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THE IMPACT OF DISCRIMINATORY POLICING IN SPAIN

This report was written by Rachel Neild, with extensive collaboration from Youssef Ouled and Lydia Vicente. Youssef Ouled conducted the interviews, and Markel Redondo took the photographs. It was edited by Brooke Havlik, and photo-edited by Maggie Soladay. Most especially, we want to thank our interviewees for their courage in telling their stories to support wider public insight and understanding through sharing very personal and often painful experiences.

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Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system.

Spanish Constitution 1.1.

It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.

Spanish Constitution 9.2.

ETHNIC PROFILING: **A PERVASIVE AND UNLAWFUL PRACTICE**

FAKE

TEM

IES

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Mamadou Ngom

San Francisco neighborhood, Bilbao, Social Worker

"It was very common when I lived in San Francisco; once we went out in a group and they stopped all of us. Another time when we were three roommates living in a house, one of my flat mates came in and said that he'd been stopped again, and I told him that I'd been stopped that morning as well, and that evening another friend came by and said that they'd stopped him as well. We asked ourselves why they were stopping us all the time.

The impact is feeling a lot of insecurity and vulnerability, and when you're about to go out it affects you as well, you think that it's best to stay at home, but that doesn't help you because, in the end, you have to get on with life, in the streets and in public places. I've often found myself delaying going out because I knew that if I went out I'd see police and they'd stop me.

All the White people that I've explained about stops either don't understand or just don't want to accept it, or they avoid talking about those issues questioning your experiences, doubting whether you were stopped for being Black or whether you've done something. They run away from this conversation, it doesn't enter their heads. I've told people about these stops and when I tell them it's because I'm Black they say to me "come on, not again with these things." That really causes a lot of pain, you've been traumatized, you seek a refuge, and you don't find it, so then you prefer to keep it to yourself."

When police officers stop, question, and search people based on what they look like or where they live rather than on anything they have done, it is called ethnic profiling.

For those who are not often stopped by police, it may seem like an ordinary, even a trivial experience to have your ID checked. After all, if you have done nothing, surely you just show the officer your documents and go on your way?

The reality is very different for those targeted based on their racial, ethnic, or religious appearance. Ethnic profiling sends a clear message that you are not the norm, you are not safe, and you need to be controlled. This has a profound and long-term impact on individuals' sense of belonging. The checks create the feeling that "no matter what you do, you will never be part of society."

This report describes the human impact of ethnic profiling in Spain through the stories and experiences of people for whom being stopped and searched by police because of the way they look is part of their everyday life.

Ethnic profiling is a common in Spain. It is impossible to say precisely how common. Spain, like most European countries, has no national data on policing that includes ethnicity. Available data from a range of sources, including some municipal police services and independent academic research, consistently shows that police disproportionately stop and check minority groups.

For example, a 2008 survey by the European Fundamental Rights Agency (FRA) found that 12 percent of White people reported being stopped in the prior 12 months, compared to 42 percent of people of North African or Arab origin.¹ In 2013, the University of Valencia published results of a national survey asking respondents how often they had been stopped in the last two years. Six percent (6%) of White people had been stopped, compared to 22 percent (22%) of Latin Americans; 39 percent (39%) of Black people; 45 percent (45%) of North Africans or Arabs, and a shocking 60 percent (60%) of Gitanos.

In 2016, a human rights group in Granada conducted a direct observation study of police stops in the main bus station. Their results show how much more likely a person of color is to be stopped than a White person, finding the following risk ratios (White people =1): Black 42:1 Gitano 12:1 Arab (Maghreb) 10:1 Latin American 8:1.²

In addition, the sheer volume of police stops appears particularly large in Spain. In 2015, the last year for which data on the total number of stops is available, police conducted 6,550,422 police identifications,³ compared to 1.2 million stop and searches conducted by police in England and Wales in 2011-2012.⁴ Spanish police are carrying out some six times more stops, and for a smaller population-in 2015, Spain had 46.5 million inhabitants compared to 58.4 million in England and Wales in 2017. This means not only are people of color stopped far more than White Spaniards, but that this seems to be a remarkably frequent intrusion on their lives.

