

# 2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with \* are mandatory.

## Introduction

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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](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

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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

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\* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☐ Civil society organisation/NGO
- ☐ International organisation
- ☐ Judicial association or network
- ☐ Media organisation or association
- ☐ Public authority or network of public authorities
- ☒ Other

If "Other", please specify

Political Party

\* Organisation name

*250 character(s) maximum*

Esquerra Republicana de Catalunya

Main Areas of Work

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

If "Other", please specify

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

*500 character(s) maximum*

Founded in 1931, Esquerra Republicana de Catalunya, is the oldest active political organization in Catalonia and its main objective is the achievement of a fairer and more solidary society, free of inequalities between people and territories. Esquerra Republicana founding values: Progressive, Ecologist, Republican, Feminist, Independentist, Interculturalist, Europeanist and internationalist.

For more information please see: <https://en.esquerra.cat/en/about-us>

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

- ☐ Afghanistan
- ☐ Albania
- ☐ Algeria
- ☐ Andorra
- ☐ Angola
- ☐ Antigua and Barbuda
- ☐ Argentina
- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan
- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados
- ☐ Belarus
- ☐ Belgium
- ☐ Belize
- ☐ Benin
- ☐ Bhutan
- ☐ Bolivia
- ☐ Bosnia and Herzegovina
- ☐ Botswana
- ☐ Brazil
- ☐ Brunei Darussalam
- ☐ Bulgaria
- ☐ Burkina Faso
- ☐ Burundi
- ☐ Cabo Verde
- ☐ Cambodia
- ☐ Cameroon
- ☐ Canada
- ☐ Central African Republic
- ☐ Chad
- ☐ Chile
- ☐ China
- ☐ Colombia
- ☐ Comoros
- ☐ Congo
- ☐ Costa Rica

- ☐ Côte D'Ivoire
- ☐ Croatia
- ☐ Cuba
- ☐ Cyprus
- ☐ Czechia
- ☐ Democratic Republic of the Congo
- ☐ Denmark
- ☐ Djibouti
- ☐ Dominica
- ☐ Dominican Republic
- ☐ Ecuador
- ☐ Egypt
- ☐ El Salvador
- ☐ Equatorial Guinea
- ☐ Eritrea
- ☐ Estonia
- ☐ Eswatini
- ☐ Ethiopia
- ☐ Fiji
- ☐ Finland
- ☐ France
- ☐ Gabon
- ☐ Gambia
- ☐ Georgia
- ☐ Germany
- ☐ Ghana
- ☐ Greece
- ☐ Grenada
- ☐ Guatemala
- ☐ Guinea
- ☐ Guinea Bissau
- ☐ Guyana
- ☐ Haiti
- ☐ Honduras
- ☐ Hungary
- ☐ Iceland
- ☐ India
- ☐ Indonesia
- ☐ Iran
- ☐ Iraq
- ☐ Ireland
- ☐ Israel
- ☐ Italy
- ☐ Jamaica
- ☐ Japan
- ☐ Jordan
- ☐ Kazakhstan

- ☐ Kenya
- ☐ Kiribati
- ☐ Kuwait
- ☐ Kyrgyzstan
- ☐ Laos
- ☐ Latvia
- ☐ Lebanon
- ☐ Lesotho
- ☐ Liberia
- ☐ Libya
- ☐ Liechtenstein
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Madagascar
- ☐ Malawi
- ☐ Malaysia
- ☐ Maldives
- ☐ Mali
- ☐ Malta
- ☐ Marshall Islands
- ☐ Mauritania
- ☐ Mauritius
- ☐ Mexico
- ☐ Micronesia
- ☐ Monaco
- ☐ Mongolia
- ☐ Montenegro
- ☐ Morocco
- ☐ Mozambique
- ☐ Myanmar
- ☐ Namibia
- ☐ Nauru
- ☐ Nepal
- ☐ Netherlands
- ☐ New Zealand
- ☐ Nicaragua
- ☐ Niger
- ☐ Nigeria
- ☐ North Korea
- ☐ North Macedonia
- ☐ Norway
- ☐ Oman
- ☐ Pakistan
- ☐ Palau
- ☐ Panama
- ☐ Papua New Guinea
- ☐ Paraguay

