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2020**

**CONSEQUENCES OF
THE STATE OF ALARM
ON THE VIOLATION
OF CITIZENSHIP
RIGHTS**

**MONITORING THE DEPRIVATION OF
LIBERTY AND POLICE ACTIVITY DURING THE
COVID-19 EMERGENCY**

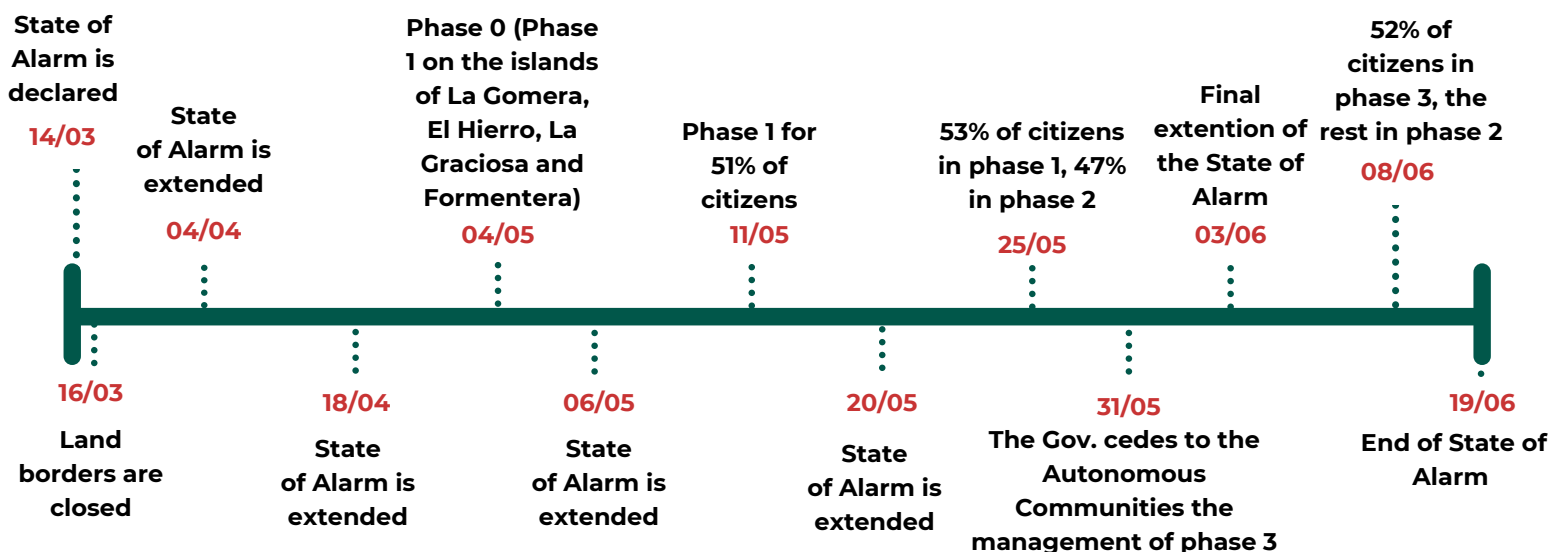


INTRODUCTION

On March 11th, 2020, the World Health Organization declared the SARS-CoV-2 virus to be a pandemic. This marked the beginning of exceptional efforts by government administrations around the world.

In the Spanish State, the government headed by Pedro Sánchez declared a State of Alarm on March 13th, which came into effect the following day. But what has this State of Alarm meant in regard to the rights and freedoms of citizens? How have the various restrictions (mainly mobility) been conveyed and what control and sanction mechanisms have been implemented?

In this report, we explore an exceptional reality whose consequences are still with us. The work is structured by discussing, first, the restrictive measures imposed by the State of Alarm. Second, we look at the data on arrests and fines made as a result of non-compliance with the restrictions. Then, we will refer to the examples of police abuse that we have been able to collect during these months under the State of Alarm. Finally, we will conclude with some reflections.



