

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 contributions 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 State (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 "about you" section 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-stakeholderconsultation_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 organization or association

☐ Public authority or network of public authorities

☐ Other

If "Other", please specify

* Organization name

250 character(s) maximum

Civic Platform for Judicial Independence

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:

Civic Platform for Judicial Independence

<https://plataformaindependenciaindicial.es/>

Twitter: @PCIndepJudicial

Association formed by jurists and civil society professionals concerned about the politicization of the Spanish justice system. Its sole objective is the defense of the rule of law and the independence of the judiciary, in accordance with European and international standards.

It is a non-profit association, of a transversal, plural and absolutely independent nature from public authorities and political, trade union, business or any other kind of organizations.

As it is not a judicial association but a cross-cutting citizens' organization comprising not only judges, but also lawyers, university professors, as well as other jurists and citizens in general from civil society, it therefore has the advantage of being detached from corporate interests that lead others to hide significant data in the description of the problem of the lack of independence of the Judiciary in Spain.

Promoted the "Manifesto for the depoliticization and judicial independence" supported by more than 1,400 Spanish judges. It has created the Observatory of Appointments, producing prestigious reports on arbitrariness and politicization in the appointment of senior judicial positions.

It is a pioneer in denouncing before international and European bodies the attacks on judicial independence in Spain through the discretionary appointments of high judicial authorities and members of the CGPJ and through certain legislative reforms that seek to limit the functions of the CGPJ or the control of the Judiciary.

<https://plataformaindependenciajudicial.es/2022/09/28/llamando-a-las-puertas-de-europa/>

Transparency register number

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

The identification number (TR ID) of PLATAFORMA CIVICA POR LA INDEPENDENCIA JUDICIAL in the Transparency Registry is: 612201944923-64 Registered on December 13, 2021

* Country of origin

* Spain

Name:

Civic Platform for Judicial Independence

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 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 has been identified elsewhere in this contribution.**

☐ Public-Your personal details (name, organization 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

The Civic Platform for Judicial Independence already submitted its contributions to the 2021 and 2022 Rule of Law Report and, unfortunately, the situation has worsened.

Throughout this year 2022 the same anomalies that the Platform already denounced to the European Commission for its 2022 report have been maintained, among them: maintenance of the system of election of the highest body of the judiciary (the General Council of the Judiciary, CGPJ) by the political power, arbitrariness in the appointment of senior judicial positions and revolving doors. In addition, there are the attempts of the Executive Power to control the Constitutional Court and the serious verbal attacks by certain political groups on judges for acts related to the mere exercise of their jurisdiction.

1.- Spain continues to find itself in 2022 in a serious and anomalous situation with respect to the rest of the Member States of the European Union in terms of judicial independence. Thus, Poland and Spain are the only two countries of the Union in which the appointment of all the members of their Councils of Justice (which will subsequently be responsible for the appointment of the highest judicial bodies) are entirely appointed by politicians through Parliament. There is an obvious parallel between the appointment of the members of the National Council of the Judiciary in Poland (CNPJ) and the General Council of the Judiciary in Spain (CGPJ).

Numerous recommendations issued by the Council of Europe, specifically from the Group of States Against Corruption (GRECO) in reports of July 2016, December 8, 2017 and June 21, 2019 and in those published on June 3, 2020, September 30, 2021 and December 5, 2022, urge the Spanish State to **modify the system of election of 12 of the 20 members of the General Council of the Judiciary, so that the political authorities do not intervene in any phase of their appointment.**

Likewise, in the **Report of the European Commission on the Rule of Law in 2021**, on the situation in Spain, reference is made to the concern about the lack of renewal of the General Council of the Judiciary (CGPJ) and that the **European rules establishing that at least half of the members of the CGPJ must be judges appointed by their counterparts at all levels of the Judiciary**, as recalled by GRECO in a letter dated October 14, 2020, **must be taken into account.** And in the recent **Report on the Rule of Law in 2022**, published last July 13, the European Commission recommends to proceed to the renewal of the CGPJ as a priority and to initiate, immediately after the renewal, a process with a view to adapt the appointment of its judge-members taking into account the European standards.

These recommendations have not been complied with.

Spain's flagrant failure to comply with European law on judicial independence and separation of powers is even more evident in light of the latest rulings of the CJEU in the various infringement proceedings against Poland [judgment of 24 June 2019, Commission v. Poland C-619/18, EU: C: 2019:531, paragraph 58 and judgment of the CJEU of 19 November 2019, joined cases C-585/18, C-624/18 and C-625/18; and judgment of 2 March 2021, C-824/18) and before the judgments of the ECtHR of 22 July 2021 (Reczkowicz), 8 November 2021 (Dolińska-Ficek and Ozimek) and 3 February 2022 (Advance Pharma), **which declare that the right of various Polish citizens to have their cases examined by an independent and impartial tribunal** (art. 6 ECHR), having been decided by a court -

the Supreme Court of Poland - whose members had been fully or partially appointed by a council of the judiciary whose judicial members, in turn, had been elected by the Parliament.

