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## **United Nations Human Rights Council Universal Periodic Review of Spain**

**Submission: The FIES system, the denial of fair trial to the Kokorev family  
and prison conditions in Gran Canaria**

In 2019, Human Rights Without Frontiers (HRWF) travelled to Las Palmas de Gran Canaria, Spain, to conduct an investigation with regards to the controversial system, *Ficheros de Internos de Especial Seguimiento* (FIES), and the consequences of its misuse in the case of the arrest and imprisonment of the Kokorev family.

During their mission, the HRWF team interviewed the three members of the Kokorev family - Vladimir Kokorev, Igor Kokorev, and Yulia Maleeva<sup>1</sup> - on their experiences in Gran Canaria prisons, their lawyer and representatives of the trade union of the prison guards.

In September 2015, the family were arrested in Panama and agreed to be extradited to Spain on charges of alleged money laundering, where they were placed under pre-trial detention. On 1<sup>st</sup> August 2017, a judge tried to extend their pre-trial detention for two additional years. After the Kokorev case came to the attention of a group of members of the European Parliament, they were eventually released without bail from pre-trial detention over a period of a few months at the end of 2017 and early 2018.

### **Ficheros de Internos de Especial Seguimiento (FIES)**

In 1996, Spain adopted a law introducing a special status and treatment for certain prisoners during their pre-trial detention and possible subsequent imprisonment.<sup>2</sup> Known by the acronym FIES, which stands for The Register of Prisoners requiring Special Surveillance (*Fichero de Internos de Especial Seguimiento*), the system originally pursued a legitimate objective.

Since then, however, the law has been misappropriated and is now being imposed on non-violent and non-dangerous persons resulting in unfair detention conditions and extensive pre-trial detention periods.

As explained in a 2016 report by the Council of Europe,

“The FIES registry was formally incorporated in the Prison Regulation through the adoption of the Royal Decree 419/2011...the Secretary General of Penitentiary Institutions (SGIP) is entitled to create special registries of inmates in order to guarantee the security and good order of the establishment, as well as the integrity of inmates...

The specific categories of the FIES system are as follows:

- FIES 1 (direct control) includes inmates that have been involved in dangerous perturbation of the prison regime;
- FIES 2 (organised crime) includes inmates sentenced or suspected of criminal offences related to the affiliation to organised crime;

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<sup>1</sup> Vladimir Kokorev and Yulia Maleeva are married, Igor Kokorev is one of their children. Vladimir Kokorev was born on 11 September 1954. Yulia Maleeva was born on 23 June 1952. Igor Kokorev was born on 27 December 1982.

<sup>2</sup> <https://web.archive.org/web/20091213211233/http://www.reicaz.es/tofyserv/sop/texttosle/i21-96-regimen.pdf>

- FIES 3 (armed terrorist organisations) includes inmates who still belong or have belonged to a terrorist organisation;
- FIES 4 (security forces) concerns inmates who previously belonged to security forces of the State;
- FIES 5 (special characteristics) refers to inmates classified in accordance with their specific criminological profile such as sex offenders, Islamic terrorists, war criminals, etc.”<sup>3</sup>

Over the last fifteen years, the European Parliament<sup>4</sup> and the Council of Europe<sup>5</sup>, in particular the Committee of Prevention of Torture (CPT), have expressed serious concerns and warnings about the FIES system.

As the Kokorev experience reveals, the FIES system does not appear to have a proper implementation strategy. In addition, this case underscores certain other concerns expressed in prior cycles regarding pretrial detention in Spain, such as its excessive length<sup>6</sup> and that in Spanish law a *secreto de sumario* regime exists<sup>7</sup>, under which the evidence and the reasoning for decreeing pretrial detention may be withheld from the detainee.

### **General prison conditions in Las Palmas**

The island of Gran Canaria is home to two prisons: Centro Penitenciario Las Palmas I “Salto del Negro” and Centro Penitenciario Las Palmas II “Juan Grande”.

Built in 1982, the Centro Penitenciario Las Palmas I became extremely overcrowded in the early 2000s. The Centro Penitenciario Las Palmas II opened in 2011 to alleviate this issue. However, the older prison, where Igor Kokorev spent more than five months, is still housing inmates in poor conditions. In the Centro Penitenciario Las Palmas I, former inmates reported to HRWF multiple structural issues in the buildings; including, extremely thin walls that are crumbling in certain places, doors that are only locked manually from the outside (creating a clear fire hazard), and the creation of bunk-beds by welding metal bed frames together.

