

IMPROVEMENT OF CIVILIAN OVERSIGHT OF INTERNAL SECURITY SECTOR ICOISS Phase II



SPAIN STUDY TOUR REPORT

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EXECUTIVE SUMMARY

As one of the activities included in the EU funded project “Improvement of Civilian Oversight of Internal Security Forces”, a Turkish Delegation, led by the Undersecretary of the Ministry of Interior, of governors, high-ranking officials of the Ministry of Interior, and high-ranking police and gendarmerie officials, held a study visit tour to Spain, aiming at deepening the knowledge about Spanish parliamentary and Ministry of Interior oversight of internal security forces.

Spanish Background

Spain is a well-known example of a transition to democracy. With the approval of a new Constitution in 1978, a new administrative structure was defined. As a consequence, Spain is a highly decentralized country, divided in seventeen Autonomous Communities, with different levels of competencies (asymmetrical devolution process). This special structure have had impact on the way Internal

Security Forces are distributed along the territory.

Spain has a dual policing system, with a National Police Corps (civil nature) and a Civil Guard Corps (military nature). They operate according to territorial and functional delimitations. However, in three of the seventeen Autonomous Communities, they have been virtually substituted by regional police corps.

Visited Institutions

The Turkish delegation held meetings with a big variety of institutions, mainly from the Ministry of Interior, the Parliament, the Defender of the People (Ombudsman), Internal Security Forces, Delegation of the Government, and the Emergency Coordination Centre 112.

During these meetings, the Delegation had the chance to deepening its knowledge about the Spanish Internal Security Forces Oversight Mechanisms.

Internal Security Forces Oversight

In regards to the oversight of Internal Security Forces, Spain has been able to build a complex system, in line with other European countries with a dual police system.

The Constitution plays a key role in defining the internal security system and all oversight mechanisms. The main important one is the total 'constitutionalisation' of both Police and Civil Guard and their total accountability to the Government (Ministry of Interior).

The Ministry of Interior has a big variety of oversight mechanisms and tools: appointments of Police and Civil Guard General Directors, five coordination bodies for different matters, execution of security policy, and sanctioning capacity, among others.

At the regional level, the Delegate of the Government (and Subdelegates) is the top responsible for public security and commands Internal Security Forces, although its real oversight powers are very limited.

In terms of coordination of different police bodies, Spain has established different Security Councils that operate at state, region or local level.

The Parliament has strong oversight powers that execute through its capacity to control the Government and through its capacity to adopt primary legislation. These two capacities are mainly executed through the Home Affairs Commission, which have access to all kind of documents and information.

In regards to inspection, a common inspection body exists for both corps within the Ministry of Interior, the Security Services and Staff Inspectorate. It is placed outside the Police and Civil Guard structures although the majority of its members belong to these corps.

For citizen's assistance, the Defender of the People was established and, despite its lack of formal executive power, it has manage to effective exercise its oversight power.

Lastly, the Spanish Judiciary can oversight the Internal Security

Forces, through Judicial Police and its coordination commissions, and through the Administrative-Law Courts.

Recommendations

Finally, some recommendations for the Turkish case are stated. They refer to some of the good practices that have been identified during this study tour process. Specifically, these suggested recommendations are:

- Increasing clarity and principles in the Turkish Constitution, including Internal Security Forces subordination to civilian authority, and fully integration within the Ministry of Interior (also their General Directors appointments).
 - Common principles and rules for all Internal Security Forces, and clear hierarchical regulation.
 - For accountability reasons, the creation of a Home Affairs Committee is suggested.
- Clear disciplinary regime for both police and Civil Guard.
 - Adopting the Spanish Defender of the People as a model for the recent Turkish Ombudsman.
 - Eliminating the need of prior executive permission for the public prosecutor.

1. INTRODUCTION

UNDP Turkey is supporting the Ministry of Interior of Turkey for “Improvement of Civilian Oversight of Internal Security” through an EU funded technical assistance project. The overall objective of the project is to structurally embed expanded enjoyment of civil rights by Turkish citizens and democratic control of internal security in the regulatory system and public administration practice of Turkey.

Within this framework, a total of five study tours —one for each major focus of the project—are being conducted. The 3rd study tour of the project was Spain, and took place from November 23rd to November 30th, 2013.

The main objective of the study tour to Spain was to study the oversight of Internal Security Forces by the Ministry of Interior and the Parliament.

This study tour was led by the Undersecretary of the Ministry of Interior, to a group of participants, which included governors, high-ranking officials of the Ministry of Interior, and high-ranking police and gendarmerie officials (concrete details of the Turkish Delegation can be found in the Appendix Table 1).

The study visit to Spain involved several meetings to provide for a thorough overview of the Ministry of Interior and the Parliament oversight mechanisms of Internal Security Forces.

This report intends to summarize this study tour, providing a review of every institution visited as well as an overview of the main Internal Security Forces Oversight Powers in the Spanish system.

2. BACKGROUND INFORMATION ON SPAIN

2.1. Recent History

Spain represents a well-known successful example of transition to democracy, after nearly four decades of military dictatorship. After a complex political process, started after Francisco Franco's death in 1975, the Spanish Parliament approved a new Constitution in 1978, paving the way of a new democracy that would evolve towards a new state configuration (the country is divided into 17 regions which all have their own directly elected authorities) that would reasonably satisfy all nationalities existing within the country (with the exception of several extremists, e.g. those supporting the terrorist group ETA¹).

The current King Don Juan Carlos I, appointed by Franco, took the lead of the process and committed himself to the achievement of a new parliamentary democracy in Spain.

The transition process from Franco's regime to a system of parliamentary democracy had also some effects on the Spanish forces of law and order, with a major effort to bring them into harmony with the new political era. As a result, every military characteristic of the police was eliminated and, together with the Civil Guard (which retained many of its military features), they both were placed under civilian leadership. From then on, the police and the Civil Guard were expected to tolerate forms of conduct previously banned and to protect the individual free exercise of rights and liberties, conferred by the Constitution of 1978.