- ☐ Peru
- ☐ Philippines
- ☐ Poland
- ☐ Portugal
- ☐ Qatar
- ☐ Republic of Moldova
- ☐ Romania
- ☐ Russian Federation
- ☐ Rwanda
- ☐ Saint Kitts and Nevis
- ☐ Saint Lucia
- ☐ Saint Vincent and the Grenadines
- ☐ Samoa
- ☐ San Marino
- ☐ Sao Tome and Principe
- ☐ Saudi Arabia
- ☐ Senegal
- ☐ Serbia
- ☐ Seychelles
- ☐ Sierra Leone
- ☐ Singapore
- ☐ Slovakia
- ☐ Slovenia
- ☐ Solomon Islands
- ☐ Somalia
- ☐ South Africa
- ☐ South Korea
- ☐ South Sudan
- ☒ Spain
- ☐ Sri Lanka
- ☐ Sudan
- ☐ Suriname
- ☐ Sweden
- ☐ Switzerland
- ☐ Syrian Arab Republic
- ☐ Tajikistan
- ☐ Tanzania
- ☐ Thailand
- ☐ Timor-Leste
- ☐ Togo
- ☐ Tonga
- ☐ Trinidad and Tobago
- ☐ Tunisia
- ☐ Turkey
- ☐ Turkmenistan
- ☐ Tuvalu
- ☐ Uganda

- ☐ Ukraine
- ☐ United Arab Emirates
- ☐ United Kingdom
- ☐ United States of America
- ☐ Uruguay
- ☐ Uzbekistan
- ☐ Vanuatu
- ☐ Venezuela
- ☐ Viet Nam
- ☐ Yemen
- ☐ Zambia
- ☐ Zimbabwe

First name

Marta

Surname

Rovira i Vergés

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

[REDACTED]

#### \* 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

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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

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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<sup>[1]</sup>. 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

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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*

On 15 December 2022, the reform of the Penal Code was approved by the Congress of Deputies.

The reform eliminates the crime of sedition and modifies some offences against public order, but we see that it still fails to ensure that peaceful protest is not unduly criminalised.

We celebrate the elimination of the crime of sedition. We also appreciate to see the reform of the crime of public disorders that includes the derogation of article 559, which refers to penalizing the dissemination of messages that incite to alter the public order. We consider it an important step to protect the freedom of speech and peaceful assembly.

The new definition of the article 557.1 for the crime of public disorders incorporates, in the case of invasion of premises, the condition that “the effective functioning of essential services at these locations has been seriously disrupted” as a restrictive condition for it to be applicable. However, we regret that the reform increases the minimum penalty up to 3 years of prison for the crime of aggravated public disorders typified under the article 557.2 (being 1 year the minimum penalty with the current version of the Penal Code). The reform also modifies article 557 bis. (former 557 ter.), addressed to punish specifically peaceful occupations of public and private buildings with 6 months to up to 6 years of prison.

This modification endangers the right to peaceful demonstration, and it could still be used to criminalize social movements and peaceful protesters. Unfortunately, Spain has a history of disproportionate applications targeting social and political activists, such as members of the movement for the right to housing or those advocating for the right to self-determination in Catalonia.

This reform, although being a step in the right direction, is a missed opportunity to repeal the crime of rebellion and to strengthen the right to freedom of expression by repealing other crimes, like the crimes of insult to the Crown, that is analysed in the next point of the report. In our opinion, these political crimes should have been eliminated, as we consider they could be used to criminalise social movements and peaceful protests.

For more info: <https://elpais.com/espana/2022-12-09/las-claves-de-la-reforma-expres-del-codigo-penal-de-la-malversacion-al-enriquecimiento-ilicito.html>

## 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*

The Council of Europe Group of States Against Corruption (GRECO) has repeatedly warned that the Spanish mechanism of election of judges (nor the selection of Public Prosecutors) is insufficient to guarantee independence, nor its “appearance” of neutrality, “that the Parliament has failed in the need to remove the selection of the judicial shift of politicians even after the Organic Act 2018 amendment”, and that the composition of the high- ranking courts could “cast a doubt on the impartiality of the process.”.

In this regard, Esquerra Republicana proposed in the Catalan Parliament in February 2020 an initiative to reform the Spanish judiciary, in order to “correct the ideological influence” regarding judges in high instances. See please:

<https://www.lavanguardia.com/local/barcelona/20200207/473324813242/catalunya-el-parlament-pide-una-reforma-del-poder-judicial-que-corrija-el-sesgo-ideologico.html>

Esquerra Republicana has also put forward the politicised nature of high-ranking courts in other instances, e. g. the Constitutional appeal lodged by Esquerra Republicana’s political prisoners Mr Junqueras, president, and Mr Raul Romeva, former Member of European Parliament (MEP) and Minister of foreign Affairs. See please:

<https://static1.ara.cat/ara/public/content/file/original/2018/0214/11/recurs-d-empara-junqueras-al-tribunal-constitucional-84778cc.pdf>

To conclude, Spain has had long-lasting problems regarding the appointment of judges, disregarding the repeated recommendations. The current framework lacks inclusiveness for the judiciary is at the mercy of the parties with majority in Parliament to the detriment of those with minor representation.