In addition, both prisons are vastly understaffed, leaving inmates and staff in danger at the two locations.

In January 2019, it was reported that there were 87 vacant posts within the two prisons combined.<sup>8</sup>

<sup>3</sup> <https://rm.coe.int/pdf/168076696b>

<sup>4</sup> [http://www.europarl.europa.eu/doceo/document/E-8-2016-004686\\_EN.html](http://www.europarl.europa.eu/doceo/document/E-8-2016-004686_EN.html) ; <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2006-0571&language=HU>

<sup>5</sup> <https://rm.coe.int/pdf/168076696b> ; <https://rm.coe.int/16806db842>

<sup>6</sup> CCPR/C/ESP/CO/5, p. 15

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqX7R5nHBFqJOU4nx7MjBHIQGRVVU9IYMm7%2fVNRMQDQGFNX4tfS%2f2GVjoUvq1PfNmfs6EDcgUT1eQltxhEEN3DQz6o4Ev0FGnsaY2TBcV7U>

<sup>7</sup> CCPR/C/ESP/CO/5, p. 18

<sup>8</sup> <https://confi legal.com/20190119-en-espana-ha-muerto-un-presos-cada-dos-dias-en-el-ultimo-mes-y-medio-informala-apfp/>

In both prisons there have been numerous incidents of attacks on guards and inmate escapes. Between January – May 2019, there were already five inmate deaths in Las Palmas II and at least two deaths in Las Palmas I.<sup>9</sup>

Of particular concern is the administration of medicine to prisoners over holidays and weekends. It has been reported that due to a lack of health professionals, inmates are responsible to self-administer their own medicine over weekends and holiday breaks. With a number of inmates dying of overdoses, such a practice poses a risk to the community. As Francisco Llamazares, the president of *La Asociación Profesional de Funcionarios de Prisiones* (APFP), explains, “medication is being given for three days in a single delivery...[and is] a risk, both for the inmates, as for the officials themselves, when endangering the health of the inmates and the internal security of the inmates.”<sup>10</sup>

Both former inmates as well as a representative from the Workers Commissions of the Canary Islands confirmed these concerns to HRWF.

The Kokorevs were subject to poor prison conditions in Las Palmas. Further exasperating their conditions, Vladimir Kokorev, Yulia Maleeva and Igor Kokorev were all classified under the highest level of the FIES system of special surveillance, which is normally reserved for terrorists, sex offenders, or war criminals. Under their FIES status, they were further restrained in their ability to enjoy their rights during their detention, particularly the right to presumption of innocence, as other inmates and the prison guards were aware of their FIES status and that this status is assigned to particularly dangerous criminals.

The case study of the Kokorev family shows that their rights were grossly violated during their detention in Las Palmas de Gran Canaria despite the international standards protecting the rights of detainees, such as:

- 1) Standard Minimum Rules for the Treatment of Prisoners
- 2) Universal Declaration of Human Rights, Article 11.<sup>11</sup>

### **The combined impact of the FIES system, the prolonged detention and the *secreto de sumario* regime in the Kokorev case**

Vladimir Kokorev, Igor Kokorev, and Yulia Maleeva have never been accused of using violence or inciting violence. However, while in prison in Las Palmas, they were all wrongfully assigned to a FIES - 5 status as they did not fit the listed descriptions of that status.

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<sup>9</sup> <https://www.laprovincia.es/sucesos/2019/05/05/pasa-prisiones-canarias/1171909.html>

<sup>10</sup> <https://confilegal.com/20190119-en-espana-ha-muerto-un-presos-cada-dos-dias-en-el-ultimo-mes-y-medio-informa-la-apfp/>

<sup>11</sup> (1) *Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.* (2) *No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*

Their pretrial detention was also unusually long; more than 2 years in the case of Yulia Maleeva and Igor Kokorev, and close to 2 years and a half for Vladimir Kokorev.

Moreover, for the larger part of this detention period (more than 18 months) they were subjected to the *secreto de sumario* regime, and neither they nor their lawyers had any access to the Court files, the evidence, or the reasoning being used by the Canarian Courts to keep them in prison.

Most significantly this case offers a unique corroboration that the Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (which should prevent the *secreto de sumario* from being used in the context of pretrial detention), has not been properly implemented by Spain via the *Ley Orgánica 5/2015* of 27 April 2015.