Reported being stopped in the previous 12 months

2008 survey by the European Fundamental Rights Agency (FRA)



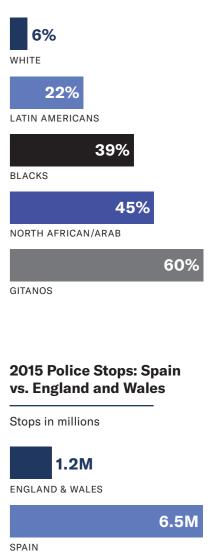
WHITE



NORTH AFRICAN/ARAB

Reported being stopped in the previous 2 years

2013 national survey published by University of Valencia



A DIVERSE COUNTRY CONFRONTS DISCRIMINATION

Spanish National Police conduct immigration checks throughout the national territory. In comparison, the United Kingdom confines checks to borders and they are generally conducted by a special agency, the United Kingdom Border Authority. Spain's nationwide checks could explain, in part, their higher rate of police stops and the disproportionate focus on people "who don't look Spanish." Indeed, in 2001 in the case of Rosalind Williams, a naturalized Spanish citizen, the Spanish Constitutional Court argued that it was rational to stop a person based on their racial appearance, as this was a reasonable way to determine who might be an undocumented migrant. This reasoning is dangerously flawed.

Spain is a diverse and increasingly multi-cultural society. Current data tells us that, of Spain's 46 million population, four and half million are legal foreign residents and a further two million naturalized Spanish citizens. Many of these six and a half million people "look different" than White Spaniards. Their Spanish-born children are visible minorities on the street, but completely invisible and uncounted in national statistics. This was recognized by the Judge Julio Diego González Campos, the lone dissenting judge in Spain's Constitutional Court in *Williams v. Spain*:

"Spain, like many European countries, is already a multi-racial society in which cohabit a non-negligible number of people of other races. These people are both non-nationals in a regular situation and Spanish nationals. That fact alone should exclude the inclusion of race as a selection criterion for police migration controls, considering its predictable negative effects on human dignity. Consider, in relation to the first group, that if they are subjected to repeated police controls by reason of race, these measures will not only negatively affect an aspect of personal identity that demands respect which is their dignity, but will also frustrate the goal of integrating foreigners into Spanish society. In regard to the second, it may produce an equally grave outcome: discrimination against nationals on grounds of their race, that also assaults their personal dignity, which in my understanding has happened in the present case."

The United Nations Human Rights Committee 2009 ruling against Spain in Rosalind William's case.⁵

"The Committee considers that identity checks carried out for public security or crime prevention purposes in general, or to control illegal immigration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination."



Rosalind Williams

Madrid, Artist and Cultural Promoter

Rosalind was born in New Orleans, Louisiana. In 1968, she married a White Spanish man and moved to Spain. The first time the police stopped her was in 1992 in the Valladolid train station.

"My husband got out of the train to go and get our bags, and I got out and a man approached me. He showed me his badge and asked for my documents. I asked 'what for' and that's where it all began. Just then, my husband got back with the bags and I told him that I was being asked for my identity papers. My husband said, "I imagine it's because of the color of your skin" and the officer replied, "Yes, we're looking for people like her." I felt confused, perplexed, I didn't understand it at all.

We made a complaint about it; it was quite laborious. A judge said to me, this happened to you in Spain as a Spanish citizen, but you are fighting it like an American. That's true. I knew my rights.

I was able to fight every time that my case was dismissed by different courts because I was not afraid to go back. When I was dismissed by the Constitutional Court, we had to go outside Spain. We went to the United Nations Human Rights Commission, and that's where we won."⁶

GENERATIONS OF PREJUDICE AND SECOND-CLASS TREATMENT

It may be easy for many Spaniards to forget that more than six million legal residents are of migrant origin, refugees or asylum seekers, many of whom have lived in Spain for decades. Their Spanish-born children are now having children, and a second and third generation of visible minorities are living a trans-generational experience of police controls. Many police services in Spain have also been slow to understand and adapt to this new reality. While controlling immigration is a legitimate function of policing, it may not be conducted based on assumptions about legal status arising from racial or ethnic appearance. This is not only because those assumptions are incorrect, but because the profiling that results creates a series of negative consequences, most immediately for the people who are stopped, but also for their families, friends and communities. This leads to an erosion of trust in the police with consequent loss of cooperation and reduced public safety.