The first democratic elections after Franco's regime were held in 1977. The Spanish Socialist Party (PSOE) came into power in 1982 for the

¹ ETA is the acronym for *Euskadi Ta Askatasuna* (Basque Homeland and Freedom), an armed Basque nationalist and separatist organization, founded in 1959, and responsible for killing 820 people, including 340 civilians. In 2012, it was reported that the group was ready to negotiate a "definitive end" to its operations and disband completely.

first time and remained there until 1996. This period was characterised by the entrance to the NATO and the European Economic Community, the economic modernization of the country, the establishment of the welfare state system and by the still on-going devolution process.

In 1996, the Popular Party (PP) came into power and remained there for eight years. The government's policies were focussing to the entrance to the Euro (in 2000) and it was a period of strong economic growth and privatizations.

In 2004, after the 11-M terrorist attack (which poorly handled by the government), the PSOE unexpectedly won the general elections. This new socialist period was marked by a first term of economic growth and social modernization (e.g. the homosexual marriage) that evolved to a second term of severe economic recession (the bursting of the Spanish housing bubble was added to the global economic crisis in 2008-09).

As a result of this critical situation, PP won the last general elections in 2011, under the leadership of Mariano Rajoy. The current government is taking austerity measures to reduce budget deficit and to foster foreign investment to fight against high unemployment rates.

The current context is still marked by the economic recession, which has fostered centrifugal political forces to gain space and power in the political arena. As a result, the Government of Catalonia is preparing a very controversial referendum about Catalonia independency by the end of year 2014.

2.2. Administrative Structure

As a result of the new Spanish Constitution, Spain is nowadays a highly decentralized unitary State, with three basic administration levels: central, regional and local.

Spain has a unique decentralized administrative structure, composed by 17 regions (known as Autonomous Communities) and 2 Autonomous Cities (Ceuta and Melilla, in Morocco). These Autonomous Communities are first-level political and administrative divisions (established by the Spanish Constitution of 1978) to guarantee political autonomy of “nationalities and regions” existing within the unique nation of Spain.

These Autonomous Communities are governed according to the Constitution and to their Statutes of Autonomy (Organic Law²) defining all the competences they can assume. And they all have the same parliamentary structure.

In every Autonomous Community there is a territorial representative of the central Government, the Delegate of the Government (for the region) and Sub-Delegates of the Government (for the provinces).

Since the approval of the Constitution in 1978, a devolution process was initiated. This devolution process is of asymmetrical nature, since the scope of assumed competences varies across Autonomous Communities. As a result, only four Autonomous Communities have assumed the maximum level of competencies —these are the three ‘historical nationalities’ (the Basque Country, Catalonia and Galicia) and Andalusia—.

² Organic Law is the second level type of law in the Spanish law system (coming under the first level Constitution, which is the supreme legal document). These type of law is specially used to rule sensitive matters that are to be protected, since can only be approved or amended by an absolute majority of the Parliament (of the complete text as a whole).

Responsibilities, in general, are divided according to the policy of devolution, with some exclusive competencies for every government level and with some shared competences where the State Government is responsible in central planning and basic services policies, and Regional and local governments are responsible for funds allocation, policies implementation, as well as general governance over regional facilities.

In order to have a coordinated system, despite this multi-level government reality, basic common consensus is established by different *Inter-Territorial Councils*, formed by State and Regional Ministries.

Referring to the Internal Security System, three Autonomous Communities (Catalonia, Basque Country and Navarra) have fully assumed the policing competency. As a result, three regional police bodies can be found that have virtually substituted the Police and the Guardia Civil in their territories (with the exception of their exercise of reserved functions). The direct command of the Police and the Guardia Civil in the Autonomous Communities and provinces depends on the Delegate and Sub-delegates of the Government.

2.3. Spanish Internal Security Forces

Spain currently has a mixed internal security forces system: highly decentralized and with two bodies with different natures, civil for the National Police Corps and military for the Civil Guard. In the case of the Civil Guard corps, there is a double dependency on the Ministry of Interior (for citizens security) and the Ministry of Defence (for military missions).

Police and Civil Guard work according to both territorial and functional delimitations. From territorial perspective, the Police Corps (currently

with 70.000 members) has presence in province capitals and some other specially designated places; the Civil Guard has presence in the rest of the land territory and territorial sea³.

Functionally, they have some common competencies: judicial police and citizens' security. When they have to act outside their corresponding territory, they have to inform each other. When they both are conducting research on a same issue, both Police and Civil Guard have to inform the Delegate of the Government, who will make a decision.

In addition, Police and Guardia Civil have their own exclusive competences. Among others, the Police is in charge of: ID and passport, exit/entry control, immigration, gambling, drugs, international collaboration, enterprises control, and private security. In its turn, the Civil Guard is responsible for: weapon and explosives; smuggling; traffic; coast, borders, ports and airports control; nature protection; and prisoners and people under arrest conduction.

However, these two forces are not the only ones operating in Spain. As previously mentioned, three Autonomous Communities have their own police bodies: Catalonia has the "Mossos d'Esquadra" (16.000 members), the Basque Country has the "Ertzaintza" (8.000 members), and Navarra has the "Policía Foral" (1.000 members). These bodies are in charge of citizen's security, administrative police, and judicial police, while the state forces maintain their responsibilities over extra and supra communities' matters (such as borders).

All these different bodies coordinate through the so-called Security Policy Council, composed by top-level representatives of both Governments and operating in the whole territory, through the Security Boards (created where regional police forces exist), and

³ The Civil Guard serves 83% of municipalities, 35% of the population and 84% of the territory. It is an "integral body" since it covers every specialization area a police corps can cover.

through other specific operative commissions, composed exclusively by members of the Internal Security Forces.