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*

Promotion of judges and prosecutors (incl. judicial review)

*3000 character(s) maximum*

The General Council of the Judiciary (Consejo General del Poder Judicial – CGPJ, with the mandate expired since December 4, 2018) is a body that emanates from the Spanish Constitution. It is a collegiate body made up of judges and jurists that exercises the functions of government of the judiciary. One of the main objectives and functions of this body is to guarantee the independence of judges in the exercise of their functions.

One of the functions of this body is that of appointments, promotions and transfers.

In addition to the president of the CGPJ, this body is composed of twenty members, called vocales. These are chosen by a qualified majority of three-fifths of the Cortes Generales, the Congress of Deputies and the Senate (NOTE: Spanish Constitution 1978, Article 122.3).

The recent report published on 5 December 2022 from the Group of States against Corruption (GRECO) on “Corruption prevention in respect of members of parliament, judges and prosecutors” points out that “Concerning judges, a critical issue revolves around the selection system of the General Council of the Judiciary (CGPJ) and its perceived politicisation. This is no minor concern since the CGPJ is responsible for some crucial decisions in the judiciary, including the designation of top rank judges which has been halted for the time being and until the CGPJ is renewed. In this connection, there is now a fouryear deadlock in the designation of the CGPJ. This is a highly unsatisfactory situation; the authorities are urged to take determined action in this key area.”.

As per international recommendations on judicial councils, the Council of Europe Commissioner, in addition to the UN Special Rapporteur on Independence of Judges and Lawyers (SR IJL) in its 2018 annual Report, advised that “appointments and promotions should be based on objective criteria based on merits and qualifications, not on the government’s political considerations.” In addition, the SR IJL recommended the Constitution to include provisions regarding its autonomy.

About the politicization of the judiciary, and the political blockage in the renewal of the Presidency of the Supreme Court and the General Council of the Judiciary, the Vice-President of the European Commission, Věra Jourová, has addressed a letter to the President of the General Council of the Judiciary (CGPJ). See please:

<https://www.lavanguardia.com/politica/20220912/8518511/cgpj-limite-incumplir-plazo-fijado-nombrar-dos-magistrados-tc.html>

Finally, the blockage of the CGPJ in the appointment of the Constitutional Court, which should give a new progressive majority, is summarised in this news:

<https://www.epe.es/es/espana/20220908/claves-renovacion-tribunal-constitucional-bloqueo-75179541>

LINK report GRECO: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in->

## Allocation of cases in courts

*3000 character(s) maximum*

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*

Not “impartiality”, nor “independence” is guaranteed in the Spanish Constitution as a fair trial right. Contrary to international counterparts, e.g ECHR or International Covenant on Civil and Political Rights.

“Independence” appears in the wording under Article 117 of the Spanish Constitution. On international standards, CoE Human Rights Commissioner compels States “to provide guarantees through constitutional or other means”.

Article: <https://app.congreso.es/consti/constitucion/indice/titulos/articulos.jsp?ini=117&tipo=2>

Regarding conduct, the Special Rapporteur on independence of judges and lawyers recalls that judges should show restraint on any activity that may undermine appearance of impartiality or be inconsistent with separation of powers. The European Court has had many cases arriving from Spain and declared violation of Article 6.1 (see case-law, including notorious case Otegi). The Committee also criticised the fact that he did not have the right to a second instance to appeal, given that he was tried on the first and only instance by the Supreme Court, Spain's highest judicial body, for his condition as judge.

Pegasus espionage: Scandal involving espionage and sabotage operations against political opponents, including an Criminal lawyer, in Spain by the Spanish Interior Ministry. And now, in October 2022, three UN Special Rapporteurs call on Spain to investigate Pegasus spying activities between 2017-2020 and call for the prosecution and appropriate sanctions to be imposed on any person responsible.

See: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27548>

In its opinions Num. 6/2019 and Num. 12/2019, the Working Group on Arbitrary Detention (WGAD) of the UN stated that deprivation of liberty of Oriol Junqueras, president of Esquerra Republicana, Raul Romeva, former Minister of Foreign Affairs in the Catalan government, and Dolors Bassa, former Minister of Labour, Social Affairs and Families in the Catalan Government was arbitrary. In addition, it considered that it was motivated by discriminatory motives, political opinion (para.142), finding violations of impartiality (para.136), noting elements such as the judges' pre-established ideas or lack of jurisdiction. In line with other international organizations, it considered misuse of sedition as disproportionate for acts protected by freedom of speech and assembly.

