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2021 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The first annual Rule of Law Report was published on 30 September 2020. It is the core of the new European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues.

In the preparation of the first annual Rule of Law Report, the Commission relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through a targeted stakeholder consultation[1]. The information provided has informed the Member State-specific assessments of the Commission in preparing the Report. Building on the positive experience from the first Rule of Law Report, the Commission is inviting stakeholders to provide written contributions for the preparation of the 2021 Rule of Law Report through this targeted consultation.

The contributions should cover in particular (1) feedback and developments with regard to the points raised in the country chapters of the 2020 Rule of Law Report and (2) any other significant developments since January 2020[2] falling under the 'type of information' outlined in next section. This would also include significant rule of law developments in relation to the COVID-19 pandemic falling under the scope of the four pillars covered by the report.

The input should be short and concise, if possible in English, 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.

Please provide your contribution by 8 March. Should you have any requests for clarifications, you can contact the Commission at the following email address: rule-of-law-network@ec.europa.eu.

[1] https://ec.europa.eu/info/publications/2020-rule-law-report-targeted-stakeholder-consultation_en

[2] Unless the information was already submitted in the consultation for the 2020 Rule of Law Report.

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 and nominations for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the request for input[1])

Any other relevant developments

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

Please include, where relevant, information related to measures taken in the context of the COVID-19 pandemic under the relevant topics.
If there are no changes, it is sufficient to indicate this and the information covered in the 2020 Rule of Law Report should not be repeated.

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

About you

* I am giving my contribution as

Judicial association or network

* Organisation name

250 character(s) maximum

FORO JUDICIAL INDEPENDIENTE

* Main Areas of Work

- [x] Justice System
- [ ] Anti-corruption
- [ ] Media Pluralism
- [ ] Other

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

500 character(s) maximum

www.forojudicalindependiente.es FJI is a judicial association founded in 2003. It is the youngest association, but with a lot of enthusiasm and a strong involvement in the defence of democratic rights. Consistency is part of the essence of our association. Our members don´t take part in the CGPJ whose politicisation we understand to be the main source of many of the current problems in the administration of justice.The defence of judicial independence is part of the association's DNA.

Transparency register number

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

* Country of origin

Please add the country of origin of your organisation

Spain

* First Name

FORO JUDICIAL INDEPENDIENTE

* Surname

FORO JUDICIAL INDEPENDIENTE

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

info@forojudicialindependiente.es forojudicial@telefonica.net

* 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 an 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.

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

overview_topics_for_contribution.pdf

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

Spain shares with Poland the dubious honour of being the only two countries in Europe to have a general council of the judiciary elected entirely by parliament.

In 1980, Spain passed a law in order to have the twelve members of the General Council of the Judiciary elected by the judges. But as in the case of Poland, this law was changed in 1985 so that all 20 members were elected by the parliament. The consequence has been the total deterioration of the General Council of the Judiciary, in which the ideological component of its members prevails, rendering it incapable of adequately fulfilling its functions, be it the defence of the independence of the judiciary, the selection of the high judicial posts or the exercise of disciplinary power against judges, issues that are always surrounded by controversy and lack of transparency. Moreover, for the first time, the government has elected as attorney general the person who until then had been minister of justice, which is also similar to Poland.

Spain has been monitored by Greco COE since 2013, and successive governments have refused to comply with its two main recommendations: that the judicial members should be elected by the judges and that the professional promotion to high judicial positions should be based on objective criteria determined by law. Finally, in Spain there are numerous revolving doors between politics and justice, as judges can occupy any representative political position without serving as judges but allowing their time spent in politics to count towards their judicial career and their place to be reserved for them. In the current government there are three ministers who are judges

Questions on developments in Member States

The following four pillars are sub-divided into topics and sub-topics. You are invited to provide concrete information on significant developments, focusing primarily on developments since January 2020, for each of the sub-topics which are relevant for your work. Please feel free to provide a link to and reference relevant legislation/documents. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices (as outlined under “type of information”).
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.

Please note that, due to the size of the questionnaire, certain elements may be slow to load, especially if selecting many Member States at once. In such cases, it is recommended to wait a few minutes to let the page load correctly.

Member States covered in contribution [several choices possible]

Please select all Member States for which you wish to contribute information. For each Member State, a separate template for providing information will open. This may take several minutes to fully load.