The European Commission has decided for the first time to intervene the Judicial Power of a country of the Union due to the lack of independence with respect to the Legislative and Executive Power. Thus, by resolution dated April 8, 2020, the CJEU suspends as a precautionary measure an entire Chamber of the Supreme Court of Poland, a Chamber which had the competence to hear **disciplinary proceedings** against Polish judges, considering that all the members of the Polish National Council of the Judiciary (CNPJ) and the magistrates that make up the disciplinary Chamber of the Polish Supreme Court were not independent and impartial, since their appointment depended on the Legislative and Executive Powers (first appointing the members of the CNPJ and, subsequently, the latter appointing the magistrates of the Chamber of the Supreme Court).

The parallelism with the Spanish system is obvious, since also in Spain the members of the CGPJ are elected by the Legislature and the CGPJ in turn, in a discretionary manner, appoints all the magistrates that will make up the 6th Section of the Administrative Chamber of the SC, in charge of reviewing the disciplinary sanctions imposed on Spanish judges and magistrates.

In this respect, we find ourselves in a similar situation to Poland, as described in the following article <https://www.hayderecho.com/2022/02/16/nubes-de-tormenta-en-europa-para-el-sistema-judicial-espanol/>

3.- The Spanish system **allows the so-called revolving doors** and favors the emergence of "political judges": judges can move directly from politics to judicial practice and vice versa. By virtue of a reform introduced in the LOPJ in 2011 by LO 12/2011 of September 22, judges are allowed to hold any political office or position of trust in the central or regional government or representative public office by election at any level, through the regime of special services, which adds up for the purposes of seniority in the career ladder. The reform retroactively benefited all judges who had previously held political office.

This regime allows these judges to return to their position and apply for any other position, in addition to maintaining their seniority in the judicial career, in such a way that while they develop their political career without any time limit, they also develop their judicial career, and then, by virtue of the contacts acquired, they can be promoted to the top of the judicial career through the discretionary appointments made by the CGPJ.

It would be desirable to proceed with a reform that would prevent, at least temporarily, the return of a politician to the exercise of judicial power, as has been approved in Italy: https://www.abc.es/internacional/abci-magistrados-italianos-entren-politica-nunca-mas-podran-vestir-toga-20220120148_noticia.html#vca=rrss-inducido&vmc=abc-es&vso=tw&vli=noticia.foto

4. In November 2022, Spanish judges were the victims of a defamation campaign orchestrated by the political power with insults in the media, calling them "fascists in robes" or "machistas". And this simply because they limited themselves to applying a legislative reform approved by parliament at the request of the Government which reduced the penalties for crimes of a sexual nature. So serious was the attack that the Council of the Judiciary itself issued a communiqué in support of the Spanish judges. <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/Comunicado-de-la-Comision-Permanente-en-relacion-con-las-resoluciones-judiciales-dictadas-como-consecuencia-de-la-entrada-en-vigor-de-la-Ley-Organica-10-2022--de-garantia-integral-de-la-libertad-sexual>

Also from PCIJ we made a communiqué: <https://plataformaindependenciaindicial.es/2022/11/17/huida-hacia-adelante-si-es-si-y-los-ataques-a-los-jueces-comunicado-de-la-plataforma/>

5. On December 9, 2022, two of the parliamentary groups supporting the Government proposed in Congress, via amendment to a bill to reform the Penal Code, the reduction of the reinforced majority

required of the members of the General Council of the Judiciary for the appointment of the two members of the Constitutional Court that correspond to it. They also proposed to establish criminal liability in the event of failure to comply with the deadlines set for the appointment of these judges. All this represents a gross interference of the Executive and Legislative Power in the body of constitutional guarantees in violation of the current legal system, as the Platform explains in its report: <https://plataformaindependenciajudicial.es/2022/12/12/jaque-mate-a-la-separacion-de-poderes-rebaja-de-las-mayorias-en-el-consejo-general-del-poder-judicial-para-la-designacion-de-los-miembros-del-tribunal-constitucional-comunicado-de-la-plataforma/>.

The processing of this legislative reform was suspended as a precautionary measure by the Constitutional Court, following an appeal for protection filed by several opposition deputies. This Court has been renewed in a third part at the end of December 2022, following the appointment by the CGPJ of two members (a magistrate and a former magistrate of the Supreme Court) and the appointment by the Government of two others (a former minister and a former senior official of the Ministry of the Presidency).

6.- During the year 2022, the PCIJ has continued to defend the Judicial Independence of the Spanish State before European bodies. Thus, after the **formal Petition before the Committee on Petitions of the European Parliament (registered under No. 0352/2021)**, <https://plataformaindependenciajudicial.es/2021/03/31/peticion-de-auxilio-al-parlamento-europeo/> of the year 2021, it has extended it in view of the existence of new attacks on judicial independence:

- On June 25, 2022, as a result of the new legislative reform registered in the Congress of Deputies, which aims to empower the General Council of the Judiciary to appoint two judges to the Constitutional Court, constitutes an attack on the separation of powers, by seeking government control of the highest interpreter of the Constitution as well as the appointment of senior judicial positions.