We are concerned by the current and out-dated legislation that does not seem to sufficiently guarantee impartial trials. In addition, as stated by the SR IJL, particular circumstances which give rise to violations of independence of judges and the proper administration of justice include in our case “reasons of State”, including national or public security, but also counter-terrorism, and states of emergency, which is what this organization has tried to put forward.

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*

Different tools exist within the Spanish legislation for the accused during a proceeding. They should be activated alleging one of the following causes (Article 219 of the Organic Act of the Judiciary) e.g having interest in the proceedings, having participated in the investigation stage or in deciding, holding public office, or any office or employment whereupon the judge has been directly or indirectly involved in the subject matter of the present suit, or taken part in other proceedings related to the latter, etc. In sum, any reason that

may jeopardise or contaminate the judge's decision and appearance of impartiality.

Concerning tools available for judges themselves, whenever judges that see their independence threatened in a case, ought to transfer this to the judicial council, but on their own motion and not by external control (Article 14.1 Organic Act). This may be done via two mechanisms:

- Through abstention, which is governed in the Organic Act (Article 217, 221, 222), which ought to be done as soon as there is knowledge of the cause, on the judges' own motion (Article 217).
- By challenging the judge for reasons that may affect the neutrality, impartiality or objectivity (Article 223.1 Organic Act) which may be done by the parties.

Concerning the international framework, the Committee of Ministers' (CoM) in its 2010 recommendation already highlighted that "where judges consider that their independence is threatened, they should be able to have recourse to a council for the judiciary or another independent authority, or they should have effective means of remedy". Please see:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805afb78](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805afb78)

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*

Independence/autonomy of the prosecution service

*3000 character(s) maximum*

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

*3000 character(s) maximum*

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

*3000 character(s) maximum*

The EU Justice Scoreboard shows that the perceived judicial independence in 2022 remained at similar levels than previous years, although it is up from last year, and the main reason continued to be the "interference or pressure from governments and politicians". Further, more than 50% of the population rate the justice system in Spain in terms of the independence judges as "fairly bad" or "very bad". Justice scoreboards 2022:

[https://ec.europa.eu/info/sites/default/files/eu\\_justice\\_scoreboard\\_2022.pdf](https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2022.pdf)

In addition to the fact that repression maintains the same mechanisms it has been using imprisonment, economic and judicial repression, investigations against Parliamentary Bureau members, public officials,

mayors, protesters, etc. there are new ones that add to existing tools, such as, for example, spying on politicians and members of civil society with Pegasus malware, with more than 65 victims. The lack of consequences increases the perception that citizens are unprotected and that justice is not on their side.

On this, the Committee on Legal Affairs and Human Rights of the Council of Europe' Parliamentary Assembly (PACE) in AS/Jur (2022) 15 Resolution (Doc. 2381), say: "numerous criminal cases against other Catalan officials or former officials related to the events surrounding the unconstitutional referendum in 2017 are still pending, as are the arrest warrants against several politicians living abroad. Also, the pardons are now challenged in court. This shows that reconsideration of the provisions on sedition and rebellion remains crucial for ensuring compliance with Council of Europe standards".

See:

<https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2022/AS-JUR-2022-15-EN.pdf>

Another aspect that increases the lack of confidence that individuals have towards justice is the perception that it has a poor democratic culture. The first governments of democracy renounced to an institutional and structural transformation of the judicial system, seeking the maximum political power in the election of the top of the judicial branch. This strategy has been a huge mistake for the quality of democracy as it has led to a politicization of the judiciary. A serious consequence that citizens suffer is the political blockage in the renewal of the Presidency of the Supreme Court and the General Council of the Judiciary (CGPJ, with the mandate expired since December 4, 2018).

Another example of politisation of justice affects the trial to four members of the Board of the Parliament, when chaired by MH Carme Forcadell. In Novembre 2022, the Superior Court of Justice of Catalonia had to repeat the trial due to the lack of impartiality of the president of the court and the speaker.

## 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*

Resources of the judiciary (human/financial/material)

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

*3000 character(s) maximum*

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

*3000 character(s) maximum*



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

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

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

## 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

Article 24 of the Constitution guarantees the right to public trial without undue delays. However, the Constitutional Court has stated that article 24.2 of the Constitution does not foresee a “constitutional right to time-limits”.

