

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

- ☐ 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

* Organisation name

250 character(s) maximum

Òmnium Cultural

Main Areas of Work

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

If "Other", please specify

Civil Rights and Culture

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

500 character(s) maximum

<https://www.omnium.ngo/>

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

974134437992-44

* 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

Aljosa

Surname

Ajanovic Andelic

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

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

The Spanish system of access is through competitive public examinations that test candidates on their powers of memory through the study of some three hundred topics, over an average of four years of preparation. No consideration is given to previous experience in court or in other professional spheres in the legal arena. Once the candidates have entered and after attending a course at the school of judges or prosecutors, they are statutory civil servants as judges or prosecutors in their different destinations. A small proportion enter on merit from the academic or professional world after accrediting ten years of professional practice and passing an examination.

The disciplinary powers in the Spanish Judiciary are held by a body, the General Council of the Judiciary (CGPJ), whose membership (the president of the Supreme Court + 20 members) is appointed by the legislative branch, half in the Senate and half in the Congress. It is a politicised governing body, highly conditioned by the decisions of the major political parties that control the central institutions of Spain.

The promotion of judges and selection of the higher courts presidents (Supreme Court and regional Superior Courts) is done by the CGPJ. This selection of high-level court presidents is sometimes controversial and linked to the political situation. An example of that is the TSJC (Supreme Court of Catalonia), whose president, Jesús María Barrientos, had to be removed from the trial of the former Catalan Parliament President, Roger Torrent, who was being judged for disobedience. In June 2022, he was removed from the case because in 2018, during a speech by Torrent in an official act, Barrientos left the room when the Catalan independentist movement was mentioned, showing a clear political bias.

In the case of the Constitutional Court, the way of electing its members (4 through Congress, 4 through Senate, 2 by the Government and 2 by the CGPJ) is also highly politicised, as its judges often have a clear political stand, even though they have to guarantee the Constitutionality and protection of human rights by all laws and judicial decisions. A clear example is the selection of its two newest members, in December 2022: Juan Carlos Campo, former Minister of Justice with the PSOE party, and Laura Díez, former high-rank official in a PSOE government.

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

In addition to that, the high level of politicisation of this body has led, in the context of the political conflict between Catalonia and Spain, to some judges being sanctioned with suspension and transfers after expressing certain political opinions. This is the case of a judge of the Audiencia Provincial de Barcelona, Santiago Vidal, who announced that he was taking part in an advisory role in the drawing up of a future Catalan constitution and whose suspension was decreed by the CGPJ in 2015, or the case of judge Frederic Vidal Grases, who was sanctioned in 2018 for criticising, in an internal chat between judges, the police brutality during the referendum of 1st October 2017. But there is no record of sanctions over the expression of opinions of a Spanish unionist nature, widely expressed by many magistrates across Spain and Catalonia. This indicates irregular use of the Council's disciplinary powers in relation to the expression of political opinions by judges at different levels.

Another example is the one of the judge Antonio Narváez, from the Constitutional Court. He was one of the judges in charge of resolving appeals of the condemnation of the Catalan civil and political leaders in jail for promoting or organising the referendum of 1st October 2017. In a conference in November 2017, Narváez compared the Catalan referendum to the failed Coup d'état that Spanish military forces performed in 1981, and during which they assaulted the Spanish congress with guns. The Catalan leaders' defence asked the Court to put him apart, because of his lack of impartiality, but instead of doing so, it was the judge himself who stepped back to avoid his dismissal (which, if the vote of the majority of judges had been against it, might have had consequences in a possible appeal in front of the ECHR). Narváez did not step back, though, during the resolution of the appeal of the former Catalan Government President, Quim Torra, who was disbarred in September 2020 for putting up a yellow ribbon in the Catalan Government's building, which symbolised solidarity with the Catalan leaders both imprisoned and exiled. Narváez was the judge who wrote the sentence to Torra's appeal, denying him protection.

