

To be or not to be recognized? Claims for recognition among Muslim minorities in Spain

Johanna M. Lems

<https://orcid.org/0000-0003-3166-6983>

Abstract

Drawing on the notion of political subjectivity to enhance understanding of the dynamics of inclusion and exclusion existing in society, this chapter addresses the rights-claiming activities and strategies undertaken by certain actors in Spain who self-identify as Muslim. According to Krause and Schramm (2011), processes of political subjectivation do not only show how an individual –or a group of actors– enters in a position from which to claim rights, but also how networks of belonging are built and who grants recognition of these subject positions. The power of political subjectivity as an analytical concept resides precisely in the tension between recognition and misrecognition of claimants and their claims (Schramm et al. 2019). In recent years certain initiatives have emerged across different regions of the Spanish territory, undertaken to change situations of vulnerability and subordination endured by Muslim minorities. Based on documentary and fieldwork research conducted between 2018 and 2022, this chapter examines a selection of the main claims made by members of associations participated by Muslims, focusing on the nature of such claims, the public that is targeted and whether political subjectivity of the claimants is recognized or not.

Keywords: Muslims, Spain, political subjectivity, rights-claiming, recognition.

Introduction

The Spanish Constitution of 1978 brought with it, among others, full exercise of freedom of religion after decades of National Catholicism under Franco's dictatorship (1939-1975). The 1980 Law on Religious Freedom and the formal recognition in 1989 of Islam as a "deeply rooted" religion in contemporary Spain, established the basis for further development of religious freedom and practice of Islam.¹ The recognition of "the presence of the Islamic religion since the 8th century" and its "uninterrupted existence within the territory", as stated in the declaration issued on 14 July 1989, by the Government's Advisory Committee on Religious Freedom, did not only enhance a symbolic meaning, in the sense of normalising the presence of Islam in Spain. Moreover, the State's mandate to cooperate with "deeply rooted" minority religions led to the accommodation of the Islamic faith and practice and prepared the ground to advance on a legal text for the protection of Islamic worship in Spain (Contreras Mazarío 2018; Relaño Pastor 2013).

The negotiations about the contents of the legal text –and what would become a few years later the so-called Cooperation Agreement or Law 26/1992– took place between the State and a representation of Muslims living in Spain prior to the arrival of migrant workers and their families from North Africa. In this regard, the men who negotiated the provisions to be included

¹ The first Spanish law on Religious Freedom, Law 44/1967 of 28 June, allowed believers of confessions other than Roman Catholicism to form and register as an association, thus obtaining legal personality and (limited) legal recognition (Corpas Aguirre 2010; Relaño Pastor 2013).

in the Cooperation Agreement were former university students whose countries of origin included Syria, Palestine and Jordan and who had decided to stay in Spain after graduation, as well as a group of Spanish born citizens new Muslims –i.e., who had embraced Islam at a later stage in their lives. The latter formed part of a Spanish–Muslim elite at the time of the negotiations at the end of the 1980s and in the early 1990s (Planet Contreras 2018).

An agreement was reached on a broad set of provisions related to the conservation and promotion of Islamic historical and artistic heritage and allowing Muslims living in Spain – Spanish citizenship is not a requirement – to practice their faith. Heading towards the signing of Cooperation Agreement and further to requirements from the State, the Islamic Commission of Spain (*Comisión Islámica de España* or CIE, in its Spanish initials) was created in February 1992. This federative organization was founded to become the representative of all Muslims in Spain – the large majority of whom adhere to Sunni Islam – and the sole interlocutor with the State both as the counterpart for signing the Agreement and to monitor the execution of the rights granted by it (Contreras Mazarío 2018).

The Cooperation Agreement between the Spanish State and the Islamic Commission of Spain was signed on 10 November 1992 (Law 26/1992) and recognized Muslims a series of individual and collective rights, such as the recognition for civil purposes of marriages celebrated in accordance with Islamic rites; the establishment and protection of places of worship; religious assistance in hospitals, prisons and the armed forces; halal food and Islamic religious education in publicly funded schools; or the access to land parcels for Islamic rite burials. However, despite this legal acknowledgement since 1992, at present – i.e., more than thirty years later – many of the rights granted to Muslims and codified in the Cooperation Agreement, including access to municipal cemetery plots for Islamic rite burials and Islamic religious education at publicly funded schools, are not respected in practice (Lems and Planet 2023; Salguero and Siguero 2021). Since Spain is territorially distributed into municipalities, provinces, and autonomous communities (*Comunidades Autónomas*), these rights are administered according to the competences assigned to each which does not always facilitate their implementation. The administration of burials, for example, corresponds to the local authorities, whilst education falls to the regional autonomous communities.

It was after the negotiations and the entry into force of this Agreement that the Muslim populations on the Spanish mainland started to increase in number, to a large extent driven by migrations from North Africa since the 1990s and, in particular, during the first decade of the 21st century. According to its 2022 demographic report, the Andalusian Monitoring Centre, which pertains to the largest federation of Islamic entities in Spain (i.e., *Unión de Comunidades Islámicas de España*, UCIDE) estimated that per December 31, 2022, the number of Muslims in Spain amounted to 2,349,288 persons which equals 4.7% of the total number of the country's inhabitants (Observatorio Andalusí 2023). Approximately 60% of them are resident aliens while 40% are Spanish citizens, of whom a relatively small proportion are new Muslims.

