonstration in Spain.

The police resorted to unlawful use of force in France, using tear gas for example, and violently broke up peaceful gatherings in Turkey, where blanket bans were often used to deny the right to freedom of peaceful assembly. States failed to hold their security forces accountable for the violence perpetrated during the protests. Some states also provided the police with heightened powers, as in Germany, where measures like assigned residency or communication surveillance can now be imposed on “future perpetrators of crimes”. In response, some courts played a critical role in safeguarding individual freedoms by annulling blanket bans on protests or, as in Poland, upholding the rights of protesters who expressed their opposition to the government. This however came at a price: some judges adjudicating in these cases were harassed or demoted by the Polish authorities striving to undermine the independence of the judiciary.

2.5. Right to personal safety

In Europe, there are systemic human rights concerns regarding institutional racism, discrimination in policing and lack of accountability for allegations of unlawful use of force by law enforcement officers. The death of George Floyd in police custody in Minneapolis (United States), which occurred in May 2020, sparked protests around the world and revealed the extent to which police discrimination, exercised with impunity, is also a widespread phenomenon in Europe. According to the data available, in 2019 there were 37 deaths in custody or as a result of some type of contact with the police in England and Wales (United Kingdom), bringing the number of people killed in the United Kingdom since 1990, under circumstances of this type, to 1,743. In France, in 2019, 23 deaths in custody or because of some contact with the police were reported. In Germany, at least 159 people of colour have died in police custody since 1990.

In several cases, the friends and families of those who have died in police custody have not received justice for the loss of their loved ones. For example, a young black man called Adama Traoré died in police custody in France in July 2016, after being detained by three law enforcement officers who pinned him to the ground. An independent forensic examination certified that Adama Traoré died of suffocation, contradicting the findings of a previous examination.

2.6. Independence of the judiciary

In Poland, Hungary, Romania and Turkey, legislative and administrative initiatives threaten the independence of the judiciary, the rule of law and, as a result, the right to a fair trial. This clash was most evident in Poland, where the government and parliament tried to implement legal and policy changes to force the judiciary to comply with its political leanings.

Judges and prosecutors found themselves at risk of disciplinary proceedings for speaking

out in defence of the judiciary and risked becoming victims of human rights violations themselves. Smear campaigns on state and social media also targeted and intimidated individual judges.

In Hungary, the erosion of the system of checks and balances in ordinary courts continued to undermine the independence of the judiciary. The European Commission has also warned Romania that it should address issues including interference with the rule of law by the executive or face the triggering of a procedure under which a member state can see certain rights being suspended for a persistent breach of the EU's founding values.

While EU institutions promptly escalated their response to the situation in Poland, their interventions have not led to significant improvements and things have even worsened. A recent example is the decision of the Polish Constitutional Court to invalidate the constitutionality of access to abortion on the basis of a "serious and irreversible foetal defect or incurable disease that threatens the life of the foetus". This causes even more harm to women and girls and violates their human rights. The ruling is a clear attack on the right to health and the sexual and reproductive rights of women and girls. It also represents a serious breach of the country's obligation, under international human rights treaties, to refrain from taking regressive measures that restrict the right of women to sexual and reproductive health care. Thus, instead of safeguarding and protecting the rights of women, the Constitutional Court of Poland has contributed to violating them. Poland must now take steps to align its legislation with that of other EU Member States and legalise abortion performed at the request of women or for general social reasons, in order to ensure full and effective access for women to health care in situations where their physical or mental health is in danger.

The Polish legislation on abortion is one of the most restrictive in Europe. Poland is one of only two European Union Member States out of 27 that does not allow abortion at the woman's request or for general social reasons. In Polish legislation, abortion is only permitted if it is performed to protect the life or health of the woman or because the pregnancy is the result of rape. Until the Constitutional ruling, it was also legal in situations of a "serious and irreversible foetal defect or incurable disease that threatens the life of the foetus". Even in situations where abortion is legal, multiple obstacles combine to severely limit access to it in practice.

> In Poland, Hungary, Romania and Turkey, legislative and administrative initiatives threaten the independence of the judiciary and the rule of law

Since it came to power in 2015, the governing party, Law and Justice, has undermined the independence of the Constitutional Court and its effectiveness as a control tool for the executive branch. The legal advisory body of the Council of Europe, the Venice Commission and the European Commission have condemned the interference of the Polish government

in the Court. In its September 2020 report on the rule of law, the Commission highlighted that the issue of the independence and legitimacy of the Constitutional Court remains unresolved. In 2017, the European Commission initiated proceedings against Poland under Article 7.1 of the Treaty of the European Union for violations of the rule of law, including the lack of an independent and legitimate constitutional review.

