

2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The annual Rule of Law Report lies at the centre of the European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, three editions of the Rule of Law Report have been published in 2020, 2021 and 2022.

In the preparation of the first three editions of the Rule of Law Report, the Commission has relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through the targeted stakeholder consultation [1]. The information provided has informed the Commission's country-specific assessments in preparing the Report. Building on the positive experience from the first three editions of the Rule of Law Report, the Commission is now inviting stakeholders to provide written contributions for the preparation of the 2023 Rule of Law Report through this targeted consultation.

The contribution to be provided should include (1) information on measures taken to implement the recommendations addressed to the Member State in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2022 [2] falling under the 'type of information' outlined in the next section.

The input should be short and concise and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published. Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

If you wish to submit information concerning several Member States, you will have to fill-in the questionnaire separately for each Member States (due to the size of the questionnaire). There is no limit to the number of contributions submitted by a single participant. In such cases, you are not required to repeat the information in the section "about you" that is non-mandatory nor the information on horizontal developments.

Please provide your contribution by **20 January 2023**. Should you have any requests for clarifications or encounter difficulties in filling in the questionnaire, you can contact the Commission at the following email

address: rule-of-law-network@ec.europa.eu.

[1] For the consultation for the 2022 Report, see https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en

[2] Unless the information was already submitted in the consultation for the previous Rule of Law Reports.

Type of information

The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

Legislative developments

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

Policy developments

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

Developments related to the judiciary / independent authorities

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[1])

Any other relevant developments

- Respondents are free to add any further information, which they deem relevant; however, this should be short and to the point.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

About you

* I am giving my contribution as

Judicial association or network

* Organisation name

250 character(s) maximum

ASOCIACIÓN PROFESIONAL DE LA MAGISTRATURA (APM)

Main Areas of Work

- ☒ Justice System
- ☒ Anti-corruption
- ☐ Media Pluralism
- ☐ Other

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

500 character(s) maximum

<https://apmnacional.es/>

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

* Country of origin

Please add the country of origin of your organisation

Spain

First name

Javier

Surname

Martínez Marfil

Email Address of the organisation (this information will not be published)



* Publication of your contribution and privacy settings

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- ☐ Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- ☒ Public - Your personal details (name, organisation name, transparency register number, country of origin will be published with your contribution).
- ☐ No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

☒ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2023 rule of law report.pdf](#)

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[list of topics 2023 Report.pdf](#)

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

Questions for contribution

The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member States in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2022 Rule of Law Report and (2) any other significant developments since January 2022[1]. Please include a link to and reference relevant legislation/documents (in the national language and/or where available, in English) if relevant. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

[1] Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czechia
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☒ Spain
- ☐ Sweden

I. Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

3000 character(s) maximum

A. Independence

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

(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)

3000 character(s) maximum

1.- Strengthen the statute of the Prosecutor General, in particular regarding the separation of the terms of office of the Prosecutor General from that of the Government.

Although the General Attorney of the State has already ceased (previously she was the Minister of Justice of the Government that appointed her, as soon as she left the ministry), the appointments continue having a strong political overtone and, often, the reports are not taken into account suitability informs of other constitutional bodies such as the General Council of the Judiciary.

The situation is far from offering guarantees of impartiality in the appointment of the leadership of the Public Prosecutor's Office, despite the fact that the rest of the prosecutors tend to carry out their work with professionalism and independence.

2.- Proceed with the renewal of the Council for the Judiciary.

The renewal process of the members of the General Council of the Judiciary continues to be in the hands of the political powers.

The lack of agreement between them (the two main parties) has led to the members appointed in their day continuing with their position extended for more than 4 years.

Instead of resolving the situation, accepting the recommendations of all the European organizations and changing the election so that it is carried out by the judges themselves, among their peers, they are considering reducing by law the consensus quorums for political elections, favoring the appointment directly by the government party alone, increasing the risk of political subjugation of the body

3.- Address the challenges related to the length of investigations and prosecutions to increase the efficiency in handling high-level corruption cases.

On the occasion of a political pact between the government party and parties whose leaders were condemned in the process of attempted secession from Spain by some leaders of Catalonia, legal procedures have been addressed to reduce the response to actions for which they were condemned: not only for sedition, but, particularly, for the fraudulent dispositions of public money to apply them to illegal purposes and prohibited by the Constitutional Court.

In this way, a modification of the Penal Code that supposes a reduction of the penalty (especially the one that prevents running for election as public office) has been recently approved.

This modification reduces the penalties not only for these political leaders who were convicted, but also for anyone who misappropriates or fraudulently manages public money.

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

3000 character(s) maximum

The Spanish Constitution of 1978 indicates in its article 117.2 CE: "Judges and Magistrates may not be separated, transferred or retired except for one of the causes and with the guarantees provided by law". For its part, the Organic Law of the Judiciary refers to immobility in its article 1 LOPJ (which is a reproduction of article 117.1 of the 1978 Constitution), and dedicates to the immobility of judges and magistrates the first chapter of the second title of his fourth book (articles 378 to 388 LOPJ).

Immobility, as regulated in Spanish law, determines the impossibility of removing a judge or magistrate from the destiny assigned to him, except for the causes and by the means established by law. In the words of the Spanish Constitutional Court (Sentences numbers 98/1989 and 204/1994), "Immobility means, according to its general meaning, that, appointed or appointed a Judge or Magistrate in accordance with its legal status, cannot be removed from office unless by virtue of reasonable causes assessed or limited and previously determined".

The organic judicial legislation contains guarantees of absolute immobility and clearly defines the causes of loss of the status of judge or magistrate (voluntary resignation, loss of Spanish nationality, disciplinary sanction for separation from the Judicial Career, sentence of custodial sentence for intentional crime, cause of disability and retirement: article 379 of the Organic Law of the Judiciary), but also of relative immobility, which can only be lost in cases strictly assessed by law (for example, due to an administrative situation of leave of absence voluntary, which implies the loss of the destination); There are cases in which the judge is removable from the knowledge of a matter, but without that determining the loss of the destiny he occupies: this is the case, for example, when there is a reason for abstention or recusal.

Promotion of judges and prosecutors (incl. judicial review)

3000 character(s) maximum

Article 311.1 of the Organic Law of the Judiciary 6/1985, of July 1, modified by Organic Law 1/2009, of November 3, complementary to the Law of reform of procedural legislation for the implementation of the new Judicial Office, provides that: "of every four vacancies that occur in the category of Magistrate, two will give rise to the promotion of the Judges who occupy the first place in the ranks within this category. (...)

The third vacancy will be filled, between Judges, through selective tests in the civil and criminal jurisdictional orders, and specialization in the contentious-administrative, social and commercial orders.

The fourth vacancy will be filled by competition between jurists of recognized competence and with more than ten years of professional practice...".