With or without Spanish citizenship, a large part of those persons categorized as Muslim suffer multiple disadvantages caused by different racializing practices performed both at institutional and private citizen level (Lems 2021). Apart from the non-compliance with the aforementioned rights related to the practice of Islam, the participation in society is often largely influenced by discriminatory practices affecting Muslims in Spain in their daily lives. These mechanisms include, for example, the difficult access to the labour market, especially for women wearing the hijab (Ali 2020). Access to housing is also very difficult for racialized individuals and families. The owners or real estate agencies have often no qualms in rejecting them as tenants based on their condition of Muslims or foreigners of African origin (Lems and Mijares 2022). Various annual reports on Islamophobia in Spain and in Europe alert about the increase in anti-Muslim

hate crime (FRA 2017; PCCI 2018) and about the presence of Islamophobic discourse spread by politicians and media (Ali 2020, 2021; OIM 2019). Furthermore, young men in particular are frequently stopped by the police due to their ethnic profile (Douhaibi and Amazian 2019) while other control mechanisms include the surveillance of mosques and other community activities (Lems and Mijares 2022; López Bargados 2014; Téllez Delgado 2018). These dynamics of ostracising, foreignizing or even criminalising Muslims often seek a silencing impact, reducing the agentic options of the “Muslim Other” (de Koning 2016) and seriously complicating the conditions that are necessary to claim a position from which to gain voice.

Nevertheless, in recent years certain initiatives have emerged across different regions of the Spanish territory. These initiatives are undertaken principally by young Muslim women and by a number of new Muslim men, who attempt to change situations of vulnerability and subordination endured by their communities (Lems 2021). This chapter analyses a selection of the main claims made by members of associations who self-identify as Muslims, exploring to whom they address their demands and how they participate in the political landscape that developed in Spain since May 2011. Around this date, the so-called *Indignados* movement aimed to promote a political construction based on the participation of many different people (Carmona Hurtado 2018) and brought together more than 100,000 people in over 50 cities in Spain day after day (Observatorio Metropolitano 2011). Alternative forms of protest and activism were emerging against the curtailment of rights and politics of privatization, and new political parties and social movements came up. Despite its inclusive vocation, certain groups such as feminists, migrants and LGBTQ+, were clearly underrepresented (Calvo and Álvarez 2015; Ramírez 2012). Muslim voices were hardly heard or, maybe more correctly, not listened to. However, their presence in society has become hyper visible, to a large extent because the media and society in general associate Islam and Muslims nearly always with negative issues (Lems and Mijares 2022).

The chapter is structured in three sections and a conclusion. Section one addresses the concept of political subjectivity and the relation between the practices of marginalization, rights claiming and the search for recognition of claims and claimants. Section two, which consists of three subsections, examines the efforts undertaken by a number of Muslim actors in different parts of the Spanish territory aimed at achieving compliance with the rights codified in the 1992 Cooperation Agreement. In particular, the right related to Islamic religious education (subsection 1), the access to cemetery land parcels for Islamic rite burials (subsection 2) and the availability of halal food in publicly funded schools (subsection 3). Section three discusses various ways of struggling against anti-Muslim racism. The first subsection deals with the attempts to get the State and its institutions to acknowledge the existence of Islamophobia, as a first step in the development and application of measures to counter it. The second subsection addresses different mechanisms of discrimination including the criminalization of Muslims by the police.

Political subjectivity, rights claiming and recognition

According to Schramm et al. (2019), processes of political subjectification imply mutual dynamics of interpellation, articulation, and recognition. Interpellation through the marking of difference often entails the categorisation and marginalization of certain communities or individuals and thus creates boundaries between groups of people. In this regard, Islamophobia as a marginalizing practice is not an exception: the discrimination of Muslim minorities in its manifold variants –whether related to the practice of the Islamic faith or to racializing mechanisms such as foreignization or criminalisation– involves a misrecognition of Muslim people as political subjects.

Krause and Schramm (2011) note that research into the processes of political subjectification sheds light on how an individual –or a group of actors– enters in a position from which to claim rights. In addition, it may also explain how networks of belonging are built and who is granting (or not) recognition of these subject positions (Krause and Schramm 2011:128). The multiple ways in which subject positions can be articulated are, in turn, closely connected to the recognition or not of the political agency of rights claimants. The refusal or denial to recognize the agency of those who self-identify –or are defined by others– as Muslims in making their demands, serves to avoid attending Muslim voices claiming their rights. As a result, their demands are left unattended, and their subordinate position is reinforced.

Though rights claiming can be aimed at many different causes, its objective usually is to make an end to a situation of injustice. Practices of claims-making allow marginalized individuals to take part in the dynamics of speaking and acting in public and to create new forms of political subjectivity (Zivi 2012: 90). In a similar way, according to Isin (2009), rights claiming entails the performative process through which the claimants can articulate new political subject positions. It is precisely in this sense that Schramm et al. (2019: 252) consider that the strength of political subjectivity as an analytical concept can be found in the tension between recognition and misrecognition of the rights claims undertaken by individuals and groups.

Against the context of political and social transformation in Spain that emerged around May 2011, in which the *Indignados* movement bolstered a cycle of protests throughout the country against the manifold privatization strategies and the constant curtailment of civil rights that were complicating the lives of many citizens, the agentic options for many Muslims in Spain were further reduced due to the above-described mechanisms of foreignization and criminalization. Despite these difficult conditions under which to gain voice and start rights-claiming, certain initiatives have emerged among Muslim minorities in various regions of the State's territory, seeking to change situations of vulnerability and subordination endured by their communities. Their strategies and claims are diverse and comprise demands for compliance with their collective and individual religious rights as well as protection against Islamophobia.