Migrants, their children, and subsequent generations are not the only people who suffer from stereotyping and ethnic profiling in Spain. One of the most affected groups is Spanish Gitanos (Romanís), a significant ethnic minority group who have been present in the country for over 500 years. Their experience speaks to a deeply-rooted prejudice and police profiling that has completely alienated the community from the police.

Many police in Spain retain explicit stereotypes and frequently lack policies or training on issues of non-discrimination or policing in diverse societies. These attitudes drive ethnic profiling, explicitly and subliminally, and must be recognized and addressed.



Alfonso Amaya

Alfonso works with an association for young Gitanos and lives in the San Roc neighborhood of Barcelona. He has four children and grandchildren. Over a year ago, the local government assigned a special police unit to their neighborhood, causing further deterioration of relations due to extreme profiling practices.

"There was a moment in which it didn't affect me because it was so normalized, I saw it through this prism. "Well it's normal, I am Gitano and that's why they stop me." There is no documentation that can show that they stopped you for a racial profile if they say it's routine, security, suspicion.

There are twenty-year old young men who do not leave their comfort zones. There is an imaginary border, it is where they feel comfortable. Go to Barcelona? Unthinkable. If you do not leave your comfort zone, your work prospects are reduced to nothing."

David Garfella

Valencia, Police Officer

"I've been an officer for 25 years, and I've never been told that all people are equal, but that certain types of people commit certain types of crime, and that we need to watch out for them, focus a lot on certain people because of their culture, ethnicity, race, origins.

are working.

When the police stop a person for the mere fact of who he is and the rest of the people see that, they are signaling the dangerousness of that person. When the police go into a Gitano neighborhood, with two or three cars it means that it is not safe in there and they have to send in lots of officers. It has a negative effect on the people who are stopped and it is very hard to rebuild trust and legitimacy. It is very complicated defending their rights and liberties, because we are not their police but the police of the majority population."

Badalona, Barcelona, Social Integrator, President of Kali Zor Association

Sometimes ID checks are carried out where there is never going to be or there has not been any crime in order to reassure the majority population [...] that they are being stopped, they are being controlled, and asked for the documentation and that makes it look like the police

Malick Gueye Madrid, Social Educator

"One of the stops that remember especially was at 7:00 AM on my way to work I was going up the stairs at Tribunal metro station like everyone else and it was then that four officers in plain clothes came running up and grabbed me. They said they were looking for a Black guy. was held for over 30 minutes and got to work late. I did not want to tell my bosses about what had happened-it was humiliating. In the end, it changes your way of seeing the world. A metro station in the morning with everyone going to work, hundreds of people and they only stop you. They stop you because you are Black. They stop you, they search you in front of everybody, they humiliate you."

LAV

EMBARRASSMENT AND HUMILIATION

Being stopped on the street by the police is an embarrassing, frightening and often a humiliating experience. Police typically stop individuals on the public street, in plain view of passers-by. In Spain, police stops are often concentrated at urban transport hubs—large metro and bus stations where they target people on their way to and from work.⁷ These times of day are busy, with crowds of other commuters passing by, their attention drawn to the police action. People watching naturally assume that there is some reason for the stop, that the person stopped has done something wrong or is a criminal.

Many stops start with a document check but then proceed to a frisk or search. Police often make people empty their pockets, or search them, all of this in full public view. It is deeply embarrassing and humiliating. People describe feeling criminalized and struggling to retain their sense of self and normalcy.

Stops have immediate and practical outcomes as well. The process is often slow, waiting for a document check against the data base, and a search can take 10, 15, or even 30 minutes, making people late for work and other commitments.

ABUSE, IMPOTENCE, AND INSECURITY

Esther Mamadou

Valencia, Expert on Human Rights and Forced Migration

"I feel defenseless, an embarrassing situation, because all the other people stop to look and you feel totally alone. You're certain that no one would intervene if something happened. Insecurity and impunity. Very afraid, at the same time that I'm defending myself and trying to exercise my rights and asking the officer to identify himself, I'm conscious of how this stop could end, this sense of incredible nervousness, fear, insecurity and feeling really alone."