The main criterion for promotion is, therefore, that of seniority in the judicial career, combined with criteria of specialty in the jurisdiction, although there are forms of discretionary appointment. For these appointments, the General Council of the Judiciary has the power to: 1- Propose the appointment of the President of the Supreme Court and the CGPJ. The candidate is elected by the Plenary, during its constituent session, by a qualified majority of three-fifths that is calculated on the totality of the twenty-one members of the Plenary. The president is appointed by the King, by royal decree endorsed by the President of the Government. 2.-To appoint, by means of a royal decree countersigned by the Ministry of Justice, the magistrates of the Supreme Court and presidents of Courts and Chambers. 3.-Appoint the Vice President of the Supreme Court, the Secretary General, the Deputy Secretary General of the General Council of the Judiciary and other positions close to the organization of the Council itself.

The Fiscal Career, according to its statute Law 50/1981, is made up of the different categories of Prosecutors that form a single Body, organized hierarchically (article 32), which are: 1st, Prosecutors of the Supreme Court, equated to High Court Magistrates Court (the Lieutenant Prosecutor of the Supreme Court will be considered the President of the Chamber); 2nd, Prosecutors, equated to Magistrates; and, 3rd, Lawyers-Prosecutors, equated to Judges.

The destinations corresponding to the first category, those of Prosecutors of the Supreme Court, those of Superior Prosecutors of Autonomous Communities and those of Chief Prosecutors will be provided by the Government, at the proposal of the State Attorney General (article 36.1 of the Organic Statute). The main positions in the Prosecutor's Office of discretionary appointment have a dependency of the State Attorney General. The other fiscal destinations will be provided through a competition between officials of the category, attending to the best ranking position ... (article 36).

Allocation of cases in courts

3000 character(s) maximum

The competent court to decide the distribution of cases is the Judge Dean, assisted by his LAJ, and the President of an Audience or the Supreme Court, when an appeal has been filed (arts. 160.9 and 167.2 and 168.2. To LOPJ) .

Government Chambers of the Superior Courts of Justice have the responsibility to approve the rules for the distribution of their constituency, with objective criteria for the distribution of matters to assign their knowledge to the different Courts or Sections.

By Order JUS / 1415/2018, of December 28, the Agreement between the General Council of the Judiciary and the Ministry of Justice to determine the system for measuring the workload of the organs was published in the Official State Gazette judicial, establishing the following:

Judicial body / Entry module

NATIONAL AUDIENCE. CRIMINAL ROOM; OF THE CONT.-ADMVO. AND OF THE SOCIAL .; between 100 and 225 cases per magistrate and year.

CENTRAL COURTS OF INSTRUCTION. 600 issues per organ and year.

CENTRAL COURT OF PENALTY. 110 matters per organ and year.

CENTRAL COURTS OF CONT.-ADMVO. 415 cases per organ and year.

T.S.J. CIVIL AND CRIMINAL ROOM-APPEAL SECTION. 125 cases per magistrate and year.

T.S.J. LIVING ROOM-ADMVO. Y SALA SOCIAL on 300 cases per magistrate and year (m / y)

PROVINCIAL HEARING CIVIL SECTIONS. 200 m / y cases (corrective index of 1.5 for commercial matters and 0.75 for family matters regarding pure civil matters).

PROVINCIAL HEARING CRIMINAL SECTIONS. 300 issues m / y.

PROVINCIAL HEARING MIXED SECTIONS. 260 civil and criminal matters m / y.

COURTS OF FIRST INSTANCE AND INSTRUCTION. 680 civilians / 1000 penalties

680 civil matters including voluntary jurisdiction and executions and 1000 criminal records per organ and year.

COURTS OF FIRST INSTANCE. 1,200 cases including voluntary jurisdiction and executions (corrective index of 1.5 for commercial matters and 0.8 for family matters regarding pure civil matters).

FAMILY COURTS. 1,323 matters including voluntary jurisdiction and executions.

COURTS OF INSTRUCTION. 3,300 general log entries (or/y).

COURTS OF INSTRUCTION WITH VIOLENCE. 3,000 entries in the general register or/y.

SOCIAL COURTS. 800 issues including executions or/y.

COURT-ADMINISTRATIVE COURTS 570 cases or/y.

COMMERCIAL COURTS 435 matters including execution or/ y.

COURTS OF VIOLENCE AGAINST WOMEN 1,600 entries from the general register or/y.

COURTS OF THE CRIMINAL. An average of 450 abbreviated procedures or y.

COURTS OF PENITENTIAL SURVEILLANCE. 5,240 files or/y.

JUVENILE COURTS. 875 cases registered including execution or/y.

CAPACITY COURTS. 704 Matters including voluntary jurisdiction or/y (corrective index of 0.2 for internments with respect to other matters).

* m/y: per magistrate per year

* o/y: per organ per year

This agreement has been annulled by Supreme Court ruling 455/2021, of March 25, because it was adopted without prior hearing of the judicial associations.

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 for the Judiciary)

3000 character(s) maximum

The General Council of the Judiciary is a collegiate body made up of:

Twenty members, appointed by the king, elected by the Cortes Generales (Congress and Senate) from judges (12) and jurists of recognized competence (8).

A president, who will be President of the Supreme Court and of the General Council of the Judiciary at the same time, appointed by the Plenary Session of the Council in its constitutive session.

The members are appointed for a term of five years, from the date of the constitutive session. The CGPJ will be renewed in entirety, once the five-year term has elapsed, although the outgoing Council continues in office until the new one is inaugurated.

The reports of the GRECO group have highlighted the desirability of the General Council of the Judiciary being elected by the judges and magistrates themselves. There is political proposals in this regard, although it does not appear to be a priority of the current government.

The renewal process of the members of the General Council of the Judiciary continues to be in the hands of the political powers.

The lack of agreement between them (the two main parties) has led to the members appointed in their day continuing with their position extended for more than 4 years.

Instead of resolving the situation, accepting the recommendations of all the European organizations and changing the election so that it is carried out by the judges themselves, among their peers, they are considering reducing by law the consensus quorums for political elections, favoring the appointment directly by the government party alone, increasing the risk of political subjugation of the body

Corresponds to the General Council of the Judiciary, in accordance with art. 14.1 of the Organic Law of the Judiciary, protect judges and magistrates when their judicial independence is disturbed.

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

3000 character(s) maximum

According to art. 117.1 of the Constitution, the Judges and Magistrates who are members of the Judicial Power, in addition to being independent and immovable, are also responsible, a provision repeated literally by art. 1 of the Organic Law of the Judiciary.

Initially law regulated three types of responsibility Judges and Magistrates were subject in the exercise of their functions: criminal (arts. 405 to 410 LOPJ), civil (arts. 411 to 413 LOPJ) and disciplinary (arts. 414 to 427 LOPJ).