2.7. Equality and non-discrimination

For nearly two decades, Amnesty International has documented widespread discrimination against racialised groups in Europe, including their lack of protection against discriminatory acts of violence. In addition to hate crimes and acts of discrimination perpetrated by non-state actors, there are significant reasons for concern about policing that suggest the existence of institutional racism in Europe. This practice may affect police services “beyond the deliberate actions of a small number of fanatics, resulting in a more systematic trend that can unconsciously influence policing in general”. Examples of this include the use of discriminatory profiling, selective police surveillance and a lack of adequate investigations and redress in cases of discriminatory police violence.

In 2019 and 2020, the European Union Agency for Fundamental Rights once again expressed, as it had in previous years, its concern about the use of ethnic or racial profiling in Germany, Belgium, Finland, the Netherlands, the United Kingdom and Sweden. In 2019, the European Court of Human Rights ruled that Romanian police had subjected the Roma population to ill-treatment in a raid carried out in 2011 and, for the first time, concluded not only that the authorities should have investigated this abuse, but also that the behaviour of the police had been discriminatory. The court found that, in Romania, “Roma communities often face institutionalised racism and are likely to be the victims of an excessive use of force by law enforcement authorities”.

To support this conclusion, the court cited “widespread reports of the use of racial stereotypes of the Roma presented by the third party [the European Roma Rights Centre] that go beyond a simple expression of concern about ethnic discrimination in Romania […]. Rather, they prove that the decisions to organise a police raid and to use force against the plaintiffs were based on considerations of their ethnic origin”. Similar cases of police raids on Roma settlements or neighbourhoods have also been reported in Italy and Slovakia.

Proof of the worsening trend of the situation in the region is that such intolerance and discrimination often end in violence. This violence is directed against those who raise their voice in defence of minorities and in support of tolerance and inclusion. Discrimination and attacks against Roma communities have continued throughout Europe. Attacks and aggression towards people from the LGBTI community and of an anti-Semitic or Islamophobic nature are also happening in many European countries.

2.8. Women’s rights

In a long-awaited development and following a Belfast High Court decision, abortion in Northern Ireland was decriminalised and all pending criminal proceedings were dropped. In Slovakia, attempts in parliament to further restrict access to and criminalise abortion continued, triggering protests by human rights organisations and prompting the Council of Europe Commissioner for Human Rights to call on parliament to withdraw the law.

Survivors of sexual violence, including rape, continued to face obstacles in obtaining justice. Legal definitions of rape in most European countries remain based on force, at odds with human rights laws and standards which recognise that sex without consent is rape. In countries including Denmark, Spain and the United Kingdom, there were systemic failures in the prevention, investigation and prosecution of sexual violence. Survivors of sexual violence and women’s rights activists continue to challenge these failings and demand justice.

3. Political repression and restrictions of rights during the pandemic and post-COVID

On 11 March 2020, the World Health Organisation (WHO) declared the outbreak of coronavirus (COVID-19) to be a global pandemic and called on States to adopt urgent measures to combat it. Since then, the European States have been adopting measures to combat the pandemic and deal with the growing pressure it is exerting on their public health systems. These “lockdown” measures and the closure of activities have also had an impact on human rights and, in particular, on the rights to freedom of movement and freedom of peaceful assembly.

The application of the lockdown measures has intensified existing human rights concerns in the region. In 2019, one year before the COVID-19 pandemic, Amnesty International documented violations of the economic, social and cultural rights of the Roma and nomadic population in 18 out of 35 European countries. That same year, the organisation expressed its concern about the impunity surrounding the illegal use of force by law enforcement officers in 13 out of 35 countries. The application of lockdown measures to combat the pandemic exposed existing structural inequalities and discrimination based on ethnicity, immigration and socio-economic status. In some cases, these measures have reinforced the marginalisation, stigmatisation and violence already suffered by certain groups.

