

### 1. What kind of judicial protection do I have in your country as a victim of business related human rights violations? Does this protection include compensation?

In Spain, access to judicial redress for human rights violations is available before civil, criminal, administrative and labour courts.

The Law on Civil Procedure (*Ley de Enjuiciamiento Civil*) sets out the obligation to provide certain entitlements; legal rights and circumstances; precautionary measures, and all other types of protection expressly provided for by the law that can affect this kind of abuse.

The Law on Criminal Procedure (*Ley de Enjuiciamiento Criminal*) sets out the judicial mechanisms and remedies that can be used during criminal proceedings. The Criminal Code (*Código Penal*) specifically provides for the criminal liability of legal persons (Article 31 bis *et seq.*) and sets out various crimes that may involve business-related human rights abuses, such as crimes against workers' rights or against public health, environmental crimes, terrorist financing, and so on.

In relation to administrative measures, Law 39/2015 of 1 October 2015 on the common administrative procedure applicable to public administrations and Law 40/2015 of 1 October 2015 on the legal system applicable to the public sector lay down general rules on the disciplinary procedures and State liability of government bodies. These rules are implemented by specific laws on business-related abuses (for example, Law 26/2007 of 23 October 2007 on environmental liability). The remedies set out in Law 29/1998 of 13 July 1998 on administrative judicial review apply in judicial proceedings.

In the sphere of labour, Law 36/2011 of 10 October 2011 regulating the labour courts sets out the judicial procedure applicable to cases where a worker or trade union alleges violations of the right to freedom of association, the right to strike or other fundamental rights and public freedoms, including the prohibition of discriminatory treatment and harassment.

Spanish procedural law establishes the means of redress available for the purpose of obtaining compensation in cases where the actions of a corporation have led to a human rights violation. Article 116 of the Law on Criminal Procedure and Article 116 of the Criminal Code provide that a person who is criminally responsible for a crime is also civilly liable for the crime if the latter results in damage or injury. In the case of legal persons, their criminal liability entails civil liability under the provisions established, jointly and severally with the natural persons sentenced for the same offences.

### 2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?

Yes, the Spanish Criminal Code sets out the human rights violations that constitute criminal offences.

In the sphere of environment, the Criminal Code has a section on 'crimes related to land-use and urban planning, the protection of historical heritage and the environment'. The section criminalises various types of conduct: construction in green zones or areas of ecological interest (Article 319), the emission and transport of waste, discharge, noise, mining or quarrying and so on that may cause substantial harm to air, soil or water quality, or to animals or plants (Articles 325 *et seq.*). These acts are punishable by prison sentences, fines or debarment from certain professions or public offices. The Criminal Code also gives judges and courts the power to order the adoption, at the perpetrator's expense, of the measures necessary to restore the ecological balance disturbed by the act, along with any other precautionary measure required to protect the assets safeguarded by the aforementioned section (Article 339).

Crimes against workers are regulated by Title XV of Book II of the Criminal Code (Articles 311 to 318 of the Criminal Code). The following are punishable by fines or prison sentences: imposition of working conditions or forms of Social Security affiliation that harm, withdraw or restrict workers' rights as recognised in legal provisions, collective agreements or individual contracts (Article 311); simultaneous employment of various workers without registering them with the appropriate Social Security scheme, or without obtaining the relevant work permit (Article 311), or the employment of third-country nationals or children without a work permit (Article 311 bis); illegal trafficking of workers, or recruitment by deception or under false pretences (Article 312); deception, simulating an employment contract to encourage a person to emigrate (Article 313); serious discrimination in public or private employment against any person based on their ideology, religion or beliefs, ethnicity, race or nation of origin, sex, sexual orientation, family circumstances, illness or disability, status as a legal representative or trade union official, relations with other workers in the company, or use of any official language within the Spanish state (Article 314); restriction of freedom of association and the right to strike (Article 315); violation of occupational risk prevention standards, endangering workers' lives, health or physical integrity (Article 316).

If the crime is committed by a legal person, the punishment applies to the directors or persons in charge of the service and also to those persons who had knowledge of the crime and could have taken remedial action but failed to do so.

### 3. I am a victim of human right violations resulting from activities of a European transnational corporation which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU citizen or if I don't live in the EU? What are the conditions to claim violation of my rights? Where can I find any additional information?

Organic Law 6/1985 of 1 July 1985 on the judiciary contains rules that determine the necessary link between a particular act and Spain to establish the jurisdiction of Spanish courts.

In civil and commercial matters, the said law provides that Spanish courts are competent to hear all claims made on Spanish territory in accordance with the provisions of the international treaties and conventions to which Spain is party, European Union regulations and Spanish law (Article 21). Where the claimant does not live in Spain, the Spanish courts have jurisdiction in the following cases (Article 22 quinquies):

In matters of contractual obligations, where the obligation to which the claim relates has been fulfilled or must be fulfilled in Spain.

In matters of extra-contractual obligations, where the harmful act took place on Spanish territory.

In claims related to the activity of a commercial branch, agency or establishment, where it lies on Spanish territory.

In matters relating to contracts entered into by consumers, they can file a claim in Spain if their usual place of residence or that of the other party is on Spanish territory. The other party can only file a claim in Spain if the consumer's usual place of residence is on Spanish territory.