The reform of the Organic Law of the Judiciary operated by LO 7/2015 of July 21 eliminated the direct civil responsibility of the Judges and Magistrates, who regulated the aforementioned arts. 411 to 413, residing the responsibility of the Judges, in harmony with the rest of the public employees, within the responsibility that corresponds to the State, for abnormal operation of the Administration of Justice or judicial error.

Anyway, Administration may repeat, in administrative proceedings, against the Judge or Magistrate if he has committed intent or serious guilt.

In disciplinary matters, the Promoter of Disciplinary Action depends on the General Council of the Judiciary and is in charge of receiving complaints and denunciations, as well as properly disciplinary activity consisting of initiating, instructing, and formulating the statement of objections and, if applicable, a resolution proposal before the Disciplinary Commission.

The Disciplinary Commission is composed by seven Members: four from the judicial branch and three from the shift of jurists of recognized competence. They have the function of solving disciplinary proceedings initiated for serious and very serious offenses and imposing, where appropriate, the sanctions that correspond to judges and magistrates, with the only exception of those cases in which the proposed sanction is separation from service, which is reserved to the plenary session of the CGPJ.

The Public Prosecutor's Office has a system of disciplinary responsibility analogous to that of judges and magistrates, which is foreseen in the Organic Regulations of the Statute of the Public Prosecutor and dependent on the higher hierarchical organs.

In terms of ethics, there is the Judicial Ethics Commission, which is an organism created for approving the Principles of Judicial Ethics and, on the occasion consultations it receives, and through its opinions and reports, provide guidance on the interpretation of these principles, their opinions and reports being purely indicative. It is made up of six members of the judicial career appointed directly by the entire career, who in turn appoint another non-judicial member, an academic expert in Ethics or Philosophy of Law.

Its operation is independent from the governing bodies of the Judiciary, although the General Council of the Judiciary must ensure that the Judicial Ethics Commission is endowed with the resources and adequate means to fulfill its objectives.

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

3000 character(s) maximum

The monthly remuneration of a Judge or a Prosecutor in our country is determined by the following items.

Fixed remuneration: They are received every month regardless of the performance of the judge or prosecutor. Consist in:

Basic salaries that are made up of base salary, triennia (length of service) and extra pay (2 a year, in June and December)

Complementary remunerations: Target complement, specific complement and variable remuneration.

The base salary for both judges and prosecutors for 2022 has been established at € 20.073,96 per year, divided into 12 payments.

In 2022, Spanish judges and prosecutors receive € 47.67 per month on their payroll for each triennium as they are Group A1 officials.

The extra pay is considered a basic fixed remuneration and is paid in June and December.

The destination supplement is paid every month depending on the location where the work is carried out. This supplement varies depending on the population in which it is exercised and is classified as follows for both judges and prosecutors and is broken down into five groups, which includes maximum and minimum amounts ranging from € 2,452.69 per month. , up to € 1,591.64.

There are other supplements for the greater difficulty in the provision of the service as for the rest of the public function and also variable remuneration.

Variable remuneration is marked by the following criteria, specified in Chapter III, art. 9, of Law 15/2003, of May 26:

"The judges and magistrates who in the immediately preceding semester had exceeded the objective corresponding to their destination by 20 percent will have the right to receive an increase of not less than five percent nor greater than 10 percent of their fixed remuneration

The judges and magistrates who in the immediately previous semester do not reach, for causes attributable to them, 80 percent of the objective corresponding to their destination will receive their fixed remuneration reduced by five percent, following a contradictory file whose regulation, procedure and resolution shall correspond to the General Council of the Judiciary

The objectives to be met in each destination are previously marked by technical criteria ".

Independence/autonomy of the prosecution service

3000 character(s) maximum

Judicial independence has legal and institutional guarantees. Regarding the former, the Constitution and the regulations that develop it (Organic Law of the Judiciary) establish very broad safeguards, together with a final control of exclusively jurisdictional administrative activity that flatly guarantees independence. However, institutional measures can be improved. Thus, it would be convenient for the General Council of the Judiciary to be elected by the judges themselves, without the intervention of politicians.

In reports from successive years until June 2019, GRECO confirms, as the main breach of the recommendations on judicial independence in Spain, the system for electing the judicial members of the CGPJ, recommending that they be elected without the intervention of the political authorities and that perform in accordance with objective criteria and evaluation requirements for the appointment of senior positions in the judiciary. In any case, it expressly underlines that "there is no doubt about the independence and impartiality of Spanish judges in the performance of their duties", although, even if they are, social perception does not detect it this way, persisting that conviction in successive evaluations that are made. In the other hand, the Organic Statute of the Fiscal Ministry (hereinafter EOMF) approved by Law 51/1981, of December 30, in accordance with art. 124 of the Constitution, indicates that the Prosecutor's Office is part of the judiciary, although with functional autonomy. Article 2 of the Statute defines the Public Prosecutor's Office as "... an organ of constitutional relevance with its own legal personality..." In short, it is detached from the executive branch, forming part of the judicial power, with its own legal personality and functional autonomy.

Usually, complaints about the autonomy and independence of the Public Prosecutor's Office usually refer to the appointment system of the State General Attorney, who occupies the top of this body with hierarchical organization, whose appointment is attributed to the Government, although with some guarantees, such as the necessary appearance in Parliament or the CGPJ report to prove their suitability, and the impossibility of termination by the Government for loss of confidence. Currently, the State General Attorney has gone from being the Minister of Justice of the Government to exercising this position.

This does not contribute to give a perception among citizens of independence from political power.

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

3000 character(s) maximum

The normative framework on which the independence of the legal profession in Spain is based are, the General Statute of the Legal Profession, which in its article 1.1 states that "the legal profession is a free and independent profession that provides its service to society in the public interest" and in its article 33.2 it adds "that the lawyer, in fulfillment of his mission, will act with freedom and independence, without other limitations than those imposed by the Law and by ethical and deontological norms". For its part, the Organic Law of the Judiciary, in its article 542.2 establishes that "in their actions before the courts and tribunals, the lawyers are free and independent".

The independence and freedom of the legal profession is connected with the fundamental right to effective judicial protection and the right of defense established in article 24 of the Spanish Constitution.

The General Council of Spanish Lawyers is the highest representative, coordinating and executive body of the 83 Spanish Bar Associations and among its fundamental missions is the organization of the professional practice of lawyers, ensuring the prestige of the profession, demanding that Bar Associations and their members comply with professional and ethical duties and work to achieve a more agile, modern and effective Justice.

One of the functions assigned to bar associations is the free legal aid service, the content and development of which will be addressed in another section

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

3000 character(s) maximum

The first approach of citizens to Justice is their own experience or close experiences, so working effectively, quickly and with quality is the best way to promote citizens' perception of the quality of the rule of law in this area, for what the material and personal means must be implemented, in appropriate procedural scenarios, to favor the work of Justice and the satisfaction of citizens.