According to the European Commission for the Efficiency of Justice (CEPEJ) and as you mention in your 2022 report, the quality of justice is measured by the “reasonable duration of the proceedings” and it will depend on how norms on acceptable length of judicial proceedings are defined”. The European Court on Human Rights (ECtHR) contemplates, for simple criminal cases, one year and five months at one instance only as reasonable. For higher instances, one year. However, on liberty issues (Article 5.4 European Convention on Human Rights) it will “require particular expedition”. That means, e.g 3 years in all instances in a detention case is a violation, and at one instance within weeks.

According to the Fundamental Rights Agency, in Spain the issue of excessive duration of legal proceedings is well known. Further, it has stated that where the National Court acts as the Court of first instance proceedings tend to last longer and are not always concluded within a reasonable time.

In 2021, there were over 4.959 cases pending to be resolved before the Constitutional Court, highest rate since 2017. We look at previous years such as 2019 with 3,505 cases and 2020 with 3,356 cases. These numbers have increased significantly compared to what we contributed last year.

The ECtHR has already stated that undue delay at last instance may pose problems of access to the Court (Article 34 ECHR).

Turning to remedies, there is a compensation mechanism (Organic Act Article 292.1), in addition to an amparo appeal on the basis of Article 24, but it's a remedy that needs to be exhausted first.

The Committee of Ministers notes, according to the ECtHR, that the most effective solution is a remedy that expedites proceedings since it also prevents violations". This should only provide a redress in so far "it hastens the decision by the (authority) concerned".

On adequate policies for undue delays, States ought to ask themselves e.g "if the norms concerning acceptable length are clear, or measures are taken to speed up delayed cases and reduce backlog".

The Consultative Council of European Judges (CCJE) recommends: adequate resources, personal assistants, use of a single judge for criminal (and non complex cases) or alternative dispute resolution, as mechanisms to remedy undue delays. The ECtHR recalls that a "persistent backlog (...) indicates length of judicial proceedings remains a major problem".

In sum, Spanish legislation on time-frames is not sufficiently insured, delays particularly affecting higher instances. While there are mechanisms for reparation, the preventive ones might not be sufficiently accessible, nor speedy enough to redress the violation given the current backlog.

#### Other - please specify

*3000 character(s) maximum*

##### Lack of impartiality

On 30th December 1976, three Royal Decree Laws were approved by the Council of Ministers and came into force on 5th January 1977 when they were published in the Boletín Oficial del Estado (BOE). These three important royal decrees were: the suppression of the Tribunal de Orden Público -TOP (Public Order Courts) (Franco's repressive court), the creation of the Audiencia Nacional (AN) with jurisdiction over the entire national territory, and a decree law transferring jurisdiction over terrorism to this new body of ordinary jurisdiction.

The new judicial body was created by means of a decree law. In Spanish legislation, both the current and the legislation of the Franco regime, the creation of judicial bodies by decree law is not permitted. Article 10 of the Ley de Cortes of 1942 required approval by ordinary law in order to set up judicial bodies. The same requirement was also demanded in Articles 81 and 122 of the 1978 Constitution, the current one.

There is an unjustified derogation from the principle of the natural judge or jurisdiction by reason of the place where the crime has been committed. This judicial body, by having jurisdiction over the entire national territory, does not comply with the principle of the natural judge, which implies that the competent judge to judge any crime must be the judge of the place where the crime was committed, since it is assumed that the latter has better means for the investigation.

The Audiencia Nacional is an institution created illegally, by means of a Decree-Law, to provide a continuation of the Tribunal de Orden Público (as we have said, the repressive tribunal of the Franco regime) in a very subtle way. This body must therefore be abolished or reformed as a matter of urgency. I say this both because of the nature of the crimes, which the AN has jurisdiction over, and which are very closely related to those of the Tribunal de Orden Público and the Tribunal Central de lo Penal. This is also due to the exceptional nature of the court, which breaks with the principle of the natural or ordinary judge and jurisdiction based on the place where the crime was committed.

This institution also has a background of decisions that have led to the abuse of anti-terrorist laws. Please see this report:

<https://igualtat.gencat.cat/web/.content/Ambits/drets-igualtats/informes-DDHH/informe-terrorisme.pdf>

Finally, as a point of interest, it should be noted that the Audiencia Nacional, in terms of its architectural structure, maintains the original location of the Tribunal de Orden Público.