The next section explores a selection of claims related to the rights granted to Muslims in 1992 regarding the practice of Islam and comments the activities performed by Muslim associations and individuals who seek compliance with their religious rights. The section furthermore examines to whom these demands are addressed and if the addressees ignore or recognize the claimants.

Religious rights claiming

An important part of the claims-making activities carried out by certain actors from Spanish Muslim civil society is related to the effective execution of their religious individual and collective rights granted to Muslims under the 1992 Cooperation Agreement. In occasions, these demands are made from outside of the institutionalized structure of interlocution with the State, i.e., circumventing the Islamic Commission of Spain (CIE), whose lack of proactivity and transparency is criticized by many active members of Spanish Muslim associations and other entities (Lems and Planet 2023). The following subsections explore the nature of three main claims made by Muslim individuals and entities in various regions of the Spanish territory, concretely the right to Islamic religious education at schools, access to municipal cemetery plots for Islamic rite burials, and the availability of halal menus at public institutions.

Islam and the right to religious education at school

In Spain, all primary and secondary schools are obligated to offer Roman Catholic religious education, i.e., the teaching of the Catholic faith. This course is optional for students and as regards the year 2021, approximately 60% of the school students chose to take this class (Conferencia Episcopal 2022). Based on the 1992 Cooperation Agreement and as established in Resolution of April 23, 1996 (on the conditions for the designation and financial terms of the educational personnel), Islamic religious education should be offered as part of the school curriculum in primary and secondary education, provided that at least 10 students per school (or their parents) express interest in receiving Islamic religious education (for their children) with the school's director, at the beginning of each educational stage. The contents per educational level of the study programs for this subject² were prepared in accordance with the Islamic Commission of Spain, the entity that is also in charge of issuing certificates of competence to teaching candidates and appointing the religious education teachers to the schools in question.

The Andalusian Monitoring Centre (*Observatorio Andalusi*) estimated that in 2021 approximately 360,000 students in Spain could be interested in applying for Islamic religious education at their educational centres (Observatorio Andalusi 2022: 11). The Centre also informed that in January 2022 a total of 106 instructors taught Islamic religion in schools across the state's territory, and that five autonomous communities in Spain, namely Asturias, Cantabria, Murcia, Galicia and Navarra, did not offer the course at any publicly funded school in their regions. Especially blatant is the case of Murcia, in Southern Spain, where approximately 25,000 Muslim students could be interested in choosing this class.

In June 2021, a family in Murcia filed a request for Islamic education for their children with the corresponding school management without receiving any reply from the school nor from the Murcia Council of Education and Culture. Facing this administrative silence, the family decided to appeal with the Regional High Court of Justice. In its sentence of February 2022, the High Court of Justice of Murcia³ declared in favour of the family confirming their right to Islamic religious education and considering that the lack of action by the Regional Administration was not in accordance with the Law.⁴ These legal proceedings were conducted without any type of support from the Islamic Commission of Spain, which caused the Islamic Federation of Murcia to formally demand an explanation from the CIE for its lack of leadership and assistance throughout the whole procedure.⁵

Other examples of struggles to achieve compliance with the right for religious education at the schools of their children are the cases of Granada and La Rioja. In the latter region, during the second decade of the 21st century a number of ten families filed claims with the High Court of Justice against the rejection of their requests for Islamic religious education by the regional authorities.⁶ They considered that the denial of religious Islamic education was a violation of

² The contents of these study programs are published in a Resolution of September 16, 2022 from the Secretary of State of Education. This Resolution was based on the first additional provisions of Royal Decrees 1513/2006 of December 7 (related to primary education), 217/2022 of March 29 (on secondary education) and 243/2022 of April 5 (regarding baccalaureate).

³ Judgment 50/2022 of the Murcia High Court of Justice of 8 February 2022, ECLI:ES:TSJMU:2022:50

⁴ In January 2023, a similar court judgment was issued by the High Court of Justice of Valencia, ECLI:ES:TSJCV:2023:700

⁵ <https://www.elhalal.es/articulo/islam-news/federacion-islamica-region-murcia-firm-exige-explicaciones-cie-inaccion-asunto-clases-eri/20210603094315001935.html> (accessed 30 October 2022)

⁶ As one of my interlocutors, a spokesperson of the supporting Muslim platform "Comunidad Musulmana de La Rioja" informed me during an interview held in June 2021.

their fundamental right of religious freedom. They were supported by a platform consisting of five grassroots organizations who had joined under the name of Muslim Community of La Rioja (*Comunidad Musulmana de La Rioja*). This platform was formed by Muslims in La Rioja who had grown tired of being ignored by local and regional authorities, as well as by the CIE. The members of these civil and religious entities, mostly of migrant origin—i.e., from Morocco and Pakistan—and a minority of active Spanish-born new Muslims, initiated a campaign to create awareness of their discrimination among a broad public, whether Muslim or not. Their aim was to mobilize as many citizens as possible in their struggle for their civil and religious rights to be recognized and put into practice. In 2020 the La Rioja High Court of Justice dismissed the families' complaint.⁷ The Catalanian association Muslims against Islamophobia (*Musulmanes contra la Islamofobia*), who had provided legal assistance to the families, issued a public statement considering the Court's interpretation to be wrongful and an act of institutional racism since it left the Muslim families without their full citizen's rights.⁸

The case of Granada had similar traits but a more favourable outcome for the families who had claimed compliance with the right to Islamic religious education at school in March 2021. In its verdict⁹ of October 2022, the High Court of Justice of Andalusia expressed that the inactivity on behalf of the Andalusian regional authorities had led to the violation of the parents' fundamental right of art. 27.3 of the Spanish Constitution, by which public authorities must ensure the religious and moral education of the children in conformity with the parents' convictions.