But that is not enough. Adequate communication policy and synergy with the media are also necessary for these values or capacities to be effectively transmitted.

The reports and actions of international organizations also contribute to facilitating among citizens a perception of security and adherence to the Judiciary, because they strengthen their confidence, as they are drawn up by third parties who are not influenced by national interests.

Indicators from international public gauges show that Spain is one of the most advanced countries in the world in the protection of human rights and that its judicial system strengthens the rule of law; however, citizen perception of this situation is increasingly negative.

The intervention of politicians in the appointments of the General Council of the Judiciary and the Constitutional Court, have increased an unreal perception of politicization of judges, encouraged by irresponsible statements of some politicians who, even reaching the point of insult, falsely accuse judges of intervening in political matters or ruling on ideologies (with accusations of sexism, or corporatism with certain political parties), something that is far from reality.

B. Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)

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

3000 character(s) maximum

In order to ensure access to justice for all people under equal conditions and to eliminate discrimination due to lack of financial resources, the Constitution recognizes in its article 119 that justice will be free when the law so provides and, in all case, with respect to those who prove insufficient resources to litigate.

The way to enjoy this right is developed by Law 1/1996, of January 10, on Free Legal Assistance.

Free Justice is assigned approximately 6% of the Justice budgets of the State as a whole - including the Autonomous Communities, the General Council of the Judiciary and the Constitutional Court.

This public service is provided by some 40,000 lawyers from all over Spain, 24 hours a day, every day of the year, and is controlled by specialized administration commissions that ratify or deny the granting of this benefit, with ultimate judicial control, and serves 1.5 million people each year

Resources of the judiciary (human/financial/material)

(Material resources refer e.g. to court buildings and other facilities)

3000 character(s) maximum

The Justice Administration has about 95,000 officials belonging to the three auxiliary bodies: managers, processors and judicial assistance, who provide their services in Courts and Tribunals, Institutes of Legal Medicine, General Judicial Mutual Society and Prosecutor's Office.

There are 3,847 Lawyers of the Administration of Justice, and more than 2,500 Prosecutors, bringing the number of judges to more than 5,500.

Justice in Spain does not have a generalized system of judicial fees that contributes to its financing, so practically all of its endowment depends on the budgets of the State and of the territorial Administrations with competences in the matter (Autonomous Communities), given that the General Council of the Judiciary, which has budgetary autonomy, lacks jurisdiction over the administration of justice as a service, although it assumes costs, such as those for training judges and magistrates or the Judicial School. The duality of administrations with financial competencies produces discrepancy problems that sometimes make it difficult to optimize resources and subject expenses to too many controls and authorizations, sometimes making them ineffective.

The budget of the Ministry of Justice for 2023 amounts to 2,304 million euros. Of this amount, 2,197.36 million euros correspond to the ordinary budget, which represents an increase of 159.63 million euros compared to 2022, an increase of 7.83%.

To these amounts should be added the allocations provided in their respective budgets by the Autonomous Communities, with jurisdiction over Justice

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

3000 character(s) maximum

In the case of judges, both initial training and continuing education, with refresher courses, is carried out by the Judicial School, which is based in Barcelona and reports to the General Council of the Judiciary.

Prosecutors receive similar training through the Centro de Estudios Jurídicos, based in Madrid, which is part of the Ministry of Justice.

Lawyers are trained by the Professional Associations of which they are members.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

3000 character(s) maximum

During the period of work stoppage caused by the pandemic, there has been almost no face-to-face activity, but the telework system has been promoted. This system has been presented as voluntary, although, in practice, it has been carried out in an almost generalized way. In Spain it is common for Judges and Magistrates, as well as members of the Public Prosecutor's Office, to take matters to their homes to resolve, even in normal situations, so that working at home is by no means unknown.

In any case, its effectiveness has depended on the means available in each territory and on the will of the judges and prosecutors concerned.

The absence of a truly operational digital judicial file in all territories and, in particular, in relation to the criminal jurisdiction, has hindered the possibility of teleworking.

Similarly, the situation has highlighted the shortcomings in the technical and computer support that are felt in the Administration of Justice in Spain and the difference between the various regions in computer developments.

Attempts have been made to implement the use of platforms that facilitate teleworking and videoconferencing, incorporating them as working tools in the judicial bodies, although the lack of infrastructure (computers not equipped with cameras or loudspeakers, for example) and the lack of training in their use have prevented their use from being as operational as would have been desirable. In any case, efforts have been made to overcome these objections with personal resources (ADSL at home, personal computer...)

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

3000 character(s) maximum

There is a judicial statistic that is prepared quarterly by the Lawyers of the Administration of Justice and that is destined to the Judicial Statistics Section of the General Council of the Judicial Power, as a tool for supervising the entry and processing of cases. These data are compiled according to the guidelines of the National Statistics Commission and are provided to international organizations to offer a real image of Justice, for example to CEPEJ.

Also in the General Council of the Judiciary there is an Inspection section, which makes routine visits to the judicial organs to verify their operation, in accordance with an annual plan, and proceeds to analyze the situation of organs in which some dysfunction is detected.

On surveys, apart from those that can be carried out by private organizations or the Eurobarometer, between individuals and companies, the last survey that was carried out on the population of judges and magistrates took place in 2015.

There are organizations related to specific matters, such as the Observatory on Gender Violence, dependent on the General Council of the Judiciary (among the various that exist, dedicated to the matter), although their mission is more for proposal and planning than supervision.

Regarding procedural tools for case management, only in the contentious administrative jurisdiction there is the possibility of processing a "witness lawsuit" for similar matters that are expected to be filed massively and in some appeals, when there is consolidated doctrine on the matter that is argue.

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

3000 character(s) maximum

The territorial organization of the courts and tribunals as well as the number of judges who belong to each of them is regulated in Law 38/1988, of December 28, on Demarcation and Judicial Plant. This norm configures the plant designed by the Organic Law of the Judicial Power and articulates the different jurisdictional orders. Regarding the territorial organization, the Justice is organized into municipalities, judicial parties, provinces, and autonomous communities. There are judicial bodies that have jurisdiction throughout Spain (Supreme Court, National Court, central investigating courts, central criminal courts, central contentious-administrative courts, central prison surveillance courts, and Central Juvenile Court).

To know which Courts exist in each territory and their scope of action, the following link is attached, which offers the corresponding detail.