For more information see please:

<https://creandopueblo.files.wordpress.com/2011/09/olarieta-el-origen-de-la-audiencia-nacional.pdf>

[http://e-spacio.uned.es/fez/eserv/bibliuned:RDUNED-2015-17-5120/Creacion\\_Audiencia\\_Nacional.pdf](http://e-spacio.uned.es/fez/eserv/bibliuned:RDUNED-2015-17-5120/Creacion_Audiencia_Nacional.pdf)

## II. Anti-Corruption Framework

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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*

### 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*

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

*3000 character(s) maximum*

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*

## 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*

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*

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*

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

*3000 character(s) maximum*

### Transposition of the "Whistleblower Directive"

As we contributed last year in this report, the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law ("Whistleblower Directive") has not yet been transposed into Spanish legislation. Spain has been one of the Member States that missed the deadline of 17 December 2021 for transposing into national law the Directive. Transparency International and the Whistleblowing International Network have closely monitored the transposition process across all Member States since 2019. According to their latest Progress Report on the transposition of the EU Whistleblower Directive, Spain has done little progress. Consequently, it still fails to provide comprehensive whistleblower protection legislation at national level.

The last corruption perceptions index published by Transparency International shows a significantly worse score for Spain compared to previous years. Some of the cases that have drawn public attention in the last years are related to the revelations into the former Spanish king's finances. Juan Carlos's serious troubles began in 2012 when he went on a hunting trip to Botswana. A photo of the king proudly standing in front of a dead trophy elephant was widely published, and harshly criticised at home; at the time he was the honorary president of the Spanish branch of the World Wildlife Federation. Spain was still recovering from the global recession, with a 23 percent unemployment rate, rising to 50 percent among people under 30. The monarchy began to be widely questioned, and the first concerted calls arose for an investigation into the king'

s finances. The clamor grew, and in 2014 he abdicated. When prosecutors began investigating his finances, he flew to the United Arab Emirates in 2020 to escape corruption investigations. Given that the alleged wrongdoing took place before his abdication, when Juan Carlos had immunity from prosecution, prosecutors see little hope for success in a raft of remaining corruption cases. Several cases have been resolved or dropped, although proper investigations have never taken place.

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*

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

*3000 character(s) maximum*

## C. Repressive measures

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

*3000 character(s) maximum*

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*

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*

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

Other - please specify

3000 character(s) maximum

### III. Media Freedom and Pluralism

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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

#### 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

In one hand, as it is reported in <https://www.media.cat/2022/02/22/policies-contra-periodistes/>, during the demonstrations, and especially when there are clashes between demonstrators and the police, there are photojournalists who have to face difficulties in documenting what is happening and have been hit by police projectiles. During the evictions, many photojournalists also encounter problems in carrying out their work: they are identified and, in several cases, sanctioned without being recognized as professionals. According to this report, an upward trend is observed in terms of sanctions against professionals in application of Law 4 /2015, on the protection of public safety.

It is very important to adopt measures that promote the independence of the media. It is for this reason that we also need to expose those laws that make it to guarantee media freedom and media pluralism.

The Royal Decree-Law 14/2019, of 31 October, adopts urgent measures for reasons of public security in the areas of digital administration, public sector procurement and telecommunications. This Decree facilitates and speeds up the closure of websites by the State. Specifically, in article 6 of the law, it allows the government to assume control and directly intervene in electronic communications networks and services. All this without having to ask for a court order, which makes it even more dangerous.

We consider that this new law puts at risk the rights to freedom of expression and information of citizens, allowing unsupervised digital censorship.

For more info: <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/el-real-decreto-digital-propicia-la-censura-previa-y-el-secuestro-de-contenidos-en-internet-por-part/>

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*

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

*3000 character(s) maximum*

## 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*

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*

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

## 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 its Resolution 1577 (2007) “Towards decriminalisation of defamation”, the PACE already warned that in some states prosecution for defamation is misused in what could be seen as attempts by the authorities to silence media criticism. Such abuse can lead to a genuine media self-censorship and cause progressive shrinkage of democratic debate and of the circulation of general information. There is also a growing recognition that defamation laws should not be of criminal nature.

In Spain, both current criminal and civil law provisions on reputation give potential to bring such cases and are often abused by powerful forces in the society to silence critics.

The Spanish Penal Code contains a number of problematic speech-related offences that are used against journalists and the media outlets. These include criminal insult and defamation, offences against public officials and public institutions, and revelation of secret information. Criminal complaints are often initiated by public officials or the police. The mere existence of such provisions and the possibility of their abuse creates a chilling effect on freedom of expression.

Journalists are also targeted by civil law provisions on protection of honour, privacy and one’s own image. Spanish courts have set the standards of relevant defences that the media can use, including reasonable publication or public interest defence, and found that public officials should tolerate a higher level of criticism than private individuals. However, public officials involved in the mismanagement of funds and corruption can still misuse these provisions to target journalists.

Criminal prosecutions and abusive civil lawsuits also have implications for the financial sustainability of the media. Journalists must bear the costs of legal proceedings and the consequences of being under investigation, sometimes for years, until a verdict is reached and regardless of the result of the judicial proceedings.

