

2025 Rule of Law Report

Targeted stakeholder consultation

(English version)

I. Justice system

Please provide information on measures taken to follow-up on the recommendations received in the 2024 Report regarding the justice system (if applicable)

The 2024 European Commission Rule of Law Report made two key recommendations for the justice service:

- **Finalize the renewal of the General Council of the Judiciary** and advance in the process of **adapting the procedure for appointing its members of judges**.
- **Strengthen the Statute of the Prosecution Office**, particularly regarding the **separation of the terms of office of the State Attorney-General from the Government**.

Regarding the General Council of the Judiciary:

- **The renewal took place on June 25th, 2024**, when, after five and a half years of blockade, several attempts and various rounds of negotiations with the then EU Justice Commissioner, Didier Reynders, the Socialist Workers' Party (PSOE) and the People's Party (PP) reached an agreement that included, amongst other aspects, the renewal of the body.
- **There has been no significant progress regarding the reform of the system for the appointment of judges**. Organic Law 3/2024¹ sets a six-month deadline from its entry into force on August 3rd for the Council of the Judiciary to draft a proposal for reform (that is, February 3rd, 2025), which must be approved by a three-fifths majority of its members. This proposal will then be submitted to the Government, the Congress of Deputies and the Senate for consideration by Parliament.

As per the Prosecutor Office:

- The only reform of its Statute that has been implemented is the amendment of Article 29 introduced by the aforementioned Organic Law 3/2024, which established a **five-year cooling-off period for the position of State Attorney-General**². Specifically, no one may be nominated for the position if, within the previous five years, they have held the position of Minister, Secretary of State, or regional government Councillor. Likewise, it excludes those who have served as the President of a Local Corporation or held the status of Member of Parliament, Senator, Member of the European Parliament, or member of a Legislative Assembly of an Autonomous Community.
- **No progress has been made regarding the separation of mandates between the State Attorney-General and the Government**.

¹ Organic Law 3/2024, of 2 August, amending Organic Law 6/1985, of 1 July, of the Judiciary, and amending Law 50/1981, of 30 December, which regulates the Organic Statute of the Prosecution Office.

² Organic Law 3/2024, article 2

A. Independence

Appointment and selection of judges, prosecutors and court presidents (including judicial review)

1. Excessive discretion in the appointment of positions within the judiciary

a) Detected issue

In accordance with article 326 et seq. of the Organic Law on the Judiciary, discretionary appointments within the judicial career fall under the responsibility of the General Council of the Judiciary. In particular, it is responsible for appointing:

- The President of the Supreme Court and the General Council of the Judiciary.
- Judges of the Supreme Court, and Presidents of Courts and Chambers.
- The president of the National Court and the presidents of the Criminal, Administrative and Social Chambers of this court.
- The Presidents of the Regional High Courts, as well as the Presidents of the Administrative, Civil and Criminal Chambers and Social Chambers of these courts.
- Presidents of Provincial Courts.

Article 329.1 of the Organic Law on the Judiciary establishes that the recruitment processes for the allocation of courts shall be decided in favor of those who, holding the necessary category, have the highest position in the ranking. Likewise, article 326 establishes the need to conduct open calls published in the Official State Gazette; to **detail the weighting of each merit in the overall evaluation of the candidate**; to **design clear and distinct criteria that specify the merits to be considered**, distinguishing between jurisdictional excellence and administrative skills, as well as between general merits and those specific to each position; and to **submit duly substantiated proposals to the Plenary, with individual weighting assigned to each merit listed in the call**.

However, the way in which the Council of the Judiciary is selected, its politicization, and the involvement of judicial associations aligned with political parties (Professional Association of Magistrates with PP and Judges for Democracy with PSOE) means that **appointments are made based on criteria other than merit, ability, and independence**. Frequently, free designation procedures are tailored to suit the “pre-selected” candidates, who are often close to Council members and/or belong to the aforementioned associations. For example, four of the candidates to preside over the National Court have strong ties to the Popular Party: Enrique López, the most media-covered candidate, was Minister of Justice in the Government of the Community of Madrid; Eloy Velasco is the former Director-General of Justice of the Valencian Regional Government; María Tardón was a counselor for the Madrid City Council (a position she accessed as an independent candidate but within the PP list); and Francisco Manuel Oliver has held various positions in the PP governments of the Community of Madrid, including that of Director-General of Security³.

b) Relevant facts

- The approval of Organic Law 4/2021⁴ as a mechanism to force the unblocking of the Council of the Judiciary prevents this body from making discretionary appointments while it is in an interim capacity. As a result, after the renewal in June 2024, and following five and a half years of deadlock, there were a total of **111 unfilled positions** within the judicial leadership, **including the Supreme Court, Regional High Courts, Provincial Courts, and the National Court**. In the Supreme Court, one out of every three positions was vacant. In October, the Council announced the call for 51 vacant judicial positions, including 16 in the Third Chamber (Administrative) and the Fourth Chamber (Social) of the Supreme Court⁵.

³ <https://www.lavanguardia.com/vida/20241202/10162663/eloy-velasco-enrique-lopez-ocho-candidatos-presidir-audiencia-nacional-agenciaslv20241202.html>

⁴ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-4907

⁵ <https://www.poderjudicial.es/cgpi/en/Judiciary/Panorama/El-CGPJ-acuerda-anunciar-la-convocatoria-de-51-plazas-judiciales-vacantes--incluidas-dieciseis-de-magistrado-a-del-Tribunal-Supremo->

Subsequently, it was announced that the remaining positions will be convened in two more rounds, with all pending appointments set to be made before the end of June 2025⁶. It is worth noting that, for now, negotiations regarding the appointment of the president of the Second Chamber of the Supreme Court have not led to an agreement among the members⁷.

- After its renewal, **the Council of the Judiciary has not proceeded to reform the procedures for discretionary appointments**, with the establishment of clear requirements and criteria in the calls for positions. Furthermore, Independent Judicial Forum and Francisco de Vitoria Association (the two “non-aligned judicial associations”) **have appealed the bases of the calls for discretionary positions issued by the Council in October**, based on Article 326 of the Organic Law on the Judiciary, which mandates that each of the merits to be considered must be clearly and separately outlined, distinguishing between jurisdictional excellence and administrative skills, as well as between general merits and those specific to a given position⁸. The appeal also claims the violation of international standards on the matter, as outlined by various bodies, including the Group of States against Corruption (GRECO), the Venice Commission, and the General Council’s own Equality Plan.
- Nonetheless, there have been two significant changes, introduced by the aforementioned Organic Law 3/2024. On the one hand, **the requirements for the appointment of Supreme Court judges have been strengthened, now requiring 20 years of service in the judicial career**, up from the previous 15 years, and **adding the requirement of having served effectively in a collegiate court of the jurisdiction corresponding to the position being sought**, or having dealt with matters specific to that jurisdiction⁹. On the other hand, **the majority required to elect the Vice President of the Supreme Court has been increased to three-fifths of the Plenary of the Council** (previously, an absolute majority was required)¹⁰. In addition, a Qualification Commission has been created within the Council of the Judiciary to report on discretionary appointments and ensure an objective evaluation of candidates based on their professional career. However, this commission is made up of five Council members (three from the judicial turn and two from the legal turn), which raises serious doubts about any real change in the modus operandi.
- It is worth recalling at this point the proposal made by the previous interim president of the Council of the Judiciary, Vicente Guilarte (the so-called “Guilarte formula”)¹¹:
 - **The appointment of Presidents**, at the provincial and regional level, of Provincial and Regional High Courts must be made **directly by the judges of the corresponding body**, without the intermediation of the Council of the Judiciary. The same would also apply to the Presidents of the different Chambers.
 - **Appointments to the Supreme Court must be made on the basis of a merit list for access**, thereby reducing the margin of discretion. In addition, a selection tribunal must be established, presided over by a member of the Council of the Judiciary and composed of qualified persons (judges of the Supreme Court Chamber in question and, where appropriate, professors, State lawyers, registrars, etc.). notaries or other senior officials), who would be appointed on a random or rotative basis to prevent attempts to influence positioning.

c) Proposal from civil society

- **A system that objectifies discretionary appointments** within the judicial career must be established, with clear rules of evaluation, objective merit criteria, an appropriate and impartial candidate ranking system, and sufficient publicity of vacancies and their requirements; respecting the constitutional principles of merit, ability and independence that should characterize the judicial career.

⁶ <https://www.abc.es/espana/cgpi-cubrir-a-111-vacantes-cupula-judicial-nueve-20241015041650-nt.html>

⁷ https://www.elindependiente.com/espana/2025/01/13/guerra-abierta-cgpi-presidencia-sala-segunda-supremo/?utm_source=Usuarios+con+newsletter&utm_campaign=9954d2c383-EMAIL_CAMPAIGN_2022_04_26_11_24_COPY_02&utm_medium=email&utm_term=0_19d740f1b0-9954d2c383-71251855

⁸ <https://www.ajfv.es/ajfv-y-fji-recurren-las-convocatorias-56-plazas-discrecionales-por-falta-de-transparencia-y-graves-deficiencias-en-el-sistema-de-seleccion/>

⁹ Article 343 Organic Law on the Judiciary

¹⁰ Article 589.2 Organic Law on the Judiciary

¹¹ <https://elpais.com/espana/2023-12-02/diluir-la-tension.html>

2. Revolving doors between politics and the judiciary

One problem detected regarding judicial independence is the ease with which, in Spain, it was possible to move from the judiciary to politics, and vice versa, without a cooling-off period. In this regard, Organic Law 3/2024 has introduced some relevant changes:

- There have been a number of changes regarding the status of **special services** and **voluntary leave** of judges and magistrates. On the one hand, **the cases in which judges and magistrates are declared to be in special service status have been reduced**: the provision for appointments to political or trust-based positions with the rank of director-general or lower has been maintained; but cases involving election to representative public office in the European Parliament, Congress of Deputies, Senate, Legislative Assemblies of the Autonomous Communities, General Councils of Historic Territories or Local Corporations are now classified as cases warranting a declaration of voluntary leave. The difference between the two is, essentially, that judges or magistrates in special services retain the right to return to their previous position, and the time spent in that situation counts as seniority in the career. Conversely, those on voluntary leave do not retain this right, and the time spent on leave does not count toward career seniority.
- However, **the remaining cases of special service status are maintained**, including for judges or magistrates appointed President of the Supreme Court, State Attorney-General, Ombudsman, State Councillor, Director of the Data Protection Agency, or lawyers serving the Court of Justice of the European Union.
- A **two-year cooling-down period** has been established, during which judges and magistrates who are on voluntary leave either in representative, political or trust-based positions with a rank higher than that of director-general, if they request reinstatement active service, will be placed in special services without exercising judicial functions¹². Those returning from political or trust-based positions or representative offices at European or national level shall be organically attached to the President of the Supreme Court, while those coming from the autonomous or local scope will be organically attached to the President of the High Court of Justice of the autonomous community of their last destination. Furthermore, an obligation has been established for such judges and magistrates to abstain from any cases involving political parties or groups, or their members who hold or have held public office¹³.

3. Excessive discretion in the appointment to the top positions within the Prosecution Office

a) **Detected issue**

The most important appointments within the Public Prosecutor's Office are proposed by the State Attorney-General to the Government with total discretion, following a non-binding report from the Prosecution Council and consultation with the Chief Prosecutor of the respective Autonomous Community in case of positions within their territorial jurisdiction¹⁴. This has often resulted in **appointments closely aligned with the current State Attorney-General, which the Government simply accepts**.

Furthermore, the Public Prosecutor's Office **lacks clear evaluation rules, objective merit criteria, a candidate ranking system, or sufficient publicity of vacancies** and the requirements for filling them. Consequently, it is difficult to uphold the constitutional principles of merit and ability in discretionary appointments.

Furthermore, while a Standing Evaluation Section exists within the Inspectorate of Public Prosecution to centralize information on the merit and ability of candidates, it has never been operational¹⁵. Additionally, the current State

¹² New Article 358.3 Organic Law on the Judiciary

¹³ New 356.g) *in fine* Organic Law on the Judiciary

¹⁴ Article 13 of the Organic Statute of the Public Prosecutor's Office

¹⁵ <https://www.hayderecho.com/2023/03/22/los-nombramientos-en-la-carrera-fiscal/>

Attorney-General has introduced a system of online interviews. However, not all prosecutors applying for a position are invited to participate, and no structure or criteria for conducting these interviews is made public.

Some of these appointments are being challenged in court, leading to significant case law from the Supreme Court, which, within the margins of judicial review, is subjecting these decisions to scrutiny. In an interview with RTVE (*Spanish Radio and Television Corporation*) in May, the State Attorney-General stated that the Supreme Court had changed its jurisprudence by introducing criteria different from those specifically outlined in the Statute, raising the standard of scrutiny for discretionary appointments¹⁶.

In this context, it is worth noting that in the rendering of accounts (*Dación de Cuentas*) report on the Prosecution Council, dated December 19th, 2024, Salvador Viada, a member of the Prosecution Council and president of the Professional and Independent Association of Prosecutors (APIF), reported remarks made by the State Attorney-General during the Prosecution Council session on September 25th, in which he stated that "there is no subjective right to a position" and that factors beyond merit and ability must be considered when deciding who should occupy it. Specifically, the Attorney General referred to "the needs of the prosecutorial career" and "a series of balances that must not be disrupted. These statements are incompatible with the Ethical Code of the Public Prosecutor's Office, which establishes that those responsible for reporting on the exercise of prosecutorial functions or professional promotion must adhere to the principles of objectivity, merit, ability, and transparency¹⁷. Despite Salvador Viada's request for clarification on this matter, the Attorney General has refused to provide further explanations¹⁸.

b) Relevant facts

- **This model of appointment encourages both nepotism and corporate affinities**, channelled by the various prosecutors' associations. In the appointments made under the previous term of office of the Attorney General (August 1st, 2022 until the dismissal of the previous government on July 24th 2023), the majority of appointees belonged to the Progressive Union of Prosecutors (UPF), the association to which the current Attorney General (and his predecessor) is affiliated. This distribution is disproportionate to the number of members: out of 33 discretionary appointments, 22 were members of the Progressive Union of Prosecutors, which has 200 members out of the total of 2,700 career prosecutors. This means that 7.4% of prosecutors secured 66% of discretionary positions, with 14 of these appointments involving promotion to a higher rank. Five of the appointments have been made by the Association of Prosecutors (AF), which has 630 members (meaning that 23% of the career accounts for 15% of the discretionary appointments) and four appointments have been made by non-associate prosecutors, which account for 40% of the career¹⁹.
- In May in 2024, **the Supreme Court annulled the appointment of Dolores Delgado** (former State Attorney General) **as Prosecutor of the Chamber for Democratic Memory and Human Rights**, ordering the procedure to be reopened so that the Prosecution Council could rule on a potential incompatibility of the prosecutor because of her partner (Baltasar Garzón) heading a foundation (FIGBAR) with a scope of activity closely aligned with the role²⁰. Subsequently, the Prosecution Council approved the compatibility and ratified Dolores Delgado's appointment to the position²¹.
- Likewise, in November of 2024, **the Supreme Court annulled the appointment of Julio Cano as Senior Prosecutor of the Balearic Islands, because his compatibility had not been properly reviewed²²**. The candidate, proposed by the State Attorney General, Álvaro García Ortiz, was found to fall under the prohibition of article 58 of the Organic Statute of the Public Prosecutor's Office which restricts the exercise of the position in the same Prosecutor's Office where their spouse or a person with a similar affective

¹⁶ <https://www.rtve.es/noticias/20240508/alvaro-garcia-ortiz-marejada-figura-fiscal-general-cuando-gobierno-progresista/16093079.shtml>

¹⁷ <https://www.fiscal.es/documents/20142/b00dca9f-5147-c430-94da-29c5a7c68e10>

¹⁸ Conversation with Salvador Viada.

¹⁹ Access to the Council of the Judiciary report: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/En-Portada/El-Pleno-del-CGPJ-considera-que-Alvaro-Garcia-Ortiz-no-es-idoneo-para-el-cargo-de-fiscal-general-del-Estado>

²⁰ Access to the ruling: <https://www.poderjudicial.es/search/openDocument/ee405f138f9a248ea0a8778d75e36f0d>

²¹ <https://www.fiscal.es/-/el-consejo-fiscal-aprueba-la-compatibilidad-de-dolores-delgado-como-fiscal-de-sala-de-la-unidad-de-derechos-humanos-y-memoria-democratica>

²² Access to the ruling: <https://www.poderjudicial.es/search/indexAN.jsp>.

relationship works, provided there is an immediate hierarchical dependency between them. The ruling determined that the Office of the Prosecutor General was aware of this affective relationship, since the candidate requested a report on compatibility in this regard. However, the Inspectorate did not refer these facts to the meeting of the Prosecution Council. On 10 December Day, **the Prosecution Council unanimously approved the compatibility of Julio Cano for the position of Senior Prosecutor of the Balearic Islands**²³.

- The Attorney General has convened two plenary sessions of the Prosecution Council for the month of December, one extraordinary (10 December) and one ordinary (19 December), supposedly at the last minute and before the investigation of his case continues²⁴. In both cases, he made proposals to cover various discretionary positions in the Public Prosecutor's Office, including one of the four chief prosecutors in the Criminal Chamber of the Supreme Court, a key position not only for the open case against him, but also in the corruption charge against former Minister of Transport José Luis Ábalos²⁵.

c) Proposals

- **Establish clear evaluation rules** by defining specific, objective and transparent criteria for the evaluation of candidates in each selection process.
- **Implement an objective merit-based scoring system** that clearly and quantifiably evaluates candidates' qualifications in line with the principles of merit and ability.
- **Ensure the publicity of vacancies** and the requirements to fill them, as well as the transparency of the entire selection process.
- **Strengthen the role of the Prosecution Council** in appointments, in particular regarding the assessment of incompatibilities.

Irremovability of judges, including transfers (including as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (including judicial review)

1. Interim justice undermines the principle of irremovability of judges

a) Detected issue

The irremovability of judges in Spain is being compromised as a result of the provision of interim positions whose continuity depends on renewal by other bodies. This creates an indirect mechanism through which their judicial activity can be influenced.

In addition to the commissions of service addressed below, reference should be made to the figure of **substitute judges and "non-professional" alternate judges**. They are provided for in **exceptional situations where there is no possibility of substitution by professional judges and magistrates**²⁶. Substitute judges and "non-professional" alternate magistrates have not entered the Judicial Career through either competitive examinations or the so called "fourth round" (a system which involves a contest of merits and an objective test). Instead, the only requirements are to be Spanish, of legal and working age, holding a law degree, not being involved in any cause of incapacity as provided for in the Organic Law of the Judiciary, and to have ease of travel to the municipality where the judicial body for which the appointment is intended has its headquarters. Only a merit-based competition

²³ <https://www.fiscal.es/web/fiscal/-/el-consejo-fiscal-aprueba-por-unanimidad-la-compatibilidad-de-julio-cano-para-la-plaza-de-fiscal-superior-de-baleares>

²⁴ https://www.eldebate.com/espana/20241207/garcia-ortiz-convoca-dos-plenos-nombramientos-antes-levante-secreto-sobre-contenido-movil_250357.html

²⁵ José Luis Ábalos, former Minister of Transport, Mobility and Urban Agenda, has been charged with bribery, embezzlement, influence peddling, and membership in a criminal organization.

²⁶ Articles 213 and 199 Organic Law on the Judiciary.

is required among the candidates, meaning that the selection is made from the best of those who apply, regardless of their expertise.