<http://www.poderjudicial.es/cgpj/es/Servicios/Demarcacion-y-Planta-Judicial/Introduccion/>

C. Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)

Length of proceedings

3000 character(s) maximum

According to the Memory of the General Council of the Judiciary, the average terms of duration in months in the different jurisdictional orders would be specified in the following periods:

Civil Jurisdiction: First Instance, 7.5; Second Instance, 7.9; and Supreme Court 18.9

Criminal Jurisdiction: First Instance, 2.8; Second Instance, 1.5; and Supreme Court 5.2

Administrative Contentious Jurisdiction: First Instance, 10.9; Second Instance, 10.6; and Supreme Court 13.8

Social Jurisdiction: First Instance, 9.1; Second Instance, 5.1; and Supreme Court 13.8

The limitation on the possibility of appointments to high judicial bodies established by the reform of the LO of the Judiciary (LO 4/2021, of March 29), while the members of the Council have their functions extended, has meant that the appointments of Supreme Court judges cannot be filled, so that vacancies have not been filled and the reduction in the number of staff is beginning to cause delays in the normal processing of matters within their knowledge.

Other - please specify

3000 character(s) maximum

II. Anti-Corruption Framework

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework (if applicable)

3000 character(s) maximum

The current circumstances of national politics have led to the modification of certain offenses, which represent a setback in the progress of strong measures to fight corruption

On the occasion of a political pact between the government party and parties whose leaders were condemned in the process of attempted secession from Spain by some leaders of Catalonia, legal procedures have been addressed to reduce the response to actions for which they were condemned: not only for sedition, but, particularly, for the fraudulent dispositions of public money to apply them to illegal purposes and prohibited by the Constitutional Court.

In this way, a modification of the Penal Code that supposes a reduction of the penalty (especially the one that prevents running for election as public office) has been recently approved.

This modification reduces the penalties not only for these political leaders who were convicted, but also for anyone who misappropriates or fraudulently manages public money.

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 authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

3000 character(s) maximum

Although no significant progress can be said to have been made in the fight against corruption, the personal infrastructure for the European Public Prosecutor's Office has been put in place in Spain, and Royal Decree 882/2022, of October 18, regulates the procedure for the selection and appointment of the shortlist of candidates for European Public Prosecutor and candidates for Deputy European Public Prosecutor in Spain.

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

3000 character(s) maximum

Until very recently we have witnessed a very close relationship between the Attorney General of the State (who is called as the most relevant instance) to prevent and investigate matters of political corruption, who, in fact, had just become Minister of Justice in the Government that appointed him.

Although the General Attorney of the State has already ceased (previously she was the Minister of Justice of the Government that appointed her, as soon as she left the ministry), the appointments continue having a strong political overtone and, often, the reports are not taken into account suitability informs of other constitutional bodies such as the General Council of the Judiciary.

The situation is far from offering guarantees of impartiality in the appointment of the leadership of the Public Prosecutor's Office, despite the fact that the rest of the prosecutors tend to carry out their work with professionalism and independence.

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

3000 character(s) maximum

Unfortunately, although there were projects underway to regulate anonymous whistleblowing on corruption and transparency in lobbying, the truth is that they have not materialized in real application norms.

B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application

3000 character(s) maximum

In Spain we have Law 19/2013, of December 9, for transparency, access to public information and good governance, which guarantees access to information on public activity for all citizens, with the limits set by the Law data protection.

Through the transparency portal, the economic data of the high public representatives is published, so that an increase in assets during the exercise of public functions that requires some explanation can be noticed, if it occurs.

There are subjects that are particularly sensitive to the need for transparency, such as the regulation of lobbies, the strengthening of the independence of powers and the control of the financing of political parties, which either lack regulation (in the case of lobbies) or have a insufficient or ineffective regulations, or, at least, can be improved.

On the other hand, it is necessary to promote a business culture of transparency and ethics, as well as ethics in politics, imposing prohibitions or, at least, temporary limitations, that prevent the transition from politics to boards of directors of large companies without resolution of continuity, which currently do not exist.

General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

3000 character(s) maximum

There is no progress in public decision-making processes, nor transparency on lobbies, although there is a law on the financing of political parties, and an accounting supervision of them by the Court of Auditors. This has not prevented the disclosure of cases of illegal financing of political parties that affect so many political parties

Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

3000 character(s) maximum

The different administrations have their own internal control mechanisms. For example, at the municipal level, the figure of the Financial Controller exercises his function on the accounts of the city council. It is an internal control.

The General State Intervention and the Court of Accounts fulfill the same function, with respect to the General State Administration, and there are other similar bodies in some autonomous communities. What happens is that the ability to circumvent the mechanisms is usually great due to the disproportion between resources of the person who controls, and the ability to deceive those who can carry them out within the public sector, who are usually officials with extensive decision-making and use capacities for apparently lawful legal instruments.

When there is a conflict of interest between public servants and their activity, there are legal cases of abstention or recusal, whose failure, depending on the case, may give rise to disciplinary and even criminal liability.

Measures in place to ensure whistleblower protection and encourage reporting of corruption.

3000 character(s) maximum

In Spain, unlike our environment, when an official or an individual in a company has suspicions of corrupt actions, they must make the corresponding complaint to the Prosecutor's Office or the appropriate judicial or police body.

Our criminal procedural legislation does not admit anonymous complaints (which are allowed in the field of tax complaints), and aware of the personal difficulty that such a decision may have for an official or an individual regarding the company to which it belongs, it tries to facilitate the application of the specific legislation for the protection of witnesses.

In other regional agencies (for example, the Valencia Anti-Fraud Agency) not only is the "secret" complaint - the figure of "whistleblowing", demanded by a broad doctrinal sector as a useful instrument to combat corruption - admitted, but it also establishes the possibility of substantiating a whole secret procedure without the possibility of intervention by the affected party (which violates the basic principles of hearing and essential defense in a sanctioning procedure in Spain).

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

3000 character(s) maximum

The areas where distorted economic interests are most frequently involved are usually public procurement, banking and sports competitions, as well as the economic interests that exist around them.

Recent experience has also highlighted the existence of a significant pool of corruption in the financing of political parties

Any other relevant measures to prevent corruption in public and private sector

3000 character(s) maximum

Precisely organizations such as Transparency International Spain, emphasize in several of their reports the need for a culture of transparency, good governance and ethics, with training activities that give importance and full meaning to honesty in public service and business.

Currently, although it cannot be specified with specific statistical data, there does not seem to be any special concern or investment in this area from the public sector, with any initiative in the private sector.

C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery

3000 character(s) maximum

Spain has reformed its legal framework in order to strengthen its anti-corruption regime since the reform of the Penal Code operated by Organic Law 5/2010, of June 22, and as reflected in its explanatory statement, introduces modifications regarding Corruption crimes to adapt the Spanish regime to EU, OECD and GRECO standards.

The crimes contemplated in the Convention against Corruption are basically defined in the Penal Code. The active bribery of a public official is typified in article 424 of the Spanish Penal Code and may be committed by natural or legal persons. Passive bribery is found in Articles 419 and 422.

When the influence is exercised by another official, the crimes of influence peddling (article 428) or prevarication (article 404) apply.

Article 445 of the Penal Code provides for active bribery committed against foreign public officials and international public organizations as specific crimes.