Promotion of judges and prosecutors (incl. judicial review)

3000 character(s) maximum

The promotions within the judiciary and of prosecutors are also decided by the CGPJ and therefore their membership is subject to the bargain between the two biggest Spanish parties (Socialist Party and Popular Party when making appointments to the higher courts), which are the ones that take final decisions on appeal in major matters. This also includes the appointment of the members of the different chambers of the Supreme Court (SC).

For example, one of the latest appointments to the SC, to the Criminal Chamber, was Vicente Magro Servet, who sat as a senator for the Popular Party. Another of the recent appointments, Carmen Lamela, was prior to her appointment responsible for initiating some of the most controversial proceedings and the most heavily criticised by international human rights bodies, the case against the leaders of two civil associations, Jordi Cuixart and Jordi Sànchez, and the imprisonment of the whole Catalan government following the referendum of 1st October 2017. The fact that Carmen Lamela was not a senior judge with an outstanding record meant that her appointment as a Supreme Court judge could be seen as a reward for her role in the political conflict between Catalonia and the institutions of the Spanish state.

Also, in 2021, Mr Angel Hurtado was appointed as a Supreme Court judge. This position, the highest in the Spanish judiciary, is often given to great scholars, or judges with long and prestigious careers. In the case of Mr Hurtado, that's not the case: he is known for being the only judge in the tribunal that judged the greatest Spanish corruption scandal, the "Gurtel", that asked for the acquittal of the Popular Party (PP). While the CGPJ renovation is blocked due to the veto to judge José Ricardo de Prada, who signed the sentence condemning the Popular Party, the one who voted against that has been promoted by the current conservative majority of the CGPJ to the Supreme Court.

In December 2022, the judge Pablo Lucas from the Supreme Court was appointed by the CGPJ as President of the Administrative Chamber of the Supreme Court. Some months before, in May, the Director of the Spanish Secret services (CNI) appeared in the Commission of Secrets of the Spanish Congress to give some information on the Catalangate scandal, the unlawful surveillance with Pegasus to 65 Catalan independentists. In that session, the Director of the CNI acknowledged that 18 of those had been spied on, with no other excuses than that they posed a "threat to national security". The surveillance with an invasive spyware against (at least) 18 people were all approved by judge Pablo Lucas, at that time judge of the SC in charge of approving CNI's actions.

After this politically motivated investigation, criticised and investigated in the European Parliament Commission of Inquiry on the use of Pegasus (PEGA), he was rewarded with a promotion and is since 30 December 2022, the President of the Administrative Chamber of the Spanish Supreme Court

Allocation of cases in courts

3000 character(s) maximum

It is generally random and fair, but there are two exceptions:

1) There is a special jurisdiction held by the Audiencia Nacional (National Court, NC), a central court set up to deal with matters of particular legal, economic and political importance (terrorism, felonies against the crown, drugs, etc), with rules on competence that are elastic and can be reinterpreted according to circumstances, with the power to take over matters that it is felt should not be tried in ordinary regional courts. A traditional way to do this is to classify the most radical forms of political dissidence as possible terrorist offences. This can lead to the criminalization of movements and can have a deterrent or chilling effect, so the political use of the figure “terrorism” to allocate a case in the NC is constant, in Spain.

In January 2023, there are still two big secret cases open in the NC’s inquiry number 6, with judge Garcia Castellon. One is against Tsunami Democratic, a platform that organised peaceful protests against the sentencing to jail of Catalan leaders in 2019, in the Barcelona airport and in several roads. This investigation has been conducted in secret for more than 3 years and it has been allocated in the NC because the investigation is on the basis of “terrorism activities”, even if those specific protests were peaceful. This fact causes a breach on the right to defence of the investigated, besides being a clear misuse of the Court allocation system and clearly of the charges of terrorism.