<https://plataformaindependenciajudicial.es/2022/06/26/parlamento-europeo-nueva-peticion-de-la-plataforma/>

- December 1, 2022 to report that the Spanish Government proposed as judges of the Constitutional Court two jurists who, instead of being "jurists of recognized competence", as stipulated in the Spanish Constitution, are politicians with a long track record in the service of the political interests of the Executive Branch. <https://plataformaindependenciajudicial.es/2022/12/01/intervencion-europea-la-plataforma-acude-al-parlamento-europeo-magistrados-tc/>

- On December 18, 2022, the Platform expanded this petition and made an appeal to the public for Spanish citizens to go directly to the European Commission and Parliament to denounce the attacks on the Constitutional Court referred to in the fifth point of this section: <https://plataformaindependenciajudicial.es/2022/12/18/llamamiento-a-europa-movilizacion-ciudadana/>.

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 therecommendations, 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].

Spain

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

Neither the recommendations of the European Commission in the 2021 and 2022 Rule of Law reports nor those of GRECO are being complied with.

Currently, **we find ourselves in Spain with a CGPJ that should have been renewed in December 2018 but has not been renewed.** Precisely, **the problem lies in the fact that the election of the members is carried out by agreement between the political party that governs and the main opposition party, through a distribution of the memberships among their affinities**, a distribution in which three of the four Judicial Associations participate, which do not represent more than half of the judges and magistrates, since 44.53% of the judges are not associated.

Moreover, under the current system of election of members of the CGPJ, **judges have the right to stand as candidates**, if they obtain the endorsement of an association or 25 colleagues (therefore, there is a relative right of passive suffrage) **but they do not have the right to elect their representatives in the CGPJ (there is no right of active suffrage).**

As we stated in the report we submitted to the European Commission in May of this year on the renewal of the CGPJ <https://plataformaindependenciaindicial.es/2022/05/19/informe-sobre-la-renovacion-del-consejo-general-del-poder-judicial/>, **the current system of election of members of the CGPJ lends itself to political corruption, affects the appearance of judicial independence and the confidence of citizens in justice and also lacks democratic legitimacy**, since the negotiations for this election are carried out by representatives of two political parties (PSOE and PP) outside the parliamentary groups and the Cortes Generales, which formally proceed to the appointment in an act of mere institutional farce, despite the fact that according to the current regulations, it corresponds to each House (Congress and Senate) and therefore to all the parliamentary groups, the effective election of 10

members of the CGPJ to each House by a majority of 3/5 of its members. **No action is being taken by the Chambers to proceed with the renewal of the CGPJ.**

In Spain we are witnessing an **intense attack on the current institutional system with absolute disregard for basic principles such as the separation of powers**, with maximum attempts to politically influence the appointment of members of the CGPJ or, as approved by Organic Law 4/2021 of March 29, to **limit its functions when its mandate is extended, preventing the appointment of senior judicial positions**, which seems to be what most interested those who approved this reform, since the truth is that, beyond the appointment of members of the CGPJ, what is of interest is to be able to control the appointment of such discretionary positions: magistrates who rule on proceedings against those with aforesaid status, on proceedings against the administrations, etc.

The CGPJ has become a hostage of the Executive Power, the Legislative Power and the political parties, since it is at the mercy of what all of them decide about its renewal or not and about the functions it may or may not exercise at any given moment.

Paradoxically, **the appeals of unconstitutionality filed almost two years ago against said LO 4/2021 are pending resolution by the Constitutional Court**, a body also strongly politicized and whose partial renewal was scheduled for June 2022, with two appointments falling to the CGPJ, which is in office and prevented from making such appointments precisely by LO 4/2021, having recovered such function after express reform operated by LO 8/2022 of July 27, Two of the four new appointments were made by persons closely linked to the current Government, which appointed them (a former Minister of Justice and a former senior official of the Ministry of the Presidency) and the other two appointments were made by two magistrates appointed by the CGPJ after strong pressures and continuous blockages that influenced the final appointment made. The appointment of the new president of the TC has not been free of controversy either, having fallen on the candidate preferred by the Government and who was Attorney General of the State with a government of the same sign as the current one. <https://okdiario.com/espana/conde-pumpido-candidato-moncloa-elegido-presidente-del-tribunal-constitucional-10276585>

On a day-to-day basis, **the current interim situation of the CGPJ, despite being exceptional and an irregular situation, the truth is that it would not affect if it were not for the limitation of functions that was approved by LO 4/2021 of March 29, 2021**, which prevents the appointment of judicial positions and therefore that vacancies are being covered, leading to overflowing and collapsed Chambers and Courts by not having covered positions and not being able to assume the existing work, which leads to further delay in the resolution of cases. This is reported in various media such as <https://www.larazon.es/espana/20221204/2bqsoadxqfbwhdlsy6ccf2i5ma.html> and the CGPJ itself at <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/En-Portada/La-Sala-de-Gobierno-del-Tribunal-Supremo-reitera-que-la-no-renovacion-del-CGPJ-originara-en-breve-dificultades-extraordinarias-para-su-funcionamiento>.