The reform of the Penal Code carried out in 2010 also explicitly contemplates the criminal liability of legal entities for certain crimes, including corruption of foreign public officials.

Regarding active influence peddling appear in articles 428 and 429 of the Penal Code, and passive influence peddling is covered by article 430 of the Penal Code.

Spain typifies prevarication in article 404 of the Penal Code.

The crime of illicit enrichment is not considered as such, notwithstanding that such circumstance operates as a condition for the appreciation of the crime of money laundering.

In the private sphere, various conducts for corruption are contemplated, such as the crime of corruption in business and between individuals and sports activities (article 286 bis of the Penal Code), crimes related to the market and consumers (articles 278 to 286) and corporate crimes (articles 290 to 297).

With respect to money laundering, it is regulated in articles 298 to 304 and the illegal financing of political parties in articles 304 bis and ter.

Recently, a legal reform of the Criminal Code has been approved that reduces the penalties for the crime of embezzlement of public funds, in order to benefit Catalan politicians convicted of allocating public money at will, without giving it the intended budgetary destination.

This reform will benefit the rest of the people convicted of this crime.

This constitutes a twist in the fight for political corruption

Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds

(Please include, if available the number of (data since 2019): indictments; first instance convictions; first instance acquittals; final convictions; final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year)

3000 character(s) maximum

According to data from the Repository of the General Council of the Judiciary, the sentences handed down since 2019 would be the following:

2019: WITH CONVICTIONS 68,
WITH ACQUITTMENT 26

2020:

WITH CONVICTIONS 46.
WITH ACQUITTMENT 21

2021:

WITH CONVICTIONS 44.
WITH ACQUITTMENT 21

2022:

FIRST TRIMESTER:

WITH CONVICTIONS 9.
WITH ACQUITTMENT 7

SECOND TRIMESTER

WITH CONVICTIONS 19
WITH ACQUITTMENT 4

AND THIRD TRIMESTER

WITH CONVICTIONS 7
WITH ACQUITTMENT 2

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

3000 character(s) maximum

The Spanish legal system does not provide jurisdictional privileges for its officials in the performance of their duties.

In accordance with article 71.2 of the Spanish Constitution, the Congress and the Senate must authorize the accusation and proceeding against its members, deputies and senators (not so the autonomous parliamentarians, because they are not in the material scope of this precept: STC 206 / 1992). The Constitutional Court has restricted in several decisions the scope of parliamentary prerogatives, establishing them only in terms of parliamentary immunity for the specific activity in the chambers and their political function. In practice, authorizations to proceed are not denied

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

3000 character(s) maximum

In the administrative field there are innumerable administrative bodies in charge of ensuring transparency and prosecuting corruption with "good governance" measures. These are dispersed organizations belonging to different administrations (General State Administration, such as the Tax Agency, regional administration, as is the case with the Anti-Fraud Agencies of Catalonia and Valencia, and even belonging to the local administration, such as the Municipal Anti-Fraud Office of Barcelona or Madrid).

All of them have varied powers and limited management efficiency, marked by the preference of the criminal jurisdiction in the prosecution of corruption convictions that constitute a crime.

Other - please specify

3000 character(s) maximum

III. Media Freedom and Pluralism

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

3000 character(s) maximum

Law 13/2022, of July 7, has meant the transposition of the community directive 2018/1808.
The National Markets and Competition Commission acts as the national regulatory authority for the supervision and control of the audiovisual market and, in particular, of many of the obligations contained in this law.
In accordance with the European standard, regulates the records of the audiovisual communication service, in order to contribute to greater transparency in the audiovisual sector and allow the user to know easily and directly who is responsible and in what way. is responsible for the content broadcast, and other information obligations are regulated for providers of the audiovisual communication service and the video exchange service through the platform.

A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

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

3000 character(s) maximum

The organization depends on the Government in its designation and does not have a particular statute that guarantees the independence of its operation

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

3000 character(s) maximum

The National Markets and Competition Commission (CNMC) is the body that promotes and preserves the proper functioning of all markets in the interest of consumers and companies.

It is a public body with its own legal personality. It is independent of the Government and is subject to parliamentary scrutiny. It went into operation on October 7, 2013.

The members of the Council (10 members), the President and the Vice-President, will be appointed by the Government, by Royal Decree, at the proposal of the Minister of Economy and Competitiveness, from among persons of recognized prestige and professional competence in the scope of the Commission. , the prior appearance of the proposed person before the corresponding Commission of the Congress of Deputies. Congress, through the competent Commission and by resolution adopted by an absolute majority, may veto the nomination of the proposed candidate within a period of one calendar month from the receipt of the corresponding communication. After the said period has elapsed without express manifestation of the Congress, the corresponding appointments will be understood to have been accepted.

The mandate of the members of the Council will be six years without the possibility of re-election. The renewal of the members of the Council will be done partially every two years so that no member of the Council remains in office for a period exceeding six years.

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

3000 character(s) maximum

The art. 12 of the law establishes that the competent audiovisual authority will promote self-regulation so that the providers of the audiovisual communication service, the providers of the video exchange service through the platform or the organizations that represent them, in cooperation, if necessary, with others Stakeholders such as industry, commerce or professional or user associations or organizations, voluntarily adopt guidelines among themselves and for themselves and are responsible for the development of these guidelines, as well as the monitoring and enforcement of their compliance.

Along with this self-regulatory framework, the draft includes co-regulation through collaboration agreements signed between the competent audiovisual authority and the self-regulation body.

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 (including any rules regulating the matter)

3000 character(s) maximum

There is little transparency in public spending on advertising and the media. The lack of this information is especially serious in the regional media, much more fragile in the face of pressures from political power. The report, the "First flat 2019" report, prepared by the Compromiso y Transparencia Foundation, highlights the significant aid that some Catalan media have received, such as the Ara Group or the Punt Avui Group, close to the pro-independence positions and the risk that this entails for their editorial credibility.

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

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 licenses, company operation, capital entry requirements, concentration and corporate governance

3000 character(s) maximum

There are no other specific measures, other than those established by law 7/2021, already mentioned

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

In this matter, it is necessary to separate the public media, whose political influence derives from the control (even indirect) of the political leaders, from the private media, distinguishing those that are listed on the stock market, from those that do not.

Although both listed and unlisted groups present serious deficiencies in these areas, there are important differences between them. The unlisted groups do not provide hardly any information about their owners, there is no way to know who is behind the control of these groups.

In the case of listed companies, it is known who their owners are, since they are legally obliged to provide this information due to their presence in the listing market, but there are no legal mechanisms or procedures in the owner structure to ensure their suitability and reinforce editorial independence.