Amnesty International is concerned about the disproportionate impact of the application of some lockdown measures on individuals and racialised groups, who are themselves victims of stereotypes, discrimination and violence based on their ethnicity, religion or immigration status. The imposition of some measures, and particularly those that restrict freedom of movement, has also hit homeless people, dozens of whom have been fined by law enforcement officers in countries such as Italy, Spain and the United Kingdom for failing to comply with isolation measures and the restrictions on the right to freedom of movement.

Amnesty International has documented several cases in which law enforcement officers have used unlawful force to impose lockdown measures on individuals who had not offered resistance or posed a significant threat. This is often the case in police identity checks. In fact, existing data on police operations to stop, search and check the identity of bystanders indicate that the application of these powers has a disproportionate impact on racialised groups. For example, in the United Kingdom, one of the few European countries to collect disaggregated data on police work, the Metropolitan Police recorded a 22% increase in stop and search operations carried out in London during the months of March and April 2020, a period during which the authorities imposed extraordinary measures to combat the COVID-19 pandemic. In particular, the number of black people stopped and searched rose significantly: specifically, in March 2020, 7.2 out of every 1,000 black people were stopped and searched, a figure that increased to 9.3 in April. In France, in the region of Seine-Saint-Denis, whose working-class population in this region of Paris has a high percentage of residents of North African and sub-Saharan descent, the number of police controls was more than twice the national average and the number of fines imposed was three times higher than in the rest of the country.

According to the local authorities, the degree of compliance with the lockdown measures in Seine-Saint-Denis was comparable to that of other regions in France. Therefore, the high number of fines and identity checks indicates that this region was subjected to disproportionate police surveillance compared to others. The Roma population in informal settlements and refugees, asylum-seekers and migrants residing in camps have also suffered from a disproportionate and discriminatory application of measures against the COVID-19 pandemic. Instead of guaranteeing the adequate access to water, sanitation and alternative housing necessary for people to comply with recommended quarantine measures, the authorities in some countries have imposed mandatory quarantines on entire settlements.

Informal settlements and migrant camps in countries such as Bulgaria, France and Slovakia have undergone intense police surveillance, to the point of the army being deployed, and the people there have been forced to undergo medical tests. In several cases, Amnesty International has received information about the unlawful use of force against residents by law enforcement officers. These measures sometimes came after discriminatory and inflammatory language was used by members of the government. For example, the Bulgarian National Movement Party (IMRO), a minority member of Bulgaria’s ruling coalition, described the Roma population as a collective threat to the general population that should be “controlled and contained”. The country’s Minister of Interior, Mladen Marinov, also threatened new coercive measures to “protect the general population” if the Roma population failed to comply with the strict social distancing measures.

The use of coercive measures to protect public health in Europe has had a disproportionate impact on racialised groups, who were already subject to discriminatory identity checks and the unlawful use of force before the pandemic. Coercive approaches go against proven good public health practices and are often used against disadvantaged communities that are marginalised, impoverished or at risk of discrimination. They result in stigma, fear and a loss of trust in the authorities. In contrast, effective responses to health crises are based on

respect for human rights and emphasising community empowerment and participation, including policies that build trust and solidarity.

In order to be considered necessary, sanctions must be the last resort when other alternatives have proven to be unsuccessful or when it is clear that the objective cannot be achieved by other means. As a result, States must apply less invasive measures to ensure compliance with the restrictions, including a sufficiently robust public information campaign to inform the population of the reasons why it is important to comply with the restrictions. If other measures have not been approved and States resort only to the imposition of sanctions, the requirement for necessity will not have been met, as less intrusive means have not previously been applied to achieve the same objective.

> The application of lockdown measures to combat the pandemic exposed existing structural inequalities and discrimination based on ethnicity, immigration and socio-economic status

In view of the systemic causes for concern in Europe about respect for human rights in policing and the lack of evidence on the effectiveness of coercive approaches in public health matters, giving additional powers to the police and focussing on using force to impose lockdown measures should be considered the last resort. States must avoid enforcing lockdown measures through the use of criminal sanctions.

Given the high risk of COVID-19 transmission in certain prisons and other detention centres, the enforcement of prison sentences is likely to exacerbate the public health problems caused by the pandemic and would not be a necessary or proportionate measure.

The case of France

According to the Amnesty International report *Arrested for protest: Weaponizing the law to crackdown on peaceful protesters in France* [2], thousands of people who have protested peacefully have been affected by the draconian measures against protests applied in France by the authorities who are misusing the law to arbitrarily detain and prosecute people who have not committed any violent acts.