It is also worth mentioning another figure, that of the **territorial assignment judges**, whose objective was precisely, to professionalize substitutions and reinforcements. These are positions attached to the various Higher Courts of Justice, filled through an ordinary competition among judges, and whose purpose is either the temporary placement of professional judges in positions where their incumbent is in active service, but unable to fulfil his or her position (due to illnesses, commissions of services, etc.), or to strengthen judicial bodies that need temporary support. However, this figure has not been properly developed: there are no sufficient positions to meet all needs, nor have they been provided with a salary supplement for temporary assignments or travel allowances. Furthermore, although territorial assignment judges are professional judges, **their dependency on the President of the High Court of Justice due to their interim status, and the lack of transparency in the allocation of assignments and internal competitions** for these positions, **may undermine the principle of judicial irremovability by introducing discretionary elements into the appointment process.**

b) Relevant facts

- **Spain is the fifth country in Europe with the lowest number of judges per 100,000 inhabitants** (10.9 compared to a European average of 21)²⁷. In some Autonomous Communities, the figure is even more concerning: in 2023, Castilla-La Mancha had only 9 judges per 100,000 inhabitants, and Catalonia 9.7²⁸.
- In the Strategic Plan for the Decade 2023-2033 of the General Council of the Judiciary²⁹, it was estimated that, **in order to avoid vacancies by 2033, the judiciary would need a total of 6,554 judges, which would imply an annual offer of 350 positions**. It should be noted that this calculation only accounts for the replacement rate plus 70 hypothetical positions per year for the creation of new judicial units. However, in 2024 only 120 positions were announced³⁰.
- With the reform of the Organic Law of the Judiciary in 2012, the role of substitute judges was significantly reduced, establishing that substitutions should preferably be carried out by professional judges.
- However, it remains a frequently used figure. **The Council of the Judiciary's Strategic Plan for the Decade 2023-2032³¹ provides for an increase in the use of temporary appointments** in both the National Court and the Regional High Courts. The term "interim justice" is used, referring to substitute judges and magistrates (it refers to "interim justice", i.e. substitute and alternate judges), which should nonetheless remain a subsidiary measure. For the fiscal year 2024/2025, the Governing Chambers of the National Court and the Regional High Courts proposed a total of **1,112 positions**.
- On December 19th, the Congress adopted the **Organic Law on Efficiency Measures of the Public Justice Service**, aimed at reorganizing the administration of justice in order to speed up proceedings. One of its final provisions (nineteenth nonies) provides for the consolidation of the positions of substitute judges and magistrates, allowing them to enter the judicial career, which undermines the principles of independence, impartiality, merit, capacity and equality that characterize the judicial career³². In addition, **the consolidation of the 900 positions of substitute judges will reduce those available through the opposition system.**

²⁷ https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3164

²⁸ General Council of the Judiciary 2024 report: <https://www.poderjudicial.es/cgpi/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Actividad-del-CGPJ/Memorias/Memoria-anual-2024--correspondiente-al-ejercicio-2023->

²⁹ Access to the Strategic Plan: <https://www.poderjudicial.es/cgpi/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/En-Portada/El-CGPJ-considera-necesario-el-ingreso-de-350-nuevos-jueces-al-ano-hasta-2033-para-cubrir-las-vacantes-por-fallecimiento-jubilacion-y-renuncia-que-se-produzcan>

³⁰ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2024-25243

³¹ Access to the Strategic Plan: <https://www.poderjudicial.es/cgpi/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/En-Portada/El-CGPJ-considera-necesario-el-ingreso-de-350-nuevos-jueces-al-ano-hasta-2033-para-cubrir-las-vacantes-por-fallecimiento-jubilacion-y-renuncia-que-se-produzcan>

³² Access to Europa Press article "AJFV warns that a provision of the Efficiency Law will allow you to be a judge "by the back door": <https://www.europapress.es/nacional/noticia-ajfv-alerta-disposicion-ley-eficiencia-permitira-ser-juez-puerta-atras-20241115163918.html> and to the Hay Derecho blog article "Substitute judges and substitute magistrates: What is interim justice": <https://www.hayderecho.com/2024/12/02/justicia-interina-jueces-sustitutos-magistrados-suplentes/>

- On January 21st, 2025, the government approved a draft law 'for the expansion and strengthening of the judicial and prosecutorial careers'³³, which establishes, in its additional provision, **an extraordinary process for stabilizing temporary employment in the judicial and prosecutorial careers**. The process will be selective, following a competitive examination system, open to those who can prove at least five years of professional experience. The examination phase will consist of a practical exercise on a specific case related to substantive and procedural law in any branch of law. The professional experience will then be calculated on the bases 0.20 points for each year of appointment and 0.80 points for each year of actual work for substitute judges, magistrates, and prosecutors; and 0.25 points for each year of actual work for the rest of the professionals. After passing the competitive examination phase, there will be a practical training and selection phase. **Those who pass it will be appointed as judges or prosecutors, while those who do not will receive compensation at a rate of 20 days of fixed salary for each year of service**, prorated for periods shorter than a year.

c) Additional issues

Another relevant issue regarding the principle of irremovability of judges are the judges **serving in a substitute and reinforcement capacity** and the **judges awaiting assignment**. Judges awaiting assignment are those aspiring judges who, having passed their exams, cannot be appointed as permanent members of the judiciary, and therefore join the judicial career as attached to the President of the General Council of the Judiciary³⁴. They have priority over substitute judges for any appointment and cease their duties once they are appointed as permanent judges and assigned to any vacancies that arise. This is a "temporary" position subject to renewal, which poses a problem both from the perspective of independence and immovability.

On the other hand, substitute and reinforcement judges are judges from the judicial school, meaning they have not yet entered the judicial career, and take on substitute and reinforcement duties before receiving their first assignment. These judges have **full jurisdiction**, even without having entered the career, but they are **still subject to evaluation**, which presents a problem from the perspective of independence.

d) Proposals

- Eliminate interim positions**, filling temporary vacancies through voluntary internal replacement, service commissions with or without a release of functions, or with Judges of Territorial Assignment (positions that must be properly remunerated to make them attractive despite their instability).
- Do not automatically incorporate substitute judges into the judicial career without ensuring the principles of merit and capacity through a competitive exam or selection process**, so that there is control over their expertise and knowledge.
- Increase the number of judicial positions according to the calculations of the General Council of the Judiciary**, that is, 350 judicial positions annually.

Promotion of judges and prosecutors (including judicial review)

As stated before, **discretionary appointments within the judicial and prosecutorial careers lack clear evaluation rules, objective merit criteria, candidate classification systems, and sufficient publicity for vacancies and the requirements needed to fill them**, making it difficult to uphold the constitutional principles of merit and capacity. Moreover, within the judicial career, interim judicial positions are frequently used as promotion tools. Regarding judicial review, it is essential to note the broad discretion enjoyed by the Attorney General and the General Council of the Judiciary in this legal system of professional promotion.

Furthermore, within both the judicial and prosecutorial careers, there are figures and mechanisms that allow for **bypassing the regular system of competitive appointments and promotions**, which poses a twofold problem:

³³ Draft Organic Law amending Organic Law 6/1985 of July 1, the Judiciary Act, and Law 50/1981 of December 30, regulating the Organic Statute of the Public Prosecution, for the expansion and strengthening of the judicial and prosecutorial careers.

³⁴ Article 308.2 Organic Law on the Judiciary.

on one hand, it may facilitate the promotion of certain individuals through less selective procedures that favor specific people based on affinities (especially those of an associative nature); and on the other hand, as previously mentioned, positions that are not permanent and are subject to renewal or extension can undermine the independence of the judges and prosecutors holding them, as their actions will ultimately be reviewed by the bodies that decide on their renewal. The use of service commissions is particularly problematic.

Service commissions are an exceptional tool used to reinforce the functioning of judicial bodies in special situations by assigning judges to other judicial bodies (service commission with function release) or **having them perform specific tasks while maintaining their original position** (service commission without function release)³⁵, as well as **assigning prosecutors to specific positions within the Public Prosecutor's Office or elsewhere** (Ministry of Justice, international legal cooperation missions, and representation activities of the Public Prosecutor's Office abroad)³⁶. **Vacancies for service commissions lack specific objective criteria or a clear merit-based evaluation system.** Announcements to fill these positions are not published in the Official State Gazette, but rather on the intranet for members of the respective careers, with very short deadlines for submitting candidacies.

In the judiciary, given the general principle of the immovability of judges and magistrates, service commissions are required to last no longer than two years and must respond to "circumstances of special need". However, **it is common for extensions beyond the two-year limit to be granted, or for temporary cessations to occur**, only for the same individual to resume the same commission a few months later, thus resetting the duration period. Furthermore, **service commissions with function release are often used in practice as a form of professional advancement**, allowing judges to be placed 'ad hoc' in specific positions, as the experience gained during these commissions is considered a merit in future job openings. This has been the case with successive service commissions in both the central courts of instruction and the Chamber of the National Court. This, in turn, violates the citizens' right to have their cases heard by a judge predetermined by law.

Allocation of cases in courts

There have not been any changes or progress in this area.

Independence (including composition and nomination and dismissal of its members) and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council of the Judiciary)

1. The General Council of the Judiciary is excessively politicized

a) Detected problem

According to Article 567 of the Organic Law of the Judiciary, the General Council of the Judiciary is composed of 20 members appointed by Parliament. The Congress and the Senate each elect ten members by a three-fifths majority: four recognized jurists with over 15 years of professional experience, and six coming from the judicial branch. The members then elect their President, who will also be the President of the Supreme Court (Article 599.1.2º)

The political nature of these appointments has resulted in a trading arrangement between the two main political parties (PP and PSOE), traditionally with a 11-9 split in favor of the party with the parliamentary majority at the time, or 10-10 in the most recent renewal (June 2024), due to the urgent need to unblock the situation and the pressure from the European Commission. Furthermore, this system is prone to deadlocks: the Council of the Judiciary functioned in an interim capacity for five and a half years, until June 2024, due to the failure to reach a

³⁵ Articles 216 y 350 Organic Law on the Judiciary.

³⁶ Article 72 and 73 of the Regulations of the Prosecutor's Office <https://www.boe.es/buscar/doc.php?id=BOE-A-2022-7184>

political agreement. This has led to an inability to make appointments to the judiciary's top posts, resulting in numerous vacancies, as explained in a previous section.

b) Relevant developments

In June 2024, after five and a half years of deadlock, multiple attempts, and various negotiation meetings with the then EU Commissioner for Justice, Didier Reynders, **PSOE and PP reached an agreement on the renewal of the General Council of the Judiciary, among other matters.** Of the 20 new members, 10 were selected by the conservative bloc and 10 by the progressive bloc, breaking away from the traditional 9-to-11 distribution that used to grant the majority to the party in government. Notable among the newly appointed members are some evident political affiliations, which diminish the appearance of independence of the body. For instance, Ángel Aromazena, who served as an advisory member of the Government Presidency Office under Felipe González (1986–1990) and as Director General of Relations with the Justice Administration under José Luis Rodríguez Zapatero (2007–2009), and Isabel Revuelta de Rojas, who was Secretary General of the Ministry of Defence under Federico Trillo-Figueroa (PP). Additionally, out of the 12 judicial members, 8 belong to an "aligned" judicial association: specifically, 5 to the Professional Association of the Judiciary and 3 to Judges for Democracy.

The PP-PSOE agreement also included the reform of the system for appointing judicial members. **However, no significant progress has been made in this regard.** Organic Law 3/2024³⁷ establishes a six-month deadline from its entry into force on August 3rd for the General Council of the Judiciary to draft a reform proposal approved by a three-fifths majority of its members, which will then be submitted to the Government, the Congress of Deputies, and the Senate for consideration by Parliament. Consequently, **the General Council has until February 3, 2025, to present the proposal.** To this end, a working group was established on October 7th³⁸.

It is worth noting that Organic Law 3/2024 **introduced a cooling-off period** for individuals who have served as Ministers, Secretaries of State, Regional Government Councillors, heads of local government corporations, or those who have held positions as deputies, senators, Members of the European Parliament, or members of a regional legislative assemblies, who **cannot be appointed as non-judicial members** (i.e., under the category of jurists of recognized expertise) **for five years following their tenure**³⁹. Furthermore, the law mandates that **all nominees for council membership undergo a prior hearing before the appointments committee of the corresponding chamber of parliament** (that is, the Congress or the Senate), where their merits, recognized prestige, and suitability will be evaluated⁴⁰.

c) Proposals

Reforming the procedure for selecting the 20 members of the General Council of the Judiciary to align it with the spirit of the Spanish Constitution and European standards, in two key aspects:

- **Ensure that the 12 judicial members are elected "by and among" judges through a system of universal, direct, and secret suffrage by active judges,** using open lists, preventing judicial associations from controlling the process by limiting the number of members each judge can vote for to fewer than seven, thereby avoiding pre-arranged lists.
- **Prior to the parliamentary selection of the 8 non-judicial members, implement a public competition with an expert evaluation.** In this regard, the Hay Derecho Foundation has prepared a document with best practices for such appointments, which should be respected⁴¹.

³⁷ Organic Law 3/2024, of 2 August, amending Organic Law 6/1985, of 1 July, of the Judiciary, and amending Law 50/1981, of 30 December, which regulates the Organic Statute of the Public Prosecutor's Office.

³⁸ <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/En-Portada/-Constituido-el-grupo-de-trabajo-que-elaborara-el-informe-sobre-el-sistema-de-nombramiento-de-los-vocales-de-procedencia-judicial>

³⁹ New Article 567.3 Organic Law on the Judiciary

⁴⁰ New Article 567.2 Organic Law on the Judiciary

⁴¹ Best practices for political appointments to constitutional oversight bodies: <https://www.hayderecho.com/wp-content/uploads/2023/12/Informe-buenas-practicas-2023.pdf>

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (including judicial review)

1. Dependency of disciplinary action promoters on the Attorney General or the President of the General Council of the Judiciary, respectively

a) Detected problem

Article 605 of the Organic Law of the Judiciary stipulates that the instruction of disciplinary proceedings and the presentation of charges to the Disciplinary Commission fall under the responsibility of the Disciplinary Action Promoter. The Disciplinary Commission, made up of seven members (four judicial members and three jurists of recognized expertise, elected by the Plenary of the Council of the Judiciary), is responsible for resolving disciplinary proceedings related to serious and very serious offenses.

Similarly, Article 180 of the Regulation of the Public Prosecutor's Office⁴² assigns the initiation, processing, and proposal for the resolution of disciplinary proceedings for alleged disciplinary infractions to the Prosecutor acting as Disciplinary Action Promoter. Depending on the penalty, the resolution falls under the jurisdiction of the corresponding Chief Prosecutor, the Attorney General, or the Minister of Justice.

Both positions—Disciplinary Action Promoters of judges and prosecutors—are freely appointed, which raises concerns about their independence, since it opens the door to initiating or keeping open disciplinary proceedings against "uncomfortable" judges or prosecutors.

b) Relevant information

- **Stampa case.** Ignacio Stampa was temporarily assigned to the Anti Corruption Prosecutor's Office and was investigating one of the corruption cases in the so-called "Villarejo case". In January 2020, a disciplinary procedure was initiated against him based on a private individual's complaint and, **although the disciplinary prosecutor saw no grounds to proceed and recommended archiving the case, it was allegedly kept open artificially under pressure from the former Attorney General, Dolores Delgado. This delay resulted in Stampa's candidacy not being considered for a permanent position in the Anti Corruption Prosecutor's Office,** forcing him to leave the post and the investigation. Allegedly, Álvaro García Ortiz, the current Attorney General, in his role as head of the Technical Secretariat, gave the instructions to prevent the case from being archived before the Prosecution Council meeting to assess the candidates. Ultimately, the claims against Stampa were proven false, and the disciplinary case was closed⁴³.
- **Until September 2024, the disciplinary promoter for prosecutors was Manuel Moix,** the controversial head of the Anti Corruption Prosecutor's Office who resigned in 2017 following revelations of his ownership of an offshore company in Panama. His appointment as disciplinary promoter was only supported by the two ex-officio members of the Prosecution Council. The prosecutor associations that had supported his nomination to the Anti Corruption Prosecutor's Office later called for his resignation⁴⁴. The current disciplinary promoter is Francisco Moreno Carrasco.

⁴² <https://www.boe.es/buscar/doc.php?id=BOE-A-2022-7184>

⁴³ Several newspapers reported the case: <https://www.publico.es/politica/fiscal-general-renueva-mandato-cisma-carrera-sentencia-ascenso-dolores-delgado.html> ; <https://elpais.com/espana/2022-07-26/fuego-a-discrecion-contra-el-nuevo-fiscal-del-estado.html> ; <https://www.epe.es/es/politica/20220902/fiscales-exigen-garcia-ortiz-justifique-intervencion-stampa-miguel-angel-blanco-14402122>

⁴⁴ <https://www.elmundo.es/espana/2017/05/31/592f0e17e2704ea8738b463f.html>

Independence/autonomy of the prosecution service

1. Excessive ties between the State Attorney General and the Government

a) Detected issue

In Spain, the **Attorney General is appointed by the Government, serves the same term, and is selected with broad discretion**⁴⁵. This has resulted in the **appointment of Attorneys General closely aligned with the ruling Government**, some of whom have even been part of it. This was the case with former Attorney General **Dolores Delgado, who transitioned directly from being the Minister of Justice to the position of Attorney General**, severely compromising her constitutional position. In June 2022, she was replaced by the head of her technical secretariat, Álvaro García Ortiz, who was reappointed after the general elections of July 23, 2023 (reappointment allowed since he had served less than two years in office), **despite receiving a negative suitability report from the General Council of the Judiciary**⁴⁶.

b) Relevant information

- In October, the current Attorney General, Álvaro García Ortiz, **was indicted by the Supreme Court for an alleged crime of disclosure of secrets** for the leakage of emails in which Alberto González Amador, partner of Madrid's Regional President Isabel Díaz Ayuso, admitted to two tax crimes and offered to negotiate a deal with the Prosecutor's Office. The indictment has sparked a government-led and media campaign against the investigating judge in the case⁴⁷, and the Attorney-General has refused to step down despite calls for his resignation from several prosecutors' associations (the Association of Prosecutors and the Independent and Professional Association of Prosecutors)⁴⁸. He is scheduled to appear before the Supreme Court on January 29th⁴⁹.
- Beyond the controversial appointments addressed in other sections of this document, **the Attorney General holds near-absolute control over the careers of subordinate prosecutors**, enabling undue influence over prosecutorial decisions⁵⁰. For instance, García Ortiz issued directives regarding the interpretation of the Amnesty Law, aligning with the Government's stance and creating significant internal divisions within the Prosecutor's Office. **He instructed prosecutors in the *procés* case to apply the Amnesty Law to all crimes, including embezzlement**⁵¹. **He also petitioned the Constitutional Court to reject outright—or, alternatively, dismiss—the constitutional challenge filed by the Supreme Court against the Amnesty Law**, arguing that the objections resembled an unconstitutionality appeal rather than a legitimate constitutional challenge⁵². Additionally, Álvaro Redondo, the prosecutor in the *Tsunami Democratic* case, reversed his technical assessment on the existence of a terrorism offense. It remains unclear whether this decision was made independently or under external pressure⁵³.
- Since the enactment of Organic Law 3/2024 in August, **a five-year cooling-off period has been introduced for individuals leaving political or representative roles before they can be appointed Attorney General**. This measure prevents cases like that of Dolores Delgado, in which a government official directly becomes Attorney General.
- However, recommendations from GRECO (the Council of Europe's Group of States Against Corruption), the European Commission's 2024 Rule of Law Report, and civil society organizations to **separate the**

⁴⁵ Article 31 Organic Statute of the Ministry of Public Prosecutions and Article 124.4 of the Spanish Constitution.

⁴⁶ Report available at: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/El-Pleno-del-CGPJ-considera-que-Alvaro-Garcia-Ortiz-no-es-idoneo-para-el-cargo-de-fiscal-general-del-Estado>

⁴⁷ <https://elpais.com/espana/2025-01-13/la-asociacion-progresista-de-fiscales-atribuye-al-supremo-una-caza-de-brujas-por-la-causa-contr-garcia-ortiz.html>

⁴⁸ <https://www.elmundo.es/espana/2024/10/16/670f70e321efa05a058b4593.html>

⁴⁹ <https://www.publico.es/politica/tribunales/tribunal-supremo-cita-fiscal-general-declare-investigado-29-enero.html>

⁵⁰ Further information: <https://www.hayderecho.com/2024/03/17/tsunami-fiscalia-general-estado/>

⁵¹ https://www.eldiario.es/politica/fiscal-general-ordena-fiscales-proces-aplicar-ley-amnistia-delitos_1_11448387.html

⁵² <https://www.elmundo.es/espana/2024/10/17/6710d3edfc6c83ac728b45a2.html>

⁵³ <https://www.abc.es/espana/fiscal-supremo-opone-investigar-puigdemont-terrorismo-causa-20240204223008-nt.html>

Attorney General's term from the Government's term, strengthen institutional independence, and redesign the selection process have been disregarded.

- In December, the General Council of the Judiciary **unanimously approved a report on legal reforms that would transfer the instruction of criminal cases to the Public Prosecutor's Office.** However, this reform was made conditional on amendments to the Organic Statute of the Public Prosecutor's Office to enhance the institution's independence.

c) Proposals

- **Amend the Organic Statute of the Public Prosecutor's Office to effectively separate the Attorney General's term from the Government's term of office.**
- **Redesign the selection process for the Attorney General by reforming the Organic Statute of the Public Prosecutor's Office** to ensure greater transparency, open competition, and the elimination of arbitrary government appointments.

Independence of the Bar (chamber/association of lawyers) and of lawyers

1. Revolving doors between the Ministry of Justice and the General Council of Spanish Lawyers (CGAE)

a) Detected issue

In recent years, we have observed a persistent revolving door dynamic between the Ministry of Justice and the Council of Spanish Lawyers, raising questions about the independence of the latter from the executive branch.

b) Relevant information

In 2022 and 2023, two cases of revolving doors were detected between the Ministry of Justice and the General Council of Spanish Lawyers.

- **Pablo Zapatero Miguel:** appointed Secretary of Justice in January 2020, he returned to his original position as Secretary General of the General Council of Spanish Lawyers in June 2022.
- **Francisco de Borja Vargues:** appointed after Zapatero Miguel's resignation, Vargues had previously served as Secretary General for Innovation and Quality in Public Justice Services during the tenure of Juan Carlos Campo, former Minister of Justice and current Magistrate of the Constitutional Court⁵⁴.

Since July 2024, the General Council of Spanish Lawyers is led by Salvador González Martín, former Dean of the Málaga Bar Association. He has no known political background, and no further examples of revolving door cases between the Government and the CGAE have been reported this year.

c) Other notable developments

The Madrid Bar Association (ICAM) has been actively promoting the concept of collegial protection (*amparo colegial*) for lawyers, as outlined in Article 58.2 of the General Statute of Spanish Lawyers⁵⁵. Collegial protection involves actions by Bar Association Boards to defend the dignity, independence, and professional freedom of lawyers, including filing complaints against courts, public administrations, government chambers, tribunal

⁵⁴ <https://confilegal.com/20231219-francisco-de-borja-vargues-nuevo-secretario-general-tecnico-del-consejo-general-de-la-abogacia-espanola/>

⁵⁵ <https://www.boe.es/buscar/act.php?id=BOE-A-2021-4568>

presidents, judicial bodies, official entities, or any other relevant operator. They may also issue formal requests to the hierarchical superior of the entity involved or instruct officials implicated in the incident⁵⁶.