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

3000 character(s) maximum

In Spain art. 20 of the Constitution protects freedom of expression and information as a fundamental right, which may be exercised by anyone (STC 6/1981, of March 16), without prejudice to the fact that at least the second, is usually exercised by professionals information, for which they have specific guarantees such as the conscience clause and the right to professional secrecy. The Constitutional Court has highlighted the prevailing or preferential nature of freedom of information due to its ability to form a free public opinion, inextricably linked to the political pluralism of the democratic State (STC 21/2000, of January 31; SSTC 9 and 235 / 2007).

Likewise, the Constitution prohibits censorship.

As a fundamental right, it has reinforced protection that can be enforced before the Courts of Justice.

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

3000 character(s) maximum

There is no specific norm that endows journalists with a specific protection status for the mere fact of being journalists, beyond the protection of the right to information (which must be “truthful”). Their physical integrity and moral indemnity are guaranteed with the generic protection that the legal system provides to all persons. The mechanisms of the rule of law guarantee the effective investigation of possible crimes of which journalists may be victims.

The Board of Directors of the Madrid Press Association has already issued more than 30 statements in a year in defense of journalists attacked for expressing their opinions and disseminating information, the attacks proceeding mainly from social networks (with supposedly informative content) and party leaders far left and far-right politicians.

Spain remains 29th out of 180 in the 2020 World Press Freedom Classification in the Reporters Without Borders (RSF) 2020 World Press Freedom Classification, which places threats above all in the sphere of political parties. polarized (extremists from the right and left or in the realm of nationalism).

Complaints about limiting access to politicians' press conferences have increased in recent times, reducing attention to journalists belonging to media outlets with different ideologies from the politician in question, and have led campaigns against certain journalists, either through social networks, or through other means of communication

Access to information and public documents (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)

3000 character(s) maximum

In Spain, there is no restriction to information and public documents other than that which may be derived from the data protection legislation of individuals and the regulations on State secrets.

In the judicial sphere, the secrecy of the proceedings governs, in certain circumstances to preserve judicial investigations, although with a temporary limitation and as long as it is necessary for the purposes of the investigation.

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

3000 character(s) maximum

Even though we do not have statistical evidence of their number, in Spain there are civil procedures (for the protection of honor, privacy, and self-image) and criminal (for insults or slander) that are directed against journalists. The purpose of such protection instruments is to guarantee the veracity of the information that is disseminated and the proportionality in the way it is done and respect for other rights worthy of protection such as privacy or honor.

In any case, the prosperity of such procedures is approached from the constitutional prism of the prevalence of freedom of information to form an informed public opinion, as a requirement of the rule of law.

Other - please specify

3000 character(s) maximum

Some sector of journalists point out that certain provisions of the Penal Code limit freedom of information, by sanctioning conduct that involves offenses to religious sentiments, institutions, the State, the Crown, or the promotion of terrorism; however, the criminal regulations in this regard do not differ substantially from others existing in our European environment

IV. Other institutional issues related to checks and balances

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)

3000 character(s) maximum

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] *This includes also the consultation of social partners*

3000 character(s) maximum

There is no specific legal provision that requires consultation of judicial associations prior to the promulgation of regulations that affect the status of judges and magistrates, the General Council of the Judiciary, or, in general, the field of Justice

We believe that this procedure not only undermines the requirements of transparency but also, in the opinion of the association, it disregards important opinions that deprive parliamentary representatives (deputies and senators) of aspects that may be relevant to assess the timeliness and perception of the reform.

We are concerned that judicial associations are not given a specific hearing in this type of reforms, because we consider that this omission contravenes the recommendations of CoE advisory bodies and the spirit of European legislation on strengthening and guaranteeing judicial independence.

In this regard, the recent GRECO report of late 2020 on San Marino underlines:

"it goes without saying that judges should be consulted and have a say in basic decisions about the shape of modern justice and the priorities involved. Such a consultation process should be vested with adequate assurances of inclusiveness, transparency, and accountability".

Likewise, the CCJE in its Opinion No. 23 (2020) stated:

"41.- (...)More generally, the opinion of associations of judges should be requested and considered by the executive power at all levels in respect of judicial reforms and projects including budgetary issues and the allocation of resources, working conditions and all aspects of the status of judges".

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)

3000 character(s) maximum

In recent years, urgent procedures have been abused in the processing of laws at the request of the Government. We have recently witnessed parliamentary processing mechanisms that, being formally within parliamentary legality, are used to evade the mandatory reports of technical bodies in the ordinary processing of bills, and amendments to laws that have nothing to do with the content of the law debated in Parliament, in order to approve regulations (including some that affect basic State agencies and institutions) quickly and subtracting its content from a true social and parliamentary debate. In fact, by using this route, the Constitutional Court has recently suspended the processing of some amendments that affected aspects of the Constitutional Court and the General Council of the Judiciary and that had been introduced in a reform of the Penal Code.

Regime for constitutional review of laws

3000 character(s) maximum

The Constitutional Court, as the supreme interpreter of the Constitution, is independent of the other constitutional bodies of the State and is subject only to the Constitution and its Organic Law. It is unique in its order and extends its jurisdiction to the entire national territory.

The Constitutional Court hears, among other matters:

- Of the appeal and the question of unconstitutionality against laws, normative provisions or acts with force of the law of the State and the Autonomous Communities;
- The appeal for protection for violation of the fundamental rights listed in articles 14 to 30 of the Constitution;
- Concerning constitutional conflicts of jurisdiction between the State and the Autonomous Communities or between them;
- Of conflicts between constitutional bodies of the State, etc.

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

3000 character(s) maximum

Due to the health emergency caused by the COVID-19 coronavirus pandemic, the Government of Spain declared a "state of alarm" through Royal Decree 463/2020, of March 14, for the entire national territory. The possibility of granting extraordinary powers to the government is contemplated in the Constitution in three possible situations (states of alarm, exception, and siege, respectively), included in article 116 of the Constitution. They are regulated and developed by Organic Law 4/1981, of June 1, on states of alarm, exception, and siege. Among them, the state of alarm is the one foreseen to face, among other assumptions, the "sanitary crises, such as epidemics and serious contamination situations".

The Constitutional Court in STC 83/2016, on the occasion of the appeal for protection presented in its day by several air traffic controllers after the declaration of the first state of alarm in the democratic history of Spain (the only precedent to the current declaration), said: " Unlike states of emergency and siege, the declaration of a state of alarm does not allow the suspension of any fundamental right (art. 55.1 CE contrary sensu), although it does allow the adoption of measures that may imply limitations or restrictions on its exercise ". The declaration of the state of alarm, regardless of the cause that precedes and motivates its declaration, does not interrupt the normal functioning of the constitutional bodies. In this sense, it corresponds to the Judicial Power to protect the individual and collective rights and freedoms of citizens while it corresponds to the Congress of Deputies to control the measures adopted by the Government of the Nation.