In 2022, it was published that the Spanish National Police, in 2018, demanded the NC to open a case for terrorism against a mix of political parties, youth organisations and associations that defend a far-left independentism in Catalonia, because it posed a “threat to the stability and social peace”. The NC judge Castellon allowed telephonic interventions to at least 38 people, who were wired for at least 7 months. This investigation and the information taken from it was used by the NC Court to open another cause of the “CDR” members accused of terrorism.

To sum up, this NC’s Inquiry seems to be specialised in prosecuting the activists of the Catalan self-determination movement.

2) A Supreme Court(SC) that can reinterpret the rules on competence to give itself the right to hear a case without any right of appeal, accountability or supervision of these decisions. In the case of the Catalan leaders, the SC changed the previous criterion in order to transfer the hearing to the SC in Madrid. In this sense, this is especially serious in the case of Jordi Cuixart, a civil society leader who has never held any political office, and who was unjustly judged in front of the SC, which can only judge elected officials accused of having committed crimes outside its autonomous community.

Now, in a prejudicial question posed by the Spanish Judge Larena to the ECJ in 2022, it will have to decide, during 2023, whether the SC was, or not, competent to judge it.

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

It has already been pointed out that the General Council of the Judiciary is chosen by the legislative body, 10 members by the Congress and 10 members by the Senate, and therefore there is an extraordinary dependence and affinity with legislative power, at least in the period when the political colours coincide - they are appointed for five years and remain on extension until new appointments are made. This is particularly obvious in relation to the senior justice and the appointment of the central legal bodies of Spain.

The clear political character of this body has been in the focus for more than four years now. Since 8 December 2018, the members of the governing body of the judiciary in Spain have been performing as acting members, as their mandate ended on that date. Since then, it has been impossible to reach a political agreement on its new composition, which is both an outrageous situation - it is a very important institution - and a worrying one - its members depend solely on a political decision.

In September and October 2022, Spain received two warnings from the EU on this matter, urging Spanish authorities to unblock the situation. In September, the Justice Commissioner of the EU, Didier Reynders, said that before Spain takes over the EU Presidency (1 July 2023) this situation has to be solved. In late October, after political negotiations broke and PP and PSOE stopped talks to try to find a solution, the European Commission said that "it is a priority question", and that the influence of the legislative and executive powers over the judiciary must be reduced.

It is clear that this politicisation of the governing body of all the judiciary is utterly against an effective separation of powers. Moreover, one could argue that all the decisions taken by the body since its members mandate expired (i.e. promotions, appointments, etc) are not legitimate. In addition to that, as PP and PSOE are the two political parties deciding on the subject, it is a fact that all the high ranks appointed by them will be favourable to their political positions.

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

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

The prosecution service is a hierarchical body dependent on the fact that its head, the State Attorney General, is appointed by the central government and changes whenever there is a change of government. There is no independent prosecution service, nor is one envisaged either in the Spanish constitution or in the law governing the institution. They provide for precisely the opposite: each government's criminal policy is directed through the Attorney General's Office.

Its bias is clear when it comes to the Catalan pro-referendum movement. In 2022, the State Attorney General's Office published its Annual Memories. In these it speaks, among others, about the "Violent Catalan Independentist Movement", alongside with ETA (a basque terrorist group disappeared more than a decade ago). It also speaks about "relevant actions against terrorism", in particular "activities against the violent independentism in Catalonia", summing up to 54 allegedly violent actions in Catalonia.

The Prosecutor's office has also consistently appealed against any acquittal of pro-independence activists judged in courts, as for example that of former Catalan Parliament President, Roger Torrent, in November 2022. It has also neglected its duty by not investigating the police violence during the 1st October 2017 referendum in Catalonia, in which the police left 1.069 people injured. In the last 5 years, not a single police officer or chief commander has been held accountable. In the meantime, various international organisations, including Amnesty International and HRW, have warned of the lack of an effective investigation, particularly in relation to the action of the Public Prosecutor's Office.

