



EXECUTIVE SUMMARY

**POSITIONING PAPER OF THE ECSR PLATFORM CONCERNING
CIRCULAR 1/2020 OF THE SPANISH STATE'S LEGAL COUNSEL,
NOTE COMMUNICATION ON "THE LEGAL STATUS OF THE
RESOLUTIONS ISSUED BY THE HUMAN RIGHTS TREATY BODIES
OF THE UNITED NATIONS" of 22nd October 2020**

Introduction

This document summarises the ECSR Platform's response to Circular 1/2020 of the Spanish State's Legal Counsel, on the legal nature of the resolutions issued by the human rights monitoring bodies of the United Nations. The increasing use of the individual complaint mechanisms by citizens has generated a debate at different levels in which we want to participate. The ECSR Platform is a space for civil society organisations (human rights organizations, trade unions and organizations working on a range of topics such as development, environment or the rights of people with disabilities) with an interest in the protection of economic, social and cultural rights in Spain and our objective is to monitor the protection of these rights following the standards of International Human Rights Law. Based on our extensive experience in the field of human rights law, we have prepared this positioning document that includes examples and jurisprudence in this field.

The document covers different topics of interest. Firstly, an introductory section explains the particularities of international human rights law in relation to public international law, the general obligations in the matter and how these obligations are recognised in our legal system.

The second and third sections of the document analyse the functions and legitimacy of the human rights treaty bodies of the United Nations (or Committees) as well as the legal nature of the resolutions of these Committees.

Fourthly, the document analyses the distinct types of obligations that States have under international human rights law, including the obligations of due reparation and non-repetition, the prohibitions of discrimination and progressive realisation and the obligations to respect, protect and fulfil human rights. In addition, this section summarises the different monitoring mechanisms used by the United Nations Committees, such as the presentation of reports by States and the use of individual complaints by individuals. Regarding this last procedure, a distinction is usually made between individual recommendations, general recommendations, and provisional or precautionary measures.



Finally, the ECSR Platform concludes this in-depth analysis summarising its position regarding the aforementioned topics as well as suggesting a list of recommendations to be implemented in the legislative, executive and judicial spheres towards the compliance of international human rights law in Spain.

Positioning and Proposals:

I. Spain's ESCR Platform positioning on Circular 1/2020 of the Spanish State's Legal Counsel

In view of:

- The **failure of the Spanish State to comply with its human rights obligations**, as highlighted by the United Nations Human Rights Treaty Bodies, both in their periodic concluding observations and in the conclusions or communications to Spain as a result of individual complaints mechanisms;
- **The lack of adoption of adequate measures by the Spanish State**, aimed at complying with the aforementioned concluding observations and individual communications; as well as the lack of an adequate and effective domestic mechanism that allows to duly comply with the conclusions and recommendations of the Treaty Bodies;
- **The considerations of the Spanish State's Legal Counsel in its Circular 1/2020, in the sense of attributing only an interpretative function to the resolutions of the Human Rights Treaty Bodies**, in order to justify their non-binding nature and the possibility of the State not to comply with these resolutions, thus calling into question the legitimacy and binding force of international human rights law;

The ESCR Platform **considers**:

- That human rights treaties recognise **rights for individuals and obligations for States** - to be monitored - with international and national validity.
- **That the interpretation of fundamental rights in accordance with international human rights treaties is an obligation of result that binds both the legislator and the courts.** This interpretation does not only include the text of treaties and protocols, but also the decisions of their supervisory bodies.



- **That consideration of the non-jurisdictional nature of the UN Human Rights Treaty Bodies does not equate to their lack of legitimacy.** On the contrary, their legitimacy for the fulfilment of their competences has been recognised by the States through their signature and ratification of the treaties, which establish them as committees, not only to interpret the treaties but also to supervise and guarantee their due compliance.
- **That States are obliged to comply with their international legal obligations and that, in compliance with the principles of good faith and *pacta sunt servanda*,** all treaties in force are binding on the parties and must be complied with by them in good faith.
- **That human rights obligations include minimum obligations, of an immediate nature; progressive obligations, to be fulfilled within a reasonable period of time; and general obligations.** Immediate obligations include the prohibition of discrimination and the protection of vulnerable groups. In addition, States have the obligation to adopt measures with the aim of continuous improvement in the enjoyment of rights; as well as the obligation to refrain from adopting deliberately harmful or retrogressive measures.
- That, by virtue of the periodic reporting procedure foreseen in nine international human rights Treaties, eight of which have been signed and ratified by Spain, **States are obliged to argue about the way in which rights are exercised domestically,** indicating all the measures that have been adopted.
- That the Treaty Body's concluding observations, which include the measures to be adopted by States on the basis of the obligations subscribed to in each treaty, **have the purpose of preventing the repetition of future violations and, at the same time, of promoting compliance with the treaties.**
- That the individual complaints are mechanisms for denouncing a violation of a human right recognised in a given treaty. The conclusions or communications from the Treaty Bodies to the States, as a result of the individual complaints mechanisms, include both individual



recommendations, aimed at repairing the harm suffered by the victim, and general recommendations, which go beyond the resolution of the specific case, **in compliance with the guarantees of non-repetition prevention of similar violations in the future.**