RESTRICTIVE MEASURES OF THE STATE OF ALARM

The State of Alarm, in force since March 14th 2020 throughout the Spanish State, came with a series of measures applied to all citizens, restricting freedom of movement and activity. The restrictions were set out in a generic way, without specifying in detail the different everyday situations in which a person could be violating any of the measures. This has caused a feeling of legal insecurity and arbitrariness among the public, with constant doubts about whether a given activity was prohibited or not recommended, and its possible legal consequences.

On the other hand, certain social groups that already regularly suffer discrimination or neglect by the various administrations, police and security forces, have seen an increase in their vulnerability and the grievances they suffer.

The specific measures imposed by the State of Alarm include the following:

- Limitation of freedom of movement, being allowed only in certain circumstances (work, health care, shopping for food and basic necessities, financial management and care of dependents);
- Suspension of face-to-face cultural, training, religious and commercial activities;
- Suspension of procedural and administrative deadlines;
- Granting of authority agent status to members of the Armed Forces.

Likewise, it is worth highlighting the publication of Ministerial Orders covered by the State of Alarm to impose different laws, such as the mandatory use of masks carried through Order SND/422/2020 of May 19th.



For the provisions of the State of Alarm, Organic Law 4/2015, for the Protection of Citizen Security (popularly known as the 'Gag Law') has been used to carry out coercive measures against offenses that citizens could commit. This law is composed of large doses of ambiguity that generate a feeling of arbitrariness in the imposition of sanctions. It also causes public insecurity in the face of the increased power of the different security bodies (presumption of veracity of the agents' account, power of interpretation of the norm by them, etc.).¹

Another point to highlight regarding the State of Alarm is the territorial scope of its application. Organic Law 4/1981, of June 1st, on states of alarm, exception and siege, provides for the application of the State of Alarm throughout the Spanish territory or in any part of it. In the case of the March 13th declaration, the applicability was generalized to the entire State. This implied the recentralization of devolved government powers, including in matters of security and health. However, the management of these affairs was still the responsibility of the devolved administrations, which had to act under direct orders of the state executive.

Devolved security forces, for example, were placed under the management of the Regional Security Boards², which consisted of representatives from both state and devolved executives³. In a situation of political tension between administrations, such as that currently existing between the Spanish State and Catalonia, the fact that security responsibilities depended on a body made up of politically confronted individuals has led to inefficient management and unclear responsibility regarding the work carried out by police officers.

1 On many occasions we have detected articles within the law that directly attack freedoms of expression, demonstration and information. In addition, the law considers that police reports or complaints are a "sufficient basis" for the corresponding administration to impose a sanction, unless there is evidence to the contrary. It has also been accused of using ambiguous language which favours interpretations that violate rights, and offers broad discretionary powers to state security agents to decide what is and is not punishable. The letter addressed to the presidents of the Spanish Senate and Congress, from the Commissioner for Human Rights of the Council of Europe in 2018, or the work carried out by Amnesty International in this area are prime examples.



2 See Section IV of Organic Law 2/1986, of March 13th, on Security Forces. Regarding what we indicate here about the Regional Security Boards, it should be said that they do also operate under normal circumstances. The difference here is that decisions regarding security cease to be the direct competence of the devolved governments (the Boards being a coordination space) to become the responsibility of the state executive, making requests to the different autonomous bodies through the Boards.

3 When we speak of devolved administration in matters of security, we only refer to those autonomous communities of the Spanish where police management is a devolved issue, and that have proceeded to form their own police forces, namely: Euskadi, Navarra, Catalonia and the Canary Islands.