The Spanish Penal Code also contains a number of offences that provide heightened protection to the royal family (so-called *lèse-majesté*). Namely:

Article 490(3) criminalises ‘slander’ and ‘insult’ against various members of the Spanish Royal Family during or related to the exercise of their official functions. Article 491(1) criminalises ‘slander’ and ‘insults’ against various members of the Spanish Royal Family, without the connection to the exercise of their official functions.

Article 491(2) criminalises the use of images of past, present, or future Kings or Queens, or other present members of the Royal Family, ‘in any way that could damage the prestige of the Crown’.

The existence of such provisions, even as historical relics, in the Penal Codes of democracies, including when they do not lead to prosecutions, sets a regressive example internationally.

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

*3000 character(s) maximum*

According to the CoE Platform on the “Safety of Journalists”, the number of alerts issued in the past years regarding incidents against the safety of journalists has increased. The indicators on journalistic profession, standards and protection as well as journalism and data protection published by the Centre for Media Pluralism and Media Freedom for Spain, have worsened during the last years. Digital harassment of journalists has increased, and the attacks, which mainly occur through social media and the section of comments on news, are frequent and often come from the extreme right. Critical journalists and fact-



checkers also have been under attack. In addition, women journalists continued to be the object of sexist attacks, particularly on social networks, some of them leading to self-censorship. With regard to journalism and data protection indicators, Spain has not yet transposed or communicated transposition measures regarding the Data Protection Law Enforcement Directive.

Reform of the Citizens Security Law (gag law).

In December 2022, Reporters Without Borders (RSF) urges Spain to adopt measures recommended by the European Commission to fight against Strategic Lawsuits Against Public Participation (or SLAPPs) to curb abusive use of such “gag-lawsuits”. In response to the SLAPP problem, which is common to all of Europe, the European Commission adopted recommendations ( <https://rsf.org/en/rsf-calls-strong-anti-slapp-measures-eu-parliament-member-states> ) designed to ensure that journalists can continue to do investigative reporting about the powerful businessmen and politicians who resort to SLAPPs to discourage and silence them.

Link: <https://rsf.org/en/rsf-condemns-gag-lawsuits-spain-and-urges-government-provide-protective-legislation-media>

The Council of Europe Commissioner for Human Rights sent a letter to the Spanish authorities on February 2022 concerning the resumption by the Congress of Deputies of the review of the 2015 Law on Citizens' Safety. She expressed the concern that “the review did not include changes to the provisions of the Law that have had the most harmful impact on the enjoyment of the rights to freedom of expression and freedom of peaceful assembly on the one hand, and the right to seek asylum and the prohibition of refoulement on the other hand.” She also asked for reviewing “the Citizens' Security Law to bring it in line with Spain's human rights obligations, including under the European Convention on Human Rights, and ensure that the changes to the law result in a legal framework that better protects the exercise of human rights in Spain.”

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*

According to RSF ( <https://rsf.org/en/country/spain> ), in 2021, journalists have been particularly concerned about press conferences at which they have not been able to ask questions, or only questions previously vetted by the government. They have also been concerned about measures to combat disinformation, and about obstacles to their covering migrants arriving in Spain. The lack of transparency was exacerbated by the state of emergency and draconian lockdown restrictions during the first few months of the pandemic. Journalists found it hard to cover what was happening in hospitals and morgues, and to obtain reliable, regular figures, which they often had to estimate for themselves, without help from the government.

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*

As the report “Policies contra periodistes” (<https://www.media.cat/2022/02/22/policies-contra-periodistes/>) points out, between 2020 and 2021, there were nine sanctioning procedures against journalists, with an upward trend: 2 in 2020, and 7 in 2021. Most of them stem from cover-ups of evictions:

The photojournalist Joanna Chichelnitzky at the end of 2021 received the penalty for an eviction that dates

back to December 10, 2020, in which she was visibly identified.

On April 20, 2021, the photojournalist Axel Miranda, fully identified, covered an eviction and ended up receiving a penalty of 601 euros.

Xavi Hurtado and another photojournalist, also identified, also received a sanction for covering an eviction in Barcelona.

The photojournalist Pau de la Calle was also reported - with an armband on - under the same pattern when he was covering an eviction on November 11, 2020.

That same year, the freelance photojournalist Lorenzo D'Agostino received a sanction following the coverage of a launch in Barcelona. Although he was not wearing a vest or armband, because it is not mandatory, he identified himself as a press officer to the officers. D'Agostino claims that when he was accredited, one of the police said to him: "How you must be a press...", and kicked him.