- [ ] 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
- [x] Spain
- [ ] Sweden

Justice System - Spain

Independence

Appointment and selection of judges, prosecutors and court presidents

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

3000 character(s) maximum

Judges and prosecutors are mainly selected through an open competition system. Any Spanish citizen with a law degree may participate in it. The competition consists of three selective tests. Firstly, a written test in which a first selection is made. This is followed by two oral exams, each lasting one hour, before a panel of judges, prosecutors, state attorneys, professors and lawyers about constitutional law, civil law, criminal law, procedural law, comercial law, administrative law and labour law. In order of qualification, successful candidates choose between being judge or prosecutor.
Judges and prosecutors then follow a theoretical and practical course at the Escuela Judicial in Barcelona (judges) or at the Centro de Estudios Jurídicos in Madrid (prosecutors) followed by a period of work experience in the courts under the supervision of professional senior judges.
After these two periods, judges and prosecutors are finally appointed. It is a very demanding test and has a lot of prestige. Judges and prosecutors enjoy excellent training.
The average time of preparation in order to pass the three exams is currently five years. The internship period is one year an a half for judges and ten months for prosecutors.
The step from judge to senior judge is based on seniority after approximately six years in the judiciary.
In turn, of every four senior judge positions, one is reserved for lawyers of recognised competence with at least ten years of professional experience who must a pass a merit exam. In addition, one in five places on the Supreme Court is reserved for lawyers of similar conditions. In this latter case, there is not a competition but direct selection by the Consejo General del Poder Judicial (Council for the Judiciary) chosen by a discretionary system (with total freedom of selection) which casts doubt on the criteria used in the selection.
The court presidents (Audiencias Provinciales, Tribunales Superiores de Justicia, Audiencia Nacional y Tribunal Supremo) are all appointed by the Consejo General del Poder Judicial in equal form.
The President of the Council for the Judiciary is selected by its members and becomes at the same time President of the Supreme Court. Most of the time this appointment is agreed upon by the president of the government and the leader of the opposition. This election is always surrounded by controversy.
The National Public Prosecutor is appointed by the King upon the proposal of the government.
Finally, the 12 judges of the Constitutional Court are appointed by the King:
4 upon the proposal of the Congreso de los Diputados.
4 upon de proposal of the Senado
2 upon the proposal of the government.
2 upon the proposal of the Consejo General del Poder Judicial.
(Congreso de Diputados and Senado are the two chambers of the Parliament).
The judges of the Constitutional Court are appointed for a period of 9 years. The Court is renewed by thirds every three years.

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

3000 character(s) maximum

The status of judge shall be lost for the following reasons:

- Resignation from the Judiciary
- Loss of Spanish nationality.
- Disciplinary sanction of dismissal from the Judiciary.
- Judgement of imprisonment for an intentional crime. In cases where the term of imprisonment is not longer than six months, the Consejo General del Poder Judicial may, in a reasoned manner and taking into account the nature of the offence committed, replace the loss of the status of judge with a suspension for a maximum of three years.
- Having incurred in any of the causes of incapacity, unless retirement is appropriate.
- Retirement.

Judges shall only be suspended in the following cases:

- When proceedings have been declared admissible against them for offences committed in the exercise of their duties.
- In case of provisional detention, provisional release or indictment for any other fraudulent offence.
- When it is decreed in disciplinary or incapacity proceedings, either provisionally or definitively.
- By a final conviction in which suspension is imposed, when separation is not appropriate.

Judges and Magistrates may only be retired:

- On account of age.
- Due to permanent incapacity to perform their duties.

The procedures for separation, transfer, retirement due to permanent incapacity and rehabilitation shall be drawn up after hearing the judge and a report from the Public Prosecutor's Office and the respective Governing Chamber, without prejudice to any other appropriate justifications, and shall be decided by the Consejo General del Poder Judicial.

A law is currently in the process of being passed that aims to put an end to the one-person courts and create the so-called courts of instance, led by a president elected on a discretionary basis. This president would be able to assign cases to magistrates and lose independence in the organisation of their work.