If the TC were to rule on the appeals of unconstitutionality filed against said LO and were to uphold them, the problem derived from the limitation of the functions of the CGPJ would be resolved and the CGPJ could continue to function until the reform of the LOPJ and the renewal in accordance with the new election system.

The problem is aggravated because there are also maximum attempts to politically influence the appointment of members of the Constitutional Court, to avoid the necessary controls on the actions of the Executive and Legislative Branches and to put an end to the system of democratic counterweights, as previously stated in point 5 of the first section of this questionnaire and in section I A). Precisely, the haste in the renewal of the TC in the last month and the decision of the new president of the TC to resolve certain matters that had been pending in the TC for many years of relevant ideological significance, augur the pretension of the current Government to obtain TC pronouncements favorable to its interests and those of its ideology: https://www.elespanol.com/espana/tribunales/20230117/primera-decision-conde-pumpido-diluir-minoria-secciones-tc/734176922_0.html <https://www.libertaddigital.com/espana/2023-01-17/conde-pumpido-estrena-mandato-pleno-constitucional-primera12-anos-recurso-aborto-6976609/>.

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 separation of powers requires that the system for appointing high-level judicial authorities be made more objective by subjecting discretion to strict rules of control and that the appointment of regional magistrates to the High Courts of Justice be abolished.

Access to the judicial career by the so-called **autonomous turn**, provided for in Article 330.4 LOPJ, allows one out of every three positions of magistrates of the Civil and Criminal Chamber of the TSJs to be filled by the CGPJ with appointments made from among jurists of recognized prestige with more than ten years in the practice of the profession from a shortlist presented by the Autonomous Assemblies. In many cases, these judges are in charge of the instruction and possible prosecution of the autonomous deputies who have proposed them, and, in any case, they constitute an important body of jurists within the judicial career in which the ideological component is defining and key to their appointment.

The problem lies in the fact that **there are more and more positions appointed on a discretionary basis by the CGPJ and the discretionary decision has become a way to reward and retaliate the trajectory of judges**. An added tool, used in recent years by the CGPJ to return favors, is the **discretionary granting of service commissions**, i.e., the coverage of vacant positions in high courts by judges with other destinations.

Discretionality" becomes "arbitrariness" because the most loyal or most like-minded person is chosen rather than the most competent and capable for the position. To this end, the bases of the call for the position are generic and focus on a personal interview and the defense of a program of action. Something very subjective. The candidate is chosen and then a motivation is created.

GRECO, after the reform by Organic Law 4/2018 of Article 326.2. LOPJ and its subsequent regulatory development, continues to denounce that Spain does not comply with the requirement to avoid the appearance of bias in appointments, since **no prior and public rules are established for the appointment of judges according to each class of court, but rather generic prior rules are set in a regulation and in each call the requirements for appointment are established ad hoc**, which favors that the CGPJ can ensure the appointment of the pre-selected or preferred candidate.

The Platform has prepared several **reports on these discretionary appointments** reaching devastating conclusions: <https://plataformaindependenciajudicial.es/2020/01/12/nombramiento-sala-3a-ts-informe-del-acuerdo-del-cgpi-de-120919> and also on the secondments: <https://plataformaindependenciajudicial.es/2022/01/10/informe-sobre-comisiones-de-servicio-judiciales/>

Likewise, the Platform has prepared a set of **bases for the reform of the current discretionary appointments regulations in order to** make appointments more objective: <https://plataformaindependenciajudicial.es/2016/07/09/propuesta-al-cgpi-bases-nombramientos-discrecionales/>.

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

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1.- In the field of discretionary senior judicial positions **there is a strong discrimination against women judges**, who despite being the majority in the judicial career only occupy 20% of these positions; ranking at the bottom of the EU in the percentage of women in senior positions. During this year the Platform has prepared a report in which statistical data are analyzed and it is evident that discretionary appointments discriminate against women: the greater the politicization, the more discrimination: <https://plataformaindependenciaindicial.es/2022/01/21/informe-actualizado-igualdad-de-genero-en-la-carrera-judicial/>

The Platform has carried out a campaign through social networks in which several female magistrates denounce this situation. <https://www.youtube.com/watch?v=hhHUY-Et9oq>
<https://twitter.com/PCIndepJudicial/status/1491031809299468289>
<https://twitter.com/PCIndepJudicial/status/1489905578445049860>

The Platform has also prepared a report on the **relevance of introducing the horizontal career of judges**, not only to motivate and stimulate a very hopeless career at the grassroots in the face of the reality that only a few prosper (political judges), but also to promote the improvement and acquisition of new professional skills through performance evaluation. Judges would not have to climb to the highest judicial levels to achieve adequate remuneration and recognition of their professional competence and merits: <https://plataformaindependenciaindicial.es/2022/01/21/carrera-horizontal-informe-actualizado-de-la-plataforma/>.