One of the most relevant aspects of this case is that it forced an important change in Belgian Law:

In March 2020, in order to execute the arrest warrant, the ECJ had to examine the double criminality aspect according to which a European arrest warrant cannot be executed if its underlying motive does not constitute an infringement of Belgian law. And thus it found that contempt and serious insults against the king were punishable in Belgium. But to guarantee that the lèse majesté law, is constitutional and compatible with the European Convention on Human Rights, the European Court referred the matter to the Belgian Constitutional Court. In its ruling at the end of October 2021, the Belgian Constitutional Court found that article 1 of the 6 April 1847 law which punished offences against the monarch violated freedom of expression.

Freemuse has also included in its annual report these two cases, among others, and underlined that vague provisions of counterterrorism laws in countries such as Spain are open to interpretation and can easily become a tool applied against those who criticise the authorities.

#### Other - please specify

*3000 character(s) maximum*

The organisation Article 19 has carried out a thorough analysis of the Spanish legal framework and has come up with a series of recommendations that the Spanish Government should take into consideration in order to adequately protect the right of freedom of expression and media pluralism in Spain. From Esquerra Republicana, we support these recommendations and ask the European Commission to include them in its 2022 report on Spain:

Although on 15 December 2022 the reform of the Penal Code was approved by the Congress of Deputies, part of the reform did not conform to international standards on freedom of expression. Articles 208–216, 490 (3), 491(1) and (2), 504, and 543 should be repealed. In the interim, either the government or the legislative body should impose a moratorium on the application of these criminal provisions.

Article 197 of the Penal Code on revelation of secret information should be amended to incorporate explicit exceptions for disclosure of information in the public interest.

Article 7(7) of Organic Law 1/1982 should be amended in order to abolish the reference to 'value judgments that negatively impact the dignity of a person, undermining their reputation or attacking their sense of self-

worth. Instead, Articles 7(3) and 7(7) of Law 1/1982 should ensure that the scope of protection of honour and reputation is limited to false statements of fact that cause actual harm to an individual's reputation.

Article 8 of Organic Law 1/1982 should be amended to reflect that exceptions under Article 8.2. a) –which concerns limitations on protecting privacy of people in public positions and individuals with public notoriety or visibility –are applicable to protection of honour and any realm of individuals' privacy.

Spanish courts should uphold the broad protection of opinions and stop relying on the lack of a 'right to insult' under the Spanish Constitution to restrict offensive opinions or critical discourse used in journalistic material and reporting.

Opinions on matters of public interest should not be subject to a necessity threshold. Spanish courts should impose a moratorium on the application of this standard. Instead, the courts should look into the circumstances in which an assessment is required to determine whether the claims involve facts or value judgments.

Spanish courts should apply the rules of good faith under Article 247 of the Civil Procedure Law 1/2000 to ensure that journalists and media outlets do not face unnecessary civil proceedings as a result of ill-founded or meritless claims brought with the sole aim of silencing or intimidating the exercise of freedom of expression –in particular freedom of information under the Spanish legal framework.

## IV. Other institutional issues related to checks and balances

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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*

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*

Regime for constitutional review of laws

3000 character(s) maximum

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

## 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

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

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

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

## 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

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

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

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

## 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

Other - please specify

*3000 character(s) maximum*

The Tribunal de Cuentas (Court of Auditors) is the highest body for auditing public money; it is a special and unique jurisdiction. But its members are not judges. In fact, the procedure of the Tribunal de Cuentas is different from that of other jurisdictions. In the preliminary proceedings, the parties are not given the possibility to intervene. Afterward, the lawsuit phase and the trial start. Only the Supreme Court can be appealed against the judgment, it is not possible to appeal to the ordinary courts.

The Court of Auditors is made up of 12 members elected by the Congress of Deputies and the Senate, clearly demonstrating the politicisation of the court.

There is a real danger of duplicity of sanctions (in the ordinary jurisdiction and in the Court of Auditors) as in cases we are currently seeing. Is the case of 17 government (or government-related) officials that were charged by the Barcelona First Instance Court no. 13 (BFIC-13) with misuse of public funds, with a joint responsibility compulsory deposit of 5.8 million Euros (or immediate forfeiture of their properties) in connection with the Catalonia Referendum of 1 October 2017 (1-OR). As per the civil liability, parallel proceedings immediately followed against those leaders also charged with misuse of public funds before the Court of Auditors (Tribunal de Cuentas) as detailed by the Supreme Court decision. The Court of Auditors detailed and broke down the expenses, which are similar as the ones by the BFCI-13.

For more information: <https://octubre.cat/tribunal-de-clavegueres/>

## Contact

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