As a result, different internal security forces combinations can be found depending on the specific territory. This reality requires high level of coordination, which is executed by the Spanish Ministry of Interior responsible for the citizen's security policy-making and implementation, and for the State Internal Security Forces (the last one is delegated to the Secretary of State for Security).

At local level several police models exist (70.000 members in total), ranging from villages with only one police to cities with big police corps (e.g. Madrid has over 7.000 agents). Strong coordination is again required through local Security Councils, and through District Security Councils, in the case of great population cities.

3. VISITED INSTITUTIONS

The main objective of the Spain study tour was to gain better knowledge about the oversight of Internal Security Forces by the Ministry of Interior and the Parliament. Thus, the meeting programme focussed mainly on several relevant organs playing a role in this oversight functions, as well as on the internal security forces themselves. These institutions are listed in the table below, and described in this chapter.

Table 1: List of Visited Institutions

INSTITUTION	DEPENDENCY	MAIN OVERSIGHT
Home Affairs Committee	Congress of Deputies - Parliament	Accountability
Defender of the People	Independent	Accountability
Studies and Coordination Cabinet	Secretary of State for Security - MOI	Control (Coordination)
Secretary of State for Security Cabinet (Parliamentary Advisor)	Secretary of State for Security - MOI	Control (Advise)
Inspectorate of Security Services and Staff	Secretary of State for Security - MOI	Control (Inspection)
Centre of Intelligence against Organized Crime	Secretary of State for Security - MOI	Control (Coordination)
General Directorate of Police	Secretary of State for Security - MOI	Control (Direct ISFs Command)
General Directorate of Civil Guard	Secretary of State for Security - MOI	Control (Direct ISFs Command)
Delegate of the Government in Castilla-La Mancha	State Government	Control (Coordination)
Emergency Coordination Centre 112	Madrid Government (Regional)	N.A.
Regional Police Headquarters	General Directorate of Police (MOI)	N.A.
Regional Guardia Civil Headquarters	General Directorate of Civil Guard (MOI)	N.A.

3.1. Internal Affairs Committee

The Parliament (a.k.a. Cortes Generales) is a constitutional body established and regulated under Title III of the 1978 Spanish Constitution. It has an asymmetrical bicameral configuration, consisting of a total of 614 members, divided by an Upper House (the Senate, with 264 senators) and a Lower House (the Chamber of Deputies, with 350 deputies).

As the legislative power, it exerts the essential aspects of national sovereignty: to approve the State Budget, to control the Government's performance and other functions assigned the Constitution.

The operation of the Chambers takes place in Plenary and Committees, within the limitations established by the Constitution (e.g. in cases of organic laws and international treaties). The Plenary is the meeting session of all members of each House; Committees are operational meeting sessions of a limited number of members, in order to analyse with extensive details the corresponding matters. These Commissions can be permanent, non-permanent and can comprise members of both Chambers. Currently, there is one specific Commission for Interior Affairs in each Chamber.

3.2. Defender of the People (Ombudsman)

The Defender of the People (art. 54 CE-1978) is the High Commissioner of the Parliament responsible for defending the fundamental rights and civil liberties of citizens by monitoring the activity of the Administration and public authorities.

He or she (currently, is a woman) has a rank of a Minister and is elected by the Congress and the Senate by a three-fifths majority, and for a five years term of office with one possible renovation.

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The Defender of the People does not take orders or receive instructions from any authority and, instead, must perform her functions independently and impartially, autonomously and in her own good judgment and enjoys inviolability and immunity in the exercise of her office. She is assisted by two deputies, to whom she may delegate her functions.

3.3. Studies and Coordination Cabinet

It is the Secretary of State for Security support and advice body, with an organic rank of Deputy General Directorate. Through this body the Secretary of State for Security exercises its function of coordinating and supervising the activities of the Interior Security Forces.

This body is responsible for preparing public safety operational plans, overseeing their implementation, for periodically preparing and submitting crime statistics, for designing and developing common training activities for the Security Forces, and for helping the Secretary of State for Security in its role as a superior responsible of the National Critical Infrastructures Protection System.

3.4. Secretary of State for Security Cabinet (Parliamentary Advisor)

The Cabinet is the immediate assistance body to the Secretary of State, with an organic rank of Deputy General Directorate. One Director and a maximum of three advisors (all of them, with an organic level of Deputy General Director) form it. This body is responsible for coordinating, under the instructions of the Secretary of State for Security, the Deputy General Directorate of Security Infrastructures and Equipment Planning and Management, and the Deputy General Directorate of Security Information and Communications Systems.

The Secretary of State for Security has three advisors; one of them is in charge of parliamentary control on the Government, on security matters. This parliamentary advisor works closely with the Minister's parliamentary advisor, in order to coordinate all answers coming from the Ministry of Interior.

3.5. Security Services and Staff Inspectorate

This is a body, with an administrative rank of Deputy General Directorate, coming under the Secretary of State for Security, responsible for inspecting, testing and evaluating the development of the General Directorates of Police and Civil Guard services, centres and units, central and peripheral, as well as the actions taken by members of the respective bodies in the performance of their duties.

3.6. Meetig with: Centre of Intelligence against Organized Crime (CICO)

The Centre of Intelligence against Organized Crime (CICO), with an organic rank of Deputy General Directorate, accounts for the development of strategic intelligence in the fight against all forms of organized crime, and, where appropriate, the establishment of operational coordination criteria for the acting services, when cases of investigation coincidence or concurrence occur.

Its main functions are Strategic Intelligence about organized crime (delivering an annual report) and operative coordination of organized crime. The main type of crime in Spain is drug trafficking, money laundering and property violation. Spanish sentences tend to re-entry into society. The only operative CICO competence is drugs and explosive precursor substances inspection. The rest of its function is to coordinate all ISFs operations related to organized crime and drugs. When a crime appears coincidental in the database an alert appears;

every concerned police body is informed and coordination is suggested. If this suggestion does not work, then CICO can impose it.