The right to cemetery land for Islamic rite burials

Since the entry into force of the 1992 Cooperation Agreement, one of the main claims of the Muslim populations in Spain has been, and still is, compliance with the individual right to be buried according to the Islamic rite.¹⁰ The Agreement formally recognizes the right to the concession of land parcels reserved for Islamic burials in municipal cemeteries or to –privately–own Islamic cemeteries.

Per the 2021 report of the Andalusian Monitoring Centre, 95% of Muslim communities in Spain do not have access to municipal cemetery land for Islamic burials (Observatorio Andalusí 2022: 14). Even though public authorities are obligated to create the conditions to comply with this right, according to a report published by the Islamic Commission of Spain in April 2020, only 30 cemeteries in Spain offer (albeit limited) space for burials according to Islamic norms for a population of more than 2 million people (Ajana Elouafi 2020).

Claims-making for space on municipal cemeteries for Muslim burials started in the late 1990s in various parts of the Spanish state. Taking again the La Rioja region in northern Spain as an example, here negotiations between local dwellers and the municipal government commenced in 1997. In 2008, public land was finally made available at the local cemetery of Logroño (capital of La Rioja). Within less than ten years, however, the

⁷ Judgment 134/2020 of the La Rioja High Court of Justice of April 4, ECLI:ES:TSJLR:2020:134

⁸ <https://mcislamofobia.org/valoracion-fallos-tsj-larioja-eri2020> (accessed 22 July 2020)

⁹ Judgment 12266/2922 of the High Court of Justice of Andalusia, of 21 October 2022, ECLI:ES:TSJAND:2022:12266

¹⁰ According to the Islamic tradition, the deceased must be buried as soon as possible, within a 48-hour term and without coffin. Cremation is prohibited. The mortuary rituals include the washing of the body and its shroud. For detailed information on the Islamic burial rite, see Tarrés 2006.

need for an extension of this cemetery space became evident yet was denied by the local authorities at that time. Hence, the entities and individuals forming the above-described platform Muslim Community of La Rioja decided to undertake action. According to one of the platform's spokespersons, various campaigns were organized between 2017 and 2019, ranging from protest marches, press conferences and a formal claim presented to the city hall. In addition, the floor was taken in a plenary session of the Logroño city hall to insist on the need for cemetery space for Muslims. After many months of mobilizations, the Muslim Community of La Rioja managed to obtain the support for their demand from all four opposition parties. The elections of 2019 gave rise to a change in the local government and the extension of municipal cemetery space was eventually agreed to in 2021.

In other parts of the Spanish territory, including the cities of Madrid, Vitoria (Basque Country) and Molina de Segura (Murcia region), advances have recently been made toward political acceptance of the need for, and accessibility to, Islamic burial land on municipal cemeteries. The sudden increase of deceased Muslims during to the COVID-19 pandemic and the closure of the borders with Morocco, made the necessity to solve the lack of available space for Islamic burials throughout the state territory even more apparent (Ajana Elouafi 2020: 2; Moreras Palenzuela 2021). It urged cooperation between Muslim communities and local administrations in finding long-term solutions and to implement a cemetery infrastructure which contemplates diversity and enables the realization of burials respecting the deceased's convictions and beliefs.

Specifically compelled by the COVID19 pandemic, the Catalanian association Muslims against Islamophobia started a campaign in 2020 with the slogan "Islamic cemeteries: Respect our cultural rights on mortuary matters!". Considering that the administration of burials falls under the jurisdiction of the local authorities, the entity asked Muslims in Spain to complete and file with their municipality of residence a specific form –downloadable from their webpage– in which they demand their local authorities to respect and duly manage the right to cemetery space for their Muslim citizens (MCI 2020). This form was to serve as a written confirmation to local authorities of the signatory's wish to be buried at the municipal cemetery according to the Islamic burial rite, and to apply the current mortuary health legislation¹¹ for the exercise of the right to be buried according to Islamic funeral rules. Upon filing the form, the signatory asks for a written reply from the municipality to the following three questions:

- "a) Does our town have an area fitted for Islamic burials at the municipal cemetery, and if so, how many spots are available at present?
- b) In case no spots are available for Islamic burials at the municipal cemetery, what measures does the town hall take to provide for such space?
- c) In case no spots are available for Islamic burials at the municipal cemetery, what measures does the town hall take to handle cases of deceased that require an Islamic rite burial in this municipality?"