Promotion of judges and prosecutors

3000 character(s) maximum

Promotion within the judicial career “in theory” is based on the principles of merit, ability, suitability and specialisation. There are three categories in the judicial career: Judge, Magistrate and Supreme Court Magistrate. Entry into the career is mostly in the category of Judge, although it is also possible to enter directly in the category of Magistrate and Supreme Court Magistrate.
The positions in the ordinary Courts, Provincial Courts and High Courts of Justice are filled by competition amongst the members of the judicial career, these competitions being decided in favour of those who have the category required and have the best position in the ranking career. The ranking reflects an order number of the members of the judicial career on the basis of the number of years, months and days of service. In the competitions for the filling of posts in some jurisdictional orders, preference is given to those who can prove that they have studied a specialisation in those matters and, in the absence of specialists, to those who have spent certain years in those jurisdictional orders.
On the contrary,the posts of Presidents of Provincial Courts, High Courts of Justice, the National High Court, Presidents of Chambers and Judges of the Supreme Court are filled by open call for applications. The rules for these calls for applications are approved by the Plenary of the General Council of the Judiciary (CGPJ-) and must clearly and separately establish each of the merits to be assessed. Candidates must appear before the General Council of the Judiciary to explain and defend their proposal. Appointment to these judicial posts is made by the Plenary of the CGPJ, requiring a qualified majority of 3/5 of the members present.
The current system of appointments to these discretionary positions has been introduced by Law 4/2018, which modified the selection criteria in an attempt to adapt to the requirements of GRECO. The system continues to present shortcomings as it gives greater value to merits of a subjective nature as opposed to merits of an objective nature. The decision is entirely discretionary and there is no comparison of the merits of the competing candidates, so in practice there is no appeal. Only judges with relations or contacts with members of the CGPJ, have real options of being selected. In the Supreme Court women represent only 14% of all magistrates while in the last exams 70 % of the successful candidates have been women.
The lack of structural independence of the CGPJ, which is caused by the parliamentary election of its members, indirectly allows politicians to control the appointment of senior judges. It is necessary to establish a more objective formula in the evaluation of candidates for these appointments to ensure that the process does not give rise to doubts as to their independence, impartiality and transparency.
There are certain posts to reinforce specific judicial bodies which are called

Allocation of cases in courts

3000 character(s) maximum

The distribution of cases is carried out on the basis of rules of jurisdiction and territorial, objective and functional competence and rules of distribution between the different Courts and Tribunals of the same jurisdictional order.
The rules of jurisdiction and competence of the Courts and Tribunals are regulated in the Organic Law of the Judiciary (LOPJ) and in the procedural laws.
The allocation of specific cases between the different courts of the same jurisdictional order and of the same level is carried out in accordance with predetermined rules known as rules of distribution. The purpose of these rules is to distribute the work in places where there are two or more courts of the same jurisdiction.
The distribution rules are adopted by the Chambers of the High Courts of Justice on a proposal from the Boards of Judges of the various territorial areas in which the courts and tribunals are organised.
In the case of collegiate courts, the Presidents of these Courts are responsible for determining the distribution of cases between the chambers of the courts and between the sections of the different chambers in accordance with the rules of distribution approved by the Chambers of the High Courts of Justice.
The actual distribution of cases is carried out by the Legal Secretary for the Administration of Justice under the supervision of the Judge in Chief Justice and it is the responsibility of the said Legal Secretaries for the Administration of Justice to ensure that the actual distribution of cases is carried out in accordance with the approved distribution rules.
The rules for the distribution of cases approved by each of the Chambers of Government of each High Court of Justice are publicly accessible and are available on the website of the General Council of the Judiciary (CGPJ). The following link provides access to the different distribution rules approved by the High Court of Justice of Catalonia: www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunales-Superiores-de-Justicia/TSJ-Cataluna/Actividad-del-TSJ-Cataluna/Normas-de-reparto/.
The system of distribution of cases between the different Courts or Tribunals of the respective jurisdictional order is computerised and is based on a random distribution of cases of the same class. The computerisation of the distribution of cases avoids the possibility of manually altering the distribution of cases