It is divided into five different areas: Intelligence and Prospective Area, Analysis and Statistics Area, Means Management Area, International Relations Area, and Operative Coordination Area. They produce some intelligence that goes directly to the Secretary of State for Security (after that, it will go to the Police and Civil Guard).

All CICO reports are confidential, although the Minister of Interior might give a briefing to the media and to the Parliament.

3.7. General Directorate of Police

The General Directorate of Police⁴, with an administrative rank of Undersecretary, coming under the Secretary of State for Security, is the direct commander of the National Police. Its main functions are to:

- a) Manage and coordinate the National Police Corps services and its central and peripheral bodies.
- b) Distribute manpower and equipment, assigning them to the corresponding unit.
- c) Propose to the Secretary of State for Security the National Police services plans and operational performance projects.
- d) Liaise directly with the administrative authorities, agencies and public and private entities, concerning the National Police Corps operational services performance.
- f) Provide collaboration and provision of assistance to foreign countries police corps.

⁴ The specific structure of the National Police Corps is established in the *Orden INT/28/2013, de 18 de enero, por la que se desarrolla la estructura orgánica y funciones de los Servicios Centrales y Periféricos de la Dirección General de la Policía*.

3.8. General Directorate of the Civil Guard

The General Directorate of the Civil Guard⁵, with an administrative rank of Undersecretary, is the organ of the Ministry of Interior, as part of the Secretariat of State for Security, responsible for the management, direction, coordination and execution of the Civil Guard Corps missions, in accordance with the guidelines and ministerial orders issued by the Ministers of Interior and Defence, within the scope of their respective competencies.

The Director General of the Civil Guard is direct commander of the Civil Guard Corps and holds its public representation. Its main functions are to:

- Direct, promote and coordinate the service units of the Civil Guard.
- Organize and geographically distribute units of the Civil Guard.
- Suggest Civil Guard operational plans and projects to the Secretary of State for Security.
- Directly liaise with the administrative authorities , organizations and public or private entities in relation to the functioning of Civil Guard operational services.
- Carry out the tasks established by the Ministry of Defence regulatory provisions in regards to Civil Guard military missions.
- Execute the personnel and education policy of the Civil Guard .
- Execute material and economic resources policy assigned to the Civil Guard to perform its services.
- Perform the legally ascribed functions on weapons and explosives.

⁵ The specific structure of the Civil Guard Corps is established in the *Orden PRE/422/2013, de 15 de marzo, por la que se desarrolla la estructura orgánica básica de los Servicios Centrales de la Dirección General de la Guardia Civil.*

3.9. Delegation of the Government in Castilla-La Mancha Region (included the visit to Regional Police and Guardia Civil headquarters).

The Delegations of the Government are peripheral State administration bodies and come under the Ministry of Finance and Public Administration. They are political, and the appointed representatives have the administrative rank of Undersecretary.

Their main functions are to represent the Government in the corresponding Autonomous Community or City, as well as to manage the State Administration based in the Autonomous Community territory and coordinate it with corresponding regional Administration.

Among their responsibilities is to command the ISFs, under the functional dependence of the Ministry of Interior.

3.10. Regional Emergency Coordination Centre 112

According to the Decision of the Council of the European Communities of 29 July 1991, establishing the obligation to enter 112 as a single emergency phone number in all European Union countries, the Spanish Government issued the Royal Decree 903/1997, of June 16th, in order to regulate its implementation. The 112 emergency call service is provided by the regional Governments (Autonomous Communities), through the corresponding Emergency Coordination Centre 112.

It is the organ that ensures appropriate caring of emergency calls occurring in each territory (Spain has 17 Emergency Coordination Centres 112, in this specific case,, Turkish Delegation visited the one in the Madrid Autonomous Community). It has centralized communications between the different existing operating areas and between these and the corresponding commands. It also monitors and controls the actions and mobilizes necessary operational units to

achieve the most effective answer to any type of incident. And it coexists with other similar services (091 for Police, 061 for Civil Guard).

112 is a service for the citizens free of charge; gives access to several services police, civil guard, health, firemen, and others; they answer the call in different languages (plus teletranslation services to 80 languages); available even for citizens temporarily disconnected from the network (e.g. did not pay the phone bill); there is no need for PIN or SIM card; can be reached without reception; and locates the call origin if made from a landline.

This 112 Centre, covering Madrid region, deals with an average of 15.000 calls per day. In the case of civil emergency, they could conduct 9.000 calls in less than one hour.

3.11. Regional Police Headquarters.

National Police Headquarters in Castilla-La Mancha is based where the Regional Government is too. It has one or more Provincial Police Stations. Depending on every Provincial Police Station, there is a General Secretary and Local Police Stations. Also, directly depending on the Provincial Police Station, five provincial departments are found: Judicial Police, Intelligence, Public Order, Immigration and Borders, and Scientific Police. Provincial Police Directors are appointed by the General Directorate of Police (MoI).

3.12. Regional Guardia Civil Headquarters.

Civil Guard territorial deployment is based on regions territories and called "zones". The Civil Guard 2nd Zone (i.e. Castilla-La Mancha) depends on the Operative Deputy Director of the Civil Guard (MoI) and it has 9 support bodies (covering a big variety of areas), several

territorial units: command headquarters (provincial level), companies (at “partido judicial” level, smaller than provinces) and offices (than can include one or more municipalities), and the top brass (with three sections).

4. MAIN CIVILIAN OVERSIGHT MECHANISMS IN SPAIN

Before starting an in-depth review of the main civilian oversight mechanisms in Spain, it is necessary to clarify the legal umbrella concerning the matter of Internal Security.