This corroboration comes from the fact that the detention order in respect of Igor Kokorev was made a day before this law came into effect (the law came into effect on 28 October 2015), and in respect of Vladimir Kokorev and Yulia Maleeva approximately a month later. However, there was no variation in the treatment of any of them: no access was given to the file and the detention orders delivered to the detainees were redacted to erase any particulars of the case, including all reference to the evidence and to the reasoning on which the decisions were grounded<sup>12</sup>. The decision to withhold any information on the reasoning and the evidence for the detention was appealed all the way to the Spanish *Tribunal Constitucional* to no avail.<sup>13</sup>

The Kokorev case also underscores the dangers of the *secreto de sumario* in the context of pretrial detention. Specifically, the detention was after some point largely sustained on digital evidence seized after the arrests and the searches. However, only once the secrecy was lifted and access to the devices was granted to the defence that subsequent forensic examination could reveal irregularities in the handling and signs of manipulation of the devices in question, including a USB drive that was attributed to one of the members of the family and had apparently being created ad-hoc by the police a month after the arrest.

The Kokorevs were robbed of their presumption of innocence during their pre-trial detention, being treated in all respects as dangerous, convicted prisoners.

They were not released on bail, nor were alternative measures, such as home arrest, ever considered. For a period of 6 months Igor Kokorev was kept in a different prison from his parents. Upon transfer to the same prison, he was detained in a different module from his father. They filed official requests to be housed together, but all attempts were refused.

The Kokorevs were denied basic information on the status of the court proceedings and on how long the secrecy and the imprisonment would last. They also suffered from the poor prison conditions in Las Palmas and from being subjected to the same living regime and the social reinsertion programs as the convicted inmates, except in that which would benefit them.

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<sup>12</sup> Source: copies of detention orders provided by the Kokorev family in the course of the interviews

<sup>13</sup> Source: copies of decisions from the *Tribunal Constitucional* declining to consider the *recursos de amparo* provided by the Kokorev family in the course of the interviews

In that regard, day leaves from the prison or a regime of ‘semi-liberty’, (i.e. only sleeping in prison) were granted to convicted criminals on certain conditions after they had served a part of their term. This right was denied to the Kokorevs, who had not been convicted and were still enjoying the presumption of innocence.

As explained during an interview, Vladimir Kokorev struggled in prison with his health (he suffers from high blood pressure, heart problems, and diabetes) and dignity. He related an episode that is particularly illustrative of the consequences of the FIES status:

After many months of struggling with the prison bureaucracy, he was given permission to be examined by a cardiologist in a hospital, but on that specified day, no one came to take him to the hospital. At a random later date, Mr. Vladimir Kokorev was escorted by half a dozen guards armed with automatic weapons and bulletproof vests to a different hospital to see a different doctor. During the ride to the hospital, he was handcuffed in the back of a police riot van. While in the hospital, Mr. Vladimir Kokorev remained handcuffed. The armed authorities refused to remove his handcuffs, even when it was requested by a nurse. The doctor was unable to perform a proper examination.

His right to receive visitors was not always respected. For nearly six months, he was denied the right to be visited by representatives of the Jewish community in Las Palmas.

Under FIES - 5 status, Yulia Maleeva and Igor Kokorev faced similar struggles. They remarked in their interviews with Human Rights Without Frontiers that they were not treated as innocent persons.

- Igor Kokorev was not allowed to be housed with his father. When he inquired about the reason why, they responded it was because they were under active investigation. However, many other inmates who were under active investigation in the same cases, were housed together.
- Yulia Maleeva reported that she felt disoriented from being moved to a different cell every 5 to 9 weeks, a security measure prescribed under the FIES-5 status to which in her module only she was being subjected.

## **Conclusion**

Human Rights Without Frontiers recommends that Spain take the following actions in order to align its practices with its international legal obligations:

- 1) Reform the FIES system by publicly outlining specific criteria for each status from FIES 1 to 5 and clarify a chain of command and decision making process for the placement of prisoners under each of the FIES statuses;
- 2) Dramatically improve conditions in both prisons in Gran Canaria, including an increase in the number of staff in both facilities;

- 3) Review the implementation of the Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings to ensure that the *secreto de sumario* regime does not prejudice any way the rights of the detainees, in particular that no evidence or reasoning on which pretrial detention is grounded is withheld from them.