Independence (including composition and nomination 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 Spain, the 5,500 active judges are guaranteed their independence by the Constitution (Article 117 of the Spanish Constitution).
The General Council of the Judiciary is the governing body of judges. It has the sanctioning power as well as the promotion and appointment of all Supreme Court judges and the presidencies of the 17 High Courts of Justice and their different chambers, as well as of the 50 Provincial Courts. It must also defend the independence of the judiciary when it comes under attack.
It has 20 members, all of whom are elected by parliament. The system of the 1978 Constitution gave rise to a law that attributed the election of the judicial vocals (12) to the judges. This law was changed in 1985 so that these judicial vocals were also elected by the Parliament. The law was appealed before the Constitutional Court, which in its famous ruling 108/1986 warned that the system could be unconstitutional if the political forces split the seats to be filled, which is exactly what has happened since then.
The parliamentary election of the judicial members allows for indirect control over the appointment of the judicial leadership. In particular Chamber II of the SC (which judges crimes committed by politicians) and Chamber III (which controls the legality of government action).
In Spain, the two main political parties that have been alternating in power (PSOE and PP) have refused since 2013 to comply with the Greco's recommendations that judicial members should be elected by the judges.
Traditionally, the political parties have chosen as jurists people linked to the administration such as senior civil servants, or parliamentarians and in general judges with a clear ideological profile.
The current Council expired two years ago, and the political parties have not yet agreed on the choice of new members.
During these two years the Minister of Justice has asked the Council not to make any more judicial appointments despite the fact that they are obliged to do so. The ruling coalition has introduced a bill to reduce the majorities needed to appoint members, but following criticism from the Justice Commissioner, the bill has been put on hold.
The governing coalition has tabled another bill to reform the current law so that a Council whose mandate has expired will not be able to make appointments. On at least four occasions the European Commission has asked the government not to reform the judiciary without taking into account the opposition and without consulting the Venice Commission.
Political parties are reluctant to give up control of the top judiciary because of the numerous corruption cases that exist or are pending appeal and that affect all parties.
There is an urgent need for Europe to take more decisive action

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

3000 character(s) maximum

The responsibility of judges and prosecutors is provided for in the Organic Law of the Judiciary. Judges and prosecutors in Spain have immunity and the jurisdiction to hear any criminal liability they may incur is vested in the High Courts of Justice for most of them, with the exception of senior judges and prosecutors, where jurisdiction is vested in the Criminal Division of the Supreme Court.
The disciplinary regime for judges and prosecutors is also regulated in the Organic Law of the Judiciary, and the offences they may commit are divided into minor, less serious and serious. There are five types of sanctions that can be imposed on them: warning, fine, forced transfer, suspension and dismissal from the career.
A judge, known as the promoter of the disciplinary action, is in charge of the investigation. He or she is chosen at the discretion of the General Council of the Judiciary. If the promoter considers that there are grounds to punish the judge as the author of an offence, he or she submits the matter to the General Council of the Judiciary, which may impose the sanction it deems appropriate or close the case. The decision of the General Council of the Judiciary can be appealed to the Supreme Court. This judge does not meet the guarantees of independence recently demanded by the CJEU.
There is an Ethics Commission in charge of resolving doubts raised by judges regarding the conduct or actions of judges.
Its members are elected by the judiciary and it only issues an opinion when the ethical doubt is raised by the person who suffers from it, which in practice limits its scope of action very much.

Remuneration/bonuses for judges and prosecutors

3000 character(s) maximum

The remuneration of judges is an element related to their independence. Although the remuneration of a judge in Spain is not low, it is not at the same level as that of other high-level positions, especially if we take into account the responsibility of a judge. It is also lower than the remuneration of judges in other countries in our environment.
The main problems we see in this matter are:
- Salary cuts and salary freezes as a result of the crisis have not been recovered. In recent decades judges have been losing relative purchasing power compared to other sectors of the population, since the decreases were greater, and the recovery is not taking place in the same proportion.
- The remuneration for on-call service in some courts is negligible (even less than 0.5 euros per hour).
- The lack of compensation for certain professional expenses, which must be borne by the judge himself (robe, computer...).
- Regarding variable remuneration: a productivism system is established, which does not favor the quality of the resolutions, but the quantity. This system consists of a payment that is proportional to judicial production.
- Pension after retirement: limits are set that imply a great loss of income for retiring judges. This favors judges to prolong their active life until 72 years of age, which is the maximum legally foreseen