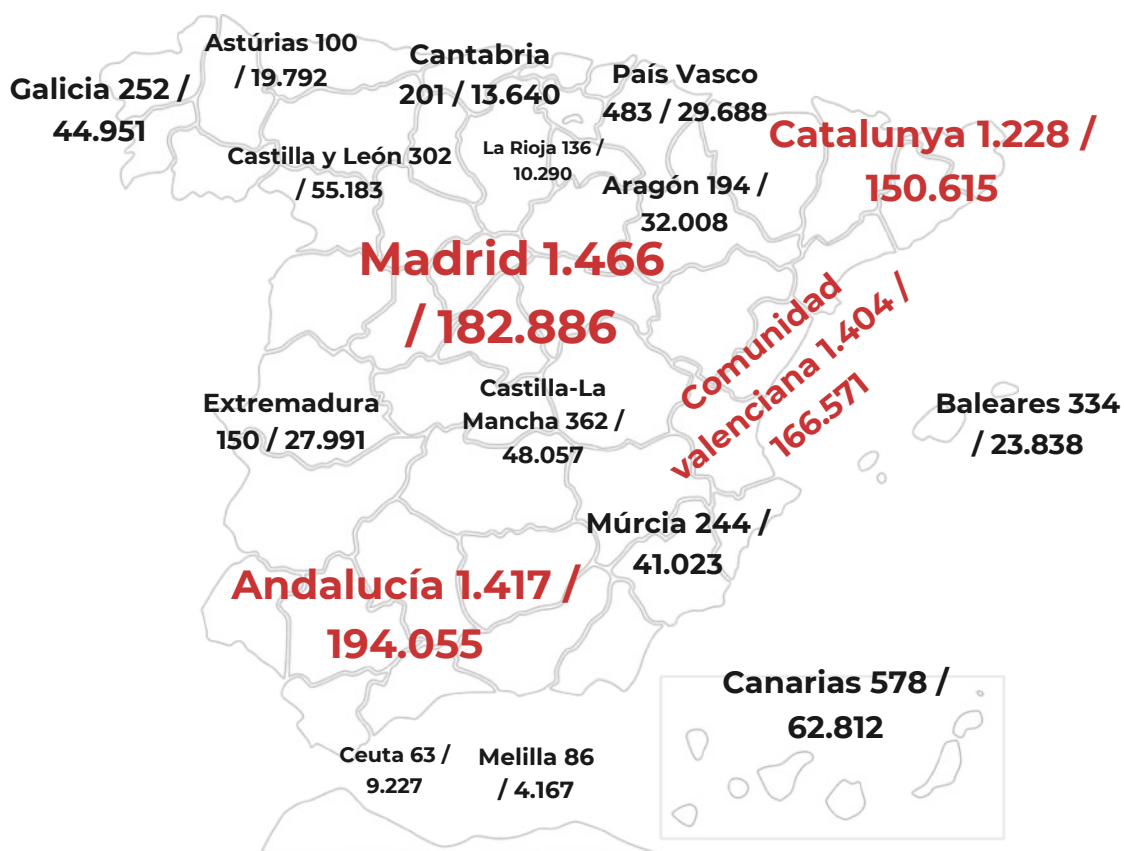
Furthermore, the discourse, language and management of the State of Alarm has taken, from the outset, a military character. The prime minister, Pedro Sánchez, said on the day the State of Alarm began that "a war without bombs was being waged," and that we had to be "united against the enemy." On the basis of this language, reality was being built, and an imagery was created in which it was understood that there was a conflict that went beyond health. In addition, it was agreed to activate a single command under the responsibility of the Chief of Defence Staff (JEMAD). The Air General, through the Operations Command, integrated operational, health, logistics and infrastructure capabilities belonging to the Military Emergency Unit (UME), the General Health Inspection (IGESAN) and the operational structure of the Armies (Land and Water) and the Navy, which made itself available to the competent authorities. Thus, a context of policing the public space and militarization of management was created, which can justify behaviours that control life and public space that are not justified at other times.



PROSECUTIONS AND ARRESTS UNDER THE STATE OF ALARM

One of the consequences of the State of Alarm has been the imposition of sanctions, complaints and even arrests, motivated by the alleged breach of the provisions of the exceptional regulations. Many of these situations have been legally analysed as abusive, arbitrary and / or disproportionate⁴. In the following graph, we want to indicate the figures provided by the public administrations in relation to these episodes. It should be noted that the general trend is a lack of transparency from the institutions, which leads to “off the record” figures regarding the complaints and arrests filed. We will most likely never know all of these figures.