Isabelle Mamadou

Valencia, Expert on Rights of Afro-descendant Populations

"We went to Madrid in order to give a training on human rights and we were in Lavapiés with a group of students, when we witnessed a racist police stop. When one of the cops got violent and hit one of the young men who was being checked, that's when we intervened to communicate that he could not use physical force against a person when the only thing he had done was to ask why he was being stopped and not other people. The police checked us then, me and Esther and one of the students, then he walked around, because there were a lot of people all around, and threatened them to stop filming with their phones. Then, he had our ID documents in his hands, and started to insult us, he called us whores, niggers, and made fun of where we were born. What upset me most was that the people watching us were totally indifferent. There was total impunity and indifference even though we were being insulted. I was shocked that one of the officers was a woman, she saw how they were making sexist insults and didn't do anything, that affected me."



IMPACT ON DAILY LIFE AND USE OF PUBLIC SPACE

In addition to the emotional consequences, stops have practical and behavioral effects. People describe a state of hyper-vigilance afterwards, knowing they can be stopped and living in a state of constant alert when they are out in the street.

Many people described changing things to avoid police stops—no longer going out to certain areas or changing the way that they dress, in the hope that if they don't wear a hoodie or tracksuit they won't attract police attention. Individuals who are often stopped—and their families and friends—live with an ever-present anxiety of being stopped again, and the fear that a stop could potentially "go wrong", leading to violence, or threats from police officers. If individuals complain to police about their treatment or refuse to cooperate, they risk retaliation.

For some people this is a constant feeling every time they leave their home, and this produces unhealthy side-effects such as elevated blood pressure, higher levels of stress, and mental health issues. In the US, research has shown that whole communities subject to higher levels of stops and frisks have higher levels of poor physical health including diabetes, high blood pressure, asthma episodes, and gaining weight.⁸ For undocumented migrants, including the many who are in regularization processes, the consequences can be extreme, including deportation or long delays in obtaining residency and work permits, if police stop them and they get fined or are subject to sanctions.⁹



Ngoy Ngoma

Valencia, Student and Humanitarian Assistance Specialist

"The effect that being stopped has on me when I go out into the street is to wonder if I am going to come back the same as when I left, emotionally whole, without the shock of being stopped. There's also the fact of avoiding certain spaces, here in Valencia I no longer go to the main bus station, I prefer to go by the river even though this means getting my shoes wet. I've been expelled from public space, which for me is now changed into a private space because going there means risking delays, being stopped and being shocked."

Delia Servin

Madrid, Domestic Worker

"It affects you when you go out in public spaces, when you have this fear; it stops you from going out for a walk. And it affected my regularization as well, because then I had a police record and was not allowed to file for legal status until four years afterwards. I have been in Spain for thirteen years and it was only two years ago that I got all my legal residency papers.

I couldn't go out anywhere. My lawyer told me as well that I could not risk exposure to any situation where the police might be. If you go on the metro or the bus, they stop you; it prevented me from going out and I tried to go as little as possible to areas with a lot of police because if I was stopped again they would deport me. The few times I went out, I called a taxi. Mostly, I stayed at work. I went out for two hours during my breaks on Sundays. I was shut up like a slave for four years because of police stops."

ERODING TRUST AND PUBLIC SAFETY

Being treated unfairly rapidly erodes trust. Repeated experiences of being stopped by police for no apparent reason other than your appearance destroys the trust of entire communities in the police. Individuals find that their experience is shared by their peers; parents worry about their children and have to warn them about how to behave if they are stopped; fear and mistrust of police become shared across entire communities, not just in the people who are stopped.

When people lose trust in the police, they are less likely to call the police when they have problems and less likely to cooperate with police either as a victim or witness of crime. This loss of cooperation has profound effects on policing. Despite the growth of technological tools, the vast majority of crimes are only recorded when a member of the public calls the police, and most crimes are solved through information the public provides to police investigations. Without this cooperation, police are seriously handicapped and everybody's public safety is negatively affected.