The association Muslims against Islamophobia clarifies on its website that this initiative does not seek to replace the work undertaken by the Islamic Commission of Spain, but to complement

¹¹ Decree 2263/1974, of 20 July, approving the Regulations on Mortuary Health Police <https://www.boe.es/buscar/doc.php?id=BOE-A-1974-1358> (accessed 9 September 2020)

it where possible. In a similar way, in February 2023, Maysoun Douas, member –at that time– of the Madrid City Council for left-wing political party *Más Madrid* (More Madrid) and visibly Muslim wearing the hijab, initiated a signature petition addressing the mayor of Madrid in an attempt to achieve compliance with the right to a proper burial without being discriminated on religious grounds. Despite the approval in July 2022 by the Madrid Assembly to dedicate 10.000m² of municipal cemetery land located in the Carabanchel neighbourhood (Madrid), the project had not progressed since then. In a few months, Douas’ signature petition initiative developed into a broader movement, which under the name “For a proper burial” filed 500 formal complaints with the national Ombudsman in June 2023.¹²

The right to halal food at public institutions

Another demand is related to the availability of a halal menu at publicly funded schools, universities, hospitals, elderly homes and other public institutions. While art. 14 of the 1992 Cooperation Agreement allows for halal slaughter provided that sanitary regulations are met, it also establishes that attention will be paid to adjust the diet of Muslim students in publicly funded educational centres to Islamic religious precepts, at their request. Though this wording is not unambiguous, at the time of signing the Agreement it was considered to allow for further regulatory development. However, in 2023 hardly any school in Spain provides for halal food to its students and only a few hospitals have incorporated a halal diet for Muslim patients. In fact, in June 2015 the Madrid High Court of Justice upheld the decision of the board of a publicly funded school, which had denied the request from a Muslim family to remove pork and its derivatives from the school meal of their child and to replace it with other ingredients of a similar nutritional value.¹³

The Association for Consumers of Halal (ACOHA), created in 2020 by Muslim citizens in La Rioja and Ceuta and formally registered in 2022, is committed to the value of halal as a healthy, secure and ethical option both for Muslims and for consumers in general and aims to provide education, orientation, information, defence and representation of its members and other consumers.¹⁴ Concerning the availability of a halal diet at publicly funded schools, ACOHA insists that families should file a formal request with the school’s management. On the occasion of a draft bill prepared by the Ministry of Consumption to procure, among others, a healthy and sustainable diet for school students, this association launched in September 2022 an on- and offline campaign inviting all citizens, communities and associations to file a request with the Ministry asking that for Muslim students, the “special menu for religious reasons” is adjusted to a halal-certified menu.¹⁵ While the deadline for filing adjustment proposals to the draft bill ended on October 7, 2022, the Spanish government’s annual list of legislative proposals to be presented to the cabinet for approval in 2023 did not include this bill.

¹² <https://www.europapress.es/madrid/noticia-musulmanes-madrid-entregan-martes-500-quejas-defensor-pueblo-falta-enterramientos-comunidad-20230611105955.html> (accessed 12 June 2023); <https://elpais.com/espana/madrid/2023-06-13/la-comunidad-musulmana-de-madrid-acude-al-defensor-del-pueblo-por-no-tener-cementerios-donde-enterrar-a-sus-muertos.html> (accessed 13 June 2023).

¹³ Judgment 8435/2015 of the High Court of Justice of Madrid, of 16 June, ECLI:ES:TSJM:2015:8435 .

¹⁴ <https://www.acoha.es/> (accessed 26 February 2023)

¹⁵ <https://www.acoha.es/articulo/actualidad/abierto-tramite-audiencia-publica/20220920093453001070.html> (accessed 3 March 2023)

Fighting anti-Muslim discrimination

In addition to the above-described activities aimed at religious rights-claiming, several entities participated by Muslims dedicate their time and efforts to countering Islamophobia or anti-Muslim racism within the Spanish state. The following section provides a few examples of the attempts made at fighting anti-Muslim discrimination.

State recognition of anti-Muslim racism

A large part of the fight against Islamophobia in Spain is aimed at obtaining recognition by the State of the existence of anti-Muslim racism, as a first step in the preparation of measures to counter it. International organizations such as the Organization for Security and Co-operation in Europe (OSCE), the Fundamental Rights Agency (FRA) or the European Council against Racism and Intolerance (ECRI), pertaining to the Council of Europe, all insist on the need for states to become more involved in the monitoring of hate crime, and to record Islamophobic incidents and crimes in a separate category in order to be able to address its specificities.

In 2017, the Spanish Ministry of Internal Affairs created the National Office for Hate Crime (*Oficina Nacional de Delitos de Odio*, ONDOD in its Spanish initials), pertaining to the Secretary of State for Security. Since then, the ONDOD is responsible for the preparation and publication of yearly reports on cases of hate crime in Spain. The information provided in these reports, however, does not segregate data on hate crime committed against Muslims or those perceived as such.

The disaggregation of data on anti-Muslim racism in Spain is one of the main claims put forward by the Spanish Muslim Association for Human Rights (*Asociación Musulmana por los Derechos Humanos*, AMDEH). The members of this entity consider that without this specific information, Islamophobia appears not to exist. As it is not always an easy task to distinguish between the different components of racist practices which often overlap, in 2019 the OSCE published a specific guide on hate crime against Muslims, providing instructions and guidelines on how to identify and collect this detailed information. The guide urges governments that “anti-Muslim hate crime should be monitored as a separate category of crime, enabling a tailored response to the phenomenon. Hate crime data should be recorded in a manner that allows for disaggregation of hate crime data by gender to show how hate crimes affect Muslim men and women differently.”¹⁶