The blanket ban on protests brought in after the COVID-19 lockdown was disproportionate and led to the unjustified levying of hundreds of fines. Since a series of protest movements began throughout the country at the end of 2018, long before the pandemic, laws that are somewhat vague have been used against volunteer first aiders, journalists and human rights observers, among others.

The disproportionate restrictions on protesting in post-lockdown France are a continuation

of the trend where the police and justice system attack peaceful protesters. Arresting people for releasing balloons or carrying placards is a profound deterrent against legitimate protest.

Thousands of people have been arbitrarily fined, detained, imprisoned and tried for peaceful activities that should not be considered a crime. In applying the powers gained as a result of COVID-19, protests have been banned and hundreds of protesters have been fined.

In recent years, there has been a considerable increase in nationwide protest movements in France: from the “Gilets Jaunes” (Yellow Vests) to demonstrations calling for measures against the climate crisis, not forgetting those demanding social justice and those protesting against racism and police impunity held after the murder of George Floyd in the United States.

Between November 2018 and July 2019, 11,203 people from the Yellow Vests movement were held in pre-charge detention, detained and tried for activities that should not be classed as a crime. In 2018 and 2019, over 40,000 people, including protesters, were found guilty under vague laws that criminalise, among other activities, the “contempt of public officials”, “participating in a group with a view to preparing acts of violence” and the “organisation of a protest without complying with notification requirements”.

In 2019, 20,280 people, including protesters, were found guilty of the “contempt of public officials”. This crime, ambiguously defined, covers everything that is considered to “affect the personal dignity or the respect owed to a public official” and is punishable by up to one year’s imprisonment and a maximum fine of €15,000.

Faced with the sharp increase in police use of tear gas, rubber bullets and tear gas grenades, protesters are resorting more to the use of masks, helmets and protective goggles. In April 2019, a blanket ban on face coverings during protests was introduced, punishable with a fine of up to €15,000 and a prison sentence of up to one year. Between April and October 2019, 210 people were placed in pre-charge detention as a result of applying this ban. In 2019, 41 protesters were found guilty of this crime.

The law that prohibits the wearing of face coverings in public assemblies must be urgently reviewed, as wearing face coverings is currently a necessary measure to counter COVID-19.

Hundreds of people, including protesters, have been found guilty of “participating in a group with a view to preparing acts of violence”. This very general crime allows the authorities to detain and prosecute people, not for what they have done, but for what the authorities believe they might do in the future. Protesters have also been detained and prosecuted for simply wearing protective goggles or masks to protect themselves from tear gas and rubber bullets.

> The arrests and prosecutions have had a chilling effect in France;

> using the law to attack protesters is less visible than using excessive force, but is no less detrimental to the right to protest

The arrests and prosecutions have had a chilling effect on the right to freedom of peaceful assembly in France. Many of those interviewed by Amnesty International said that they now thought twice before protesting, took part less regularly in protests or avoided large public assemblies.

Using the law to attack protesters is less visible than using excessive force, but is no less detrimental to the right to protest. The French authorities must stop criminalising people and must amend all laws that hinder the right to peaceful assembly.

The case of Spain

The exceptional situation and health emergency caused by the worsening of epidemiological data in October and November 2020 in Spain, after the first wave in spring, have required the Spanish authorities to adopt urgent measures to protect the life and health of all people. These are still in effect as of early 2021.

The state of alarm decreed by the Government in October 2020 through Royal Decree 926/2020, by which new measures were adopted to contain the spread of COVID-19, meets this objective and introduces a new limitation of rights such as freedom of movement or freedom of assembly, delegating the decision-making on the specific scope of these measures to the presidents of the Autonomous Communities.

Since the entry into force of the Organic Law on Citizen Security in 2015, the so-called Gag Law, Amnesty International has reiterated its concern about the wide margin of power and discretion this law grants members of the State security forces and bodies to decide on what conduct could be considered as disobedience, lack of respect or resistance to authority. This discretion is not accompanied by adequate control and accountability mechanisms, which facilitates abusive and arbitrary behaviour. The current pandemic context has exacerbated the imposition of fines.