Allocation of cases incourts

3000character(s)maximum

Spain is governed by the principle of the ordinary judge predetermined by law. However, **in judicial proceedings that have a greater media transcendence and in which high-ranking politicians may be involved, there are significant distortions in the assignment of court cases.**

A. Due to the **special regime of privileges** enjoyed by members of the Government and all members of Parliament, deputies and senators (art. 102.1 and 71.3 C.E., 57 LOPJ), the Criminal Chamber of the Supreme Court, Second Chamber, will be competent to hear criminal cases against these privileged politicians. Hence the special importance for politicians to control the appointment of these judges of the SC, being these the competent ones to hear criminal cases against members of the Government and parliamentarians. The appointment of the magistrates that make up this Chamber of the Supreme Court is carried out by the politicians themselves, using the CGPJ as an intermediate body. The politicians appoint the members of the CGPJ, which subsequently, and in a discretionary manner, (326.2. LOPJ), will appoint the judges of the SC in charge of judging said politicians.

This special prerogative and privilege that the aforementioned privileges imply for the parliamentarians, extends to all the parliamentarians that exist in each one of the Legislative Chambers of the Autonomous Communities. The High Courts of Justice of each Autonomous Community have special competence to hear these criminal cases. The Autonomous Assemblies themselves also intervene in the appointment of these TSJ magistrates.

The *aforamientos* involve an alteration of the general rules of attribution of judicial cases. They imply that politicians have a greater interest in controlling that small group of high-ranking judicial officials who would have to be in charge of the investigation of their cases.

Thus, the Group of States against Corruption of the Council of Europe (GRECO) has repeatedly singled out Spain for this special regime of immunity, highlighting its incidence in the area of corruption, and requesting its elimination.

B. Another important distortion occurs in the **discretionary granting of secondments, i.e.,** the filling of vacancies in high courts by judges with other assignments.

The coverage of these vacancies by the secondment system in the National Court is of particular importance, due to the media and politically important cases that are processed there.

The Platform has prepared a Report which concludes that the CGPJ can grant service commissions with absolute discretion: <https://plataformaindependenciaindicial.es/2022/01/10/informe-sobre-comisiones-de-servicio-judiciales/>

This system would entail a violation of Art. 19 TEU and Art. 6 ECHR, as indicated in STJUE cases C-487/19 or C-748/19 of 16/11/2021, right to an impartial court and judicial immovability, requiring that the appointment and termination of a secondment must be motivated and must be judicially controllable. In view of the above, there is a real risk that a legal action before the CJEU or the ECtHR, based on the discretion of the Judge appointed on secondment by the CGPJ, could be successful.

C. The entry into force of the new Law on Organizational Efficiency, which provides for the configuration of the so-called Courts of First Instance, could establish a **discretionary and politicized appointment of the Presidents of such Courts**, which could alter the general rules for the assignment of cases. This is similar to what happens in the area of the Public Prosecutor's Office.

On May 16, 2022, Plataforma prepared a report on these risks: <https://plataformaindependenciaindicial.es/2022/05/16/informe-de-la-plataforma-sobre-el-proyecto-de-ley-organica-de-eficiencia-organizativa-del-servicio-publico-de-justicia/>.

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

In accordance with European standards on judicial independence, which have been reiterated in the Rule of Law Reports published by the European Commission on July 20, 2021 and July 13, 2022, as well as in the latest GRECO report published on December 5, 2022, and also in accordance with the spirit and will of the Spanish Constitution (since we must not forget the wording of art. 122.3 EC and the Constitutional Court Judgment no. 108/1986 of July 29) **it is appropriate to reform the current system of election of the members of the CGPJ so that they are elected by the judges and magistrates themselves in active service by personal, direct and secret ballot, without the intervention of political parties or judicial associations** (some of which are strongly ideologized and linked to certain parties), bearing in mind that 44.53% of the judicial career is not associated with any of them and, therefore, it would not be a representative CGPJ if the judicial associations were able to control or direct the presentation of candidates for members.

In this sense, the Platform insists that, as stated by the Spanish Constitutional Court, the composition of the Council of the Judiciary should reflect the existing plurality, not only in society, but also within the

judicial career itself. In order to achieve these objectives, it would not be sufficient to merely reform the system by empowering the judges themselves to elect a part of the members of the Council, but rather, this reform would also have to implement an electoral system that guarantees maximum representativeness, so that the final results are not controlled by groups of power, whether judicial associations or other minorities capable of distorting the final vote. The Platform has prepared a **report where, from a mathematical point of view, the risks are diagnosed and solutions are proposed.**

<https://plataformaindependenciajudicial.es/2022/09/04/eleccion-de-vocales-judiciales-al-cgpj-analisis-matematico-de-la-plataforma/>

The Platform has also submitted to all parliamentary groups a proposal for the reform of the Organic Law of the Judiciary, which regulates the filling of positions in the Council of the Judiciary. It is a **concrete proposal to reform the system for the election of members** that complies with European standards of judicial independence and that would avoid the risks of politicization and corporatism that could occur. This proposal can be accessed through this link: <https://plataformaindependenciajudicial.es/2022/09/04/reforma-lopi-propuesta-de-la-plataforma/>

This proposal has taken into account the proposals presented by various parliamentary groups to strengthen judicial independence, as well as the general proposals made by various judicial associations, in order to achieve the greatest support for this proposal made by civil society.