Through direct correspondence and press communications in 2019 and 2020, the Muslim Association for Human Rights tried to achieve recognition of this claim from the Ministry of Internal Affairs. Nevertheless, the National Office for Hate Crime so far still fails to provide a separate category for anti-Muslim hate crime. This is curious, because ONDOD established in 2019 a specific category for anti-gypsyism hate crimes, separating the relevant data from the general category for racist and xenophobic hate crime in which they were included prior to 2019.¹⁷ It is for this reason that different civil society actors continue to claim transparency in the statistics and the recognition of Islamophobia in the annual hate crime reports prepared by the Spanish National Office for Hate Crime, in accordance with the recommendations made by the international institutions. Only in Catalonia a timid start for change has been detected, aimed to undertake action and record Islamophobic incidents and hate crime in a systematic manner (Lems 2022). In August 2020 the association Stop Islamophobic Events (*Stop als Fenòmens Islamofòbs*, SAFI) created, in cooperation with the Barcelona Town Hall and Provincial Council, the

¹⁶ https://www.osce.org/files/f/documents/1/6/373441_1.pdf (accessed 22 May 2022)

¹⁷ See the 2019 Report on the evolution of hate crime in Spain (ONDOD 2020:5).

Catalonian Monitoring Centre for Islamophobia (*Observatori de la Islamofòbia a Catalunya*, ODIC).¹⁸ The Centre's purpose is to monitor all cases of Islamophobia that occur in Catalonia and publish yearly reports. Until March 2023 ODIC has published two reports, corresponding to the years 2020 and 2021. These reports insist, among others, on the importance of reporting Islamophobic incidents as a form of –partial– reparation of the injustice suffered, as well as on the responsibility of the public administrations in the normalisation of Islamophobia, due to the violation of, or passivity and indifference towards, the fundamental rights of a large part of their citizens (ODIC 2021: 36).

The struggle against criminalisation

During the first decades of the 21st century, in Spain and other countries (not limited to the Global North) different laws, policies, protocols and strategies related to security have been enacted, to a large extent based on supranational directives. These are key in the otherization of Muslim communities and in particular in their criminalisation as “dangerous” groups and individuals (Télez Delgado 2018). A study conducted in Catalonia by SOS Racisme on police identification processes by ethnic profile revealed disproportionate figures between people with or without Spanish citizenship who were required to show their identification documents (SOS Racisme 2018). García Añón et al. (2013) also confirm that practices of ethnic profiling are the main mechanisms for criminalising foreign and/or racialized groups of people. Yet it is above all legislation in security affairs that has had the greatest impact on the construction of the alterity of Muslim groups. Through these laws, agreements, protocols, state, and regional plans, the State contributes to the criminalisation of Muslims as “terrorist suspects” (Lems and Mijares 2022; Télez Delgado 2018). The risk of accusations of being a “terrorist” and the threat of punishments in the form of fines or the withdrawal of residence or work permits have a silencing effect on part of the Muslim population (Lems and Mijares 2022) and hamper their possibilities to respond or make a claim.

The case of Catalonian activist Mohammed Said Badaoui, who was deported to Morocco in October 2022, demonstrates how state policies which focus on suspicion and pre-crime do not only impact the daily lives of those who are deported and of their families, but have an impact on all who are actively involved, or plan to engage, in rights claiming, especially in the case of foreign nationals. Badaoui came to Spain at the age of ten and has been living in Catalonia for more than 30 years. He is married to a woman from Valencia and their three children were born in Spain. Mohamed Badaoui is the founder of Adedcom (*Associació per la Defensa dels Drets de la Comunitat Musulmana*),¹⁹ an association created in 2020 in Catalonia aimed to defend the rights of Muslim communities. Adedcom has close relationships with many individuals and other NGO due to cooperations in the fight against Islamophobia and in favour of the rights for Muslims throughout Spain. He has also been spokesman for a mosque in Reus, a village in the Tarragona province (Catalonia). However, this rootedness in Spain did not protect him from deportation to Morocco based on a police report accusing him of “radicalisation” and a “danger to national security” without providing evidence or specific information. Badaoui and his lawyers believe that the reason for his deportation is linked to his application for Spanish citizenship in 2020.²⁰ The Spanish Law on the rights and freedoms of foreign nationals (Law 4/2000)²¹ allows deportations of foreign nationals under certain conditions and discretionary power to the

¹⁸ <http://www.odic.cat/> (accessed 22 May 2022)

¹⁹ <https://adedcom.org/> (accessed 27 December 2022)

²⁰ www.radiorubi.cat/programs/entrevistes-rubi-al-dia/radiorubi_podcast_22576?ref=wa (accessed 13 January 2023)

²¹ Organic Law 4/2000, of 11 January, on the rights and freedoms of foreign nationals in Spain and their social integration, <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544> (accessed 13 January 2023)

Ministry of Internal Affairs to determine the ground and scope of the potential threat of an individual to national security.

During the months before Badaoui's deportation, the members of Adedcom and SAFI, together with the Monitoring Centre ODIC made a number of efforts to mobilize as many people as possible. Several demonstrations were held in Catalonia and also in Madrid. A manifesto was written and disseminated online and in the press. Members of political formations of a wide range of ideologies all agreed to support their fellow citizen and the well-known activist. A large group of different political parties in Catalonia – from *Candidatura d'Unitat Popular* (CUP) to *Junts per Catalunya* (Junts) – sent a letter to the Minister of Internal Affairs, asking for immediate revocation of the order of expulsion. However, these mobilisations did not manage to prevent the deportation of Badaoui to Morocco, from where he continues his legal actions. The Catalanian government (*Generalitat de Catalunya*) has reported the case to the EU Coordinator for Racism, as an act of institutional racism.²²

To be or not to be recognized

The previous paragraphs have described certain examples of rights-claiming activities in different parts of Spain carried out by associations and individuals who identify as Muslim. Despite the silencing effect of multiple discriminatory interpellations, part of the Muslim populations are raising their voice in the public hegemonic sphere, of which they feel part as Spanish citizens. The claims they articulate cover a variety of demands, the most relevant of which focus on the proper exercise of their civil rights related to the practice of Islam as recognized by law since 1992, as well as on the protection against the anti-Muslim discrimination that affects their communities.