A) Judicial control:

Regarding judicial control, there has been no remission of the powers of the judges on the occasion of the pandemic, but the judicial bodies have been deprived of their personal resources ordering the cessation of judicial activity, for health reasons, limiting their activity to emergency cases, which has, in fact, reduced the powers of control of the judicial bodies.

B) Parliamentary control:

Parliamentary control of the government in the exercise of exceptional powers occurred with the validation of the "alarm" decrees in a period of 15 days, although, with the last, in which powers are delegated to regional governments, the control period has been extended to six months.

The Parliament has had limited activity despite the importance of the restrictive measures for the freedom of citizens that the special regime brought about by the pandemic entailed

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

(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

3000 character(s) maximum

The functions of defense of citizens are articulated in Spain in an institutional way through the figure of the Ombudsman, which has a national scope, and there are also similar figures in some territories that have created similar figures within their territorial scope.

The Ombudsman is the High Commissioner of the General Courts in charge of defending the fundamental rights and public liberties of citizens by supervising the activity of Spanish public administrations.

The Ombudsman is elected by the Congress of Deputies and the Senate, by a three-fifths majority. His mandate lasts five years and he does not receive orders or instructions from any authority. He performs his functions independently and impartially, autonomously, and according to his criteria. He enjoys inviolability and immunity in the exercise of his office.

Any citizen can go to the Ombudsman and request his intervention, which is free, to investigate any action by the Spanish public administration or its agents, allegedly irregular. You can also intervene ex officio in cases that come to your attention even if no complaint has been filed about them.

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

3000 character(s) maximum

C. Accessibility and judicial review of administrative decisions

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

3000 character(s) maximum

The sanctioning administrative route does not have special publicity, although it is always subject to the control of the contentious-administrative jurisdiction.

The contentious-administrative jurisdiction is public and its resolutions are made known in the corresponding legislative collections, always making publicity compatible with the protection of the personal data of those who are affected by the resolutions, including the sanctions on which it can be resolved.

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)

3000 character(s) maximum

The control of the legality of administrative action in the Spanish legal system is nothing more than a consequence of the principle of legality and is constitutionally attributed, in an ordinary way, to the Judges and Courts.

The general principle is that administrative acts are immediately executive, a general rule that is the consequence of the constitutional presumption of art. 103.1 of the Spanish Constitution according to which "The public Administration serves the general interests objectively."

This means that not even the filing of an administrative appeal supposes, by itself, that the execution of the contested act is suspended except in those cases in which that consequence is foreseen, that is, that a provision establishes that the filing of an appeal administrative supposes the suspension of the act that is contested.

The filing of any administrative appeal will not suspend the execution of the contested act, although the possibility of adopting the precautionary measure consisting of the suspension of the enforceability of the contested act is included in the law.

When a request for suspension of an administrative act occurs, both administratively and judicially, until the request is resolved, the execution of the act will not be possible

Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

3000 character(s) maximum

The execution of sentences in which the Administration is condemned, when it implies carrying out activities of a discretionary nature, or alterations of reality that suppose a return to the initial situation, usually poses some problems.

It will depend on the circumstances of the specific case, to assess whether or not compliance with the provisions of the judgment is truly sought.

In this control activity, the judge has broad powers to ensure that the provisions of the sentence are finally executed.

D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

3000 character(s) maximum

Art. 22 of the Constitution guarantees the right of association as a fundamental right.

Regarding freedom of association, the Constitutional Court has had to rule on various situations of compulsory affiliation to various associations, generally of a professional nature. This type of association is not created by the associative will but is legally created and compulsory for those who carry out certain activities. The justification for their existence is based on the public functions they carry out and on which they have a constitutional basis in articles 36 (professional associations) and 52 (professional organizations). The effectiveness of the action of an association requires its registration in a public registry. Thus, it is considered that the secret nature of an association cannot lie in its lack of registration but in material reasons: those that hide its purposes and activities, even from its partners, and direct its activity to interfere with the exercise of the rights. functions of public institutions. This activity could lead to criminal offenses other than illicit association.

In Spain, there is currently no regulation of lobbies, or an obligation to register in a special registry, other than the general one for any type of association, for those that seek to exercise political influence.

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection 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.

3000 character(s) maximum

Unfortunately, there are no effective protection measures against smear campaigns, orchestrated against organizations or individuals, mainly through social networks and the media.

The only recourse is to go to the criminal complaint or request a civil procedure for the protection of honor, but the reaction is slower and is obtained when the damage is done

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)

3000 character(s) maximum

The financing of these entities does not have a differentiated treatment with respect to others that also represent a social interest. In particular, access to public funds will depend on the programs that are presented and the evaluations that the granting administration makes of them, having to justify the income received in the application of the same for the purposes of such organizations.

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

3000 character(s) maximum

The process of hearing these organizations in legislative processes that may affect this matter is not provided for in Spanish legislation, so in practice they are not given intervention. Nor do they have a precise channel of regular contact with the administration, so that only in some cases, when the administration concerned voluntarily so wishes, will the entity have the opportunity to express its opinion.

E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society etc.)

3000 character(s) maximum

In Spain, there is no institutional concern to disseminate the values of the rule of law, beyond the political debates that are usually limited to the parliamentary sphere and in the academic world (Universities), through courses.

The civic pedagogy of the privilege of enjoying the rule of law does not figure among the concern of the rulers, and there are no institutional campaigns that affect these aspects.

Even so, there are initiatives aimed at that end, such as the creation of the website <https://www.thisistherealspain.com/es/quienes-somos>, dependent on the Ministry of Foreign Affairs and the European Union, and certain institutions such as the Royal Institute Elcano, which is a "think tank" that, under the patronage of HM The King brings together relevant politicians and businessmen to promote the image of Spain in the world.

But, often, political alliances to govern are locked with parties that are not supporters of the state model, either in their territorial organization or in their political organization (populist or anti-system parties) and that composition makes the references to the rule of law that it is assimilated with the postulates of the liberal state, they are not usually seen with good eyes, so, to avoid inconvenience to the partners, their public or compromised defense is avoided.

These initiatives are especially important because we are witnessing a gradual devaluation of the rule of law and a weakening of balances and counterweights, due to a marked willingness of the government and opposition politicians to control the bodies that should be independent, colonizing them with candidates who have a accused political profile

Other - please specify

3000 character(s) maximum

The traditional democratic division of powers that exists as a regime in Spain is, as in the rest of Europe, undergoing a review phase interested in a sector of politics (usually with populist and nationalist overtones) that seeks to reside in the democratic legitimacy of the votes citizens an absolute prerogative of control of the three branches, altering the system of checks and balances that their separation guarantees. In this sense, there is an increasing desire for control of the constitutional bodies that should be independent by political power (the Constitutional Court, the General Council of the Judiciary...) and we are increasingly approaching legislative abuses. to limit the independence of the Judiciary, similar to those experienced in Latin American or Central European countries such as Poland or Hungary

Contact

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