Some police officers and authorities argue that ethnic profiling is efficient, focusing resources on more frequent offenders.¹⁰ But empirical evidence shows that this argument is false. In fact, where ethnic data exists, it clearly shows that police stops are more likely to detect offenses among White Spaniards than

other ethnic and national groups. In the town of Fuenlabrada, when police began to gather stop data including nationality and the "hit rate," or number of stops producing a law enforcement outcome such as an arrest or fine. They found that people of Moroccan origin were 6.7 times more likely to be stopped than a White Spaniard, but the hit rate for Spaniards was 17 percent, but only 9 percent for Moroccans.¹¹ This tells us that Moroccans were stopped at a disproportionate rate with poor law enforcement results—both unfair and ineffective.

Another point raised by police is that they receive very few or no complaints about ethnic profiling. As noted in several interviews in this report, it is difficult to make a complaint, in part because the primary channel is via the same police who just conducted the stop. People stopped by police generally want to put the experience behind them, and prefer to avoid any further contact with police. It is more common to seek support from civil society organizations. There are further obstacles to proving ethnic profiling, including not having any record that the stop took place at all, or being able to challenge the officer's version of events.

The Spanish Ombudsperson has received a high number of complaints filed by victims and witnesses of discriminatory identity checks performed by officers of the National Police. In 2013, it issued a recommendation to the Police General Directorate with a set of measures that should be adopted in order to address ethnic profiling, including the introduction of stop forms, the gathering of disaggregated data on ID checks, and the setting up of a specific complaint mechanism.¹²

Ebenezer Mengu Chua Madrid, Catering Professional

"I once complained through a nongovernmental organization to the Ombudsman's office, and they kept me informed and told what responses they were receiving from the police, but in the end, nothing. Because of the presumption that the officer is telling the truth, the police knew they were going to win..."





Zeshan Mohammad

Barcelona, Activist

"I have four or five Friends, Latinos, Pakistanis and a Moroccan [...] three of them born here [...]. Often when we're out walking I have the impression that when the police come by we're alarmed. I thought it was my own paranoia, but because I'd been stopped and I was scared. One day I asked if they felt the same and they all said they went through the exact same thing. Why does this happen to us, if we haven't done anything wrong?"

THE WAY FORWARD: EVIDENCE-LED POLICING

Spain is like most other European countries in its patterns of ethnic profiling, lack of data and persistent police stereotypes. However, Spain stands out for the extent of experimentation with good practices by local, municipal police services. Many of these have been supported by a coalition called the Platform for Police Management of Diversity (PGPD) which unites two police associations with nine non-governmental organizations¹³ working on different aspects of diversity and non-discrimination, including supporting the introduction of stop forms to document possible bias in local police forces.

The most successful initial trial of stop forms was in Fuenlabrada in 2008, where disproportionality was reduced by two-thirds and the hit rate increased from 6% to 17%. Fuenlabrada has continued to use the forms with positive results, in 2012 their hit rate peaked at 30%.¹⁴ Since then, the PGPD has supported the adoption of stop forms in seven other local police forces as of 2019.¹⁵ In 2018, the Madrid local police service, the largest in Spain, also started a stop form pilot in the district of Cuidad Lineal. Unfortunately, in July 2019, following elections, the new coalition government has announced that it will end this initiative rather than scale it up as requested by local community and non-discrimination groups.¹⁶

While stop forms have become a highly politicized topic in Madrid, in other parts of Spain conservative as well as progressive authorities have adopted the PIPE project, recognizing that evidence-led policing is not only fairer, but is also more efficient and is the trend in 21st century policing. Further best practices in Spain include the adoption of police protocols on hate crime, and the creation of special prosecutors on discrimination issues.

Recommendations:

- An essential first step to addressing ethnic profiling is **explicit recognition** that this takes place. Ongoing denial—by political authorities, the police, and members of the public—not only perpetuates unfair and ineffective policing practices, but is also an insulting and hurtful denial of the lived experiences of people like those who have shared their experiences in this report.
- Ethnic profiling should be **explicitly prohibited in law**, with clear limits to police powers to stop and search people, most notably including clear and strict standards of **reasonable suspicion** and providing officers with **practical guidance** and training on how to apply that in their daily work.
- Monitoring and addressing ethnic profiling patterns in policing is best achieved on the basis of **objective evidence**, obtained through **documenting police stops**, and subsequently managing the use of stops on the basis of that data to enhance fairness and effectiveness.
- In Spain, stop forms should include both **ethnic and nationality data**, in strict compliance with **data protection standards**, and release anonymized statistics for purposes of transparency and public dialogue with a view to addressing bias in police practices on the basis of objective evidence.
- Safeguards also need to be strengthened, and **complaints mechanisms** are in clear need of strengthening through the creation of more **accessible and effective** avenues, strengthening the powers of the ombudsman's office and creating a specialized and accessible independent police oversight mechanism.
- Finally, there is clear need for **greater engagement and dialogue with communities** about non-discriminatory approaches to policing and models of co-production of community safety between police and residents, particularly in diverse neighborhoods.