The Madrid Bar Association sought to introduce the figure of collegial protection into Organic Law 5/2024 on the Right to Defence through amendments in the Senate, which were ultimately not put to a vote. According to its Dean Eugenio Ribón, efforts will continue to have this measure included in another related piece of legislation⁵⁷.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

1. Perception of politicisation of the justice system

a) Detected issue

In Spain, there is a widespread perception that the judiciary is politicized. Furthermore, there is a growing distrust of the judicial system, fuelled by political criticism labelling it as overly conservative and partisan, as well as controversial judicial cases involving individuals close to the government. Accusations of “lawfare” have multiplied in recent years and are frequently wielded as a political weapon, contributing to a dangerous erosion of both the judiciary and the separation of powers itself as a cornerstone of the rule of law.

b) Relevant data

- In Spain, **31% of respondents rate the judicial system, specifically in terms of the independence of judges and courts, as “fairly bad”** compared to the **24% EU average**⁵⁸. An additional 19% describe it as “very bad”. Among the primary reasons cited for these ratings are the interference or pressure from the government and politicians (67%), influence of economic interests (51%), and the belief that the status and position of judges do not sufficiently guarantee their independence (31%).
- **Eight out of ten respondents believe that political parties consistently attempt to control judges and courts**, and 86% think this situation severely undermines democracy and damages Spain’s reputation in Europe⁵⁹.
- More generally, according to a 2023 study by CIS on the quality of public services, the judiciary is the **lowest-rated public service** in Spain: **66%** of citizens feel little to no satisfaction with the justice system, **18%** consider themselves fairly satisfied, and only **3%** are very satisfied⁶⁰. Among the users of the judicial system, satisfaction levels are significantly higher: **81%** express satisfaction with the impartiality of judges and **80%** are satisfied with judges’ competence and preparation⁶¹.

c) Key developments

In 2024, **political criticism of the judiciary in Spain has intensified**, largely driven by two highly controversial and publicized cases: the **investigation into Begoña Gómez, the Prime Minister’s wife, for alleged influence**

⁵⁶ <https://www.eleconomista.es/legal/noticias/12725095/03/24/el-icam-impulsa-el-amparo-de-los-abogados-ante-los-actos-que-coartan-su-independencia.html>

⁵⁷ <https://www.eleconomista.es/legal/noticias/13063918/11/24/eugenio-ribon-pactaremos-incluir-en-otra-norma-el-amparo-colegial-en-defensa-de-la-independencia-profesional-tras-lo-sucedido-en-el-senado.html>

⁵⁸ Flash Eurobarometer No 540: Perception of the independence of national justice systems in the EU among the general public. <https://europa.eu/eurobarometer/surveys/detail/3193>

⁵⁹ Opinion poll conducted by Metroscopia: “Massive censorship of attempts at political control of justice”

⁶⁰ Access to the CIS report: <https://www.cis.es/-/avance-de-resultados-del-estudio-3430-calidad-de-los-servicios-publicos-xiv-?redirect=%2Finicio>

⁶¹ Opinion poll conducted by Metroscopia: “The Image of Justice Among Users of its Services”. <https://www.poderjudicial.es/cgpj/es/Temas/Transparencia/Buen-Gobierno--Etica-Judicial-y-Comision-de-Etica-Judicial/Encuestas-de-satisfaccion/Sondeo-de-opinion--La-imagen-de-la-Justicia-entre-usuarios-de-sus-servicios--Febrero-2023--Metroscopia->

peddling and private corruption, and the indictment of the Attorney General for a suspected offense of disclosure of secrets.

Episodes worth highlighting:

- Alfonso Gómez Celis, PSOE congress member and First Vice President of the Congress of Deputies, stated during a parliamentary session that there is **“evident endogamy in access to the judiciary”** and that **democracy would truly prevail when there are more judges who are children of workers than of magistrates**⁶². This assertion, which aimed to reinforce the narrative of an elitist and conservative judiciary, is easily disproved by data from the General Council of the Judiciary itself which shows that, of the 137 members of the latest judicial class (92 women and 45 men), only 5.84% have a relative who is a judge or magistrate, and only 22.63% have relatives who work in legal professions⁶³. Additionally, 34.3% of them come from families where neither parent has a higher education degree.
- The **Prime Minister**, in a letter addressed to the public, **accused Judge Juan Carlos Peinado—who is presiding over the case against his wife—of attempting to influence the outcome of the European Parliament elections**⁶⁴. This prompted the General Council of the Judiciary to issue a formal condemnation of such statements, characterizing them as “an attempt to undermine the institutional and democratic credibility of the country”.
- Similarly, **the Minister of the Presidency, Justice, and Relations with Parliament, Félix Bolaños**, referred to the investigation into Begoña Gómez as **“an undeniable, unjustified, inhumane, and cruel persecution against the President and his family”**⁶⁵. Judicial associations such as the Francisco de Vitoria Judicial Association (AJFV) and the Independent Judicial Forum (FJI) responded by accusing the minister of exerting “intolerable pressure” on Judge Peinado⁶⁶. **Meanwhile, the Minister of Transport, Óscar Puente, accused Judge Peinado of prevaricating**⁶⁷.
- The Prime Minister also reportedly claimed during an informal conversation with journalists that there is **collusion between the Popular Party (PP) and the judiciary**⁶⁸. Similarly, Óscar Puente declared during a parliamentary session that the PP **“subcontracts” its opposition efforts to judges**⁶⁹.
- Regarding the case involving the Attorney General, **the Minister for Presidency, Justice and Relations with Parliament, Félix Bolaños criticized Judge Hurtado, who is overseeing the case, stating that he was leveling accusations “without any evidentiary basis”**⁷⁰.

On December 13th, 2024, Isabel Perelló, President of the Supreme Court and the General Council of the Judiciary, issued a statement emphasizing that **the rule of law requires judges and courts to carry out their duties in accordance with the rule of law alone**, free from direct or indirect pressures by any power group, public or private. She also noted that while judicial work can and should be subject to criticism, **it is unacceptable to question it in a generalized and ongoing manner by attributing political bias to members of the judiciary**. Such conduct, she warned, undermines public confidence in the justice system and causes serious institutional harm⁷¹.

⁶² Access to the cut of the intervention: <https://x.com/gomezdcelis/status/1861469565516951827?s=48>

⁶³ <https://www.poderjudicial.es/cgpi/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/En-Portada/Los-137-jueces-y-juezas-de-la-73--promocion-de-la-Carrera-Judicial-reciben-el-jueves-sus-despachos-en-Barcelona>

⁶⁴ Access to the letter: <https://x.com/sanchezcastejon/status/1798039620367815141>

⁶⁵ https://www.lasexta.com/noticias/nacional/bolanos-denuncia-persecucion-injusta-cruel-begona-gomez-causa-archivara_20240719669a433ca54861000159b06d.html

⁶⁶ https://www.eldebate.com/espana/20240707/dos-asociaciones-judiciales-acusan-bolanos-presion-intolerable-juez-investiga-begona-gomez_211254.html

⁶⁷ https://www.eldiario.es/politica/oscar-lopez-acusa-juez-peinado-prevaricador-haber-mentido-sede-judicial-imputar-guemes_1_11918221.html

⁶⁸ <https://www.elmundo.es/espana/2024/12/11/67599c23e4d4d89e498b4599.html>

⁶⁹ Access to the cut of the intervention: https://x.com/voz_populi/status/1848777376206827526?t=vv8kH3w0ywtCb16OXhURMg&s=08

⁷⁰ https://www.lespanol.com/espana/politica/20250116/gobierno-cruza-linea-roja-jueces-ministro-justicia-dice-supremo-acusa-sin-base-probatoria/916658884_0.html

⁷¹ Acceso to the communication <https://x.com/PoderJudicialEs/status/1867518131133943828>

B. Quality of justice

Accessibility of courts (e.g. court/legal fees, legal aid, language)

1. Active legitimization of civil society entities to appeal arbitrary decisions of public authorities

a) Detected issue

The procedural legislation in the contentious-administrative branch is highly restrictive and does not allow civil society entities that defend the rule of law to challenge certain acts of the Public Administration.

b) Significant progress

- In its ruling 1611/2023, dated November 30th⁷², **the Supreme Court recognized the active standing of the Hay Derecho Foundation to appeal a government decision** that did not comply with the legally established criteria for appointing the President of the Council of State. **The court granted the appeal and annulled the appointment**, ruling that the selected person for the role, Magdalena Valerio (former Minister of Labor, Migration, and Social Security), did not meet the requirements of being a "jurist of recognized prestige" as stipulated in Organic Law 3/1980, of April 22nd, of the Council of State. This ruling represents a **significant step forward for access to justice**, as it marks a paradigm shift toward a less rigid understanding of the legitimate interest required to establish active legitimization. This **opens the possibility for challenging arbitrary decisions by the public authorities** that, otherwise, would remain unchallenged due to the lack of active standing.
- **Both the government and Magdalena Valerio filed an appeal before the Constitutional Court, requesting it to annul the Supreme Court's ruling**⁷³. The latter has been disregarded⁷⁴, while the former is still pending resolution. The executive justifies its appeal based on the alleged lack of standing by the Hay Derecho Foundation to challenge the appointment and has asked the Constitutional Court to clarify its doctrine on who and under what conditions civil society entities can challenge discretionary government appointments.

c) Proposals

- **Consolidate the Supreme Court's decision** regarding the active standing of civil society entities in administrative litigation.
- **Incorporate this jurisprudence into legislation** by including the active standing of civil society entities in the procedural law.

⁷² Disponible en: https://www.hayderecho.com/wp-content/uploads/2023/11/2022_0000918_002_20231062463627320231130131512_001_2807913004320239000000904.pdf

⁷³ <https://elpais.com/espana/2024-03-25/el-gobierno-pide-anular-la-sentencia-del-supremo-que-aparto-a-valerio-de-la-presidencia-del-consejo-de-estado.html>

⁷⁴ <https://confilegal.com/20250121-el-tc-inadmite-el-recurso-de-amparo-de-magdalena-valerio-contr-la-sentencia-que-le-privo-ser-presidenta-del-consejo-de-estado/>

2. The Socialist Parliamentary Group has submitted a draft law to amend the popular action

a) Detected issue

Article 125 of the Spanish Constitution establishes that “citizens may exercise popular action... in the form and with respect to the criminal proceedings that the law determines.” Its core purpose is to empower any citizen to initiate criminal justice action without needing to prove any personal harm or interest, but rather in defense of legality, allowing them to be an active participant in the process with full autonomy. This mechanism **also serves to supervise the Public Prosecutor’s Office**, which is primarily responsible for “promoting justice in defense of legality” (Article 124 of the Constitution), **which is particularly relevant in a context of lack of independence in the Public Prosecutor’s Office** that may lead to a failure to prosecute individuals close to the government. While it is true that this procedural tool has been subject to abuse and fraud (mainly by political parties and their affiliated organizations), it has also allowed for the prosecution of significant criminal cases, such as the conviction of Iñaki Urdangarín (the ex-husband of Infanta Cristina) or the detention of Chilean dictator Augusto Pinochet.

In January 2025, the Socialist Parliamentary Group registered a **proposal for an Organic Law on the protection of fundamental rights against harassment from abusive legal actions**⁷⁵, which, among other things, significantly restricts this figure, potentially rendering it meaningless (raising serious doubts about its constitutionality). Once again, we face a highly peculiar draft legislation presented as a bill by a parliamentary group, bypassing the reports and consultations that would have been required if it had been presented as a government bill. Furthermore, it appears to be another “*ad casum*” law, seemingly designed to grant immunity to individuals close to power: its Transitional Provision applies to ongoing proceedings, potentially leading to the termination of several open cases, such as those involving relatives of the Prime Minister (his brother has been charged with prevarication, influence peddling, embezzlement, and tax evasion after a complaint from Manos Limpias)⁷⁶.

b) Relevant facts: the content of the bill

- **The scope of crimes eligible for popular action is significantly narrowed.** Popular action will only be allowed in relation to crimes against the market and consumers affecting the public interest; illegal financing of political parties; crimes related to land use planning, protection of historical heritage, and the environment; bribery; influence peddling; public funds misappropriation; judicial prevarication; rebellion; hate crimes; glorification and justification of terrorism; genocide, crimes against humanity, and crimes against people and property protected in armed conflict.
- **It is required that individuals who exercise popular action must have “a specific, relevant, and sufficient link to the public interest protected in the corresponding criminal proceedings”.**
- **The procedural position of the popular accuser is limited**, as they are not granted access to the judicial process nor allowed to take any action during the investigative phase. Their participation is limited to the final stage of the proceedings, and they may only appeal a definitive dismissal, but not a provisional one. Moreover, they will not be informed of the evidence presented nor be able to request additional evidence.
- **The Organic Law on the Judiciary is amended to include as a new cause for the abstention or recusal of judges and magistrates** that they have “publicly expressed, invoking their position as judge or magistrate, or using this status, criticism or agreement/disagreement with actions carried out by public authorities or officials, political parties, trade unions, associations, or other public or private entities that are parties to the proceedings; or addressing them with the same aim privately or participating in acts or rallies with the same purpose, compromising their independence or image of impartiality.” This provision facilitates the removal of judges and magistrates from proceedings in an absolutely disproportionate manner.

⁷⁵ Access to the text:

https://s1.elespanol.com/2025/01/10/actualidad/250110_PPL_Proteccion_acciones_judiciales_abusivas.pdf

⁷⁶ <https://elpais.com/espana/2025-01-09/el-hermano-de-sanchez-declara-como-imputado-en-badajoz-por-una-denuncia-de-manos-limpias.html>

3. Other relevant issues

In November 2024, the **Organic Law 5/2024 on the Right to Defense** was approved, which brought the following significant advances:

- **Extension of free legal aid to certain legal entities** in criminal and bankruptcy proceedings⁷⁷.
- Recognition of the **right to information for those holding the right to defense and the right to “be heard”**, which allows individuals whose rights or legitimate interests may be affected by the resolution to submit arguments, provide documents, and utilize the legal defense means accepted by the legal system.
- Regulation of the **right to clear language** in acts, resolutions, and procedural communications⁷⁸, as well as the **right to an interpreter and/or translator** in cases where the use of a particular language contributes to ensuring the exercise of the right to defense⁷⁹.
- Establishment of **mandatory inclusion in the public defender system for all practicing lawyers**, a measure criticized by the Madrid Bar Association for discouraging specialization and violating lawyers' professional freedom⁸⁰.

The evaluation report from the **European Commission for the Efficiency of Justice** (CEPEJ)⁸¹ highlighted the following relevant data concerning access to justice in Spain:

- Spain is one of the European countries with the **highest number of cases receiving free legal assistance**, alongside the United Kingdom and Lithuania.
- It is among the countries that **collect lower judicial fees** compared to the overall judicial system budget (less than 3%).

Resources of the judiciary (human, financial, material), remuneration/bonuses, rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year)

1. **Spain has a high expenditure on justice, which does not translate into an improvement in the administration of justice**

a) **Detected issue**

Spain is close to the European average in terms of investment in justice, with 0.5% of the General State Budgets⁸². Compared to the country's overall wealth level, **the budget effort in justice is relatively high** compared to other countries around it. However, the high economic investment in justice is not having an appreciable return in terms of an improvement in the administration of justice.

b) **Relevant data**

Judges per capita

- **Spain ranks fifth-to-last in terms of number of judges per 100,000 inhabitants**, with a rate of 11.7 compared to an average of 22 in 2022⁸³.

⁷⁷ Third final provision of Organic Law 5/2024 on the Right of Defense.

⁷⁸ Article 9 of Organic Law 5/2024 on the Right of Defence

⁷⁹ Article 11 of Organic Law 5/2024 on the Right of Defence

⁸⁰ <https://web.icam.es/claves-icam-ley-organica-del-derecho-de-defensa/>

⁸¹ Council of Europe's European judicial systems CEPEJ Evaluation Report. 2024 Evaluation Cycle (2022 data). <https://rm.coe.int/cepej-evaluation-report-part-1-en-/1680b272ac>

⁸² EU Justice Scoreboard 2024: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3164

⁸³ EU Justice Scoreboard 2024: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3164

- The General Council of the Judiciary, in its Strategic Human Resources Plan, has calculated that an annual offer of 350 positions would be necessary, taking into account the current positions, the gradual increase in litigation and retirements and deaths⁸⁴. However, for **2024, only 200 positions have been convened**, 120 for judges and 80 for prosecutors⁸⁵.

Congestion rate

- The **congestion rate** (ratio of unresolved cases to resolved cases) **shows an upward trend**, from 1.52 in 2022 to 1.61 in 2023⁸⁶.

Resolution rate

- The **resolution rate in Spain**, that is, the capacity of the judicial system to deal with incoming case, **is below the European Union average in virtually all jurisdictions and instances**⁸⁷. The 100% resolution rate, which implies no delay or judicial congestion, is only exceeded in the second instance of the contentious-administrative order.
 - In **civil matters**, Spain has a decision rate of 97 100 1% in the first instance, 84 97 7% in the second instance and 89 5 104% in the Supreme Court (compared with 6%, 5% and 9% respectively, on the EU average).
 - In the **contentious-administrative order**, Spain has a decision of 96 98 3% in the first instance, 130 102 7% in the second instance and 90 8 101% in the Supreme Court (compared with 2%, 8% and 6%, respectively, in the EU average).
 - In **criminal matters**, Spain has a decision of 98 100 1% in the first instance, 98 99 5% in the second instance and 91 9 98% in the Supreme Court (compared to 9%, 3% and 6%, respectively, in the EU average).

Resolution time

- **The resolution time far exceeds the EU average in almost all jurisdictions and instances**, except for the second instance of the contentious-administrative order, in which the resolution time is exactly the same as the European average (325 days) and the second instance of criminal proceedings, with a resolution time of 71 days compared to 129 days of the European average.

Increased litigation rates

- In the third half of 2024, **new issues increased by 4.8% compared to the previous half**, with a total of 1,734,977 between July and September⁸⁸.
- **There was also an increase of 7.3 per cent in the total number of cases resolved** (1,522,062 4,397,985) and 12 per cent in the total number of cases outstanding at the end of the period

⁸⁴ Strategic Plan for the Decade 2024-2033 on Human Resources in the Judicial Career: <https://www.poderjudicial.es/cgpi/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Actividad-del-CGPJ/Estudios/Plan-Estrategico-para-el-decenio-2024-2033-de-recursos-humanos-en-la-Carrera-Judicial-Acuerdo-CP-CGPJ-11-07-2024->

⁸⁵ <https://www.poderjudicial.es/cgpi/es/Servicios/Acceso-a-la-categoria-de-Juez-a/Convocatorias-en-curso/Acceso-a-la-carrera-judicial-Juez---Fiscal-2024-Avisos-y-notas-informativas-Nota-informativa-de-la-Comision-de-Seleccion-relativa-a-las-oposiciones-2024-2025>

⁸⁶ General Council of the Judiciary "Justicia dato a dato": <https://www.poderjudicial.es/cgpi/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Justicia-Dato-a-Dato/>

⁸⁷ CEPEJ. Study on the functioning of judicial systems in the EU Member States. https://commission.europa.eu/document/download/46721e8e-ac7a-42ac-a4e0-d696f5e2619a_en?filename=2024_CEPEJ_Part%202.pdf

⁸⁸ <https://www.poderjudicial.es/cgpi/en/Judiciary/Panorama/El-numero-de-nuevos-asuntos-mantiene-la-tendencia-al-alza-al-registrarse-en-los-organos-judiciales-de-toda-Espana-un-total-de-1-734-977>

(4.397.985) All the courts, except those of the contentious-administrative order, registered a higher number of cases in the third quarter of the year than in the same period in 2023, and also increased

Training of justice professionals (including judges, prosecutors, lawyers, court staff, clerks/trainees)

On January 21, 2025, the Government **presented a draft organic law that modifies key aspects of access to the judicial and prosecutorial careers**⁸⁹:

- **The competitive examination system for entering both careers is modified, reducing the memorization component.** The exams would consist of an eliminatory written test in the form of multiple-choice questions covering the entire syllabus; an eliminatory oral test on constitutional law, European Union law, civil law, and criminal law; and an eliminatory written test that will involve solving one or more practical cases concerning civil law, civil procedure, criminal law, and criminal procedure.
- **Access to the careers will be through opposition for the categories of judge or public prosecutor; and through a competitive examination for the categories of magistrate or prosecutor.** In both cases, it will be necessary to pass a practical training and selection phase organized by the Judicial School. Those who hold a degree in law or an equivalent qualification and can demonstrate at least ten years of professional experience in the relevant fields of the call will be eligible to participate in the competitive examination. The law provides for a single eliminatory written test for the preparation of an opinion and introduces a merit-based scoring system for the competition phase.
- **A “fourth turn” for prosecutors is introduced** to allow the entry of jurists with recognized competence and more than ten years of professional experience. This mode of entry already exists for the judicial career.
- **The Center for Legal Studies of the Administration of Justice will assume, among other tasks, the responsibility of carrying out training activities for preparing the selection process to enter the judicial and prosecutorial careers,** the State Advocacy, and the Corps of Legal Advisors to the Administration of Justice. Until now, preparation had been carried out by professionals from the respective careers in private centers.
- **A scholarship system is safeguarded by law,** ensuring grants equal to or greater than the annual minimum interprofessional wage, which will be awarded annually and can be extended for up to a maximum of four years.

Digitalization (e.g. use of digital technology, including electronic communication and AI tools, within the justice system and with court users, procedural rules, access to judgements online)

a) Relevant progress

- In February in 2024, the Ministry of Justice launched access to the Electronic Judicial Record⁹⁰.
- In October, the Minister of Justice announced an Artificial Intelligence tool that will be available to all citizens through the Justice Portfolio. The tool is designed to **adapt court rulings to clearer and more accessible language** and aims to ensure that citizens easily understand the content and implications of court rulings⁹¹.

⁸⁹ Draft Organic Law amending Organic Law 6/1985, of July 1, on the Judiciary, and Law 50/1981, of December 30, which regulates the Organic Statute of the Public Prosecutor's Office, for the expansion and strengthening of the judicial and prosecutorial careers.

⁹⁰ <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/justicia/Paginas/2023/010323-expediente-judicial-electronico.aspx>

⁹¹ <https://espanadigital.gob.es/actualidad/felix-bolanos-anuncia-una-herramienta-de-ia-que-facilitara-la-ciudadania-la-comprension>

The Hay Derecho Foundation is not aware at this time of the impact of the aforementioned measures on the functioning of the Administration of Justice.

Use of assessment tools and standards (e.g. ICT systems, including AI-based systems, for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

We are unaware of any significant progress regarding the system of evaluation of the judiciary.

Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

a) Relevant progress

There have been no changes in the specialization of courts and tribunals or their geographical distribution.

b) Proposals

Establishment of specialized judicial bodies in corruption crimes, as in other cases, such as gender-based violence.

C. Efficiency of the justice system

Developments related to efforts to improve the efficiency of the justice system (e.g. as regards length of proceedings)

1. The length of judicial proceedings in Spain continues to increase

a) Detected issue

Following the trend of recent years, in 2024 there was a general increase in the resolution times of judicial proceedings⁹². This poses a problem regarding the right to a trial without undue delay enshrined in Article 24.2 of the Spanish Constitution.

b) Relevant data

- In 2023, the time of resolution of the courts of first instance and of first instance and investigation courts (civil proceedings) in all the autonomous communities increased compared to 2022 except in Catalonia, which reduced it in 0.1 (from 8.3 to 8.2 months).
 - In Murcia, the average resolution time in 2023 was 12.8 months.
 - In Aragón, the average resolution time in 2023 was 6.1 months.

⁹² Information contained on the General Council of the Judiciary’s website:
<https://www.poderjudicial.es/cgpi/es/Temas/Transparencia/Estimacion-de-los-tiempos-medios-de-duracion-de-los-procedimientos-judiciales/>

- In Madrid, the average resolution time in 2023 was 9.3 months.
- In Galicia, the average resolution time in 2023 was 7.3 months.
- In 2023, **the resolution times of the courts of first instance and investigation courts (criminal proceedings) of all the autonomous communities increased compared to 2022 except the Balearic Islands**, which reduced it in 0.2 (from 3.3 to 3.1 months on average).
 - In Murcia, the average resolution time in 2023 was 4.4 months.
 - In Aragón, the average resolution time in 2023 was 1.9 months.
 - In Madrid, the average resolution time in 2023 was 2.5 months.
 - In Galicia, the average resolution time in 2023 was 4 months.
- **The Supreme Court**, except in the contentious-administrative Chamber and in the Special Chambers, **shows a trend between 2014 and 2023 toward an increase in the resolution times**. In addition, there are marked differences between Chambers.
 - In the Civil Chamber, the average resolution time in 2023 was 24.9 months.
 - In the Criminal Chamber, the average resolution time in 2023 was 9.4 months.
 - In the Dispute Chamber, the average resolution time in 2023 was 9 months.
 - In the Social Room, the average resolution time in 2023 was 13.3 months.
 - In the Military Chamber, the average resolution time in 2023 was 6.7 months.
 - In the Extraordinary Chambers, the average resolution time in 2023 was 3.5 months.

c) Progress

- On January 3rd, 2025, **Organic Law 1/2025 on Efficiency Measures in the Public Justice Service** was published⁹³, which will have a staggered entry into force. The aim of the Act is to reorganize the administration of justice in order to expedite proceedings.
- **One of its final provisions, the nineteenth nonies, has been particularly controversial**. Despite its declared goal of "ending temporality, increasing the number of personnel, and strengthening the judicial and prosecutorial careers," this provision allows lawyers who regularly act as substitute judges to enter the judicial career bypassing the official channel to do so, which undermines the principles of independence, impartiality, merit, ability, and equality that characterize the judicial career⁹⁴. Additionally, **the consolidation of the 900 substitute judge positions will reduce those available through the competitive exam system**.
- **The law introduces a new system of Trial Courts that will replace the current first instance single-judge courts**. These new courts will be collegiate bodies from an organizational perspective, composed of first-instance judges from the territory to which their jurisdiction applies. The law also establishes the creation of **Justice Offices in municipalities without a trial court**, which will essentially be administrative support units that provide services to the public. Furthermore, the law contemplates the creation of **judicial offices attached to each trial court**, where their activities will be carried out through processing units and common procedural services, with the goal of balancing the workload across all courts.
- **However, the law has faced widespread criticism regarding the lack of funding and investment in material and human resources** associated to the reorganization of the country's judicial structure⁹⁵. Also, the courts' domestic violence sections (currently Gender Violence Courts) will take on responsibilities for sexual violence, including crimes against sexual freedom, trafficking, and harassment, regardless of whether there was a couple relationship. This is expected to increase the workload in these courts by 20%.
- Regarding the **legislative process of the bill**, it is worth noting that despite being declared urgent by the Congress Bureau, the deadline for amendments was extended 15 times between April and July 2024.

⁹³ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2025-76

⁹⁴ Further information: <https://www.europapress.es/nacional/noticia-ajfv-alerta-disposicion-ley-eficiencia-permitira-ser-juez-puerta-atras-20241115163918.html> and <https://www.hayderecho.com/2024/12/02/justicia-interina-jueces-sustitutos-magistrados-suplentes/>

⁹⁵ <https://cincodias.elpais.com/legal/2025-01-15/adios-juzgados-una-reforma-que-lo-cambia-todo.html>

II. Anti-corruption framework

Please provide information on measures taken to follow-up on the recommendations received in the 2024 Report regarding the anti-corruption framework (if applicable)

No progress has been made regarding the recommendations received in the 2024 Rule of Law Report.

- No measures have been adopted to strengthen the regime of conflicts of interest and asset declaration of high-ranking officials of the State administration.
- The sanctioning authority of the Office for Conflicts of Interest has not been strengthened, nor has its functional autonomy. It has not been allocated greater material or human resources.
- No regulation on interest groups has been approved.
- The Independent Whistleblower Protection Authority has not been established.
- The Official Secrets Act has not been reformed. As in previous years, the Basque Nationalist Party (PNV) introduced a bill at the end of August 2023. The amendment period has been extended thirty times since March 2024⁹⁶.
- The Criminal Procedure Code has not been reformed to improve the efficiency of high-level corruption investigations, particularly regarding the time limit for investigations (article 324.1).

In July, the Amnesty Law came into force, which includes within its scope of application the crimes of embezzlement in cases where there is no personal financial gain and the diversion of funds does not harm the financial interests of the European Union. This provision was intended to grant amnesty to those convicted of embezzlement of funds in the *procés* case. However, the Supreme Court has refused to apply the Amnesty Law to those convicted in the *procés*, arguing that an extensive interpretation of the concept of “intent to profit” must be applied and that it should include “all kinds of advantage, whether financial or spiritual” (*animus lucri faciendi gratia*), given that the crime of embezzlement does not require the personal gain of the offender, but rather their actions driven by any type of benefit, even non-financial, and even if the benefit is intended for a third party⁹⁷.

A. The institutional framework capacity to fight against corruption (prevention and investigation/prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention, detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal and technical resources as relevant), including the cooperation among domestic and with foreign authorities. Indicate any relevant measures taken to effectively and timely cooperate with OLAF and EPPO.

1. Dismantling of key institutions to combat corruption in Spain

a) **Detected issue**

In 2024, **the progressive dismantling and the increasing politicization of public entities dedicated to the fight against corruption** (anti-fraud agencies, regional transparency councils, etc.) **has become more entrenched**. This has occurred through various means: in some cases, the entity has been outright abolished (the Office for the Prevention and Fight Against Corruption of the Balearic Islands) and, in others, there have been reforms or appointments that reveal greater politicization of the organ (the Transparency Commissioner of the Region of Murcia and the Transparency and Data Protection Council of the Community of Madrid). In the Valencian

⁹⁶ Access to the parliamentary process: https://www.congreso.es/es/busqueda-de-iniciativas?p_p_id=iniciativas&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&iniciativas_mode=mostrarDetalle&iniciativas_legislatura=XV&iniciativas_id=122/000005

⁹⁷ Court of Order of July 1st 2024: <https://www.poderjudicial.es/search/indexAN.jsp>

Anti-Fraud Agency, the system to appoint the director has been modified to allow the election by absolute majority of the regional Parliament, thus facilitating the election of political allies. Subsequently, the director has promoted internal reforms that have undermined the Agency's ability to fight corruption.

b) Relevant information

- In April, Law 2/2024 of the Balearic Islands was approved which, among other provisions, **abolishes the Office for the Prevention and the Fight Against Corruption of the Balearic Islands** (*Oficina de Prevención y Lucha contra la Corrupción de las Islas Baleares*)⁹⁸, following a proposal from the new regional government, formed by the People's Party (PP) and Vox). The law was introduced as a bill by the PP and declared urgent, meaning it was drafted without a prior study or report on the office's activities or its contribution to preventing and combating corruption in the region. Numerous civil society organizations⁹⁹, as well as the NEIWA network (Network of European Integrity and Whistleblowing Authorities) have expressed their concern¹⁰⁰.
- In the **Valencian Community**, although the Anti-Fraud Agency (*Agencia Valenciana Antifraude*, AVAF) has not been abolished, a series of reforms have been introduced which have, *de facto*, deeply weakened it. In June 2024, Law 11/2016 governing the Valencian Anti-Fraud Agency was amended to, amongst other aspects, reduce the majority required for the election of the director. While a three fifths majority is still required in the first round, only an absolute majority is now needed in the second round¹⁰¹. This reduction of the majority was implemented in light of the composition of the Valencian Parliament, since PP and Vox can achieve an absolute majority, but not the two thirds required. This amendment was introduced as a bill by the People's Parliamentary Group, that is, the governing party (another example of the aforementioned poor parliamentary practices). The new director, **Eduardo Beut González**, who was **elected in July with the support of Vox and PP, has political ties with the latter, specifically with the government of Eduardo Zaplana, former President of the Generalitat Valenciana**, who was sentenced to more than 10 years imprisonment for political corruption crimes (Erial case). Specifically, he was a counselor and vice president of the Industrial Holdings portfolio of Bancaja, a public entity at the time. Upon his arrival, Beut **dismissed two senior officials of the Anti-Fraud Agency**, Teresa Clemente (deputy director) and Gustavo Segura (head of investigations and a candidate for the agency's leadership proposed by civil society, who ultimately did not receive the necessary parliamentary support). Opposition parties (PSOE and Compromís) have claimed that the dismissals were due to the collaboration of both officials with the judiciary in cases such as the Erial case¹⁰². Furthermore, Beut **has repealed the Ethical Code and abolished the ethics committee and the internal whistleblowing system**, which had been managed by this committee to address any irregularities, violations or malpractice¹⁰³. The Hay Derecho Foundation, together with two other civil society organizations and the three individuals who were part of the ethics committee, has challenged the abolition of the committee.
- After the dismantling of the Balearic Office, **only four Autonomous Communities have an anti-fraud agency**: Catalonia, Valencia, Andalusia and Navarra. **The creation of the national anti-fraud agency is still pending.**

⁹⁸ Additional provision 1: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2024-8369

⁹⁹ <https://www.hayderecho.com/portfolio-item/declaracion-conjunta-de-organizaciones-de-la-sociedad-civil-en-contra-de-la-eliminacion-de-la-oficina-de-prevencion-y-lucha-contra-la-corrupcion-en-las-illes-balears/>

¹⁰⁰ <https://www.antifrau.cat/es/red-neiwa-autoridades-europeas-integridad-proteccion-personas-alertadoras-expresado-preocupacion-delante-cierre-oficina-prevencion-lucha-contra-corrupcion-islas-baleares>

¹⁰¹ <https://www.boe.es/buscar/doc.php?id=BOE-A-2024-16513>

¹⁰² <https://cadenaser.com/comunitat-valenciana/2024/09/04/beut-cesa-a-dos-altos-cargos-de-antifraude-decision-que-pp-y-vox-enmarcan-en-la-normalidad-mientras-ppv-y-compromis-hablan-de-purga-radio-valencia/>

¹⁰³ <https://elpais.com/espana/comunidad-valenciana/2024-09-30/el-director-de-la-agencia-valenciana-antifraude-deroga-el-codigo-etico-del-organismo.html>

- Regarding the budgetary autonomy of these bodies, the budget of the AVAF for 2024 was reduced by 3,61% compared to the previous year¹⁰⁴. However, the budget of the Andalusian Office increased by nearly 14%¹⁰⁵.
- Meanwhile, the Office of Good Practices and Anti-Corruption of Navarra spent only 30% of its allocated budget in 2024 (209.000 euros out of 600.000) due to unfilled staffing positions¹⁰⁶.
- In January 2024, the Regional Government of Murcia, specifically the Vice Presidency responsible for good governance, currently held by Vox, decided **not to renew the agreement for the Chair of Good Governance and Public Integrity**, a joint initiative between the University of Murcia, the regional Government, and the regional Assembly. Over its three years of operation, the Chair had carried out significant activities in outreach, training and research, with collaborations with the European Commission and the Council of Europe. Moreover, in July, the regional assembly **passed a law to reform the Transparency Council of the Region of Murcia**¹⁰⁷, which had been under interim management for years, with the aim of replacing it with a **Special Transparency Commissioner**. A parliamentary election system was maintained under which, in the second round, the Commissioner can be appointed by an absolute majority. In September, Natalia Sánchez López was appointed Transparency Commissioner, a decision challenged by the Hay Derecho Foundation as illegal, as it fails to meet the requirements of "recognized prestige and professional competence" stipulated by the regulations¹⁰⁸.
- In December 2023, Law 2016/2023 was passed, introducing measures for the simplification and improvement of the institutions and bodies of the Community of Madrid¹⁰⁹. Among other measures, it **significantly altered the framework of the Transparency and Citizen Participation Council**. The body's functions and powers were reduced, transforming it into the Transparency and Data Protection Council. Additionally, the **parliamentary majorities required for the election of the president were lowered**, and their individual functions strengthened. Most notably, the Council **was moved from being attached to the regional Assembly to being under the jurisdiction of the Department of Presidency, Justice and Local Administration**.

Safeguards for the functional independence of the authorities tasked with the prevention and the detection of corruption

1. Functional dependency of the future Independent Whistleblower Protection Authority

a) Detected issue

In October 2024, the Statute of the Independent Whistleblower Protection Authority was approved¹¹⁰, although the entity itself is still to be created. The Authority is an independent administrative body **linked to the Minister of the Presidency, Justice, and Relations with Parliament**, who is also responsible for appointing its President for a non-renewable five-year term, subject to ratification by Congress by an absolute majority. The Statute **does not establish an open and transparent process for the submission of candidacies for the leadership position**,

¹⁰⁴ https://www.eldiario.es/comunitat-valenciana/bipartito-pp-vox-baja-presupuesto-agencia-valenciana-antifraude_1_10643077.html

¹⁰⁵ https://www.europapress.es/andalucia/noticia-presupuesto-oficina-andaluza-antifraude-crecera-casi-14-superara-dos-millones-euros-2024-20231028103951.html?utm_campaign=smartclip_social&utm_medium=Social&utm_source=Twitter

¹⁰⁶ <https://cadenaser.com/navarra/2024/11/06/la-oficina-de-buenas-practicas-y-anticorrupcion-carece-de-personal-para-tramitar-las-26-denuncias-recibidas-radio-pamplona/>

¹⁰⁷ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2024-15430

¹⁰⁸ <https://www.hayderecho.com/portfolio-item/recurso-nombramiento-transparencia-murcia/>

¹⁰⁹ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2024-10766

¹¹⁰ Real Decreto 1101/2024, de 29 de octubre, por el que se aprueba el Estatuto de la Autoridad Independiente de Protección al Informante: <https://www.boe.es/buscar/act.php?id=BOE-A-2024-22298>

nor does it include effective accountability mechanisms or provisions for the participation of civil society in the Authority.

The political appointment of individuals in charge of combating corruption, with broad discretionary powers, undermines the independence of these bodies. Generally, the regulatory framework requires appointees to have professional experience and recognized prestige. However, it is not uncommon for these requirements to be overlooked, with appointments often prioritizing political affinity, especially when the appointment is made by the current government or a parliamentary majority that is not qualified.

Furthermore, it is worth pointing out that during the drafting of the Statute, only a seven-day period was allocated for public consultation and information, citing supposed urgency. Law 2/2023, which mandated the approval of the Agency's Statute within one year, came into force in March 2023.

b) Other relevant aspects

Recently, **the Community of Madrid assigned the Transparency and Data Protection Council the responsibilities of protecting whistleblowers in corruption cases and managing the whistleblowing channel¹¹¹.** This is problematic because, as outlined in another section, since December 2023, the Council has been attached to the Department of the Presidency of the Community of Madrid. As a result, **the body responsible for whistleblower protection in the region is strongly functionally dependent on the regional government.** Additionally, it is important to note that the Council does not have the authority to impose sanctions on the private sector.

c) Proposals

- **Authorities responsible for the prevention and fight against corruption, as well as transparency bodies, should be selected through a public competition system.** This process should include expert evaluation and, where political intervention is involved, require **qualified majorities in Parliament.** In cases of deadlock, a lottery system could be established among candidates who meet the established requirements.
- **Legal provisions should ensure the budgetary independence of these entities.** These provisions should stipulate that the entities themselves will draft and approve their budgets, which will then be submitted to the Government for integration into the corresponding budgets, while maintaining their independence.

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators

1. The approval of the anti-corruption strategy is still pending

a) Detected issue

Law 2/2023 regulating the protection of whistleblowers reporting regulatory violations and combating corruption, establishes in its Fifth Additional Provision that the Government must approve an Anti-Corruption Strategy within a **maximum period of eighteen months from the entry into force of this law.** This strategy must include, at a minimum, an evaluation of the compliance with the objectives set out in this law, as well as measures deemed necessary to address any deficiencies identified during this period.

¹¹¹ Law 8/2024 on measures for the improvement of public management at the local and regional level of the Community of Madrid: <https://www.boe.es/buscar/doc.php?id=BOCM-m-2024-90247>

Accordingly, **the strategy was required to be approved by September 13th, 2024.** However, not only has it not been approved, but there is no indication that work has even begun on its design. This demonstrates that the fight against corruption does not appear to be a priority at either the national or regional level.

b) Relevant facts

Spain is one of only five OECD countries—alongside Canada, Ireland, Iceland, and Norway—that has not implemented a strategic plan to mitigate corruption risks¹¹².

B. Prevention

Measures to enhance integrity in the public sector (including as regards incompatibility rules, revolving doors, codes of conduct, ethics)

1. No progress on conflicts of interests, incompatibilities and codes of conduct in Public Administration

a) Detected issue

There has been no notable progress in the regulation of incompatibilities, the development of codes of conduct, or the implementation of ethic and integrity training within public administration. The Group of States Against Corruption (GRECO) in its 5th evaluation round report on Spain, stressed the need for “**decisive improvements**” in transparency and the prevention of conflicts of interest for high-ranking officials, including political advisors—a category that currently lacks clear regulation¹¹³. The report further emphasized the urgent need to significantly enhance the independence, authority, and resources of the Office of Interests and the Council for Transparency and Good Governance. It also underscored the necessity for strict rules and procedures to address the issue of “**revolving doors**”.

Additionally, **Law 53/1984, on incompatibilities for public administration personnel, has become outdated and is in need of a comprehensive revision.**

b) Relevant information

- Law 3/2015, of March 30, which regulates the exercise of high-ranking positions within the General Administration of the State¹¹⁴, establishes the framework for incompatibilities and the definition of conflict of interest. Article 19 of this law also outlines the functions of the Office of Conflicts of Interest, which operates under the Ministry of Finance and has been active since 2006. **Since its establishment, the Office has rejected only 2.5% of applications for compatibility from senior officials seeking to join the private sector (20 rejections out of a total of 770 approvals)**¹¹⁵. Moreover, it has approved cases of clear incompatibility, such as that of Juan Junquera, former Secretary of State for Telecommunications and the Information Society, who was allowed to work as an advisor for Cash Devices, a subsidiary of Gowex, a company to which he had granted a €1.22 million subsidy during his tenure. In general, the Office suffers from limited resources, both material and human, and has not been effectively fulfilling its duties, especially in terms of its sanctioning regime.

¹¹² <https://www.swissinfo.ch/spa/espa%C3%B1a-es-uno-de-los-5-pa%C3%ADses-de-la-ocde-que-no-tienen-un-plan-estrat%C3%A9gico-anticorrupci%C3%B3n/74336477>

¹¹³ <https://rm.coe.int/quinta-ronda-de-evaluacion-prevencion-de-la-corrupcion-y-promocion-de-/1680a5f3c2>

¹¹⁴ <https://www.boe.es/buscar/act.php?id=BOE-A-2015-3444>

¹¹⁵ <https://www.publico.es/politica/oficina-conflictos-intereses-deniega-2-5-solicitudes-altos-cargos-pasarse-sector-privado.html#:~:text=La%20Oficina%20de%20Conflictos%20de,solo%20se%20han%20denegado%2020.>

- **There is no specific Code of Ethics for the members of the Government or its President.** The need for such a tool was highlighted by the indictment of Begoña Gómez, the President's wife, on charges of influence peddling, business corruption, and embezzlement. This is particularly crucial from the perspective of public trust and accountability. Civil society has taken steps to advocate for progress in this area, notably through the **development of a Government Ethical Code¹¹⁶ by the Hay Derecho Foundation and the non-profit association España Mejor.**

c) Proposals

- **Amend Law 3/2015** to strengthen the regulation of conflicts of interest and provide the Office of Conflicts of Interest with greater functional autonomy.
- **Increase resources—both material and human—allocated to the Office of Conflicts of Interest,** enabling it to effectively fulfill its mandate regarding the detection of incompatibilities and the enforcement of sanctions.
- **Develop a Government Code of Conduct** that clearly outlines the ethical principles to guide the actions and decisions of the Government.
- **Revise Law 53/1984,** of December 26, on the incompatibilities of public administration personnel, to modernize and adapt it to current challenges.

2. Revolving doors in regulatory and oversight bodies, as well as independent authorities, remain a persistent practice

a) Identified issue

The revolving door phenomenon has become more pronounced in recent months, underscoring the patronage dynamics that define the relationship between the political class and public institutions. In recent years, several notable cases have emerged within the public sector:

- José Luis Escrivá, former Minister of Digital Transformation and Public Administration, was appointed Governor of the Bank of Spain with no transitional period.
- Carmen Calvo, former Deputy Prime Minister (until July 2021), was appointed President of the Council of State in February 2024.
- Álvaro Fernández Heredia, former Secretary General of Sustainable Mobility, left his post in January 2025 and was immediately appointed President of RENFE (National Network of Spanish Railways).