The main law that needs to be mentioned is the Constitution of 1978, which is the supreme document of the Spanish legal system, as the fundamental norm of the State, stating the supremacy of Law.

As a result of the democratization efforts, also trying to change the biased public opinion on security, the commonly understood authoritarian concepts of “State Security” or “National Security” disappeared and, instead, the concept of “Public Security” is used.

Also, the Constitution establishes a clear differentiation between “Internal Security”, which refers to citizens’ security and domestic security forces will be responsible for it, and “External Security”, which exclusively refers to defense matters and the responsible body is the army.

The Constitution implies the ‘constitutionalisation’ of Internal Security Forces (art. 104 CE-1978), stating as their main objective the protection of the free exercise of citizens’ rights and liberties:

- 1. The Security Forces serving under the Government shall have as their mission the protection of the free exercise of rights and liberties and the guaranteeing of the safety of citizens.*
- 2. An Organic Law shall determine the duties, basic principles of action and statutes of the Security Forces.*

And establishes their dependence of the Government (art. 149 CE-1978):

- 1. The State holds exclusive competence over the following matters:*

2. (...) 29. *Public Security, without prejudice of the possibility for the Autonomous Communities to create their own Police forces, according to their respective Statutes and within the framework to be established by an Organic Law.*

Following the Constitutional mandate, the second relevant norm for Security is the Organic Law 2/1986, of Security Forces and Corps. This is a comprehensive law serving as the basic legal text defining duties, basic principles of action and statute of all Security Forces and Corps, and describing the core missions and tasks assigned to them.

This legal umbrella (Constitution and Organic Law) establishes four key elements defining the Internal Security System in Spain: supremacy of law, equality before law, subordination of all public administration and Army to civilian authority (Internal Security Forces included), and civilian accountability of all public administration (again, Internal Security Forces included).

4.1 Oversight Powers of Government/s

4.1.1 State Level

The Spanish Government or, more specifically, the Ministry of Interior⁶ is the executive body responsible for providing public security and for protecting civil liberties.

⁶ The Ministry of Interior structure follows the general Ministry structure established by the *Ley 6/1997, de 14 de abril, de funcionamiento y organización de la Administración General del Estado*, the *Ley 50/1997, de 27 de noviembre, del Gobierno*, the *Real Decreto 1887/2011, de 30 de diciembre, por el que se establece la estructura orgánica básica de los departamentos ministeriales*, and the *Real Decreto 400/2012, de 17 de febrero, por el que se desarrolla la estructura orgánica básica del Ministerio del Interior*. For cross-country comparative reasons, it is relevant to understand that in every Spanish Ministry there are 'superior bodies' (Minister and Secretary of State) and 'executive bodies' (Undersecretary, General Secretary, Technical General Secretary, General Director and Deputy General Director). In the Spanish case, differing from Turkey, the Undersecretary is the one in charge of the internal functioning of the Ministry and does not intervene in political and policy orientations.

It is also the Head of all State Internal Security Forces, even the Civil Guard despite its double dependence on the Ministries of Interior and Defense due to its military nature.

The Ministry of Interior main functions are:

- Execution of Government's policy on public security.
- Command of State security forces and corps.
- Promotion of the conditions for the free exercise of fundamental rights.
- Planning, direction and inspection of top-command of State Security Forces and Corps.

The responsible body for internal security policy formulation and daily work orientation is the Secretary of State for Security, together with both the General Directorate of Police and General Directorate of Civil Guard, with a rank of Undersecretary (during the previous PSOE Government, these two General Directorates were only one). The daily work of territorial units depends on Delegates of Government and Sub-delegates.

Within the Secretary of State for Security five ISFs coordination bodies can be found: The Executive Coordination Commission (strategic body that guarantees the coordination of both Police and Civil Guard), the Secretary of State's Cabinet (the immediate assistance Secretary of State assistance body), the Cabinet of Coordination and Studies (the direct advisory body for the Secretary of State, currently composed by 140 people, and managed by a Civil Guard) the Intelligence Centre against Organized Crime and the National Anti-terrorist Coordination Centre.

The General Director of the Police is not a member of the Police corps; instead, he is a politically appointed person. However, there is an Operational Deputy Director, who is a police corps member, in charge of the coordination and supervision of the operative police body at state level.

Depending on the Operational Deputy Director, there is an International Units Affairs Department, the Planning and Prospective Office and the International Cooperation Division.

The General Director of the Civil Guard is politically appointed by the Minister of Interior and the Minister of Defence and, as in the Police case, there is an Operational Deputy Director who belongs to the Civil Guard.

Below both General Directorates of Police and Civil Guard, there are professional heads of different units or departments.

All appointments in the Ministry of Interior are decided by the Minister or by the Secretary of State of Interior. There are only two exceptions: the General Director of the Civil Guard is appointed by the Ministry of Interior with the agreement of the Minister of Defense, and all highest official in the Ministry of Interior are appointed by the Council of Ministers.

Disciplinary regimes for the National Police Corps and the Civil Guard are different but similar in principles. All established procedures are more similar to civil service than to the Army.

In the case of serious infringements, the Minister of Interior, the Secretary of State for Security and the General Director can sanction. Only in the case of the maximum punishment for a Civil Guard, i.e. separation of service, it has to be decided by both Ministers of Interior and of Defense. In the case of less serious infringements, hierarchically superior professionals, i.e. heads of units, or Delegates of the Government can sanction.

Role of the Representative of the State at regional level

The Prefectural System in Spain was abolished in 1997 and instead the figure of Delegate of Government by Autonomous Communities (17) and Sub-Delegates by provinces (50) was established.

Their functions are to direct and coordinate the State Public Administration (Internal Security Forces included) and to cooperate with the Regional Government.

Delegates of the Government formally hold top responsibility for public security and command Internal Security Forces, which in turn report to them.