ENDNOTES

- 1 04 EU-MIDIS, Encuesta de la Unión Europea sobre las minorías y la discriminación, at https://fra.europa.eu/sites/default/files/ fra_uploads/1132-EU-MIDIS-police_ES.pdf
- 2 https://apdha.org/media/granada-identificaciones-etnicas-2016web.pdf
- 3 Anuario Estadístico del Ministerio del Interior, 2015. (his is the most recent year for which his data is available; subsequent annual statistics only contain police checks where the person was subsequently taken to the station for further ID verification or processing—a much smaller number. Dr. Juan Jose Medina Ariza, Professor of Quantitative Criminology (Centre for Criminology and Criminal Justice, Manchester University) and President of the Spanish Society of Criminology, comments on Spanish government Nota Informativa dated 4th of May of 2018, submitted as expert testimony to the European Court of Human Rights in the case of Zershan Mohemed v Spain.
- 4 The UK does not use calendar years, but fiscal years for official data. Home Office (2017) 'Best Use of Stop and Search Open Data Tables', Police Powers and Procedures: England and Wales – Year Ending March 2017, London: Home Office.
- 5 Rosalind Williams Lecraft v. Spain, UN Human Rights Committee, CCPR/C/96/D/1493/2006 (2009), para. 7.2.
- 6 SENTENCIA 13/2001, de 29 de enero (BOE núm. 52, de 01 de marzo de 2001) http://hj.tribunalconstitucional.es/es/Resolucion/ Show/4309
- 7 The FRA survey found that 81% of stops conducted in the street or public transport.
- 8 Ross, J. (2015) 'Warning: Stop-and-Frisk May Be Hazardous to Your Health,' William & Mary Bill of Rights Journal, 25(2): 697 – 733; Sewell, A. and Jefferson, K. (2016) 'Collateral Damage: The Health Effects of Invasive Police Encounters in New York City,' Journal of Urban Health 92(1): 42-67.
- 9 https://www.boe.es/buscar/pdf/2000/BOE-A-2000-544consolidado.pdf Articles 53 through 57. There are three levels of administrative offense for being undocumented: minor, serious and very serious. Minor, serious and very serious administrative offences may result in a fine; failure to pay the fine is a more serious offense. A person with a police record for these offenses is legally required to wait longer (two to four years depending on the level of offense) before they can obtain work or residency papers. Repeat stops and certain serious and very serious offenses may lead to a deportation order instead of the fine.
- 10 Like most people, police are prone to confirmation bias, and will remember the stop of a person of color that detected an offense and confirm their view that such offending is typical of all persons of that groups. Studies from social psychology also show that we are all more capable of making nuanced distinctions between person sin our own "in group" yet tend to generalize about persons from other groups. These are common human attributes, yet combined with discriminatory and race-based stereotypes about offending, they easily lead to systematic discrimination—ethnic profiling by police.
- 11 Open Society Justice Initiative, "Addressing Ethnic Profiling by Police," 2009, p.29.
- 12 Defensora del Pueblo, Recommendation 45/2013, 17 April 2013, Annex E.1, p. 154-156. Available at: https://www.defensordelpueblo. es/wp-content/uploads/2015/05/2013_Anexo_E_1_ Recomendaciones_2013.pdf
- 13 http://www.gestionpolicialdiversidad.org/
- 14 According to data provided by the Fuenlabrada Local Police.
- 15 Fuenlabrada, A Coruña, Castellón, Pedrezuela, Puertollano, Girona (Mossos y Policía Local), Móstoles y Albacete.
- 16 https://www.liberties.eu/en/news/madrid-mayor-abolishes-policeforms/17745

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