As discussed in other sections, **the revolving door issue also extends to the judiciary.** For instance:

- Pilar Llop, Minister of Justice from July 2021 to November 2023, rejoined the judiciary in January 2024 as a judge in the Criminal Chamber of the Provincial Court in Madrid.
- Similarly, Enrique López, former Justice Minister of the Community of Madrid and now a candidate to head the National Court, returned to the same court in June 2023 after four years in regional politics.

b) Relevant developments

- **Organic Law 3/2024 has introduced a cooling-off period in the judiciary.** For one, the law has made a series of changes regarding special services and voluntary leave for judges, **reducing the circumstances in which judges and magistrates are declared to be in special service status.** Thus, while the declaration of special service status for appointments to political or trusted positions with the rank of director general or lower is maintained, **the cases of election to representative public office in**

¹¹⁶ <https://www.hayderecho.com/portfolio-item/espana-mejor-y-hay-derecho-presentan-el-codigo-etico-del-gobierno-y-piden-a-los-representantes-politicos-que-asuman-este-compromiso-publicamente/>

the European Parliament, Congress of Deputies, Senate, Legislative Assemblies of Autonomous Communities, General Assemblies of Historical Territories, or Local Corporations are excluded. These cases now fall under the circumstances in which voluntary leave status applies.

For judges and magistrates in voluntary leave status, a cooling-off period of two years has been established if they request to return to active service¹¹⁷. They will be placed in special services status without performing judicial functions, and will be organizationally assigned to the President of the Supreme Court (those coming from political, trusted, or representative positions at the European or state level) or to the President of the Superior Court of the autonomous community of their last posting (if they come from the regional or local level).

- **The same law has also introduced a cooling-off period of five years for the State Attorney General¹¹⁸.** No one who has held a Ministry, a State Secretariat, or an autonomous government department in the previous five years, or who has been elected President of a Local Corporation, or has been a member of Parliament, Senator, or member of the European Parliament or an Autonomous Community Legislative Assembly, may be proposed for the position.

c) Proposals

- **Extend these cooling-off periods to five years for appointments to oversight bodies and consultative institutions,** such as the Ombudsman, the Council of State, the Constitutional Court, the Court of Auditors, or the Bank of Spain, as well as to independent authorities.
- **Establish cooling-off periods for appointments to regulatory bodies.**
- **Establish cooling-off periods for the appointment of executives in public companies.**

Measures to enhance general transparency of public decision-making (including rules on lobbying, asset and interest disclosure rules, gifts policy, transparency of political party financing).

There has not been any **significant progress on issues related to lobbying, asset and interest declarations, transparency, or political party financing.**

In 2024, no regulations concerning interest groups have been approved. In fact, the 2024 Annual Regulatory Plan did not even foresee the resumption of the 2022 regulatory project. This lack of adequate regulation is especially concerning given the number of former politicians who are now involved in lobbying activities in Spain, either by establishing their own consulting firms or by joining consultancies or companies engaged in lobbying. One of the most recent examples is the consultancy Acento, which has former Minister of Public Works José Blanco on its executive team, with former politicians from all parties serving as collaborators and members of the Advisory Council. Alberto Garzón, the former Minister of Consumer Affairs in the previous legislature, was hired by this consultancy, although he ultimately did not join due to concerns about potential "damage to the political space of the left" following the backlash after the announcement¹¹⁹.

The Democracy Action Plan includes a **reform of the regulations of both the Congress and the Senate to strengthen penalties for the failure to submit asset declarations or for providing false or incomplete information.** However, no initiative has been presented on this issue so far.

¹¹⁷ New article 358.3 Organic Law of the Judiciary (6/1985)

¹¹⁸ Article law of Organic Law 3/2024.

¹¹⁹ https://www.elespanol.com/invertia/medios/20240214/acento-consultora-pepe-blanco-alfonso-alonso-renunciado-exministro-alberto-garzon/832666873_0.html

The amendment to the Organic Law on Political Party Financing, requested by the Court of Auditors in 2022, has not been carried out¹²⁰.

Measures to prevent conflicts of interest in the public sector. Please specify the features and scope of their application (e.g. categories of officials concerned, types of checks and corrective measures depending on the category of officials concerned)

There has not been any **progress in the prevention of conflicts of interest in the public sector**.

It is worth noting that the Democracy Action Plan includes the approval of the new Open Government Strategy and the submission to Parliament of a Draft Law on Open Administration, which, among other aspects, aims to strengthen controls regarding conflicts of interest¹²¹. However, none of these measures have been implemented in 2024.

Measures to ensure whistleblower protection and encourage reporting of corruption, including their application (i.e. number of reports received, and the follow-up given)

1. Deficient transposition of Directive 2019/1937 into Law 2/2023

a) Identified issue

As noted in our contribution to the 2024 Rule of Law Report, the transposition of Directive 2019/1937, regarding the protection of individuals who report breaches of Union law, into Law 2/2023 **has notable shortcomings that could pose practical obstacles to the effective implementation of European standards for protecting whistleblowers in Spain**. In particular, it is worth noting that the Independent Whistleblower Protection Authority, envisaged in the law but still pending creation, has been placed under the jurisdiction of the Ministry of the Presidency, Justice, and Relations with Parliament.

b) Relevant information

- **The Valencian Anti-Fraud Agency (AVAF) and the Andalusian Anti-Fraud Office have the authority to protect whistleblowers reporting corruption.** Between 2017 and 2023, the AVAF granted protection in 35 out of the 67 requests submitted (52.2%)¹²². Furthermore, the number of cases involving legal assistance and advisory services for whistleblowers has steadily increased, rising from 20 in 2017 and 82 in 2018 to 128 in 2023. As mentioned in another section, the responsibility for protecting whistleblowers of corruption has recently been assigned to the **Transparency and Data Protection Council of the Community of Madrid**, a region that does not have its own anti-fraud agency.
- As previously noted, **the Independent Whistleblower Protection Authority has yet to be established.**

Specific measures to enhance transparency, integrity and accountability in sectors with high-risks of corruption, with a view to monitor and prevent corruption and conflict of interests, and where applicable measures to prevent and address corruption committed by organized crime groups.

¹²⁰ <https://www.tcu.es/es/sala-de-prensa/noticias/El-Tribunal-de-Cuentas-acuerda-solicitar-por-segunda-vez-a-las-Cortes-Generales-una-modificacion-de-la-Ley-Organica-sobre-Financiacion-de-Partidos-Policos>

¹²¹ Access to the Democracy Action Plan: https://www.mpr.gob.es/prencom/notas/Documents/2024/2024-3002_Plan_de_accion.pdf

¹²² AVAF activity report 2023: https://www.antifraucv.es/wp-content/uploads/2024/03/MEMORIA_AVAF_2023_CAS.pdf

Such high-risk sectors include: public procurement, including construction, transport/infrastructure, defense, cohesion, agriculture, environment, healthcare, citizen/residence investor schemes, large-scale investments of national interest and the spending of EU funds, urban planning.

The areas most closely linked to corruption, the potential receipt of illicit commissions, and even the illegal financing of political parties are found in public procurement, particularly in large infrastructure projects or major public service contracts associated with ministries such as Defense and Transport. **No significant progress has been observed in these areas.** In fact, it is worth highlighting the so-called "**Koldo case**"¹²³, a corruption scheme involving Koldo García Izaguirre, former advisor to Socialist ex-minister José Luis Ábalos and later a board member at RENFE, who is **accused of receiving illegal commissions during the purchase of masks during the pandemic**; Víctor de Aldama, a Spanish businessman accused of facilitating and mediating the payment of these kickbacks; and **ex-minister Ábalos** himself, whose parliamentary immunity was lifted by Congress in January 2025 to allow him to be investigated by the Supreme Court. Specifically, Víctor de Aldama has testified before the Supreme Court, stating that he paid four million euros in commissions—an allegation that the government has categorically denied - although he admitted to not having any evidence to support his claim¹²⁴.

In the healthcare sector, **the first Strategic Plan of the Observatory against Healthcare Fraud and Corruption** was approved in September 2024¹²⁵. The Observatory was established in April as a working group within the Ministry of Health. The plan includes important measures, such as the publication of public procurement activity schedules, the drafting of a "do-not-do" manual for public procurement practices, and the development of good governance practices for interactions with interest groups. However, the plan is limited in many respects. For example, it only foresees an "analysis" of the feasibility of publishing complete work schedules for senior officials at the Ministry or a "study" of regulations concerning conflicts of interest in pharmaceutical services and the guarantee of medicines.

C. Repression

The legal framework on the criminalization and sanctions for corruption and related offences, including foreign bribery

1. The Amnesty Law applies to crimes of embezzlement of public funds

a) **Detected issue**

The Amnesty Law includes within its scope of application "acts typified as crimes of usurpation of public functions or embezzlement only when they are aimed at financing, defraying or facilitating the realization" of "acts committed with the intention of claiming, promoting or procuring the secession or independence of Catalonia" (Article 1. 1.a)) and of "acts committed with the intention of calling, promoting or procuring the holding of consultations that took place in Catalonia on November 9, 2014, and October 1, 2017, by someone who lacked the powers to do so, or whose call or holding has been declared unlawful", **"provided that there has been no purpose of enrichment"**.

¹²³ <https://www.elmundo.es/espana/koldo-garcia.html>

¹²⁴ <https://www.rtve.es/noticias/20241217/reacciones-aldama-koldo-gobierno-pp/16375745.shtml>

¹²⁵ Access to the Plan:

https://www.sanidad.gob.es/en/organizacion/transparenciaGobierno/OCFCS/docs/MEDIDAS_Y_CRONOGRAMA.ANTIFRAUDE_23_09_24.pdf

b) Relevant developments

However, the **Supreme Court has refused to apply the Amnesty Law to the crime of embezzlement** of those convicted in the case of the *procés* (Court ruling of July 1st, 2024)¹²⁶. The Court has made an extensive interpretation of the concept of “profit motive”, in line with its previous jurisprudence, and has stated that it must include “any kind of advantage, patrimonial or spiritual (*animus lucri faciendi gratia*)”, so that in embezzlement “the personal profit of the subtractor is not required, but his action with the intention of any benefit, even non-patrimonial”, concurring profit motive even if it is intended to benefit a third party.

It is worth mentioning that the Court of Auditors has referred eight questions to the Court of Justice of the European Union for a preliminary ruling regarding the extinction of civil and accounting liabilities of the amnesty (Article 8), an issue that is dealt with in more detail in a later section.

Official data on the number of investigations, prosecutions, final judgments, and the application of sanctions for corruption offences (differentiated by offence if possible). Please indicate whether the cases: involve legal persons; are related to the implementation of EU or national funds; involve high level corruption. Please indicate which data is publicly available and how policy-making is informed by the data

We are not aware of **any progress in this area**. The main source of data on corruption proceedings continues to be the General Council of the Judiciary data repository¹²⁷, which provides data at both national and regional level.

For example, in the third quarter of 2024 there were a total of 5 open proceedings involving 17 individuals (14 men and 3 women) and 4 legal entities. In terms of convictions, there were a total of 6 convictions (1 of them partial) and 5 acquittals.

Potential obstacles identified in law or in practice to the investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

1. Jurisdictional privileges of a large number of public officials

a) Detected issue

Many public officials, including the Prime Minister, the President of the Supreme Court and the General Council of the Judiciary, the President of the Constitutional Court, members of the Government, the State Attorney General, deputies, senators and members of the General Council of the Judiciary, among others, have the jurisdictional privilege to be tried before the Supreme Court¹²⁸. Such jurisdictional privilege of deputies and senators, and that of the members of the Government, including the President, is constitutionally protected¹²⁹. Likewise, the members of the Governments and Legislative Assemblies of the Autonomous Communities, if applicable, are protected before the corresponding High Court of Justice, by virtue of their Statute of Autonomy.

¹²⁶ Access to the order: <https://www.poderjudicial.es/search/indexAN.jsp>

¹²⁷ Access in: https://www.poderjudicial.es/cgpi/en/Subjects/Transparency/Data-repository-on-corruption-proceedings/Data-search/?_gl=1*14s69zm*_up*MQ_*_ga*MTM4NDU5NjAwOC4xNzY0OTI5*_ga_WDV68MMZM*MTczNTU2NDkyOC4xLjAuMTczNTU2NDkyOC4wLjAuMA..

¹²⁸ Article 57.1.2º of the Organic Law on the Judiciary

¹²⁹ Articles 71.3 and 102.1 of the Spanish Constitution

This implies **an alteration of the normal order of adjudication of cases** based on competence, since, if one of the accused persons has jurisdictional privilege, the proceeding will be heard by a specific jurisdictional body, and not by the competent examining court for similar cases involving people without jurisdictional privilege. This, in turn, means that there is a special interest in judicial appointments in certain courts, which results in their politicization.

Such is the case, for example, of the deputies and high-ranking officials of the Autonomous Communities that maintain their jurisdictional privilege to be tried before their Regional High Courts, whose Civil and Criminal Courts include a judge appointed directly by the regional Parliament in most cases. In the case of the jurisdictional privileges to be judged before the Supreme Court, the influence is exercised through the appointments of the General Council of the Judiciary. This implies that, **indirectly, politicians influence the choice of the specific judges who will eventually judge them.**

In 2018, Prime Minister Pedro Sánchez announced that he would reform the Constitution to eliminate the jurisdictional privilege of deputies, senators and members of the Government except for crimes committed “in the strict exercise of their office”. **This reform has not materialized.**

b) Relevant facts

- Between 2019 and 2022, Cantabria, Murcia, Canary Islands, Balearic Islands, La Rioja and Aragon have eliminated from their Statutes of Autonomy the jurisdictional privilege of their regional representatives and members of the regional government.
- In 2017 (latest available data) **there were 250,000 people with jurisdictional privileges in Spain¹³⁰**, of which 232,000 are members of the FCSE, 5 of the Royal Family and almost 18,000 belonging to State and regional institutions (politicians, members of the Judicial and Prosecutorial Careers, Ombudsman, members of the Court of Auditors and the Council of State, etc.).

2. The procedural law establishes time limits to the investigation of corruption cases

a) Detected issue

Article 324.1 of the Criminal Procedure Law establishes that **judicial investigations must be carried out within a maximum period of twelve months from the initiation of the case**. Although the judge or court may grant successive extensions equal or inferior to 6 months, it should be noted that, as has been explained in another section, Spain is one of the countries with the lowest number of judges per inhabitant. Therefore, **this time limitation of investigations is an obstacle, especially in macro-cases that usually involve politicians.**

Information on effectiveness of criminal and non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders

We are not aware of any public data on the effectiveness of criminal and non-criminal measures for public and private offenders.

There is an **Asset Recovery Office** (Oficina de Recuperación de Activos), which is part of the General State Administration and whose function is to locate and recover assets from criminal activities to be placed at the disposal of the courts for future confiscation, at the request of the judge or the Public Prosecutor's Office¹³¹. However, the latest statistical information published relates to the year 2022¹³².

¹³⁰ <https://www.elmundo.es/espana/2017/05/03/5908c620268e3e53088b4588.html>

¹³¹ <https://www.mjusticia.gob.es/es/areas-actuacion/oficina-recuperacion-gestion>

¹³² Access to 2022 statistical data: <https://www.mjusticia.gob.es/es/AreaTematica/OficinaRecuperacion/Documents/Datos-estad%c3%adsticos-a%c3%b1o-2022.pdf>

It is worth noting **the difficulties in the investigation of corruption cases** due to the lack of specialization of judges and prosecutors. In the Valencian Anti-Fraud Agency, all positions with expert assistance and collaboration functions have been eliminated from the job list (previously there were 2 positions with these specific functions)¹³³.

III. Media pluralism and media freedom

Please provide information on measures taken to follow-up on the recommendations received in the 2024 Report regarding media pluralism and media freedom (if applicable)

There have been no changes in the legal framework for institutional advertising. The annual reports on institutional advertising still do not provide information on the media that receive money for advertising purposes from the Public Administration. **Neither have initiatives aimed at increasing transparency in the ownership and financing of the media been approved**, although several measures in this regard have been foreseen in the Action Plan for Democracy, **nor have there been any advances in access to public information. The revision of the Law on Official Secrets**, a key recommendation of the Rule of Law Report 2024, **is still pending**.

The Board of Directors of RTVE has been renewed, after several months of interim management after the expiration of the term of office of five directors in March 2024. However, **since it does not have sufficient parliamentary majorities, the Government has chosen to modify by Royal Decree (5/2024) Law 17/2006, on June 5th, for the state-owned radio and television¹³⁴, introducing a second round reducing necessary majorities and increasing the proportional weight of the Congress of Deputies**, the chamber in which it has a majority, in the election of the Board members.

A. Media authorities and bodies

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

We are not aware of any progress in this area. In fact, there have been several setbacks worth mentioning:

- **As we have already pointed out, the RTVE Act was amended by Royal Decree-Law (5/2024)** in October 2024 in order to increase the number of Board Members from 10 to 15 Board of Directors, 11 elected by the Congress and 4 by the Senate. Of all the modifications which the system for electing the Board has undergone, this is the one which has given **more proportional weight to the Congress, which is the chamber in which the current Government has a majority** (as against the Senate, which has an absolute majority of the opposition party). After this modification, **a highly politicized Council has been formed**, in which at least 10 of the members have direct political links with the political parties that have proposed them for the position.
- **The General Intervention of the State (within Ministry of Finance) has detected unjustified expenses** in RTVE both in the fiscal years 2021 and 2022¹³⁵, which denotes a significant weakness of internal control within the corporation.
- In the RTVE webpage regarding audits, only the audit report for the fiscal years 2010 and 2011 can be found, as well as the settlements of the budgets for 2009, 2010, 2012 and 2013¹³⁶.

¹³³ <https://www.lasprovincias.es/politica/antifraude-adelgaza-estructura-recorta-cinco-plazas-20250103141859-nt.html?ref=https%3A%2F%2Fwww.lasprovincias.es%2Fpolitica%2Fantifraude-adelgaza-estructura-recorta-cinco-plazas-20250103141859-nt.html>

¹³⁴ <https://www.boe.es/buscar/act.php?id=BOE-A-2006-9958>

¹³⁵ <https://www.elconfidencialdigital.com/articulo/medios/hacienda-detecta-pagos-injustificados-expresidente-tve/20240116000000703484.html>

¹³⁶ <https://www.rtve.es/rtve/20140609/transparencia-fiscalizacion/951240.shtml>

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

1. Politicization of RTVE's Board of Directors

a) Detected issue

In October 2024, the Government approved Royal Decree-Law 5/2024, which amends the RTVE Act¹³⁷. This reform **increases the number of members of the Board of Directors to 15, 11 elected by the Congress and 4 by the Senate, and re-establishes the second round with absolute majority**, keeping the two-thirds majority for the first round. The absolute majority is also introduced for the election of the Chairman of the Board, which is also carried out by Congress by a two-thirds majority.

It should be noted that the second round had been eliminated in 2017 at the proposal of the PSOE (Law 5/2017, of September 29)¹³⁸, after its introduction in 2012 by the PP (also by decree-law). The Socialist Parliamentary Group filed in 2012 an appeal of unconstitutionality against the PP's reform alleging it left the election of the governing body entirely to the government, and that what was intended was to "empty the parliamentary control of RTVE"¹³⁹. The Constitutional Court partially upheld this appeal.

Besides, the latest reform introduced a if the appointment of the members or the Chairman is not achieved, the Government will be able to propose **a sole provisional administrator**, who will have to be elected by the Congress according to the same formula. The provisional administrator will have a term of office of three months, which may be extended until the definitive appointment, and the same powers as the board of directors and the presidency. Additionally, the Board will be renewed in its entirety every 6 years, instead of by halves every 3 years, and the re-election (once) of the Board Members is allowed. **Moreover, the Chairman of RTVE is no longer required to submit the appointments and dismissals of executives nor the basic organization of RTVE to the Board, but is instead able to approve them directly.**

This reform results in an even more pronounced reflection of parliamentary majorities both in the Board of Directors and in the Presidency of RTVE, which hinders an independent public radio and television whose strategic priorities respond exclusively to its public service mission. Never before has the Congress had so much weight in the appointment of RTVE's board members. With the new reform, it will elect more than 70% of the body (73.3%), while the Senate, a chamber with an absolute majority of the PP, has become more marginal than ever.

It should be noted that in 2022 the Government modified RTVE's statutes in order to grant greater powers to the interim president, then Elena Sánchez Caballero, which raised strong protests from some trade unions. In March 2024 Elena Sánchez ceased and the Board of Directors elected as new interim president **the journalist and PSOE militant Concepción Cascajosa, who had been ranked 86th out of the 95 selected in the 2018 public competition, with an overall score of 6 out of 30**¹⁴⁰.

b) Relevant data

Of the new Board of Directors, **10 of the 15 Board Members have strong political ties with the political parties that proposed them for the position**, which highlights, once again, the logic of the political patronage within Spanish institutions. The current composition of the Board of Directors and their political links are detailed below.

- José Pablo López (Chairman), former Director of Contents of RTVE.
- **Esther de la Mata, press officer of the Minister for Presidency, Justice and Relations with Parliament, Félix Bolaños.**
- Rosa León Conde (former socialist councillor of the Madrid City Council).