As regards Islamic religious education at schools, the claimants first address their requests to the school management in question. When being ignored they step up to the regional Council of Education. Upon administrative silence from regional authorities, they undertake legal action bringing cases to the corresponding courts when deemed necessary. However, their complaints are often dismissed. With respect to the demands made in relation with their right to cemetery space for Islamic rite burials, the COVID19 pandemic has urged the previously reluctant local authorities, to whom the petitions were directed, to find a prompt and steady solution. The practice of rights-claiming for the availability of a halal diet in schools, hospital or armed forces is a more recent one which targets the public institutions themselves. So far, very few educational centres offer a halal menu for their Muslim students and hardly any progress has been made beyond the formal recognition of this right in 1992 by the State. In general, the different authorities seem to recognize neither the claims nor the claimants' political subjectivity. Nevertheless, as citizens of a non-denominational state, part of the Muslim minorities who live in Spain insist on obtaining compliance with their formally recognized religious rights and by doing so, they are contesting the imposed boundaries between full citizens and (Muslims as) second-rate citizens.

In connection with the demands for recognition of the existence of Islamophobia in Spain – through the segregation of data on anti-Muslim hate crime – and of the criminalization

²² www.elperiodico.com/es/internacional/20221119/generalitat-denuncia-europa-deportacion-activista-78789029 (accessed 17 December 2022)

of Muslims based on securitization policies, these are directly addressed to state authorities. However, the State and its power structures fail to respond, apparently not considering the claimants as legitimate nor valid interlocutors in the Spanish hegemonic public sphere. It remains to be seen if support can be expected from the level of the European Union (for example, from the EU Coordinator for Racism). This misrecognition on behalf of the State results in a further social and political ostracization of Muslim minorities. Moreover, the case of Badaoui shows that rights-claiming in Spain can even be a “risky practice of political engagement” (Zivi 2012).

The activities of organizing campaigns, filing complaints in court, providing legal assistance are strategies to mobilize individuals and communities, bringing new political subject positions into existence. Occasionally, such as in the case of the extension of municipal cemetery land in Logroño, results are achieved. However, in many cases, the state, regional or local authorities recognize neither the claims nor the claimants, and this may lead to a disappointment or estrangement in the feelings of belonging among a large part of the Muslim population in Spain. Yet the above-described dynamics of making claims to others in public and the political engagement on the part of these actors may also contribute to the imagination of a different future and open up the space for them to become recognized as full citizens.

Reference list

Ajana Elouafi, Mohamed (2020), *Informe sobre los cementerios para los musulmanes, a fecha de 10 de abril de 2020*. Madrid: Comisión Islámica de España.

Ali, Aurora (2020), “Islamophobia in Spain: National Report 2019.” In Enes Bayrackli and Farid Hafez (Eds.), *European Islamophobia Report 2020* (pp. 737-764). SETA Foundation.

Ali, Aurora (2021), “Islamophobia in Spain: National Report 2020.” In Enes Bayrackli and Farid Hafez (Eds.), *European Islamophobia Report 2020* (pp. 739-776). Viena: Leon Weiss Institute.

Calvo, Kerman and Iago Álvarez (2015), “Limitaciones y exclusiones en la institucionalización de la indignación: del 15-M a Podemos.” *Revista de Estudios Sociológicos* 24: 115-122.

Carmona Hurtado, Jordi (2018), *Paciencia de la acción. Ensayo sobre la política de asambleas*. Madrid: Akal.

Conferencia Episcopal (2022), *Tabla de Alumnado que opta por la Asignatura de Religión Católica*. Available online: <https://www.conferenciaepiscopal.es/wp-content/uploads/2022/04/Estadisticas-Alumnos-ERE-2021-22.pdf> (accessed 8 December 2022)

Contreras Mazarío, José María (2018), “Muslims in Spain. The legal framework and status.” In A. I. Planet Contreras (Ed.), *Observing Islam in Spain. Contemporary Politics and Social Dynamics* (pp. 23-61). Leiden: Brill.

Corpas Aguirre, María de los Ángeles (2010), *Las comunidades islámicas en la España actual (1960-2008). Genesis e institucionalización de una minoría de referencia*. Madrid: UNED.