NUMBER OF DETENTIONS / COMPLAINTS DURING THE STATE OF ALARM

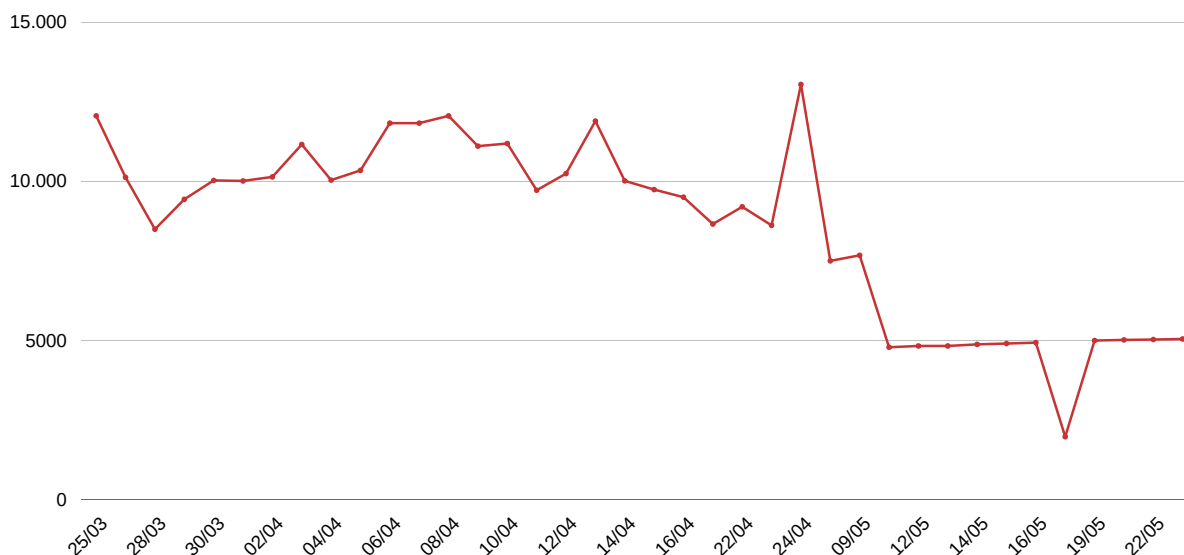


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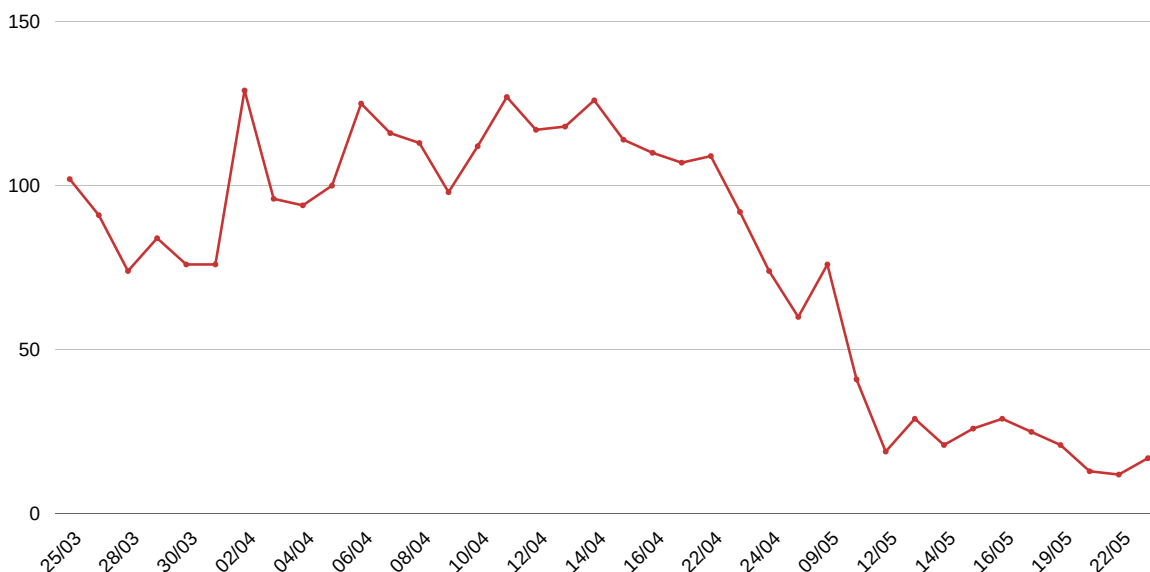
The human rights group Defend the Defender in their 2020 report Protection of Rights during the State of Alarm, points out that the law has allowed potentially disproportionate and arbitrary restrictions which have been applied without taking into account the new reality and its circumstances, both for the State and for citizens. This has led to irregular and arbitrary situations with regard to identifications, sanctions and arrests.