¹³⁷ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2024-21699

¹³⁸ <https://www.boe.es/buscar/doc.php?id=BOE-A-2017-11091>

¹³⁹ https://www.elconfidencial.com/comunicacion/2012-07-05/el-constitucional-admite-un-recurso-del-psoe-contr-a-el-decreto-ley-para-rtve_293704/

¹⁴⁰ <https://civio.es/el-boe-nuestro-de-cada-dia/2021/03/29/solo-4-de-los-10-nuevos-miembros-del-nuevo-consejo-de-administracion-de-rtve-pasaron-el-corte-del-concurso/>

- **Angélica Rubio** (director of the El Plural newspaper and former director of communications of José Luis Rodríguez Zapatero, former Prime Minister).
- **Mercedes de Pablos** (independent candidate for PSOE for the Andalusian municipal elections, and councilor in the Seville City Council).
- **Marta Ribas** (former deputy in Parliament for ICV and the Comuns).
- **Maite Martín del Caz** (general secretary of Comisiones Obreras in RTVE).
- **Mariano Minuesa** (candidate of Unidas Podemos for the Congress of Deputies in the general elections of April and November 2019, though he did not win a seat).
- **María Roncesvalls Solana** (spokesperson of the Government of Navarra, Minister of Education and foral deputy for Geroa Bai).
- **Miquel Calçada** (journalist and television and radio presenter).
- **María Teresa Martín** (Intercenters Committee of RTVE for Comisiones Obreras).
- **Sergi Sol** (former head of the Communication Cabinet of ERC (Esquerra Republicana de Catalunya)).
- **Eladio Jareño** (former head of Communication for Alicia Sánchez-Camacho, during her time as president of the PP in Catalonia).
- **Rubén Moreno** (former PP senator and congress member, Secretary of State for Relations with Parliament and Secretary General of Health).
- **Ignacio Ruíz Jarabo** (director general of the Tax Agency during the government of José María Aznar).
- **Marina Vila** (editor of RTVE news).

c) Other relevant issues

There is a **worrying lack of professionalization of RTVE's management**. When the Board was renewed in March 2021, only 4 out of the 10 board members had passed the previous expert evaluation cut-off¹⁴¹. In addition, the previous interim president, Concepción Cascajosa, a PSOE militant, was ranked number 86 out of the 95 selected in the 2018 public competition. The data of this previous expert evaluation for the last renewal are not available.

Existence and functions of media councils or other self-regulatory bodies

The audiovisual regulatory authority in Spain is the **National Commission on Markets and Competition through its Directorate of Telecommunications and Audiovisual Sector**. Its functions include market analysis, the development of regulations on obligations and penalties for media and market operators, as well as the resolution of conflicts and consultations raised before the regulations by the various operators, amongst others.

Recently, the **National Commission on Markets and Competition has been designated as Digital Services Coordinator** as required by the European Union Digital Services Regulation, through an amendment to Law 24/2002, of July 11, 2002, on information society services and electronic commerce, operated through an omnibus royal decree law (9/2024)¹⁴². To this end, the aforementioned decree-law also amends Law 3/2013, creating the National Commission for Markets and Competition to create the Directorate of Digital Services.

In December 2024, the Council of Ministers proposed five candidates for CNMC counselors. Although the appointment is made by the Government, the Congress can veto the appointment by absolute majority within one month of its communication¹⁴³. **There have been no candidates proposed by the PP, the main opposition party**, but names have been put forward by both Junts per Catalunya and the PNV¹⁴⁴. The proposed candidates are:

- **Ángel García Castillejo**: Director of the Corporación RTVE (currently, he is the Director of Audiovisual Policies, Public Service and International) and former member of the former Telecommunications Market

¹⁴¹ <https://civio.es/el-boe-nuestro-de-cada-dia/2021/03/29/solo-4-de-los-10-nuevos-miembros-del-nuevo-consejo-de-administracion-de-rtve-pasaron-el-corte-del-concurso/>

¹⁴² <https://www.boe.es/buscar/doc.php?id=BOE-A-2024-26915>

¹⁴³ Article 15.1 of Law 3/2013, of June 4, on the Creation of the National Commission on Markets and Competition: <https://www.boe.es/buscar/act.php?id=BOE-A-2013-5940>

¹⁴⁴ <https://elpais.com/economia/2024-12-23/el-gobierno-lanza-la-renovacion-de-la-cnmc-y-nombra-vicepresidente-a-angel-garcia-castillejo.html>

Commission. He has been coordinator of the parliamentary group of Izquierda Unida in the Congress of Deputies.

- María Vidales Picazo: current director of the Department for the Promotion of Competition at the CNMC.
- Enrique Monasterio Beñarán (proposed by PNV): industrial engineer, Director of Development and Innovation of EVE (Basque Energy Entity).
- Pere Soler Campins (proposed by Junts): former Director of the Mossos de Esquadra, Director General of the Catalan Competition Authority and Councilman of the Terrassa City Council for Convergència i Unió, among others.
- Rafael Iturriaga Nieva: former President of the Basque Court of Public Accounts and Deputy Minister of Security of the Department of the Interior of the Basque Government.

B. Safeguards against government or political interference and transparency and concentration of media ownership

Measures taken to ensure the fair and transparent allocation of state advertising

1. Transparency in the awarding of institutional advertising contracts is a pending challenge

a) Detected issue

Law 29/2005, of December 29th, on Institutional Advertising and Communication regulates institutional advertising in Spain. However, it is a law with evident shortcomings and, above all, one that it is systematically disregarded. As we pointed out in our contribution to the 2024 report, it is worth noting both the lack of transparency in the awarding of contracts and the political use of institutional advertising campaigns, especially during election periods. In 2023, the Council for Transparency and Good Governance urged the Government to report on “which media have been the final recipients of the money invested in institutional campaigns”¹⁴⁵. This requirement has been marked as “fulfilled”, which implies that the Government has communicated this information to the Council¹⁴⁶.

In April 2024 the Media Freedom Act came into force. We are not aware that this has yet been translated into significant regulatory changes, although some announcements have been made, as we will see below.

b) Relevant data

- In 2023, 126 institutional advertising campaigns were carried out, at a cost of more than €90 million, a slight decrease compared to 134 in 2022¹⁴⁷. However, **an upward trend is observed in recent years both in number of campaigns and total cost of campaigns**: in 2018 and 2019, 66 and 60 advertising campaigns were carried out, respectively, with total costs of €21 million and €25 million, while in 2022 total costs exceeded €100 million.
- The Government publishes annual reports on institutional advertising and communication including the contract recipients as required by Article 14 of Law 29/2005 on Institutional Advertising and Communication¹⁴⁸. **However, the information is relative to media or creative agencies, making it very difficult to determine which specific media outlets ultimately received the funding.**

¹⁴⁵ Link to the Council of Transparency and Good Government resolution of April 17, 2023:

https://www.consejodetransparencia.es/ct_Home/dam/jcr:f0cd370d-edc9-460f-83ac-0a89dbff2aca/R%20CTBG%202023-0251%20%5BResoluci%EF%BF%BDn_expte.%20R-0754-2022%5D.pdf

¹⁴⁶ Access to the Council of Transparency and Good Government monitoring of compliance with resolutions:

https://www.consejodetransparencia.es/dam/jcr:843e9061-f95b-4e5c-b0d4-e45a1a8f5c13/Cumplimiento_AGE_06-10-2023.xlsx

¹⁴⁷ <https://www.lamoncloa.gob.es/serviciosdeprensa/cpci/Documents/Plan%202024.pdf>

¹⁴⁸ Access to 2023 report: <https://www.lamoncloa.gob.es/serviciosdeprensa/cpci/Documents/Informe%202023.pdf>

c) Relevant progress

- The Action Plan for Democracy¹⁴⁹, within its Pillar 2 “Strengthening transparency, plurality and accountability of our information system”, has a **line of action dedicated to “setting new standards of transparency in the media”**. Four measures are proposed:
 - The creation of a **media registry with public information on media ownership and received advertising investment**. The National Markets and Competition Commission will be in charge of managing the registry.
 - The establishment of a duty of **annual publication of advertising investment** by all public administrations.
 - **Reform of the Institutional Advertising Law** to introduce criteria of transparency, proportionality and non-discrimination in its allocation, as well as to guarantee that the audience measurement systems, and the methodology used, comply with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, comparability and verifiability.
- On the other hand, the Plan foresees the introduction of **limits to the financing** that public administrations can devote to the media, so that there will be no media driven by or dependent on public administrations. However, **the Government has already announced 35 million euros in aid for the digitization of media**, which will be distributed by the National Institute of Cybersecurity (INCIBE) and the Secretary of State for Digitalization and Artificial Intelligence¹⁵⁰.

d) Proposals

- **Reform of Law 29/2005, of December 29th, on Institutional Advertising and Communication** to oblige all public administrations to explicitly detail, both in terms of procedure and criteria, how the processes of planning, contracting and evaluation of institutional advertising campaigns are articulated.
- **Reform of Law 19/2013, of December 9th, on transparency, access to public information and good governance**, to include, within the obligations of active publicity, the publication of money transfers made to the media detailing the concepts.

Safeguards against state / political interference, in particular:

- **Safeguards to ensure editorial independence of media (private and public)**
- **Specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their financial and operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions.**
- **Information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licences, company operation, capital entry requirements, concentration, and corporate governance.**

1. Politicization and lack of media freedom

a) Detected issue

According to the Media Pluralism Monitor of 2024, Spain is one of the “**medium risk**” countries in terms of media politicization and lack of editorial independence, and “**high risk**” in terms of lack of independence of public media¹⁵¹.

¹⁴⁹ Access to the plan: https://www.mpr.gob.es/prencom/notas/Documents/2024/2024-3002_Plan_de_accion.pdf

¹⁵⁰ https://digital.gob.es/portalmtdfp/comunicacion/sala-de-prensa/comunicacion_SEDIA/2024/12/2024-12-26.html

¹⁵¹ Report available in: https://cadmus.eui.eu/bitstream/handle/1814/77028/Media%20Pluralism%20Monitor%20Report_2024.pdf?sequence=3&isAllo wed=y

b) Relevant facts

- As we have mentioned in another section, the current Board of Directors of RTVE, the main public media in Spain, is **highly politicized**, following a legal reform to grant proportional primacy in the appointment of board members to the Congress of Deputies (majority of the governing parties and related parties) as opposed to the Senate (chamber with absolute majority of the opposition party).
- At the regional level, a law was passed in the Community of Madrid in late December 2023 introducing amendments to Law 8/2015, of December 28th, on the regional Radio and Television Corporation, that severely hindered the independence of the body, including transfer of the distribution of political parties in the Assembly to the election of the Board of Directors¹⁵².

c) Progress

- In December 2024, the Government approved the Preliminary **Draft of the Organic Law Regulating the Right of Rectification**, which replaces the current regulation (Organic Law 2/1984, of March 26, regulating the right of rectification) in order to extend the obligation of rectification to digital and social media, including particularly influential persons in social networks¹⁵³. This measure is included in the Action Plan for Democracy.

d) Proposals.

- **Recover the system of public and transparent competition** prior to the current system of parliamentary appointment of Board Members.
- **Establish safeguards for financial and operational independence, and plurality of information.**

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners

1. There is a generalized lack of transparency on media ownership.

a) Detected issue

According to the Media Pluralism Monitor 2024, **Spain is one of the nine high-risk countries for lack of transparency in media ownership**, along with Albania, Cyprus, Finland, Hungary, Romania, the Czech Republic and the Netherlands.

b) Relevant progress

The Media Freedom Act requires Member States to **set up national databases on media ownership**, to be managed by national regulators or other competent bodies (art 6.2). Similarly, the Action Plan for Democracy foresees the creation of a media register containing both public information on their ownership and the advertising investment they receive, which will be managed by the National Commission on Markets and Competition.

¹⁵² https://noticias.juridicas.com/base_datos/CCAA/824135-I-16-2023-de-27-dic-ca-madrid-medidas-para-la-simplificacion-y-mejora-de.html#a6

¹⁵³ <https://www.mjusticia.gob.es/es/institucional/gabinete-comunicacion/noticias-ministerio/ley-rectificacion>

C. Framework for journalists' protection, transparency and access to documents

Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications, referring also, if applicable, to follow-up given to alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists

1. Journalists continue to be targeted and attacked

a) **Detected issue**

In 2024, there have been several episodes of targeting and attacks on journalists, hindering their work and undermining press freedom.

The Safety of Journalists Platform of the Council of Europe recorded six alerts in 2024¹⁵⁴:

- The attack by a National Police officer against journalist Fermín Godira (*Público* newspaper) while he was covering a protest against the Valencian Government's management of the DANA floods.
- The dissemination of manipulated images to discredit journalist Raúl Solís (*Canal Red*) by MEP Alvis Pérez.
- The denial of accreditation to journalist Rosa Ronda by the Region of Murcia.
- The graffiti with death threats on the house of journalist David Gallardo (*Canal Sur*).
- The online threats to the program *Equipo de Investigación* (*La Sexta*) by the leader of Desokupa (eviction company).
- The approval of the decree-law modifying the majorities for the election of members of the Board of Directors of RTVE, hindering the independence of the body.

As we pointed out in last year's contribution, **the political party Vox continues to deny access to journalists from several media outlets to their campaign events and other activities**. On the electoral night of June 23, 2023, Vox banned media from the Prisa group¹⁵⁵. In January 2024, Vox denied access to *Público* newspaper to the General Assembly where Santiago Abascal was elected, without a vote, as leader of the party for the following four years¹⁵⁶.

The practice of **holding press conferences without allowing questions from journalists continues**, which has been criticized by journalist associations for "violating the rights to freedom of the press and information."¹⁵⁷ In April 2024, the Prime Minister held a press conference without questions to announce that he would not resign following his letter to the public in which he announced a few days of reflection after the complaint against his wife, Begoña Gómez, an issue that was denounced by the Federation of Associations of Journalists of Spain (FAPE)¹⁵⁸. More recently, the mayor of Ourense has replaced press conferences at the town hall with appearances without questions on his private YouTube channel, a measure that has been criticized by the College of Journalists of Galicia¹⁵⁹. Likewise, **it has become increasingly common to see institutional and representative figures pointing out and even insulting journalists and media outlets**¹⁶⁰.

¹⁵⁴

<https://fom.coe.int/en/alerte?idsPays=11709582&alertesActives=true&dateDebut=1704067200000&dateFin=1735603200000&nbElementDebut=0#search>

¹⁵⁵ <https://elpais.com/opinion/2023-07-21/vox-veta-a-el-pais.html>

¹⁵⁶ <https://www.publico.es/politica/vox-veta-publico-asamblea-general.html>

¹⁵⁷ <https://www.europapress.es/sociedad/noticia-fape-apm-denuncian-convoque-prensa-permitir-preguntas-presentacion-acuerdo-psoe-sumar-20231025142812.html>

¹⁵⁸ <https://www.apmadrid.es/la-fape-demanda-al-presidente-del-gobierno-que-convoque-a-la-prensa-para-explicar-su-proyecto-de-regeneracion/>

¹⁵⁹ <https://www.rtve.es/noticias/20241204/alcalde-ourense-susituye-ruedas-prensa-evitar-preguntas-prensa/16359124.shtml>

¹⁶⁰ See, as an example: <https://www.elmundo.es/espana/2024/05/22/664e0430e9cf4a4f4f8b4574.html>; https://www.larazon.es/espana/13-ataques-psoe-gobierno-prensa-mas-sonados-contenedor-basura_2024032065fb376417c56e0001c3fb96.html; y https://www.elplural.com/politica/espana/graves-insultos-periodistas-celebracion-alvise-perez_331593102

In December 2024, Alberto González Amador, a businessman accused of tax fraud and document falsification, and partner of the President of the Community of Madrid, requested the Supreme Court to investigate communications with six journalists from different media outlets. **FAPE has denounced this request as an attack on the professional secrecy protected by Article 20 of the Constitution**, which includes the right not to reveal sources¹⁶¹.

b) Progress

The Action Plan for Democracy foresees **the approval of the law on journalists' professional secrecy as a legal guarantee for the protection of sources**. However, no specific progress has been made in this regard.

Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

There has been no notable progress in this regard. The Action Plan for Democracy foresees the reform of Organic Law 4/2015, of March 30, on citizen security (known as *Ley Mordaza*) in Article 36.23, regarding the classification of infractions for the use of images of the State Security Forces. Later on, in October, the PSOE, Sumar, EH Bildu, and the PNV presented an **Organic Law proposal for the protection of freedoms and citizen security**, which is currently under review for amendments. This includes the reform of the mentioned article, among many other modifications to the law's infringement and sanction system¹⁶². It is worth noting that even though the proposal was declared urgent, the deadline for amendments has been extended three times.

Access to information and public documents by the public at large and journalists (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

1. **The Council for Transparency and Good Governance does not have sanctioning powers nor the capacity to enforce its own resolutions.**

a) Detected issue

The Council for Transparency and Good Governance does not have sanctioning powers to ensure compliance with its resolutions¹⁶³. As a result, a paradoxical situation arises where, when a public administration body does not implement a resolution and no one appeals the decision to the courts, administrative inaction has no consequences. This way, citizens who requested the information are either left without access to the required information or are forced to go back to the courts to achieve enforcement of the favorable final resolution.

Additionally, and despite the law having been in effect for 11 years, **its implementing regulation has not yet been approved**. Both the approval of the transparency regulation and the reform of the Transparency Law are commitments of the IV Open Government Plan 2020-2024¹⁶⁴. However, neither of these measures has been carried out, nor are they included in the Action Plan for Democracy or in the 2024 Annual Regulatory Plan.

¹⁶¹ <https://periodistasdearagon.org/2024/12/29/la-fape-denuncia-el-intento-de-vulnerar-el-secreto-profesional-de-periodistas-en-el-caso-gonzalez-amador/>

¹⁶² Access to the Bill: https://www.congreso.es/public_oficiales/L15/CONG/BOCG/B/BOCG-15-B-148-1.PDF#page=1

¹⁶³ Article 38 of Law 19/2013 on transparency, access to public information, and good governance: <https://www.boe.es/buscar/act.php?id=BOE-A-2013-12887>

¹⁶⁴ Access to the Plan: https://transparencia.gob.es/transparencia/dam/jcr:2a0d9dfb-0ee6-4329-a254-c83b09835f06/170123%20IV%20PLAN%20DE%20GOBIERNO%20ABIERTO_ACTUALIZACION.pdf

b) Relevant Data

Public information requests submitted by citizens continue to show an increasing trend in recent years. In 2023, citizens and other legitimated entities submitted 2,103 initiatives to the CTBG, of which 1,886 (98.68%) were claims for the protection of the right of access to public information¹⁶⁵. The remaining initiatives were of varying nature: 80 requests for access to information, 73 contentious-administrative appeals against Council resolutions issued in claims procedures, and finally, 64 complaints regarding the application of the Transparency Law.

c) Proposals

- **Reform Law 19/2013 on transparency, access to public information, and good governance** to grant the Council for Transparency and Good Governance executive and sanctioning powers so it can ensure the enforcement of its resolutions
- **Approve the necessary regulation** to develop the law.

d) Other relevant issues

The reform of the Official Secrets Law is still pending¹⁶⁶. It was not included in the 2024 Annual Regulatory Plan, but has been included in the Action Plan for Democracy.

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

1. Spain does not have a specific regulatory framework to protect journalists from Strategic Lawsuits Against Public Participation (SLAPPs)

a) Detected problem

In Spain, there has been a concerning rise in the use of SLAPPs, particularly against journalists and environmental groups. The abuse of defamation and slander lawsuits stands out.

b) Relevant Data

Between January 1st, 2022, and August 31st, 2023, a total of 47 SLAPPs were filed against 106 defendants in Europe¹⁶⁷. 17% of the cases were filed in Spain, making it the second country with the most cases after Italy.

Notable examples of SLAPPs in 2024:

- Alberto González Amador, a businessman and partner of the President of the Community of Madrid, who has been accused of tax fraud and document falsification, filed a defamation lawsuit against four journalists and RTVE for referring to him as a “confessed author of tax fraud.”¹⁶⁸
- Journalist Carlos Sosa has been accused of alleged crimes of secret disclosure, hate and harassment following a lawsuit filed by former judge Salvador Alba, convicted of judicial prevarication, bribery, and falsifying official documents. The Public Prosecutor's Office has requested his acquittal and both the

¹⁶⁵ 2023 Memory Council for Transparency and Good Governance:

https://www.consejodetransparencia.es/ct_Home/Actividad/memorias_planes/memoria2023.html

¹⁶⁶ <https://www.boe.es/buscar/act.php?id=BOE-A-1968-444>

¹⁶⁷ European Parliament. Cases of Strategic Lawsuits Against Public Participation (SLAPPs) Filed in 2022 and 2023.

[https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL_STU\(2023\)756468_ES.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL_STU(2023)756468_ES.pdf)

¹⁶⁸ <https://www.elmundo.es/espana/2024/12/09/6757545de9cf4ade068b4582.html>

Federation of Associations of Journalists of Spain (FAPE)¹⁶⁹ and the International Press Institute¹⁷⁰ have expressed support and asked for the charges to be dropped.

- The Provincial Court of Madrid confirmed the lower court's ruling dismissing the defamation action by the Kingdom of Morocco against journalist Ignacio Cembrero for accusing Moroccan intelligence services of being responsible for the Pegasus espionage. This is the fourth time the Kingdom of Morocco has taken Cembrero to court¹⁷¹.

c) Relevant Progress

- In April 2024, the EU Official Journal published the so-called anti-SLAPP Directive for the protection of individuals involved in public participation against manifestly unfounded claims or abusive legal actions ("Strategic Lawsuits Against Public Participation"). **Spain has until May 7, 2026, to transpose the directive**, a measure already included in the Action Plan for Democracy.
- The Action Plan for Democracy foresees a **comprehensive reform of the articles of the Criminal Code that could affect the right to freedom of expression**, including those involving state institutions, crimes against religious feelings, public ridicule, or other similar cases. The proposed aim is to "align with the legislation of neighboring countries" and comply with the jurisprudence of the European Court of Human Rights regarding defamation and its legal framework.

IV. Other institutional issues related to checks and balances

Information on measures taken to follow-up on the recommendations received in the 2024 Report regarding the system of checks and balances (if applicable)

No progress has been made regarding the recommendations included in the 2024 Rule of Law Report concerning the improvement of access to information. In particular, **the Citizen Security Law has not been reformed**. However, PSOE, Sumar, EH Bildu, and the PNV have presented a bill on the matter, which is currently being processed in parliament.