The reform of the Organic Law of the Judiciary (LOPJ), which currently regulates the system for electing members of the CGPJ, could be approved in less than three months by the Cortes Generales and would only require approval by 176 votes (compared to the 210 votes currently required to renew the 20 members of the CGPJ, a majority that would only be necessary to appoint the 8 non-judicial members of the CGPJ).

Such reform cannot be subsequent or parallel to the renewal of the CGPJ under the current election system, but must be prior and proceed to the renewal under the new election system, since, if the renewal were to take place under the current election system, it would still be flawed and contrary to European standards on judicial independence, being applicable the legal consequences indicated in the following report <https://plataformaindependenciajudicial.es/2021/10/26/renovacion-cgpj-riesgos-juridicos/> and article in which the consequences of the latest case law of the ECtHR are studied, with reference to some judgments of the CJEU, which could become applicable to the Spanish CGPJ if the current election system is maintained <https://www.hayderecho.com/2021/11/19/consecuencias-de-la-ultima-jurisprudencia-del-tedh-sobre-separacion-de-poderes/>.

On the other hand, it must be taken into account (as we argued in the report <https://plataformaindependenciajudicial.es/2022/05/19/informe-sobre-la-renovacion-del-consejo-general-del-poder-judicial/>) that **it is not possible to renew the CGPJ with the current system by continuing with the process initiated in 2018** (the candidates that were presented three years ago) **since**, with the dissolution of the Congress in 2019, the **process expired** and **a new process of proclamation of candidates should be initiated with the opening of a period for the presentation of candidacies**, so that the current circumstances of the judicial career (number of members of each Judicial Association and non-members and the current status and category of each potential candidate, having changed that of many of the candidates who presented themselves in 2018) can be taken into account in the appointment of the members of the judicial shift, and the judges of the last three promotions that have joined the career in the last four years, in addition to all judges and magistrates who so wish, can participate in this process.

On the other hand, in Spain we are witnessing an **intense attack on the current institutional system with absolute disregard for basic principles such as the separation of powers**, with maximum attempts to politically influence the appointment of members of the CGPJ and judges of the Constitutional Court. The Supreme Court of Justice, as approved **by Organic Law 4/2021 of March 29th**, or, as

approved **by Organic Law 4/2021 of March 29th** , to limit its functions when its mandate is **extended, preventing the appointment of senior judicial positions**, which, almost two years later, is affecting the day-to-day work of several courts, which have vacancies that cannot be filled: . This is reported in several media such as <https://www.larazon.es/espana/20221204/2bqsoadxqfbwhdlsy6ccf2i5ma.html> and the CGPJ itself at <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/En-Portada/La-Sala-de-Gobierno-del-Tribunal-Supremo-reitera-que-la-no-renovacion-del-CGPJ-originara-en-breve-dificultades-extraordinarias-para-su-funcionamiento>.

Said LO, which was approved by the emergency procedure in barely 3 months, enabling a period that is usually unusually inactive and without the reports of the CGPJ itself (which requested it and was denied) or of the Venice Commission, was appealed before the Constitutional Court in April and May 2021 by the two main opposition parties, but they have not yet been resolved, **failing, as usual, to comply with the legal deadlines for the resolution of matters before the Constitutional Court, This body is also strongly politicized**, since its 12 members are appointed by the Cortes Generales, by the Government and by the CGPJ (formally elected by the Cortes, but in fact by the Government and the main opposition party), so that its members do not comply with the European standards required in terms of judicial independence and therefore its resolutions are subject to appeals before the ECHR, due to the lack of independence of the Legislative and Executive. In this regard, the ECtHR has declared applicable the guarantee to an independent and impartial court of art. 6 of the ECHR to the constitutional courts (Judgment of May 7, 2021, case 4907/18, Xero Flor).

It is clear that there is a **lack of counterweights when this politicized Constitutional Court decides on the constitutionality or otherwise of the norms approved by the Government and validated by the Cortes in which the Executive has a majority or approved directly by them, and that it does so once all the effects of the norms whose validity is being studied have been produced**. And furthermore, in relation to LO 4/2021, it has to do so precisely when one third of its members were to be renewed in June 2022: two members to be elected by the Government and another two by the CGPJ, a renewal that has taken place at the end of December 2022, after enormous pressure exerted on the members of the CGPJ to proceed with the appointment of the two members of the TC that corresponded to it and even a legislative reform to enable such appointments and an attempt at another reform to reduce the majorities necessary to proceed with them, as has been explained in point 5 of section 1.

Curiously, the LO 4/2021 prevented the CGPJ from making such appointments of two magistrates of the TC, but as this also prevented the Government from appointing two members (since the renewal must be made jointly of the four magistrates ex art. 159.3 of the Constitution), the Government, through the parliamentary group that supports it, urged a new express reform of the LOPJ (processed by urgency, in a single reading by plenary sessions of the Houses, without passing through the Justice Commissions or prior hearing of advisory bodies), which was approved by **Organic Law 8/2022 of July 27**, so that **the CGPJ could appoint two judges to the Constitutional Court so that, in turn, the Government itself could appoint the two magistrates** of said body that correspond to it, so that there would be a majority in line with the Government in the Constitutional Court for several years (at least until the next renewal in three years) that could validate the constitutionality of its actions and those of the Legislative Branch that supports it.