Both National Police Corps and Guardia Civil Corps have headquarters in every region territory, where they can coordinate and manage their forces performance.

ISFs are accountable to the Delegate of the Government (and provincial Sub delegates) for daily basis operations. They meet, at least, once per week. Although the Delegate of the Government has no formal powers to appoint or dismiss the Police or Civil Guard regional director, he/she can informally influence Government decisions).

4.1.2. Regional and Local Levels

As it was previously explained, Spain has a multi-level government structure, where different governments coexist and none of them is hierarchically subordinated to another.

Spanish regions can have their own police bodies and, in fact, as it was already explained, three Autonomous Communities have their own police corps: Catalonia, Basque Country and Navarra.

As a consequence of this governmental complexity, a big coordination effort is required. This coordination occurs in the bosom of different Security Councils that constitute the perfect tool to successfully answer in a coordinate manner to security challenges. These Security Councils are as follows:

▪ **Security Policy Council (State Level)**

It is a political body with the aim to coordinate State and Regional public security policies. It is chaired by the Ministry of Interior; and State Government and Regional Governments are equally represented. It is the place where Regional Ministers of Interior can participate in the formulation of national security policies.

Its competencies are to:

- Approve coordination plans for security and police infrastructures.
- Inform about the members of the police corps in the Autonomous Communities and their modifications.
- Establish the maximum number of members for autonomous police corps.
- Approve directives and general recommendations.
- Inform the creation of regional police corps.
- Inform cooperation agreements for security matters, between the State and the Autonomous Communities.

▪ **Regional Security Council (Regional Level)**

These Councils are created where Autonomous police corps exists. And both levels of Government (State and Region) are equally represented.

Its main functions are to:

- Coordinate the actions of State Security Forces and Regional Security Forces.

- Solve any incident that may arise between both before mentioned forces.

Periodically, Autonomous Communities Representatives and Delegates of the Government inform about coordination problems, mutual help, information exchange and measures to solve these problems.

- **Local Security Council** (Local Level)

These Councils are created where Local police corps exists, whenever the Mayor or the Delegate of the Government decide.

It is chaired by the Mayor (and if the Delegate of the Government attends the meeting, it will be chaired jointly) and the members are: the Director of the Internal Security Forces in the municipality and a representative of the Delegation of the Government (State level); one representative of the regional Administration; and three representatives of the local Administration.

These Councils can have ordinary meetings (once every six months) and extraordinary meetings (due to urgency reasons at the Mayor discretion).

Their main functions are to:

- Establish coordination and cooperation procedures.
- Analyze citizens' security state of the art.
- Know the evolution of crime and other similar problems that might alter normal cohabitation.
- Prepare joint citizens' security and vial security plans and prevention campaigns.
- Agree local police functions in regards to judicial police.
- Exchange relevant information.
- Promote cooperation among different social stakeholders regarding citizens' security (trade unions, NGO's, neighbors associations, professional associations, etc.).

- Solve any competency conflict between different police bodies.
- Monitoring agreements and assessing their results.

4.2 Oversight Powers of Parliament

In regards to internal security, the Spanish Parliament —according to the Constitution— can control the action of the Government and can adopt primary legislation.

Parliament control over the Executive: Direct Parliament control over the Government is stated in the Spanish Constitution (arts. 108 and 111 CE-1978) and implemented according to the regulation of the Chambers of the Parliament (regulation of the Congress of Deputies, arts. 185-190 CE-1978; regulation of the Senate, arts. 160-169 CE-1978).

This government control can take place in different forms, but mainly through the approval of the State budget, oral or written questions, interpellations, requests of information or report requests, and requesting the presence of Government members (mainly, Prime Minister, Ministers and Secretaries of State).

Written questions have no limit, every member of the Parliament can formulate them. The Government has an average of 22 days to answer. If it does not do it, the question becomes oral and has to be responded in person. They represent 95% of the advisor work.

Oral questions are limited in quantity and time and require the appearance of the Minister or Secretary of State before the plenary or the committee. Oral questions are preferably used for delicate matters. They will take 6 minutes to be answered, or up to 30 minutes if they require longer time.

Legislative Initiative: Another type of Parliamentary control over the Government is through adopting primary legislation. It is implemented through law proposals (mandatory), non-law proposals (non-mandatory) or amendments to Government law proposals.

Despite the Parliament has no competency in public security; there is no limit to its control. The Home Affairs Committee can request any type of information. And, in the case of classified information, it can be requested through the Official Secrets Committee, whose members are subject to a non-disclosure clause.

Another important institution is the Court of Accounts that, on behalf to the Parliament, audits financial management and accounting of the Government, Public Administration (including MoI and ISFs) and other beneficiaries and users of public resources.

4.3 Central Internal Oversight Powers (Security Services and Staff Inspectorate)

This Inspectorate (established in 1996), directly depends on the Secretary of State for Security. It is the common inspection body for both National Police and Civil Guard Corps.

This is an external body with no organic dependency on either the Police or the Civil Guard, placed outside their structure (i.e. different from the Internal Affairs Units). This body needs to be differentiated from the State General Inspectorate and from the Ministry's General Inspectorate.

Its head is appointed by the Undersecretary of Interior (with the agreement of the Secretary of State for Security), and he will appoint the Heads of Inspection teams.

It is composed by two main departments: one in charge of all inspections (commanded by a Police Superintendent) and another in charge of citizen's relations (commanded by a Civil Guard Colonel). Almost its entire staff is composed of members of the two corps.

Inspections can be ordinary (according to the annual inspection plan) or extraordinary (those not stated in the annual plan).

Functions:

- To inspect organization and expenditures of security.
- To improve effectiveness and efficiency of security services.
- To oversee the functioning of services, centers and units, and the action of the Police and Civil Guard members.