On the other hand, **bad practices related to the legislative procedure** highlighted in the 2024 Report continue, notably the use of urgent procedures, **and the creation of the Independent Authority for Equal Treatment is still pending**.

More generally, there is growing concern over the increasing **politicization of appointments to counterbalance bodies, particularly the Ombudsman and the judges of the Constitutional Court**. In September 2024, José María Macías Castaño took office as a magistrate, appointed by the Popular Party. He has been removed by the Constitutional Court from deliberations on the constitutionality of the amnesty proposed by the Supreme Court for having been a member of the General Council of the Judiciary that prepared the legality report on the law¹⁷².

A. The process for drafting and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders' 10/public consultations (including rules and practices on the transparent

¹⁶⁹ <https://fape.es/la-fape-reitera-su-respaldo-a-carlos-sosa-ante-la-decision-de-la-audiencia-provincial-de-madrid-de-dar-via-libre-al-juicio-contra-el-periodista/>

¹⁷⁰ <https://www.publico.es/politica/international-press-institute-pide-retiren-cargos-periodista-carlos-sosa-querella-exjuez-alba.html>

¹⁷¹ https://www.elconfidencial.com/espana/2024-11-19/desestimada-demanda-marruecos-cembrero-espiar-pegasus_4006339/

¹⁷² <https://confilegal.com/20250115-el-tc-recusa-al-magistrado-jose-maria-macias-de-las-deliberaciones-sobre-la-inconstitucionalidad-de-la-amnistia/>

participation of civil society to policy development and decision-making processes), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase.

1. Low degree of regulatory compliance and high unpredictability

e) Detected problem

The main tool for evaluating legislative activity is the Regulatory Evaluation Report, which is produced to assess the Annual Regulatory Plans designed by the Government itself, with forecasts for the approval of regulations in the corresponding year. The 2023 report reveals, once again, **a trend of medium-low compliance**: 40% of initiatives were approved from those initially planned, compared to 53% in 2022, not counting those still in progress¹⁷³. This non-compliance also affects regulations that incorporate or implement European Union law (49%). Furthermore, the number of regulatory initiatives approved in 2023 that were not initially foreseen in the Annual Regulatory Plan remains very high.

b) Relevant Data

- In 2023, only 40% of the initiatives planned in the Annual Regulatory Plan were approved, compared to 53% in 2022 (not including those still in progress).
- In 2023, 49% of the regulations that incorporate or implement European Union law were approved (14 out of the 35 planned), compared to 68% in 2022. Of the 27 directives planned, only 14 were transposed.
- In 2023, 214 Royal Decrees, 4 ordinary laws, and 1 organic law were approved that were not included in the Annual Regulatory Plan for that year.

c) Other Issues

The 2024 Annual Regulatory Plan does not foresee the approval of the following relevant regulations:

1. **The amendment of the Transparency Law.**
2. **The regulation of interest groups:** this was included in the 2023 Annual Regulatory Plan as the “Transparency and Integrity in Interest Groups Activities Law” and is a commitment of the Recovery, Transformation, and Resilience Plan (Component 11, Reform 1).
3. **The reform of the Official Secrets Law:** a recurring recommendation in the European Commission’s Rule of Law Reports (2022, 2023, and 2024).

2. There is no uniform system for public policy evaluation

a) Detected issue

There are clear deficiencies in regulatory and public policy evaluation. The main ex-ante evaluation tools foreseen by our regulations are the Regulatory Impact Analysis Report (MAIN) and the existence of a Regulatory Coordination and Quality Office (OCCN). Regarding the latter, while its operation has provided a significant boost to ex-ante evaluation of regulatory projects, according to the Court of Auditors, it has clear deficiencies, possibly due to lack of sufficient resources¹⁷⁴. **Many reports issued are either late or produced within a very short time frame, which results in the analysis focusing on purely formal aspects.** Additionally, there is no qualitative follow-up on the recommendations and observations made, only quantitative.

¹⁷³ 2023 Annual Report on Normative Evaluation: https://transparencia.gob.es/transparencia/dam/jcr:8cdfd017-7c45-46c8-a939-fcea757c95ce/2024-0921_Informe_anual_de_evaluacion_normativa_2023_IAEN_ACC_FINAL.pdf

¹⁷⁴ Audit Report on the Regulatory Impact Analysis in the Ministries of the Political-Administrative Area of the State: <https://www.boe.es/boe/dias/2023/01/05/pdfs/BOE-A-2023-331.pdf>

b) Relevant Data

- More than 20% of the files in the sample analyzed by the Court of Auditors do not include all the documentation collected for the preparation of the regulation or all versions of the regulatory project or the Regulatory Impact Analysis Report.
- In most files, the Regulatory Impact Analysis Report contains an insufficient analysis of alternatives to address the regulated situation, as well as a poor description of the procedures and consultations carried out.
- At the end of 2019, the Regulatory Coordination and Quality Office had 84 reports pending issuance, 17.1% of the total report requests submitted up to that date. Additionally, in that year, 62.9% of reports were issued late.
- In 12 cases, the time between the formal submission of the report request and the approval of the regulatory project by the Council of Ministers was 0 or 1 days.

c) Progress

Some progress has been made, likely related to the management of the COVID-19 pandemic and the need for comprehensive follow-up on the implementation of the EU's Recovery, Transformation, and Resilience Plan. Notably, the commitment included in Component 29 of the Plan on spending efficiency, which involves the conduct of the Independent Fiscal Responsibility Authority (AIReF) of so-called Spending Reviews. In March 2024, the fourth edition was published¹⁷⁵, featuring several evaluation projects in different phases, covering topics such as active employment policies, university education scholarships, talent and employability promotion in research and innovation, and municipal waste management.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

1. Disproportionate Use of Royal Decree-Laws

a) Detected issue

The Royal Decree-Law is an **exceptional legal instrument**, provided by Article 86.1 of the Spanish Constitution, for cases of "extraordinary and urgent necessity." Its abusive use represents a democratic degradation, as it bypasses other instruments that allow the preparation of regulations in a more deliberate manner, considering necessity, following rigorous evidence-based evaluation processes, with amendment procedures, public consultation processes, and the mandatory reports required by applicable regulations, typically those from the Council of State¹⁷⁶ and the General Council of the Judiciary¹⁷⁷.

¹⁷⁵ 2024 Report on the Recommendations Made in Public Spending Review Processes:

<https://www.sepg.pap.hacienda.gob.es/sitios/sepg/es-ES/Presupuestos/IRG/Documents/Informe%20Seguimiento%20SPENDING%20REVIEW%202024.pdf>

¹⁷⁶ The opinions of the Council of State are mandatory in the following cases, among others: regulatory provisions issued in execution of laws; laws and regulations issued in execution of international treaties or community law; challenges to general provisions before the Constitutional Court; review appeals; contractual modifications; termination of contracts and concessions when contractors oppose such termination; or in the case of liability proceedings, among others. Article 2 of Organic Law 3/1980, of April 22, on the Council of State, establishes that the consultation with the Council will be mandatory when this or other laws specify it, and optional in other cases. The opinions of the Council will not be binding, unless the law specifies otherwise.

¹⁷⁷ Under Article 561 of the Organic Law of the Judiciary, the following draft laws and general provisions will be submitted for a report to the General Council of the Judiciary: Amendments to the Organic Law of the Judiciary; Determination and modification of judicial districts, as well as their capitals; Establishment and modification of the staffing of judges and magistrates, judicial secretaries, and personnel in the administration of justice; The organic statute of judges and magistrates; The organic statute of judicial secretaries and other personnel in the administration of justice; Procedural rules or those affecting legal-constitutional aspects of the protection of fundamental rights before ordinary courts; Rules affecting the constitution, organization, functioning, and governance of courts; Criminal laws and regulations on the penitentiary system; Any other issue deemed appropriate by the government, the Cortes Generales, or, where applicable, the Legislative Assemblies of the Autonomous Communities.

Furthermore, the Royal Decree-Law does not allow for the introduction of amendments, as it can only be validated or rejected in a vote on the entire text (unless, during the validation process, it is chosen to be processed as a bill). Royal Decree-Laws are becoming increasingly voluminous and cover all kinds of matters, making their approval without proper parliamentary debate and amendment introduction even more problematic. **This increasing abuse significantly undermines the legislative function of Parliament and the inevitable deterioration of the deliberative parliamentary process.**

This undermining of parliamentary functions is especially aggravated when it comes to **omnibus Royal Decree-Laws**, i.e., with heterogeneous content with no substantial connection between them. For validation, Congress is forced to vote on disparate issues in a block. In fact, this formula of omnibus Royal Decree-Laws can be politically used as a mechanism of coercion against parliamentary groups, forcing them to vote in block on a specific matter that is hard to oppose, thus avoiding debate on other more complex or less "popular" issues.

b) Relevant data

- **In 2024, there were a total of 24 laws approved, of which 11 were Royal Decree-Laws, i.e., 45.8%.** This represents a significant increase compared to 2022 and 2023, where Royal Decree-Laws accounted for 27% and 32%, respectively, of the total laws approved.
- **None of the Royal Decree-Laws processed as bills in 2024 (11) or in 2023 (8) have been approved as laws.**
- **3 of the 11 Royal Decree-Laws approved in 2024 were omnibus**, representing 27.3%, compared to 62.5% of omnibus Royal Decree-Laws in 2023.
 - Royal Decree-Law 2/2024, May 21, adopting urgent measures to simplify and improve unemployment benefits and to complete the transposition of EU Directive (EU) 2019/1158 on the reconciliation of family and professional life for parents and caregivers, and repealing EU Directive 2010/18.
 - Royal Decree-Law 4/2024, June 26, extending certain measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East and adopting urgent fiscal, energy, and social measures.
 - Royal Decree-Law 9/2024, December 23, adopting urgent economic, tax, transport, and Social Security measures, and extending certain measures to address social vulnerability.

c) Other Relevant Aspects

On December 24, 2024, the Official State Gazette published Royal Decree-Law 9/2024, December 23, adopting urgent economic, tax, transport, and Social Security measures, and extending certain measures to address social vulnerability. Besides being an omnibus Royal Decree-Law, **its Article 10 modifies Law 7/2024, December 20**, establishing a Complementary Tax to ensure a minimum global tax level for multinational groups and large national groups. This law, **which entered into force on the 22nd, had undergone nearly five months of parliamentary processing despite being declared urgent, with ten extensions of the amendment procedure.**

On December 26, the Minister of the Presidency, Justice, and Relations with Parliament posted a tweet claiming that they were "the government that passed the most laws in 2024".¹⁷⁸ Besides evidencing a clear "laws by weight" mentality, this statement undermines the separation of powers, as in Spain, the Government does not "pass" laws; that is the function of the Cortes Generales.

2. Abuse of urgency declaration in parliamentary processing

a) Identified Problem

The urgency procedure, as foreseen in Article 93 of the Congress of Deputies' Rules, allows the reduction of processing deadlines by half. It is the Bureau that, at its discretion, decides on the urgency procedure, proposed by two parliamentary groups or by one-fifth of the deputies.

¹⁷⁸ Access to the tweet: <https://x.com/felixbolanosq/status/1872371998787293378?t=JgloVbPKdY8JM3dh-F2Xfg&s=08>

The abuse of the urgency procedure leads to a deterioration of parliamentary debate and, therefore, of the legislative process. It is also common that despite the urgency declaration, the amendment period is extended several times. This is the case, for example, with the Cinema and Audiovisual Culture draft law, whose amendment period has been extended 16 times¹⁷⁹.

It should also be noted that this appeal to urgency has also extended to the request for mandatory reports from the Council of State in regulatory procedures.

b) Relevant Data

- In 2024, **out of a total of 176 initiatives, 31 were declared urgent** (i.e., 17.61%). This represents a significant increase compared to 2023, where the balance was 142 to 13 (9.15%). Notable examples include:
 - Draft law on Corporate Information on Sustainability, modifying the Commercial Code, the Companies Act, and the Auditing Law (under processing).
 - Draft law amending Law 17/2006 on state-owned radio and television, to adopt urgent measures regarding the legal regime applicable to RTVE (under processing).
 - Draft law on Cinema and Audiovisual Culture (under processing).
 - Draft law amending Law 1/2005 on the regulation of the emissions trading system for greenhouse gases (under processing).
- In 2023, out of 1,514 opinions issued by the Council of State, 98 were urgent, 13 of which had a reduced urgency period¹⁸⁰.

c) Key example: Amnesty Law

In addition to being presented as a bill by the Socialist Parliamentary Group, the Amnesty Law¹⁸¹ was processed via urgency to limit parliamentary debate. Unlike other bills or draft proposals declared urgent, whose amendment procedures are often extended multiple times, the amendment period for the Amnesty Law lasted just 26 calendar days, from December 22th, 2023, to January 17th, 2024. This shows the Government's and the Congress majority's intent to rush the process in order to fulfill a promise made to Junts per Catalunya in exchange for their votes for President Pedro Sánchez's investiture agreement.

In response, the Senate (the chamber with an absolute majority of the opposition party, the PP) introduced an *ad hoc* amendment to its Rules, enabling the Senate Bureau to decide whether to accept the urgency procedure introduced by Congress¹⁸², **with the explicit goal of slowing down the processing of the Amnesty Bill.**

The law was finally approved with 177 votes in favor and 174 against. Despite Spanish law requiring organic laws to be approved by absolute majority, it is noteworthy that the Venice Commission, in its opinion on the rule of law requirements for amnesties, with special reference to Spain's Amnesty Bill, emphasized that amnesties, due to their potentially divisive effects on society, should be approved by **sufficiently broad qualified majorities**, with an inclusive process that favors dialogue and the establishment of restorative justice mechanisms¹⁸³.

¹⁷⁹ Access to the parliamentary process: https://www.congreso.es/es/busqueda-de-iniciativas?p_p_id=iniciativas&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&iniciativas_mode=mostrarDetalle&iniciativas_legislatura=XV&iniciativas_id=121/000026

¹⁸⁰ Council of State 2023 Memory: <https://www.consejo-estado.es/wp-content/uploads/2024/07/Memoria-2023.pdf>

¹⁸¹ Organic Law 1/2024, of June 10, on Amnesty for the Institutional, Political, and Social Normalization in Catalonia.

¹⁸² Reform text available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-23340

¹⁸³ Access to the Statement: [https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD\(2024\)003-e&lang=en](https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD(2024)003-e&lang=en)

3. Undercover government draft laws

a) **Detected issue**

The Government has legislative initiative through the so-called “projects of law” (*proyectos de ley*), draft laws that are given priority parliamentary processing as they do not require consideration by the chambers. For their elaboration the Government Law¹⁸⁴ foresees various requirements, including studies and consultations, such as reports from consultative bodies like the Council of State, public consultations, or the Regulatory Impact Analysis Report.

Increasingly, the parties forming the Government, instead of using the aforementioned process, **submit legislative proposals through their parliamentary group in Congress**. This maneuver allows them to bypass the required preliminary procedures, while also diminishing the legislative quality of the norms.

b) **Relevant Data**

- In 2024, **the Socialist Parliamentary Group registered 13 legislative proposals**, two of which were jointly with the Plurinational SUMAR Parliamentary Group. Notable examples include:
 - Draft Organic Law amending Article 80 of Organic Law 1/1979, General Penitentiary Law, to recognize penitentiary officials as law enforcement agents (under processing).
 - Draft Law to improve the protection of live organ or tissue donors for transplantation (approved with amendments).
 - Draft Organic Law reforming Organic Law 6/1985, the Judiciary Act, and Organic Law 50/1981 on the Statute of the Public Prosecutor (approved with amendments). Presented jointly with the Popular Parliamentary Group.
 - Draft Organic Law modifying Law 1/2002 on the right of association (under processing).
 - Draft Organic Law for the protection of civil liberties and security (under processing), presented jointly with the Plurinational SUMAR Parliamentary Group, EH Bildu, and the Basque Parliamentary Group.
 - Draft Law amending Royal Legislative Decree 1/2007 on the General Law for the Defense of Consumers and Users (under processing).
- In 2024, **the Plurinational SUMAR Parliamentary Group submitted 21 legislative proposals**, 2 of them jointly with the Socialist Parliamentary Group.
- **Of a total of 97 legislative proposals, 32 were submitted by a government party** (or both), nearly 33%. This represents a substantial increase compared to 2023, where 18 proposals out of 95 came from government parties, i.e., around 19%.

Rules and application of states of emergency (or analogous regimes), including judicial review and parliamentary oversight

1. Configuration of Exceptional States and Constitutional Fit of Rights-Restricting Measures

a) **Detected issue**

The Spanish Constitution (Article 116) provides for three extraordinary situations that allow the Government to temporarily restrict rights and freedoms to address severe crises: states of alarm, exception, and siege, regulated by Organic Law 4/1981¹⁸⁵.

¹⁸⁴ Law 50/1997, November 27th, on the Government.

¹⁸⁵ <https://www.boe.es/buscar/act.php?id=BOE-A-1981-12774>

The **state of alarm** can be declared by the Government, in all or part of the national territory, when public disasters, health crises, severe pollution situations, the paralysis of essential public services for the community, or shortages of essential products occur. The declaration is made by a Council of Ministers decree, which must specify the territorial scope, effects, and duration (maximum of 15 days). Furthermore, it can only be extended with the express authorization of the Congress of Deputies, which will establish the scope and conditions for the extension.

To declare a **state of exception**, the Congress of Deputies must request authorization from the Congress in cases where “the free exercise of citizens' rights and freedoms, the normal functioning of democratic institutions, essential public services for the community, or any other aspect of public order, are so severely disturbed that the exercise of ordinary powers would be insufficient to establish and maintain it” (Article 13.1). Finally, **the state of siege** must be declared by the Congress of Deputies in cases where an insurrection or act of force against Spain's sovereignty or independence, its territorial integrity, or its constitutional order occurs or threatens to occur (Article 32).

During the COVID-19 pandemic, the state of alarm was declared three times. Although initially, this decision met with little resistance from opposition parties or civil society, as the weeks passed and successive extensions were required, voices emerged questioning whether the state of alarm was the appropriate instrument for the suspension or limitation of rights as broad as the freedom of movement (Article 19 of the Spanish Constitution), or if instead, the state of exception should have been declared.

b) Constitutional Court rulings

The Constitutional Court has ruled several times on the constitutionality of the state of alarm. In November 2024, it issued its latest ruling, **changing its previous doctrine** set in its July 2021 judgment.

While in July 2021, the Court stated that **the criterion for differentiating between the suspension and restriction of a fundamental right was the intensity of the interference, the November 2024 ruling used a formal criterion**. It concluded that **the distinction between a restriction and a suspension does not depend on the intensity of the measure, but on the enabling constitutional provision**: in states of exception and siege, the fundamental right temporarily loses its effect and is suspended, whereas the state of alarm leads to a limitation or restriction, regardless of its intensity.

Thus, while in July 2021, the Constitutional Court declared some provisions of the decree that approved the state of alarm in March 2020 to be unconstitutional, specifically the home confinement measure, concluding that the constitutionally appropriate framework for adopting this measure would have been the state of exception, with this new argument, it supports that **the declaration of the state of alarm is sufficient to restrict fundamental rights, as long as there is a criterion of proportionality**.

c) Proposals

- **Review Organic Law 4/1981 on states of alarm, exception, and siege** to align it with the case law established by the Constitutional Court and to incorporate measures that adapt it to the reality of the current distribution of competences between the State and the Autonomous Communities.

Regime for constitutional review of laws

1. Severe Politicization of the Constitutional Court

a) Detected issue

The Constitutional Court is composed of 12 members: 4 proposed by the Congress and 4 proposed by the Senate by a three-fifths majority, 2 proposed by the Government, and 2 proposed by the General Council of the Judiciary, also by a three-fifths majority¹⁸⁶. Magistrates are appointed for a period of 9 years, and the Court is gradually

¹⁸⁶ Article 159.1 of the Spanish Constitution

renewed in thirds every 3 years, with appointments from judges, prosecutors, university professors, civil servants, and lawyers, all of whom must be recognized experts with more than fifteen years of professional experience.

In recent years, **the trend of appointing magistrates with previous political connections has increased**. Since 1980, there have been 74 judges in the Constitutional Court, of which 25 had political ties (33.8%). **The current composition of the Court represents nearly a third of those political ties.**

Currently, eight out of twelve magistrates have previously held public office (that is, 66.6%), including appointments as members of the General Council of the Judiciary or as State Attorney General, promoted by political parties that later proposed them as constitutional magistrates. Furthermore, of the 4 who do not have such ties, 2 were appointed by the General Council of the Judiciary, and the other 2 were part of the 2017 renewal. Another concerning element is **the transition from politically appointed positions to the Constitutional Court judge role in very short periods**. This is especially problematic when moving directly from government positions to the Court.

Moreover, **there has been a shift in the professional origin of magistrates**. The unwritten rule that Constitutional Court judges with a judicial background should have the status as Supreme Court judges is no longer being observed: of the 8 judges with a judicial background, 4 do not hold such status. Also, there is a noticeable dominance of magistrates from the judicial career, as opposed to the previous trend where most were academics.

Recusals and abstentions

This situation has led to multiple abstentions and recusals. The Plenary has repeatedly accepted the abstention of former Minister Campo, including the question of unconstitutionality raised by the Supreme Court regarding the Amnesty Law. Furthermore, in ruling 62/2023, his abstention was accepted for 19 cases related to various agreements by the Council of Ministers or bills in which he participated during his time as a minister. This means that, practically speaking, a judge in such circumstances is unable to perform their duties normally, which complicates the Court's overall work by requiring the resolution of abstention requests and reducing the number of magistrate available to handle many cases.