The total number of people arrested during the State of Alarm in the Spanish State was 9,085, while the number of sanctions has exceeded one million, with a total of 1,130,441 complaints. Andalusia is the Autonomous Community that has received the most complaints (194,055), followed by Madrid (182,886), the Valencian Community (166,571) and Catalonia (150,615). These communities are also the ones with the highest number of arrests, with 1,466 in Madrid, 1,417 in Andalusia, 1404 in the Valencian Community and 1,228 in Catalonia, coinciding with the fact that they are the communities with the highest population density⁵.

COMPLAINTS FILED BY THE NATIONAL POLICE AND CIVIL GUARD



PEOPLE DETAINED BY THE NATIONAL POLICE AND CIVIL GUARD



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.It should be noted that these data, taken from the Ministry of the Interior's website, do not include the total number of arrests and complaints carried out by all the security forces, only from the National Police Corps and the Civil Guards, nor do they reflect all the events that occurred during the state of alarm, since the information that can be accessed is incomplete.



In reference to complaints filed by the National Police and the Civil Guard, except for the peak of April 24th, when the highest number (13,038) was made, the line generally decreases. On May 22nd, 5,042 complaints were made, fewer than half from two months earlier, on March 25th (12,053), when the approval of the state of alarm was still very recent. This is partly because the restrictions decreased as the weeks went by. In addition, members of the public were increasingly aware of both the health consequences and the legal sanctions implied by not following the rules.

The number of arrests made by the National Police and the Civil Guard follows a similar pattern to the complaints, being much lower in the final weeks of the state of alarm (17) than in the first weeks (102). Although there is not a peak as clear as that of April 24th in the case of complaints, we do find some clear peaks compared to previous days on April 2nd (with 129 arrests, when on previous days there had been 96), April 6th (125), April 11th (127) and May 9th (76). With the exception of April 6th, the other peaks coincide with weekends, which surely explains the increase in arrests.

The application of complaints and arrests is, in many cases, a selective, discriminatory and unequal affair; the quarantine regime as such is also discriminatory and has affected extremely vulnerable people. For the preparation of this report, we have reviewed different bibliographical sources, among them the Amnesty International Spain report Human Rights Violations during the State of Alarm, where one of the issues that stands out is the differentiated impact on groups with a high risk of social exclusion.

Women, as caregivers, have not been able to be in quarantine to help other people in the quarantine, in addition to suffering higher figures of sexist violence; Precarious workers have been hit even harder during these months, where layoffs have happened in many cases.

The elderly and dependents, people deprived of liberty and those with functional diversity and mental disorders have also suffered more serious consequences, since they depend directly or indirectly on institutions, or on other people. More specifically, people working in the street vending sector have been disproportionately affected on a health, economic and social level. Some legal groups have reported that a large group of people who are in an irregular administrative situation have not gone out to the streets to carry out permitted activities such as buying food or medicines for fear of police violence and identification based on racial and ethnic profiles.⁷

Likewise, the group of homeless people is surely the most vulnerable to the pandemic, and the application of the state of alarm has affected them in a particular way. Among other problems, the majority of soup kitchens closed in order to stop the spread of the virus. The Arrels Foundation accused the police of fining homeless people for wandering the streets of Barcelona⁸.