- Douhaibi, Ainhoa N. and Salma Amazian (2019), *La radicalización del racismo. Islamofobia de Estado y Prevención Antiterrorista*. Oviedo: Cambalache.
- FRA Fundamental Rights Agency (2017), *Fundamental Rights Report 2017*. Luxembourg: Publications Office of the European Union.
- García Añón, José; Bradford, Ben; García Sáez, José Antonio; Gascón Cuenca, Andrés and Llorente Ferreres, Antoni (2013), *Identificación policial por perfil étnico en España*. Valencia: Tirant lo Blanch.
- Isin, Engin F. (2009), "Citizen in flux: the figure of the activist citizen." *Subjectivity* 29: 367-388.
- Koning, Martijn de (2016), "'You Need to Present a Counter-Message'. The racialization of Dutch Muslims and Anti-Islamophobia initiatives." *Journal of Muslims in Europe* 5: 170-189.
- Krause, Kristine and Katharina Schramm (2011), "Thinking through Political Subjectivity." *African Diaspora* 4: 115-134.
- Lems, Johanna M. (2021), "Staying silent or speaking up: reactions to racialization affecting Muslims in Madrid." *Ethnic and Racial Studies*, 44(7): 1192-1210. <https://doi.org/10.1080/01419870.2020.1779949>
- Lems, Johanna M. (2022), "Islamofobia en España: actores y consecuencias." In S. Dieste and E. Tena (Coords.), *La derecha radical europea en la actualidad. Discurso de odio e islamofobia* (pp. 119-135). Valencia: Tirant lo Blanch.
- Lems, Johanna M. and Laura Mijares (2022), "La securitización de la cotidianidad de las personas musulmanas en España: el silenciamiento como estrategia de control." In B. Azaola, T. Desrues, M. Larramendi, A. Planet and A. Ramírez (Eds.), *Cambio, crisis y movilizaciones en el Mediterráneo occidental* (pp. 203-219). Granada: Comares.
- Lems, Johanna M. and Ana I. Planet Contreras (2023), "Struggling with and against the Governance of Islam in Spain." *Religions* 14: 306. <https://doi.org/10.3390/rel14030306>.
- López Bargados, Alberto (2014), "Autos de fe en un mundo de incrédulos: etnografiando la construcción del 'terror islámico' en Cataluña." In A. Ramírez (Ed.), *La alteridad imaginada. El pánico moral y la construcción de lo musulmán en España y Francia* (pp. 23-44). Barcelona: Bellaterra.
- Moreras Palenzuela, Jordi (2021), "Lo que la pandemia nos ha enseñado con respecto de la muerte (y otras obviedades)", *Cuestiones de Pluralismo* 1(1). <https://doi.org.10.58428.YAIH5054>
- MCI Musulmans contra la Islamofòbia (2020), "Cementerios islámicos: ¡Que se respeten nuestros derechos culturales en materia mortuaria!", <https://mcislamofobia.org/cementerios-islamicos-se-respeten-derechos-culturales-materia-mortuoria> (accessed 20 November 2022)
- Observatorio Andalusi (2023), *Estudio demográfico de la población musulmana. Explotación estadística del censo de ciudadanos musulmanes en España referido a fecha 31/12/2022*. Madrid: UCIDE.

OIM Observatorio de la Islamofobia en los Medios (2019), *Un cambio a nuestro alcance: Islamofobia en los medios*. <http://www.observatorioislamofobia.org/2019/09/19/informe-2018-cambio-alcance-islamofobia-los-medios/> (accessed 31 August 2020)

Observatorio Metropolitano (2011), *Crisis y revolución en Europa*. Madrid: Traficantes de Sueños.

ONDOD Oficina Nacional de Delitos de Odio (2020), *Informe sobre la evolución de los delitos de odio en España 2019*. Madrid: Ministry of Internal Affairs. Government of Spain.

OSCE Organisation for the Security and Cooperation in Europe (2020), *Understanding anti-Muslim Hate Crimes. Addressing the Security Needs of Muslim Communities. A Practical Guide*. Warsaw: ODIHR.

PCCI Plataforma Ciudadana Contra la Islamofobia (2018), *Informe Anual Islamofobia en España 2017*, <http://pccislamofobia.org/wp-content/uploads/2018/03/Informe-Islamofobia-en-España.-PCCI-Informe-Anual-2018.pdf>

Planet Contreras, Ana I. (2018), "Islam in Spain. From Historical Question to Social Debate." In A. I. Planet Contreras (Ed.) *Observing Islam in Spain. Contemporary Politics and Social Dynamics* (pp. 1-22). Leiden: Brill.

Ramírez Fernández, Ángeles (2012), "Ausencias silenciosas: La inmigración en el 15-M." In C. Taibo (Coord.) *¡Espabilemos! Argumentos desde el 15-M* (pp. 314-378). Kindle edition.

Relaño Pastor, Eugenia (2013), "Participation of Muslim minorities in the Spanish mainstream society", in Kristin Henrard (Ed.), *The Interrelation between the right to identity of Minorities and the Socio-Economic Participation* (pp. 261-285). Leiden: Martinus Nijhoff.

Salguero, Óscar and Alba Siguero (2021), "La cuestión funeraria islámica: el 'enquistado' caso de la metrópolis madrileña." *Revista de Estudios Internacionales Mediterráneos* 31: 108-127.

Schramm, Katharina; Krause, Kristine and Greer Valley (2019), "Introduction: voice, noise and silence. Resonances of political subjectivities." *Critical African Studies* 10(3): 245-256.

SOS Racisme Catalunya and platform Parade de pararme (2018), *La apariencia no es motivo. Identificaciones policiales por perfil étnico en Cataluña. Informe 2018*. <https://www.pareudepararme.org/uploads/informe2018-es.pdf>

Tarrés Chamorro, Sol (2006), "Ritos funerarios en el islam: la praxis entre los musulmanes de Sevilla." *Zainak* 28: 429-446.

Téllez Delgado, Virtudes (2018), "El 'Pacto Antiyihadista' y las estrategias de lucha contra la 'radicalización violenta': implicaciones jurídicas, políticas y sociales." *Revista de Estudios Internacionales Mediterráneos* 24: 9-30.

Zivi, Karen (2012), *Making Rights Claims. A Practice of Democratic Citizenship*. New York: Oxford University Press.