Over these months, the state security forces and bodies have arbitrarily imposed sanctions against people who allegedly disobeyed the state of alarm, without observing the criteria of necessity and proportionality indicated in international standards. All this is under the application of the Gag Law, a law that, as Amnesty International has been repeatedly saying for years, must be modified because it poses a threat to the rights of peaceful assembly, expression and information while also enhancing the powers of the police when it comes to sanctioning, without creating control mechanisms. In the first two months of the state of alarm alone (March to May), over 850,000 reports were processed according to the Ministry of the Interior.

Despite the difficulties and challenges faced by the security forces in this unknown and

unprecedented context, officers have carried out their task adopting a largely coercive approach, without considering alternatives to the mere imposition of sanctions. The lack of clear criteria for action, especially when dealing with vulnerable groups and specific needs, opens the door for officers of the State security forces and bodies to continue committing abuse while the exceptional situation caused by the pandemic continues.

The organisation received testimonies from people who were reported without being given any kind of warning, even under circumstances that could legitimise their presence on the street and without taking specific needs into account. Situations were also documented in which law enforcement officers did not behave with due professionalism, or even acted contrary to the instructions issued by the Ministry.

It should be remembered that the mere presence of some people on the street does not necessarily constitute a crime of disobedience and that sanctions should only be used as a last resort once all other avenues have been exhausted. However on many occasions officers are simply adopting their own arbitrary and disproportionate criteria, and in others they are not even taking into account the legitimate arguments put forward by the affected persons.

4. Proposals to guarantee more human rights in Europe

- In these times of pandemic, it is essential to protect the right to health and there is an urgent need to reinforce the public health systems in European countries, weakened by the austerity policies of the last decade. There is also a need to adopt legislative measures to protect health as a basic human right, which States must guarantee for everyone without discrimination.

- The pandemic is global and requires a multilateral response. Urgent measures must be taken now to support the COVID-19 vaccine being accessible and available to everyone, in all countries, without discrimination. Here, the agreements that Pfizer-BioNTech and other vaccine manufacturers are signing to supply more than one billion doses to the rich countries, mostly from the EU, while excluding the rest of the world, leaving them with barely a quarter of the expected production, are very worrying. The profits of the big pharmaceutical companies should not be put ahead of the health of billions of people. Pfizer-BioNTech and other manufacturers must urgently clarify how they are going to optimise access to the vaccine in low- and middle-income countries to save lives. The pandemic will not be over until it is over for the whole world, not just for Europe and the Western block.

- States must recognise that defending human rights is an essential activity during states of emergency and alert and must guarantee that those defending human rights can carry out their work without fear of retaliation, intimidation or threats. The right to peaceful demonstration and free expression must also be protected by repealing or reforming those laws that pose a threat to these fundamental rights or that

discourage protest.

- It is essential for authorities around the world to prioritise good public health practices over solely punitive and coercive approaches, which have proved counterproductive. Law enforcement agencies must give clear orders and instructions to their staff to put human rights above all other considerations.

- The obligation to pay attention to and prevent worrying setbacks in human rights within the EU, with the most obvious cases being in Hungary and Poland. The pandemic cannot be an excuse to continue going further down this path.

- The need for all member states, including Spain, to increase their efforts to relocate the refugee population in Greek camps, especially unaccompanied minors, as well as improve asylum and reception systems.

- The use of digital technologies to track and trace people and populations must guarantee full respect for human rights. These applications must not be mandatory, as this would make them a mass surveillance tool and this is prohibited under international law.

- The need to take different measures so that the pandemic does not exacerbate gender inequalities, using all possible means to tackle domestic violence and guaranteeing access to sexual health and reproductive services.

- States must refrain from imposing lockdown measures by force and from granting law enforcement officers extraordinary powers to apply these measures. The use of coercive measures to protect public health must only be seen as a last resort. They must avoid, in particular, the use of criminal sanctions to apply lockdown measure and not enforce prison sentences for those who violate these measures.

- States must explicitly prohibit discrimination in police and anti-discrimination legislation, including discriminatory identity checks, and ensure adequate mechanisms to enforce this ban, including a system of disciplinary measures against officers who violate it.

- States must put in place accountability mechanisms to ensure prompt, impartial and thorough investigations into allegations of the unlawful use of force by the police.

- States must end mandatory and discriminatory quarantines in Roma settlements.

- States must review the penalties imposed for a failure to comply with the lockdown measures and waive the fines imposed on those unable to comply with the measures in question because of their socio-economic status, including the homeless.

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