In the same way, women who practice prostitution are not left out of the discrimination of the state of alarm. The lack of regulation of prostitution and the irregularity in which the people who practice it find themselves make their vulnerability very high⁶. Although in principle the security forces should ensure the protection of these people, in Andalusia, for example, two prostitute women were punished for breaking the confinement order of the state of alarm. Likewise, it should be noted that the behaviour of the arrests and sanctions has also adopted a class character. On May 15th, more sanctions were accumulating in the working class Vallecas district than in the wealthy Salamanca district of Madrid, where protests were taking place against the Spanish government's management of the crisis.

6 Boaventura de Sousa Santos (2020) comments on this in *The Cruel Paradox of the Virus*



7 A study co-promoted by International Decade for People of African Descent, and by Rights International Spain (2020) highlights a report by SOS Racismo Madrid that on April 2nd it received in a single day the notice of four fines against African who had walked, separately, to collect food from their neighbours' houses. Due to the language barrier, two of them were not able to express themselves correctly.

8 Arrels Fundació (April 22nd, 2020) *Insecurity increases for people living on the street during the state of alarm*. Retrieved from <https://www.arrelsfundacio.org/inseguretatastatalarma/>

POLICE ABUSES AND BAD PRACTICE DETECTED

One of the notable issues regarding police management during the state of alarm is the volume of police abuse and malpractice exercised by agents of the various Security Forces. This is not something exceptional to the current pandemic. Police violence is a clear reality throughout the State, systematically condemned by various human rights groups for, and which, unfortunately, has deep-rooted impunity. In addition, the victims of these abusive situations have suffered a double criminalization, on the part of the police agents but also of the citizens. The abusive and repressive behaviours carried out by the police forces have been, in general, less condemned socially than the presumed infractions of citizens.

We will now highlight some of the episodes of police violence experienced during the State of Alarm, emphasizing the patterns of conduct of the security agents who have acted in an abusive way (when not criminal) and the initial situations that "provoked" these police actions.

It is worth mentioning that what we present is only a representative sample of the reality that has occurred during the state of alarm. Likewise, it is important to point out that at SIRECOVI we network with other organizations that also fight for the defence of Human Rights with more experience in investigating police violence, who have shared data related to the cases that are presented. Thus, this compilation of information echoes not only some of the stories that we have been able to record directly, but also the recovery of cases through research in newspaper archives, the media and other groups. We especially highlight the work done by Amnesty International Spain and Defend the Defender in the following reports: AI and DtheD. 61 cases of rights violations were reported during the state of alarm and 330 registered incidents, respectively.



In La Bisbal del Empordà, a region in the north of Catalonia, some Local Police officers, in addition to kicking, insulting and threatening the victims, ended up pointing a Taser at the head of the mother and brother of a boy whom they tried to arrest for not having followed the confinement restrictions and being on the street when it was not allowed. The events occurred at the door of the victims' house and in the presence of minors.

Various agents of the National Police force brutally beat a seated person who did not offer any type of resistance.



It should also be noted that police violence - like all violence - is not neutral; it often comes from racist and xenophobic motivations. In this case, two local police officers showed clearly transphobic and sexist behaviour towards a transsexual woman who was on the public highway during the lockdown, facts that could constitute a hate crime. "During the day you are even uglier, you are horrible. *What are you doing now that you can't jerk cocks or steal? How do you live? You're so ugly you couldn't jerk many cocks even before the lockdown, so now...*".

As we have indicated, we at SIRECOVI have received several accounts of police violence that occurred in Catalonia during this State of Alarm period. Physical violence, threats, humiliations and lack of health care by various police forces are among the events recorded. Regarding physical violence, the victims report having suffered punches, kicks, blows to the neck and suffocation. Similarly, the victims report having suffered reprimands such as threatening to take the detainees to police stations; abuses of authority such as telling them that *"we are the police and we can do whatever we want"* and professional malpractice such as not notifying the parents of the detainees where their child was, or not providing medical services to the victims when requested. These facts serve as an illustrative sample of a reality spread throughout the Spanish State.

It is worth mentioning a case in which the victim, a minor, being on the public highway riding a bicycle in a non-permitted time slot, was taken into custody at a police station under the pretext that he had punched a police officer, which he claims is false. Once he was in the police station, he claims that he was not informed of his right to notify a family member of his situation; His parents, not knowing where their son was, say they wanted to report his disappearance.