Citizen's complaints, suggestions and congratulatory messages in regards to ISFs performance are channelled through the Security Services and Staff Inspectorate. Citizen's complaints are directed to the corresponding units and the Security Services and Staff Inspectorate controls whether the answer is appropriate or not. Citizens feel free and protected to express their opinion, no matter the type of complaint they might have. Citizens can also choose to go to the Courts instead. This Inspectorate is just another tool for them to use but it is not mandatory.

Everything related to this Inspectorate is considered classified information, subject to non-disclosure clause. Accordingly, any report they might write cannot be published.

This Inspectorate does not deal with disciplinary procedures, although its inspections and investigations can be the first step, neither with penal investigation, which it is all done by public prosecutors or judges of instruction.

4.4 Oversight Powers of External Independent Bodies (the Defender of the People/Ombudsman)

The Defender of the People started functioning in 1983, inspired by the Swedish Ombudsman tradition. It has two main functions: to defend the free exercise of rights and liberties and to facilitate the good performance of the Public Administration, through any type of recommendations.

The Defender of the People keeps strong relationships with the Parliament (by reporting to it) and with the Government/Public Administration in a daily basis (ISFs included). It has guaranteed triple access: to people, to public administration facilities and to documents.

Her main role is to mediate between Public Administration and citizens, so that her neutrality becomes cornerstone, as well as her conviction abilities, since she has no executive powers and only produces recommendations. This is the reason the Defender of the People is, traditionally, a very senior professional (>60 years old person) since this position will probably be his/her last one.

To oppose, resist or boycott the Defender of the People's action is considered a crime. Also, it has guaranteed access to every type of information (including secret and confidential, unless the Council of Ministers might decide the contrary).

In terms of structure, it is divided into different areas. One is the Area of Security and Justice, responsible for investigating complaints about the actions of the Security and Police Forces, the Judiciary, the situation of prisoners, public safety issues, the treatment of victims of crime and road safety.

The principal tool is the "citizen complaint". Any citizen may request the intervention of the Defender of the People, which is free of charge, to investigate any alleged misconduct by public authorities and/or the

agents thereof. These citizens complaints are mainly placed through the website. Once the complaint is placed, it communicates and requests explanations to the Head of the unit. If the explanation is not satisfactory, its own staff will be mobilized.

It manages about 32.000 complaints per year. Security and Justice Area manages about 3.000 complaints per year, mostly about traffic fines (legal procedure warranty). However, for the Ombudsman to take action does not depend on the quantity of complaints but on the nature of the underlying problem behind the complaint.

The Defender of the People's office can also intervene ex officio in cases that come to their attention without any complaint having been filed.

The Defender of the People, in her capacity as the National Preventive Mechanism against Torture (NPM), performs preventive visits to all detention centres to detect problems that might favour the impunity of torture or ill-treatment. The conclusions of these visits are reflected in an annual report presented to the Spanish Parliament and the United Nations Subcommittee on Prevention of Torture in Geneva.

It delivers an annual report about its activities, including, since 2012, a chapter about torture prevention in detention centres and prisons (following its visits to these facilities).

4.5 Oversight Powers of Judiciary

Judicial Investigation

Spanish Prosecutors and Ordinary Criminal Courts have no need of prior authorization to open and conduct an investigation or criminal process against public authorities or members of the ISFs for possible criminal actions committed in the exercise of their duties.

ISFs have no jurisdictional privileges, i.e. there is no differentiation with lay citizens.

Jurisdiction belongs to Prosecutors and Ordinary Criminal Courts with one only exception: for Civil Guard criminal offenses of strict military nature committed during military missions.

Judicial Police is regulated by the Spanish Constitution (art.126 CE-1978), establishing it should report to the Judiciary. So that, a double dependence emerges: to the Ministry of Interior (organically) and to the Judiciary (functionally).

Specific and specialized units, whose members belong to the National Police and Civil Guard Corps after a period of specialized training, form it.

In regards to coordination, two main bodies exist:

- National Coordination Commission for the entire system of judicial police (President of the Supreme Court, Minister of Interior, Minister of Justice, Prosecutor-General, Secretary of State for Security, and two other Judiciary members).
- Provincial Coordination Commissions: Chaired by the President of the Province Court.

Administrative-Law Courts

These Courts especially control the exercise of Government's regulatory powers (competence, procedures and compliance with primary legislation). No exception for public security reasons is possible.

They are the only Courts that can review decisions made by public authorities regarding the statutory regime of National Police and Civil Guard Corps.

Administrative-Law Courts, under specific circumstances, can review governmental or administrative decisions and regulation classified as “secret” or “confidential” decisions (in other cases, the Law on Official Secrets).

Military Courts

The Spanish Constitution states the principle of Jurisdictional Unity (art.117.5 CE-1978), although it also states the existence of Military Jurisdiction for strictly military matters and in case of state of siege (martial law).

Table 2: Summary of Main ISFs Oversight Mechanisms

STATE GOVERNMENT ISFs OVERSIGHT MECHANISMS	
Hierarchical authorities	
MINISTRY OF INTERIOR	Secretary of State for Security (MOI)
<u>General Directorate of Police</u> (MOI) <u>General Directorate of Civil Guard</u> (MOI)	<u>Delegate of the Government</u> and Subdelegate of the Government
Central Internal Oversight	
<u>Security Services and Staff Inspectorate</u> (MOI)	
Specific ISFs control and coordination bodies (State Level)	
Executive Coordination Commission (SSS-MOI)	<u>Secretary of State Studies and Coordination Cabinet</u> (SSS-MOI)
National Anti-terrorist Coordination Centre (SSS-MOI)	Deputy General Directorate for international police cooperation (SSS-MOI)
<u>Centre of Intelligence against Organized Crime</u> (SSS-MOI)	<u>Inspectorate of Security Services and Staff</u> (SSS-MOI)
Specific ISFs control and coordination bodies (Regional Level)	
Security Policy Council	Regional Security Council
Specific ISFs control and coordination bodies (Local Level)	
Local Security Councils	
PARLIAMENT ISFs OVERSIGHT MECHANISMS	
Government's Control (<u>Home Affairs Committee</u>)	Primary Legislation
Court of Accounts	
EXTERNAL INDEPENDENT ISF OVERSIGHT MECHANISM	
<u>Defender of the People</u>	
JUDICIARY ISFs OVERSIGHT MECHANISMS	
Judicial Police National and Provincial Coordination Commissions	Administrative-Law Courts

Source: Own elaboration.