Tendency to vote in ideologically aligned blocks in politically sensitive cases

In 2023, **the Plenary resolved 7/4 (progressive/conservative blocks) 21 cases (28.38%)**, while 25 cases were decided unanimously and 25 with different majorities. In contrast, only 8 cases were decided "by block" in 2022 (8.57%). However, the ideological block division systematically occurs when dealing with politically sensitive cases. For instance, this has occurred in ruling STC 128/2023 of October 2nd, regarding the reform of the Organic Law of the Judiciary, which determined that the General Council of the Judiciary cannot make appointments while in office; or in ruling STC 44/2023 of May 9th, concerning the abortion law.

b) Relevant information

- In November 2021, the renewal of the third of the judges corresponding to the Congress of Deputies took place. This pact represented **a compromise to appoint magistrates favorable to both parties** (Enrique Arnaldo and Concepción Espejel, both former members of the General Council of the Judiciary appointed by the PP; and Inmaculada Montalbán and Ramón Sáez, former General Council of the Judiciary members appointed by the PSOE and Izquierda Unida, respectively).
- In December 2022, the renewal of the third of the judges corresponding to the General Council of the Judiciary and the Government was carried out. **The two magistrates proposed by the Government had maintained significant ties with it:** Juan Carlos Campo Moreno, Minister of Justice until July 2021; and Laura Díez Bueso, Director General of Constitutional Affairs and Legal Coordination at the Ministry of the Presidency, Relations with Parliament, and Democratic Memory until April 2022. **This was the first time the Government had nominated as constitutional magistrates people who had been part of it.**
- In June 2024, PP and PSOE agreed on the appointment of the vacant Constitutional magistrate position, whose selection corresponds to the Senate: José María Macías Castaño, a career judge **and former General Council of the Judiciary member proposed by the PP.**

c) Proposals

- **Establish a "cooling-off" period** for individuals who have held political or representative office, which could be five years, as is the case for the State Attorney General.
- **Establish a system for objectifying appointments** by introducing more demanding requirements, such as more years of experience and an expert evaluation system. In this regard, the proposals outlined in the document "Best Practices for Appointments of Constitutional Court Judges and Members of the General Council of the Judiciary" prepared by the Hay Derecho Foundation, can be consulted¹⁸⁷.

2. Other Relevant Issues

a) Temporality and discretion in the appointment of Constitutional Court attorneys

In 2023 and 2024, vacancies for Constitutional Court attorneys were announced, but all were in **temporary assignment status**. This has been the practice for several decades, avoiding the announcement of permanent lawyer positions.

Given the importance of the body, the way in which vacancies are filled is highly relevant in terms of **transparency and objectivity in the selection process**. The Constitutional Court's Organization and Staff Regulations stipulate that vacancies should be filled through a competitive exam¹⁸⁸, which should include an initial phase of evaluating academic and professional merits and a second phase of an opposition with two exercises.

However, **temporary positions are freely appointed by the Constitutional Court**, based on proposals from three judges and by an absolute majority of the Plenary. This temporary assignment system **lacks a known objective scoring system for evaluating the merits of candidates**. Moreover, it reserves a sort of "right of presentation" for candidates from which the Plenary will eventually choose.

b) Average time for resolution

- The **average time to resolve constitutional challenges has notably increased in recent years, from 9.5 months in 2018 to 24.6 months in 2023**¹⁸⁹.
- However, **the average time to resolve amparo appeals has shown a downward trend, from 13.8 months in 2018 to 8.28 months in 2023**.
- It is problematic that, in certain cases, **the Constitutional Court can manage the resolution times, significantly delaying them** and avoiding ruling on certain issues. The most striking case in recent years has been ruling STC 44/2023 of May 9th, concerning the abortion law, which was appealed in 2010

¹⁸⁷ Best practices for political appointments to constitutional guarantee bodies:

<https://www.hayderecho.com/wp-content/uploads/2023/12/Informe-buenas-practicas-2023.pdf>

¹⁸⁸ <https://www.boe.es/buscar/act.php?id=BOE-A-1990-18696>

¹⁸⁹ Data available in: <https://www.tribunalconstitucional.es/es/jurisprudencia/Paginas/resultados-busqueda-sentencias.aspx?pn=16>

B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions.

1. The Ombudsman, a politicized counterbalance body

a) Detected issue

The current Ombudsman, Ángel Gabilondo, transitioned directly from active politics—specifically, from being the PSOE candidate in the Madrid regional elections—to the Ombudsman position, with virtually no break between the two positions¹⁹⁰. **The appointment of a person so closely tied to the government to head a counterbalance body raises concerns regarding its independence and undermines the democratic system of checks and balances.**

b) Relevant Facts: the refusal to challenge the Amnesty Law

In Spain, there is no *actio popularis* allowing citizens to challenge the constitutionality of a law. Article 162.1 of the Constitution grants standing to challenge a law's constitutionality to the Prime Minister, the Ombudsman, 50 deputies, 50 senators, and the executive bodies and Assemblies of the Autonomous Communities.

Between June and September 2024, over 30 citizens and entities approached the Ombudsman requesting him to file a constitutional challenge against the Amnesty Law. He refused, citing a series of formal and substantive reasons, which, according to the Hay Derecho Foundation, are insufficient¹⁹¹, particularly given the lack of credibility of an Ombudsman with strong political ties to the government.

2. The Court of Auditors systematically fails to fulfill its duty of external control over public spending

a) Detected issue

The Court of Auditors exercises exclusive external control over public spending concerning the state administration and its dependent agencies and entities¹⁹². Article 13 of the Organic Law of the Court of Auditors mandates the Court to issue an annual report on the external control of public spending, which should include the following aspects:

- a) Compliance with financial regulations for the public sector.
- b) Budget execution.
- c) The rationality of public spending execution based on efficiency and economic criteria.
- d) The economic and financial activity of public companies and subsidy matters.

However, **the reports published by the Court of Auditors lack a fiscalizing nature**, meaning they do not allow citizens to understand the extent of the control conducted by this institution, making it difficult for the public to gauge compliance with public spending regulations.

Moreover, **political influence over the appointment of its members has been noted**. The latest renewal of the body in 2021 was, once again, the result of political bargain between the two main parties, PP and PSOE, in a

¹⁹⁰ <https://www.publico.es/politica/angel-gabilondo-ministro-candidato-madrid-defensor-pueblo.html>

¹⁹¹ See the article by Germán M. Teruel on the Hay Derecho blog 'The Ombudsman and the Amnesty Law': <https://www.hayderecho.com/2024/10/17/el-defensor-del-pueblo-ante-la-ley-de-amnistia/#comments>

¹⁹² Article 136.2 of the Spanish Constitution.

multi-institutional agreement on appointments, including the Constitutional Court, the Ombudsman, and the Spanish Agency for the Protection of Data.

However, the most concerning issue is the **change in the Court of Auditors' stance regarding the accounting responsibility of the leaders of the *procés***. The amount demanded from the 34 former senior officials of the Catalan government accused of embezzlement was reduced from 9.5 million euros to 3.1 million euros—less than a third—following a majority decision of the full Court¹⁹³. This radical change in stance was reportedly one of the demands of ERC to the Government in exchange for approving the 2022 General State Budget.

b) Other relevant aspects

Article 8 of the Amnesty Law establishes the extinction of civil and accounting liabilities, including those currently under procedures before the Court of Auditors, except for those already declared in a final and executed judgment or administrative decision. This extinction applies to damages suffered by public administrations, not to private individuals.

The extension of the amnesty to civil and accounting liabilities is of questionable constitutionality¹⁹⁴ and, in some respects, may violate EU law. The Court of Auditors has raised a total of eight preliminary questions before the Court of Justice of the European Union (CJEU) regarding the procedure for restitution for expenses and payments made due to the illegal referendum on Catalan independence¹⁹⁵. Among other issues, the questions concern whether the extinction of accounting responsibilities could lead to discriminatory or unequal situations; whether the unilateral and imperative lifting of precautionary measures without any discretion for the judicial body is compatible with the EU Treaty; and whether the suspensive effect of raising the preliminary question and the final resolution of the CJEU are compatible with the Amnesty Law, given that the law imposes its absolute effectiveness (Articles 8.3, 10, and 13.3), thereby violating the principles of primacy and direct effect of EU law.

3. The Independent Authority for Equal Treatment and Non-Discrimination is still pending creation

a) Detected issue

In July 2023, the Law 15/2022 for Equal Treatment and Non-Discrimination was enacted, which envisioned the creation of an Independent Authority for Equal Treatment and Non-Discrimination. The law set a six-month period for its creation from the date it came into force, meaning the Authority should have been operational by January 14, 2023. However, its creation is still pending. Also, the Royal Decree, required by the law to establish the specific functions of the Authority, has yet to be issued.

The Alliance for the Equal Treatment Law, composed of fourteen NGOs such as Accem, CEAR, Red Cross, the Gypsy People's Secretariat, and Save the Children, has urged the Government to establish the Independent Authority as soon as possible and provide it with sufficient resources¹⁹⁶.

¹⁹³ <https://www.elmundo.es/cronica/2023/11/22/655b1abee4d4d809428b45b3.html>

¹⁹⁴ See the article by Germán M. Teruel on the Hay Derecho blog 'Amnesty, Civil and Accounting Liabilities, and Non-State Financial Interests': <https://www.hayderecho.com/2024/06/20/amnistia-responsabilidades-civil-contable/>

¹⁹⁵ Access to the order of the Court of Auditors: https://www.tcu.es/repositorio/989388e4-5524-4bca-a9db-eb1fd649e734/Auto%20Cuestion%20Prejudicial%20TJUE_2024.pdf

¹⁹⁶ Statement by the Alliance for the Equality of Treatment Law of July 1, 2024: <https://www.accem.es/avances-en-creacion-de-autoridad-independiente-por-la-igualdad-de-trato/>

Statistics/reports concerning the follow-up to recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years

- According to data from the Ombudsman, **the average response time of the Administration to the Ombudsman** was 57.19 days in 2024. This figure represents a setback compared to previous years (36.98 in 2023; 44.73 in 2022; 47.15 in 2021; and 60.37 in 2020)¹⁹⁷.
- **Regarding compliance with its resolutions**, the Ombudsman, in its 2023 Report, identified as "non-collaborating administrations" those that did not respond after the third request in 2023, including the Ministry of Foreign Affairs, European Union, and Cooperation (D.G. of the Foreign Service, concerning the situation of the Spanish Consulate in London due to Brexit), the Ministry of Culture (D.G. of Cultural Heritage and Fine Arts, related to the conservation and maintenance of cultural heritage assets in Murcia), and the Ministry of the Interior (D.G. of Internal Policy, on procedures at border posts, and the Undersecretariat of the Interior, on the denial of stateless status)¹⁹⁸.
- In general, **there is limited public follow-up on the recommendations issued by the Ombudsman to public administrations**. Although partial information is provided on the number of recommendations accepted, rejected, or left unanswered, the degree of implementation is not detailed, nor are deadlines for compliance established. This lack of information significantly reduces the real impact of its recommendations and compromises the ability to assess their effectiveness.

C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

As a general rule, in Spain, there is no specific publicity given to judicial or administrative decisions that review or are contrary to the actions of a public entity.

Judicial review of administrative decisions: short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

In general, the system of judicial review of administrative decisions favors public administrations. Their acts are presumed to be legal, and there have traditionally been strong limitations on standing to challenge them. The difficulties that individuals face in judicial proceedings to challenge acts of public administrations are significant. The system of prior administrative appeals is ineffective, except in the case of specialized bodies such as the Economic-Administrative Courts in tax matters or the Special Courts for Procurement in the area of public procurement (only for high-value contracts).

Regarding active legitimation and standing, we refer to what was stated in the section on accessibility to the courts.

¹⁹⁷ Data available in: <https://www.defensordelpueblo.es/transparencia/informacion-institucional-y-organizativa/tiempos-medios-de-respuesta/>

¹⁹⁸ Annex D of the 2023 Annual Report of the Ombudsman: <https://www.defensordelpueblo.es/wp-content/uploads/2024/03/D-No-colaboradoras.pdf>

Rules and practices related to the application by all courts, including constitutional jurisdictions, of the preliminary ruling procedure (Art. 267 TFEU)

In 2023, Spain referred **32 preliminary questions to the TFEU**, out of a total of 511 referred across the European Union¹⁹⁹. The majority were submitted by the Regional High Courts (11), followed by the Commercial Courts (5). In terms of subject matter, the most notable were the approximation of laws (12), freedom of establishment (12), and social policy (9).

Implementation of final judgments by the public administration and State institutions and follow-up given to supranational judgments, including decisions from the European Court of Human Rights, as well as available remedies in case of non-implementation

- According to the European Court of Human Rights' report on the execution of judgments, Spain had **30 pending ECHR judgments by the end of 2023**, including 1 enhanced procedure and 22 standard procedure cases²⁰⁰. The enhanced procedure case has been pending for over 5 years, and 3 of the standard procedure cases have been pending for five years or more. Among the pending executions, there are cases related to the lack of an effective remedy with suspensive effect against expulsion orders for migrants in the context of an accelerated asylum application procedure; the application of criminal provisions regarding the glorification of terrorism and insults to the Crown; and the dismissal by the Constitutional Court of an amparo appeal against Parliament for failing to appoint a new General Council of the Judiciary.
- Spain is one of the countries with more than 50% of judgments pending execution from the last 10 years²⁰¹
- At the European Union level, it is worth noting that the Commission has decided to take Spain to the CJEU **for failing to properly transpose the Directives on public procurement** (specifically, the Public Procurement Directive, the Public Procurement Directive in the public service sectors, and the Directive on the award of concession contracts)²⁰².

D. The enabling framework for civil society

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures to protect them from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services, as well as available remedies

1. Strategic Lawsuits Against Public Participation (SLAPPs)

a) **Detected issue**

In recent years, there has been a growing number of manifestly unfounded lawsuits and abusive legal actions in Europe. According to the Coalition Against SLAPPs in Europe, in 2023, there were 820 new cases, a significant

¹⁹⁹ Available data at: <https://www.poderjudicial.es/cgpi/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Aspectos-internacionales/Cuestiones-prejudiciales-iniciadas-ante-el-Tribunal-de-Justicia-de-la-Union-Europea/>

²⁰⁰ Inform available: <https://rm.coe.int/annual-report-2023/1680af6e81>

²⁰¹ "Justice delayed, Justice denied" (European Implementation Network & Democracy Reporting International) data available in the following link: https://static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/64a29f5698963750a81c90f7/1688379227726/Justice+Delayed+and+Justice+Denied_Final%282%29.pdf

²⁰² https://ec.europa.eu/commission/presscorner/detail/es/inf_24_6006

increase compared to 570 in 2022²⁰³. However, **it should be noted that Spain is one of the countries with the fewest identified SLAPPs** since 2010, with a total of 15 compared to 76 cases in France, 88 in Malta, or 128 in Poland.

Nevertheless, SLAPPs are of great importance from the rule of law perspective, as they involve the instrumentalization of the judicial system as a tool of intimidation, aiming to discourage public participation from weaker actors (journalists, media, civil society organizations, academics, etc.). By diverting resources and creating a fear of legal reprisals, SLAPPs undermine not only public participation, but also accountability and the right to information.

b) Relevant developments

In April 2024, **Directive 2024/1069 on the protection of individuals engaged in public participation against manifestly unfounded claims or abusive legal actions** ("Strategic Lawsuits Against Public Participation"), popularly known as the "anti-SLAPP" Directive²⁰⁴, was adopted. Its purpose is to protect individuals and entities involved in matters of public interest who are sued by more powerful actors, whether public or private, with the sole intention of deterring them from participating. The Directive proposes the regulation of **specific procedural safeguards within the civil** procedural framework of Member States.

Spain has until **May 7th, 2026** to transpose the Directive.

2. The Citizen Security Law is still pending reform

a) Detected issue

The Organic Law 4/2015, of March 30, 2015, on the protection of citizen security was enacted following the wave of social protests after the 2008 economic crisis. It allows the State Security Forces and Corps **to impose significant administrative fines on those participating in protests**, which introduces a disincentive to this form of public participation. The Council of Europe Commissioner for Human Rights has urged Spain to reform the law several times²⁰⁵.

b) Relevant Developments

- The government pact between the PSOE and Sumar for this legislature included a commitment **to repeal the Citizen Security law**. This commitment was also part of the coalition agreement between the PSOE and Podemos in 2019.
- The Democracy Action Plan also includes reforming the law, but only in its Article 36.23⁹, concerning the classification of sanctions for using images of the State Security Forces²⁰⁶.
- In October 2024, PSOE, Sumar, EH Bildu, and PNV presented the **Organic Law Bill for the protection of freedoms and citizen security**, which is currently under amendment proceedings.²⁰⁷ This Bill includes **a single article to modify Organic Law 4/2015 in several areas, but it does not repeal it**. The processing of this law highlights two legislative procedure abuses we mentioned in previous sections: it has been processed as a bill rather than a project of law, despite being presented by the two governing parties and being a coalition pact commitment; and it has been fast-tracked, although the amendment process has already been extended three times.

203 Access to data: <https://www.the-case.eu/wp-content/uploads/2023/08/20230703-CASE-UPDATE-REPORT-2023-1.pdf>

204 <https://eur-lex.europa.eu/eli/dir/2024/1069/oj?locale=es>

205 <https://www.swissinfo.ch/spa/la-comisaria-europea-de-ddhh-insta-a-espa%C3%B1a-a-reformar-la-ley-mordaza/47345820>

206 Access to plan: https://www.mpr.gob.es/prencom/notas/Documents/2024/2024-3002_Plan_de_accion.pdf

207 Access to parliamentary proceedings: https://www.congreso.es/es/busqueda-de-iniciativas?p_p=id=iniciativas&p_p lifecycle=0&p_p state=normal&p_p mode=view&iniciativas mode=mostrarDetalle&iniciativas legislatura=XV&iniciativas id=122/000131

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

We are not aware of any progress in this regard. However, it is worth noting the near total absence of public funds allocated to the promotion and defense of the rule of law, both at the national level and at the level of the European Union. It is noteworthy, for example, that the grants under the CERV program are mainly focused on the defense of social rights, which, while crucial in a rule of law, overlooks specific areas related to the defense of the institutional framework that ultimately enables the effective implementation of social rights.

E. Initiatives to foster a rule of law culture

Developments related to initiatives to foster a rule of law culture, please specify, which (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society, education initiatives, etc.)

At the Hay Derecho Foundation, we actively work to promote a culture of the rule of law. In 2024, we presented **our Second Report on the Rule of Law in Spain**, which analyzes the period from 2022 to 2023 using various quantitative and qualitative indicators to offer a rigorous study of the state of the rule of law in our country.

Additionally, there are several noteworthy activities worth highlighting:

- The Hay Derecho [blog](#) continues to be a reference in the legal-political field, with a **specific subscriber base of 1,376** and the accumulated collaboration of more than **800 experts**. The blog maintains a publication frequency of about four articles per week related to the rule of law.
- The [IX Hay Derecho Award](#), which this year was granted *ex-aequo* to lawyer Celia Carbonell, who achieved the annulment in the Supreme Court of a conviction against an innocent Moroccan citizen who spent 15 years in prison, and to the civil society entity Societat Civil Catalana, for its continued action in defense of the constitutional framework in Catalonia in response to the procés and the independentist drift. Furthermore, for the first time, a **special lifetime achievement award for the defense the Rule of Law** was given to Joan Llinares, former director of the Valencian Anti-Fraud Agency.
- Presentation of the **regional annexes** to the 2024 Rule of Law Report ([Catalonia edition](#), [Andalusia edition](#), and [Community of Madrid edition](#)), which complement the global analysis by providing a detailed approach to the particularities and challenges in each region.
- The publication of the [Dedómetro 2024](#), a comprehensive study that evaluates the merit and capacity of the highest officials of 40 state public sector entities, as well as the transparency in their management.
- The publication of an [Ethical Code for Government](#) in collaboration with the non-profit organization España Mejor, aimed at the President, Vice Presidents, and Ministers, with a self-regulatory nature and more ambitious than the current regulations.
- [Amnesty](#): After launching a petition campaign against the Amnesty Law in 2023, with more than **101,000 signatures** collected and delivered to the Congress of Deputies, the Foundation continued to monitor its legislative development and judicial application in 2024. After the law was approved, the Foundation emphasized the involvement of civil society and academic experts in the debate about the implications this law could have on the rule of law, which resulted in the appearance of our President before the Joint Constitutional and Justice Committees in the Senate in April 2024.
- Organization of several seminars and colloquiums, including:
 - [Presentation of the book *La amnistía en España. Constitución y Estado de Derecho* \(Amnesty in Spain. Constitution and the Rule of Law\)](#);
 - [Colloquium: "The Role of Civil Society in the Control of the Rule of Law and Power"](#);
 - [Colloquium: "Civil Society and the Amnesty Law: A Technical-Juridical Analysis from a Constitutional and European Law Perspective"](#);
 - [Meeting and book presentation *Huida de la responsabilidad* by Rodrigo Tena](#);
 - Online seminar: ["Judges: Freedom of Expression vs. Impartiality. Where is the Limit?"](#);
 - Online seminar: ["What Are We Talking About When We Talk About Terrorism? A Perspective from National and International Law"](#);
 - Online seminar: ["Investigative Committees: Legal Regulation and Political Praxis"](#);
 - Legal seminar: ["The Future of the Rule of Law." in collaboration with the Tatiana Foundation](#);
 - Webinar: ["Media Freedom: Regulation and Reality"](#);

- Organization of the [re:constitution's Third Fellows Exchange Meeting](#), a joint program of Forum Transregionale Studien and Democracy Reporting International.
- Participation in various debate spaces with **civil society organizations and academia**:
 - [X International Congress on Transparency and Open Government](#):
 - ["Amnesty for Understanding or Confrontation?"](#) Organized by the Trabajo y Democracia (ASTRADE) Association.
 - **Is the Rule of Law Fatally Wounded? X Intergenerational Meeting**. Organized by Foro de foros.
 - [Proposals to Renew the General Council of the Judiciary](#). Organized by +Democracia.
 - [People, Institutions, and Technologies: The Role of Constitutional and Constitutionally Relevant Bodies in Building the Open State](#). Organized by the Center for Political and Constitutional Studies.