This is not the only account recorded by SIRECOVI where the victim refers to having been detained under a false pretext. Thus, we find the case in which a person tells of having been detained for several hours in a police station under the pretext of attempting to evade arrest and trying to hit an officer. According to him, the reality was that when he was at his home to look for the identity documentation that some police officers had previously requested on the public highway, they took him by the arm for no apparent reason, preventing him from entering his home. In addition, he relates that during the struggle his belongings fell to the ground and he was not allowed to pick them up.



FINAL THOUGHTS

Below we would like to point out a series of reflections regarding what is described in this report:

- In reference to the complaints and sanctions imposed on citizens, different groups have pointed out the possible unconstitutionality⁹ and the lack of legal procedure for many of them. It will be necessary to see the final result of these processes, without forgetting that although ultimately not all of them have a direct consequence for the sanctioned citizen, they have been able to generate a dissuasive effect on citizens when it comes to asserting their fundamental rights.
- In reference to complaints and sanctions, it should also be noted that many of them have been sustained through the crime of disobedience to authority. The state of alarm decree did not provide specific penalties for non-compliance with the restrictions it dictated. Thus, the qualifier of disobedience has been used in many cases as a sanctioning argument in situations that did not go beyond being administrative offenses.



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Some legal analyses indicate that the Royal Decree 463/2020 declaring the State of Alarm may be considered unconstitutional (and, consequently, the sanctions covered by it), due to the limitation of fundamental rights and freedoms that can only be restricted through the figures of a State of Exception or Siege. See: Analysis sanctions and State of Alarm Jurists

- Class, gender and ethnicity have also been determining factors in the punishing behaviour of the police. We have seen how there are certain groups more vulnerable during the state of alarm, such as migrants and / or racialized people, the homeless, women who practice prostitution, or people with lower incomes. The unequal nature of police behaviour depending on neighbourhoods is partly explained by the overcrowding of poorer families in small spaces or the precarious conditions that mark people's daily lives, as is surely also explained by the ideological bias of the police forces that has allowed citizens of the richest neighbourhoods to demonstrate without great reprisal.



- Regarding police violence, it seems remarkable how, once again, the testimony of witnesses, the obtaining of graphic evidence (many times in contravention of the 'Gag Law' and, therefore, exposing oneself to an action criminalized on many occasions by the officers, although the law does not prohibit it in a general way), and the media coverage of these situations are the elements that offer the possibility to fight against police impunity. Most of the situations, however, remain and will remain in the most complete opacity, reducing the victims to an invisible and silenced suffering. That is why it is so important that citizens become aware of their role as a counterweight to the presumption of veracity precept enjoyed by law enforcement officials. Victims of institutional violence start from a disadvantageous situation, not only in terms of their status as victims, but also because of the little credibility that justice administrations tend to give to their complaints. When there are cases of police violence in public spaces, there is the possibility of this counterweight through testimonies of the attacks. However, lack of evidence is one of the problems faced by the victims, perpetuated by the provisions of regulations such as the 'Gag Law' that criminalizes, as we said before, the obtaining of graphic evidence and public complaints of abuse.



Regarding the cases of police violence, it also seems remarkable how, on many occasions, the citizens who were witnesses have chosen to support the agents in their abuses, doubly criminalizing the victim. Citizens' infractions of the rules of the state of alarm seems to be given more weight than repressive and abusive behaviours of police officers.



Although it is not something that does not happen in contexts of "normality", it seems remarkable how, in a scenario like the current one, security is framed more in citizens' (non)compliance of the rules, than in the defence of their rights and freedoms.



It should be noted how a security discourse has been imposed in a context in which the centrality of the problem is health related. The militarization of epidemiological discourses (notably the presence of members of the Armed Forces in the appearances of government health experts) has led to a situation in which the fight against a virus seems to be carried through mechanisms typical of an armed conflict. This circumstance could explain, in part, how citizens have relegated their fundamental rights to the background, prioritising compliance with transitory and exceptional regulations.