NOTE: Those underlined are the institutions visited by the Turkish Delegation.

5. Best Practices

- The key principles and clear definitions that are found in the Spanish Constitution, concerning Citizen Security and Internal Security Forces, could be adopted in the Turkish Constitution. Supremacy of law should be at the core of the system
- In Spanish Ministry of Interior, ISFs General Directorates are integrated into the Ministry's organizational structure, even those with military nature (for policing activities).
- General Directors of ISFs are appointed by the Council of Ministers or the Ministry of Interior (with the agreement of the Ministry of Defence for the Gendarmerie), and they can be civilians.
- All internal security forces act under common principles and rules and regulated by a clear hierarchized set of legal texts.
- In order to make ISFs accountable to the civilian power, it is necessary a full exercise of the Parliament control over Government. In this sense, the existence of a Home Affairs Committee with no restrictions to access any type of information is a guarantee.
- In regards to disciplinary regime there is a clear legal differentiation between serious and less serious infringements, since it helps to clarify the system and make everyone equal before the law.
- In Spain, despite not having formal executive powers, the Defender of the People is highly evaluated by public opinion and has managed to have real power and great impact with its recommendations.
- On behalf of greater transparency and lawfulness, no prior permission is required for the public prosecutor to initiate the

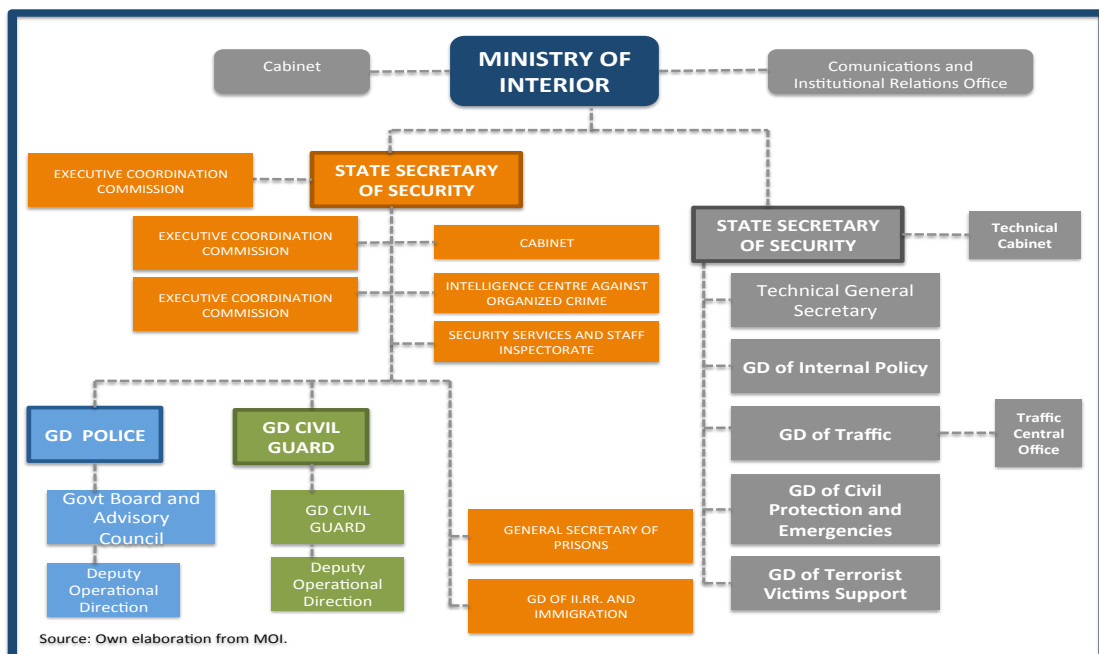
corresponding investigation alleged civil servants crimes (ISFs included).

APPENDIX

TABLE 3: List of members of the Turkish Delegation

NAME	POSITION AND INSTITUTION
Seyfullah HACIMÜFTÜOĞLU	Undersecretary (Ministry of Interior)
M.Celalettin LEKESİZ	Governor of Hatay (Ministry of Interior)
Erdal ATA	Governor of Gaziantep (Ministry of Interior)
Abdil Celil Öz	Governor of Trabzon (Ministry of Interior)
Ali FİDAN	General Director (General Directorate of Provincial Administrations)
Gazi Levent KURTOĞLU	Head of Department - Senior Program Officer (General Directorate of Provincial Administrations)
İsmail Baş	Deputy General Director (Turkish National Police)
Sami Balcı	Staff Colonel - Head of Plans and Operations Department (Gendarmerie General Command)
İlhami AKTAŞ	Head of Department (General Directorate of Personnel)
Aydın BARUŞ	Head of Department (General Directorate of Local Authorities)
Hüseyin Engin SARIİBRAHİM	Unit Director (General Directorate of Local Authorities)
Mustafa TURGUT	Police Officer (Ministry of Interior)
Leyla ŞEN	Democratic Governance Program Manager (UNDP)
Sebastian ROCHE	Chief Technical Advisor (UNDP)
Duygu OSKAY ÖNÜR	Assistant to Chief Technical Advisor (UNDP)

EXHIBIT 1: Ministry of Interior Organization Chart



Source: Own elaboration from MOI.