- **That States, in this sense, must provide an effective remedy and reparation to the victim of the violation of a human right**, as derived from international law, which recognises a duty of reparation for victims and includes the right to adequate, effective, and prompt reparation for the harm suffered, the right to fair and just compensation; and non-repetition as a tool to prevent the recurrence of incidents that give rise to human rights violations.
- **That the objective of the precautionary or provisional measures is to prevent irreparable damage from occurring, so that compliance by the State can be expected based on the principle of good faith and *pacta sunt servanda*.** In any case, it will be necessary to provide the Committee with reasons for refusing the immediate application of the precautionary measure requested.
- Therefore, in line with the pronouncement of the Spanish Supreme Court in its judgment 1263/2018, of 17th July, in the González Carreño case, as well as numerous doctrinal considerations in the same sense, **we consider that the pronouncements of the Treaty Bodies are binding, are mandatory, and are effective (directly or indirectly) for the States Parties to the treaties.**

II. Proposals for the implementation of international human rights law in our positive law

II.1.- Urgent and transitional measures: proposals for the Spanish State's Legal Counsel -Directorate of the State Legal Service (Spanish Ministry of Justice)

The aforementioned **Circular 1/2020 of the S Spanish State's Legal Counsel - Directorate of the State Legal Service**, on "the legal status of the resolutions issued by the Committees responsible for monitoring United Nations Human Rights treaties" should be modified to adapt it to international human rights law, incorporating, to this end, the proposal to draw up **special protocols**:



- **For the processing of requests for precautionary measures** by the committees (follow-up, substantiation, and notification), establishing coordination and communication mechanisms with the judicial bodies concerned in each of the cases.
- **For the implementation of the opinions** (final decisions on individual complaints) of the committees, contemplating mechanisms for direct communication with the Spanish Council of Ministers, in which it is informed of the opinions handed down against Spain and urged to:
 - **Make an effective reparation for the victims, with the application of the individual measures** contained in the opinions, which includes both compensation for damages and other measures envisaged.
 - **Adopt guarantees of non-repetition, with application of the general measures** stipulated in the opinions to prevent similar human rights violations from recurring.

II.2.- Legislative measures: proposals for the Government and the parliamentary groups represented in the Spanish Parliament.

- **Amendment of Law 25/2014, of 27th November, on Treaties and other International Agreements**, with the incorporation of a new Title, "on international human rights treaties" in which guarantees are provided for to comply with the obligations derived from the international treaties of the United Nations system signed by Spain, as well as Article 10.2 of the Constitution. In this Title, mention will be made of the role of the Monitoring Committee referred to below.
- Amendment of the **Spanish Organic Law on the Judiciary**:
 - Introduction of Article 10 of the Spanish Constitution within Article 7, also in reference to the binding of human rights treaties to judges and courts, as already stipulated in the article for the rights and freedoms recognised in Chapter Two of Title I of the Spanish Constitution.
 - Reference to the opinions of the United Nations Human Rights Treaty Bodies in Article 5 bis), provided that the already demanding requirements of relevance and persistence are met.



II.3.- Political measures: proposals for the Spanish Ministry of the Presidency, Parliamentary Relations, and Democratic Memory

- Promote the approval of the **2nd Human Rights Plan**, with the participation of the competent administrations, experts and academics, and civil society organisations, containing a list of all the measures urged by the human rights protection mechanisms of the United Nations system and a road map to promote their application.
- Establishment of a **Committee for Monitoring the Resolutions of the International Human Rights Bodies, taking as a reference the Colombian model of the Colombian Law No. 288 of 1996,¹** *"whereby instruments are established for the compensation of damages to victims of human rights violations by virtue of the provisions of certain international Human Rights bodies", with a specific Committee to carry out such monitoring and control).*

This Committee should report directly to the Spanish Ministry of the Presidency, Parliamentary Relations, and Democratic Memory, and have an inter-ministerial composition, ensuring the participation of the Autonomous Communities and ensuring compliance with the resolutions of the Treaty Committees, both the concluding observations of the periodic reports and the precautionary measures and opinions issued in response to individual complaints.

In order to ensure the correct implementation of decisions on individual complaints, this Committee will:

- Establish channels of communication with the courts and tribunals in cases pending judicial resolution in Spain to report on the application of the precautionary measures requested by the Committees.
- It will issue binding resolutions addressed to the different competent administrations, at all levels of administration, to comply with the different aspects of the opinion, both individual measures and general measures.

May 2021

¹ **GOVERNMENT OF COLOMBIA** (1996) Retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=28597>.