Not only does it not investigate police violence, but the Public Prosecutor's Office and the State Attorney have requested the prosecution of some of the victims in various open trials, and in some cases the judge has decided to prosecute some of them, in addition to some of those who participated in the vote, instead of investigating the police action.

In January 2022, to try to end the impunity, Òmnium presented an expert test identifying, through videos, 468 acts of violence in 16 schools of Barcelona, carried out by 120 police agents. Thanks to these images, Òmnium was able to require the investigation of 24 police officers, and the ampliation of the investigation already opened against 13 other agents. In total, 90 National Police officers are being investigated in Barcelona at the moment. It is clear that the popular plaintiffs (Òmnium Cultural and 2 more NGOs) are carrying out the role that the Public Prosecutor's office should have in this case. For example: the popular plaintiffs have been the ones that asked for expert tests and paid for them. This was necessary to combat the double effect of the impunity: firstly, the lack of proactivity by the Prosecutors, and secondly, the obstruction of all of the open investigations by the Ministry of Interior and Police forces.

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

At least 65 people in Catalonia have been attacked and infected with the spyware between 2015 and 2021. This case, known as Catalangate, is the largest forensically documented cluster of mercenary spyware attacks and infections, and the biggest espionage case in Europe and in the world using Pegasus until now. We will talk more about this case in the field of “enabling the work of civil society space”, but the case has also had its relevance in the appearance of independence of the Spanish Judiciary.

The judiciary, in a democracy, would be the first interested in knowing if all of the allegations made by a reputed, well renowned centre such as Citizen Lab have any basis. Moreover if, like it's the case, affects civil society activists, journalists or, simply, political dissidence. Also, the Prosecutor's Office would get deep in the investigation of which judge, and on what grounds, ordered the investigation; also, if there has been any use without the approval of a judge, which would be totally illegal.

On the contrary, nothing of this has happened. From the many (up to 10) complaints filed by the victims in May 2022, no investigation nor actions have been taken by any of the judges.

There is controversy about which Court should be competent for the investigation and if whether or not all the complaints filed for facts related to the use of the Pegasus malware in relation to victims of the same judicial party should be accumulated (it would correspond to the Barcelona Court of Inquiry 32, as it has the oldest knowledge for previous cases, but it declined).

This is especially blatant in contrast to the other case denounced in Spain. In May, Prime Minister Pedro Sánchez announced that the CNI found out that both his phone and 2 of his Ministers had been hacked, probably by a foreign government. He put the case in hands of the National Court, which immediately opened an investigation and asked Israel (where the spyware was created) its collaboration in the case three times: 10 May 2022, 7 June 2022, and 7 September 2022.

In the case of the Catalan victims, no actions have been taken by any judge, so far. So, it is clear that there is an important difference between guardianship judicial protection that is being given to the Spanish victims protected by the National Court and those Catalan victims who have denounced the facts in the Courts of Barcelona. The Criminal Procedure Law does not establish gradation between victims and guardianship for such a serious attack on the privacy of citizens should not receive different protection depending on the position held by the victim in question. This difference in treatment is at this moment totally unjustified and illegal.

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

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

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

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

Juan Carlos I was king of Spain until the year 2014, when he abdicated in favour of his son, the current head of state. From July 2018, public opinion became aware of the existence of possible illegal business carried on by Juan Carlos I during his time as head of state. On 15th March 2020 the current head of state recognised the existence of illicit funds in his father's name, explicitly stating his intention to renounce the inheritance because it was not "in accordance with legality or with the rectitude or integrity" of the crown and stripped him of the public allowance he had received. On 3rd August 2020 Juan Carlos I fled Spain, moving to live in the United Arab Emirates. Spanish Courts have repeatedly stopped any investigation against Juan Carlos I and his allegedly fraudulent businesses, on the basis that the Article 56 of the Spanish Constitution grants the head of State total immunity.

In 2020, only after the public statements by the current head of state recognizing irregularities, on 5th June the Spanish attorney general's office issued a decree opening an investigation against Juan Carlos I, concentrating exclusively on actions taken after June 2014, i.e. since his abdication, considering all previous actions immune. No conclusion, decision or result of these proceedings has emerged publicly.