All of the above **constitutes an attack on the separation of powers, by seeking governmental control of the highest interpreter of the Constitution** and, unfortunately, is part of a broader campaign of **subjugation of Justice to politics with absolute disregard for the basic principles of the Rule of Law and the regulations of the European transnational institutions**.

This report analyzes the infringements of this latest reform of the LOPJ: <https://plataformaindependenciaindicial.es/2022/07/12/violacion-de-la-normativa-europea-en-la-reforma-del-tc-informe-de-la-plataforma/> and we have denounced it from Civic Platform for Judicial Independence before the Committee on Petitions of the European Parliament <https://plataformaindependenciaindicial.es/2022/06/26/parlamento-europeo-nueva-peticion-de-la-plataforma/> and before GRECO <https://plataformaindependenciaindicial.es/2022/07/08/denuncia-ante-greco-por-la-reforma-de-la-lopi-de-julio-de-2022/>.

It is paradoxical that, despite undertaking two express reforms of the LOPJ to limit the powers of the CGPJ with an extended mandate (LO 4/2021 of March 29) and to allow it to appoint two judges to the TC (LO 8/2022, of July 27), on the other hand, there is not the same determination and political will to undertake the reform of the LOPJ to modify the system of election of 12 of the 20 members of the CGPJ so that these 12 members of the judicial shift are elected by the judicial shift, **there is not the same determination and political will to undertake the reform of the LOPJ to modify the system of election of 12 of the 20 members of the CGPJ so that these 12 members of the judicial rotation are elected by the active judges and magistrates themselves, without any interference or political influence**, as required by the European standards on judicial independence set by GRECO, the European Commission (being one of its recommendations in the Report on the Rule of Law published on July 13, 2022) and case law of the CJEU and ECtHR and in the spirit of art. 122.3 CE and the criteria established by the Constitutional Court in Judgment 108/1986 of July 29th.

3.- The CGPJ cannot be a politicized body or a body at the service of politicians to appoint high judicial positions, but it is the governing body of the Judiciary and must be independent of the other branches of government.

Likewise, **the TC cannot be a body at the service of politicians, their political program and their respective ideology**, but it is the highest interpreter of the Constitution and it is only owed to the Constitution. Although the TC is not formally integrated into the Judiciary, the requirements of impartiality and independence are equivalent.

The political parties cannot continue to distribute positions in both bodies as if they were stickers. It is not acceptable that the renewals of constitutional bodies such as the TC and the CGPJ depend on who obtains the parliamentary majority or is in government at any given time, nor that it is considered that these bodies should represent the parliamentary majorities or be an expression of the plurality of political forces represented in the Chambers, since they are bodies that should be independent of the Executive and the Legislature, so that they can perform their functions with autonomy, impartiality and independence and so that the separation of powers and the rule of law in Spain are guaranteed.

If the European rules on the rule of law and separation of powers, one of the values on which the European Union is based and which its Member States must comply with, according to Articles 2 and 7 of the TEU, are not complied with, we may start to find ourselves imminently with decisions of the CJEU and the ECtHR that place the Spanish justice system in an untenable situation, questioning the legitimacy of these politicized bodies and their resolutions.

For all these reasons, **the system for electing the CGPJ and the TC must be reformed to prevent their distribution by political parties.**

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 Spanish Public Prosecutor's Office does not have the minimum guarantees of independence and impartiality: the appointment of the State Attorney General is made by the Government. The appointment of the Public Prosecutor's Council and the senior officials of the Prosecutor's Office is made in a discretionary manner, but without objective and regulated criteria (Article 22 et seq. Organic Statute of the Public Prosecutor's Office).

Superior prosecutors can give orders to hierarchically subordinate prosecutors; they can call a prosecutor to their presence and can give him/her specific instructions and remove them from their positions and replace them with other prosecutors in the handling of cases. Prosecutors depend on their superiors not only for the endorsement of their reports and procedural positions in the particular proceedings, but also in terms of their working conditions (leave, vacation). Senior prosecutors also have disciplinary powers over their subordinates.

All this implies a strong politicization of the institution, which has worsened in recent times with the appointment of the Minister of Justice as Attorney General of the State, Dolores Delgado. Although she resigned in 2022 for health reasons, she was replaced by her deputy. Public opinion and citizens perceive the Prosecutor's Office as an institution strongly linked to the Government, since the Government itself considers the Prosecutor's Office as dependent on the Government, which follows its instructions. It is enough to listen to the statements of several members of the Government:
<https://www.facebook.com/watch/?v=574958976603850>
<https://mobile.twitter.com/AFiscales/status/1615301873665187840>

The Platform has elaborated a basis for a future reform of criminal investigation in which the Public Prosecutor's Office will be completely independent, impartial and free from any political influence.
<https://plataformaindependenciajudicial.es/2018/09/26/bases-investigacion-criminal/>

It has also published a green book analyzing the different doctrinal positions on the subject:
<https://www.dykinson.com/libros/libro-verde-sobre-la-investigacion-criminal/9788413770994/>

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

Without prejudice to what is stated in point 4 of section 1 on general issues, in Spain there are **continuous attempts by different groups to discredit the Judiciary and undermine the confidence of citizens in justice, publicly questioning certain judicial decisions** with which they do not agree or which do not satisfy certain interests, without providing legal arguments but rather generic disqualifications of the court or personal disqualifications of a judge or magistrate, and even adopting measures (such as pardons or inhibition to demand compliance by third parties) that limit the effects agreed in some of these judicial decisions.