In criminal law, courts can hear cases concerning crimes and offences committed on Spanish territory or on board Spanish vessels or aircraft, without prejudice to the provisions of international treaties to which Spain is a party. Spanish courts also have jurisdiction over crimes committed outside national territory where those held criminally responsible are Spanish or third-country nationals who acquired Spanish nationality subsequent to perpetration of the offence, subject to certain requirements (Article 23).

In labour matters, the Spanish courts have jurisdiction in the following cases (Article 25):

1.º In the sphere of the rights and obligations deriving from employment contracts, where the services have been rendered in Spain or the contract was signed on Spanish territory; when the claimant is domiciled in Spain or has an agency, branch, delegation or any other type of representation in Spain; when the worker and the employer are Spanish nationals, regardless of where the services were rendered or contract signed; in the case of contracts for employment on board ships where the contract derives from an offer received in Spain by a Spanish worker.

2.º In the sphere of reviewing compliance with the law of collective labour agreements signed in Spain and of claims deriving from collective labour disputes taking place on Spanish territory.

3.º In social security claims made against Spanish entities or entities that have their registered address, agency, delegation or any other representation in Spain.

**4. Can Ombudsman Institutions, equality bodies or National Human Rights institutions support victims of business related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen or I don't live in the EU? Are there other public services (such as labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?**

In Spain, the Ombudsman (*Defensor del Pueblo*) is the Office of the High Commissioner of the Spanish Parliament (*Alto Comisionado de las Cortes Generales*), responsible for defending the fundamental rights and public freedoms of citizens by supervising the activity of Spanish government bodies. Any citizen can request the Ombudsman to take action (which is free of charge) to investigate any alleged irregular act by Spanish government bodies or their agents. The Ombudsman can also intervene of its own motion in cases that come to its knowledge even if no complaint has been made. However, its powers do not extend to the activity of multinational corporations outside the European Union.

The Ombudsman reports to the Spanish Parliament by means of an annual report, and can also publish dedicated reports on matters it considers serious, urgent, or worthy of special attention.

More information on this can be found [here](#).

Labour inspection in Spain is the responsibility of the Labour and Social Security Inspectorate (*Inspección de Trabajo y Seguridad Social*), which reports to the Ministry of Labour, Migration and Social Security (*Ministerio de Trabajo, Migraciones y Seguridad Social*). The administrative powers vested in the Labour and Social Security Inspectorate enable it to monitor compliance with labour regulations and impose the relevant responsibilities, provide advice, and engage in conciliation, mediation and arbitration in labour matters where appropriate.

Anyone who becomes aware of acts that might constitute an infringement in matters falling within the remit of the labour inspectorate (issues related to labour, occupational health and safety, social security, employment, and so on) can call on its services. Complaints can be raised in person (at provincial Labour and Social Security inspectorates); electronically, via the website of the Ministry of Labour, Migration and Social Security; or by post.

More information [here](#).

Environmental inspections are the responsibility of Spain's regional governments, which take action when required to punish conduct that constitutes an infringement in this sphere. Law 26/2007 of 23 October 2007 on environmental liability establishes an obligation on the part of operators engaged in economic activities to remedy any damage caused to the environment. In cases where such activity constitutes a crime, the criminal law referred to in Answer 2 applies. In such cases, the rules set out above relating to compensation and civil liability claims also apply.

**5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in charge of monitoring of these activities in your country? Are there public reports available providing information on the functioning of the system?**

This kind of dispute cannot be resolved by the Spanish civil and commercial mediation system described in Law 5/2012 of 6 July 2012 on mediation in civil and commercial matters, since that regulation excludes from its scope disputes involving rights that are not disposable (Article 2).

The Decision of 1 September 2017 of the Secretariat of State for Foreign Affairs on the publication of the National Action Plan on Business and Human Rights (published in the Official State Gazette on 14 September 2017) is relevant in this respect. The Plan discusses the need to establish effective measures to protect human rights in the business world and regulate judicial, extra-judicial and administrative mechanisms to provide redress where such rights have been violated.

**6. Do I have specific rights if I am a vulnerable victim seeking remedy for business related human rights violations? Can I have access to legal aid and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?**

Article 119 of the Spanish Constitution recognises the right to legal aid where provided for by the law and in all cases where a claimant can prove that they have insufficient resources to take legal action. This constitutional right is implemented in Law 1/1996 of 10 January 1996 on free legal aid. Victims of human rights abuses committed by companies can benefit from legal aid provided their financial resources do not exceed the threshold set in Law 1/1996. This threshold was raised following the amendment of Law 1/1996 in 2015. It also takes into account certain personal circumstances of the applicant, such as family responsibilities, with the aim of increasing the potential number of beneficiaries of legal aid. The aid provided includes legal defence by professional legal representatives, legal assistance, and information from any available extra-judicial resource.

Law 1/1996 also regulates the granting of free legal aid in cross-border legal proceedings. Natural persons who are citizens of the European Union or third-country nationals legally resident in an EU Member State can benefit from the aid.

It is granted only in civil or commercial disputes, and in extra-judicial proceedings in civil or commercial disputes where the law obliges the parties to undertake the proceedings or the court in question chooses to embark on such proceedings.

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