International public law has developed a considerable body of doctrine concerning the validity and withdrawal of immunity for heads of state in relation to their prosecution by other states. However, this is not currently the debate with regard to Juan Carlos I because it is the state he formerly headed that is called on to exercise jurisdiction. Article 56.3 of the Spanish constitution stipulates his inviolability and immunity from liability, but only in relation to the functions he performs as head of state, which must necessarily be endorsed by another state authority. Thus, it can be stated that an equivalence is established between immune actions and endorsed actions, which necessarily means the emeritus king is liable for actions without such endorsement. This interpretation is also the most in accordance with international practice, which has made a distinction between official or public actions (*ius imperii*) and private actions of a commercial nature (*ius gestionis*), clearly excluding the latter from the institution of immunity. Under these criteria, this inviolability does not extend to actions that are not part of the exercise of his position and are illegal. Internationally it is an uncontested interpretation that *ratione personae* immunities lapse following the end of the exercise of their functions. The complete absence of investigation based on the inviolability of the emeritus king is against international law. Also contrary to international law is the investigation by the Spanish public prosecutor's office concentrating exclusively on actions after 2014 as those taken before the abdication are considered to enjoy immunity

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

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

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

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

3000 character(s) maximum

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

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

Other - please specify

3000 character(s) maximum

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

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

In 2022 there have been 3 scandals that show how intimidation and smear campaigns against the independentists are being used by Spanish authorities with impunity. In the cases, practices reserved to the fight against terrorism and criminal organisations were used against a peaceful political movement. CATALANGATE <https://citizenlab.ca/2022/04/catalangate-extensive-mercenary-spyware-operation-against-catalans-using-pegasus-candiru/>

The Citizen Lab report certified that 65 people in Catalonia have been attacked and infected with the spyware between 2015 and 2021. As the Citizen Lab points in its report, “strong circumstantial evidence points to a strong nexus with one or more entities within the Spanish government”. The Spanish authorities have criminalised the movement in favour of self-determination with intimidation, with the purpose of organising a smear campaign and tying it, falsely, with violent behaviours. Spain accepted that the National Court approved the spying of at least 18 of the 65. To use Pegasus against political targets, against civil society and their families, lawyers and journalists is not what one expects from a democracy. This crisis can be tackled only with an independent investigation, as it involves gross violations of human rights. The PEGA Committee report gave credibility to the case, and highlighted that Spanish authorities - including the judiciary - have not collaborated with the inquiry.

MASSIVE SURVEILLANCE

In October 2022 an investigation by “Directa” showed that 38 left-winged independentist activists were victims of a massive police surveillance, under the justification of “anti-terrorist fight”. Again, the figure of “terrorism” is being used to unlawfully prosecute and create a chilling effect amongst political dissidence. The espionage happened between November 2017 and March 2019, and was ordered by Spanish police forces. It included geolocalisation, infection with a spyware, physically following people..

This massive surveillance was allocated in the National Court and approved by judges de Egea, Lamena and Castellón. It is clear that the only goal of this type of judicial proceedings is associating independentism with terrorism, but also using the Criminal Law of the Enemy, independentist activists.

INFILTRATIONS IN YOUTH ORGANISATIONS

In 7 June 2022 it was revealed by La Directa that the Spanish police had infiltrated at least one police officer in the university’s student union SEPC, and tried to do so with another one in the youth organisation of ERC party, revealed by La Directa and Ara on 27 June 2022. When asked, through a complaint filed by Òmnium, the Spanish Government answered in 5 September 2022. The Interior Ministry justified its actions, pointed out aspects such as membership in multiple groups as a dangerous element, as well as making the claim that such groups are “giving origin to dynamics that are violent and philo-terrorist” - that is to say, pro-terrorist dynamics.

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

Contact

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