This has prompted a communiqué from four judicial associations:
<https://www.europapress.es/nacional/noticia-cuatro-asociaciones-judiciales-plantan-ataques-politicos-piden-respeto-sentencias-20211115114221.html>

Some more recent examples are: pardons to those convicted for the Catalan process of October 1 and to Juana Rivas; attacks for sentences against Podemos politicians, even in one case with an attempt by the President of Congress to keep the deputy's seat and requirement by the Supreme Court to enforce the sentence; inhibition by the Government of Spain to enforce the ruling that requires at least 25% of classes in schools in Catalonia to be taught in Castilian.

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

Recently, two resolutions have been issued by Chamber III of the Supreme Court that restrict the possibility of access to justice. And specifically on the control of legality of the actions of the Executive. This could imply a violation of the right to effective judicial protection, in the terms recognized in Article 19 TEU.

The first of the appeals was filed against the appointment of the Attorney General of the State for her lack of suitability and impartiality for the position. The Supreme Court dismissed the appeal, without resolving the merits of the case, due to the lack of standing of the appellant political parties. Two dissenting opinions were issued by the five competent judges.

The second appeal was filed against the granting of pardons to those convicted of the *procés*. Also in this case, the lack of standing of the appellants was upheld, without considering the merits of the case. One of the appellant political parties had been a party to the criminal proceedings that gave rise to the conviction. In this case there were also individual opinions.

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 organized 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.

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 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) max

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 litigation 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) max

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 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

In 2020, 2021 and 2022, the Government has made excessive use of Decree Laws, a legislative instrument designed for cases of extraordinary and urgent need, but which has been approved even without justifying the concurrence of such circumstances, limiting its parliamentary processing to its subsequent validation by the Cortes, where the Executive has the necessary support to do so.

Likewise, there **has been a tendency towards the urgent processing of certain legislative reforms, in order to dispense with formalities such as prior consultations and reports from the sectors involved and to reduce the time required for their processing.** A relevant case was the approval of Organic Law 4/2021 of 29 March, limiting the functions of the CGPJ with an extended mandate, and Organic Law 8/2022 of 27 July, which returned to the CGPJ the power to appoint judges to the TC, setting a time limit for their exercise, which were approved by the emergency procedure in just 3 months and 1 month, respectively, enabling a usually inactive period and without the reports of the CGPJ itself (which requested it and was denied) or the Venice Commission, contrary to the recommendations that have been made by various representatives and European institutions (such as the Commissioner for Justice Didier Reynders, Venice Commission and GRECO and recommendations of the European Commission 2017/1520 and 2018/103) in order to carry out any reform of the judiciary.

The Council of State itself has recently issued an opinion in which it warns of unjustified urgencies that affect the quality of the laws and the control of legality and constitutionality and warns of guarantees that suffer, describing the Government's action as a folly close to fraudulent law that could violate EU law: https://www.vozpopuli.com/economia_y_financeas/informe-consejo-estado-alerta-chapuzas-legislativas-gobierno.html

Regime for constitutional review of laws

3000 character(s) maximum

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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
- processesrelatedtolessonslearned/crisis preparedness in termsofthefunctioningofchecks and balances

3000 character(s) maximum

During the two states of alarm in force in Spain, parliamentary activity was almost paralyzed and, particularly, the function of control of the Government was suspended during the second state of alarm (lasting 6 months), since only the President had to appear every two months to report on the pandemic situation.

Appeals of unconstitutionality were filed against both states of alarm by a parliamentary group in opposition to the Government, and the Constitutional Court found that the Constitution had been violated, although, given that these appeals were resolved once the last state of alarm had expired, **the supervening unconstitutionality of the states of alarm agreed by the Executive and endorsed by the Legislature has lacked real effectiveness in practice,** without prejudice to their relevance in terms of how to proceed in the future.

The European Commission should draw the attention of the European Commission to the lack of checks and balances that the Constitutional Court, which is composed of 12 members elected by the Cortes Generales, by the CGPJ elected by them and by the Government, **should decide on the constitutionality or otherwise of the rules approved by the Government and validated by the**

Cortes in which the Executive has a majority or approved directly by them, and that it should do so once all the effects of the rules whose validity is being studied have been produced.

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 organizations and human rights defenders (e.g. legal, judicial, and other).

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 organizations and human rights defenders. This includes measures for protection from attacks - verbal, physical or online. -, 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