Independence/autonomy of the prosecution service

3000 character(s) maximum

In Spain, contrary to what happens in most of the countries of our environment, the Prosecutor is not the one who instructs the criminal matters, but an Instructing Judge does it. However, for years there has been an intention to modify this issue and attribute the instruction of criminal matters to the Public Prosecutor's Office. So far, this project has not been successful. At present, the bill to assign the investigation to the prosecutors is in the public hearing process. The bill contemplates that the statute of prosecutors will be modified in another law at a later date. It includes a provision that the prosecutor may at any time assign the investigation to another prosecutor. There is no immovability and the prosecutor is not independent, as is the case with the investigating judge.
The basic regulation of the Public Prosecutor's Office is found in Article 124 of the Spanish Constitution and in Law 50/1981, which regulates its organic statute. The State Attorney General is appointed at the proposal of the Government, and is subject, among others, to the principles of unity of action and hierarchical dependence.
Any Prosecutor must obey the instructions or orders received from a superior. Sometimes these instructions are verbal. The mechanism to question an order is cumbersome. And disobedience can lead to disciplinary consequences. The superior can change the prosecutor handling a case. And, in addition, the Chief Prosecutor has the capacity to decide certain employment issues of the subordinate prosecutors. Therefore, formally, it is not possible to speak of prosecutorial independence.
In general, on a day-to-day basis, there is no constant interference in the actions of the prosecutors. However, in relation to specific matters, especially those with greater media relevance, the risk of interference is evident. At present, it turns out that the Attorney General of the State was Minister of Justice of the party in Government, which accentuates the appearance of lack of independence of this institution with respect to the executive power.
In general, the autonomy of the prosecutors in their actions is preached, but not their independence. In our opinion, the attribution of the investigation of criminal cases to the Public Prosecutor's Office would require a prior, deep reform, which would give this institution a true independence that it lacks at present. There is no need to change the figure. there is a well-founded fear that the legislative amendment is intended to subject the investigation of crimes (some of them) to political control

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

3000 character(s) maximum

There is no lack of independence of Spanish lawyers. Their own professional performance consists of taking sides in the proceedings, so their partiality is welcome. And necessary.
We don’t believe that the bar associations are a problem. They merely look after the professional interests of local lawyers. And they do not exert pressure on the judges of the place, except in very specific cases of dissatisfaction with the work of a problematic judge. They tend to be very cautious. However, they are not usually receptive when the courts inform them of a lawyer's serious misconduct. They are reluctant to sanction the bad lawyer.
The Consejo General de la Abogacía Española (General Council of Spanish Lawyers) is the object of reproach. It is a representative body that coordinates the 83 Bar Associations in the country. It acts as a lobbie, as it claims to represent all lawyers in Spain and is perceived as such from the outside, in particular by the various governments. But the decisions of its board are not shared by many lawyers, as they are not part of the decision-making process and they are not consulted.
In the past, an attempt was made for the Consejo General de la Abogacía Española (General Council of Spanish Lawyers) to reach a consensus with the judges' associations on a document of proposals to improve justice. It was thought that it would be a great achievement for lawyers and judges to present a common front to the government. But there was no agreement because the Consejo General de la Abogacía Española (General Council of Spanish Lawyers) wanted to introduce corporatist claims into the document. And, above all, because on the main issue, that judges should be able to vote for some of the members of the General Council of the Judiciary, they were lukewarm. It wants, as a collegiate body, to participate in that election. In truth, there have always been lawyers on the General Council of the Judiciary

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

3000 character(s) maximum

The most important step forward would be that political parties should not elect all members of the Consejo General del Poder Judicial (General Council of the Judiciary). This has been requested many times by the Venice Commission and the Group of States against Corruption of the Council of Europe, and as the Court of Justice of the European Union has said (CJEU C-169/18, in relation to Poland). The judges should elect the 12 members who are judges, out of the total of 20. And this is what we, the judicial associations, have asked for many times, we have even gone on strike twice asking for this as the first point.
At present, the political parties are negotiating the renewal of the Consejo General del Poder Judicial (General Council of the Judiciary), in a lamentable spectacle that is broadcast in all the media. There is an indecent dance of candidates and party acronyms, which makes the average citizen read "judiciary" and "political parties" in the same sentence. The perception of the independence of judges is seriously damaged. Moreover, these members, branded with the acronyms of one party or another, will have the task of appointing the most important judges in the country, so that the connection between these senior judges and the political parties becomes even more entrenched in the public's impression, and spreads to the rest of the country's judges, who are not involved in these power games, like an oil slick.
It would also be very helpful if Spain were to adopt the Group of States against Corruption of the Council of Europe's recommendation that the appointment of senior judicial officials should be made according to an objective scale previously established in the law approved by parliament. Currently, the Consejo General del Poder Judicial (General Council of the Judiciary) appoints with a discretion that borders on arbitrariness. In fact, 3 out of 4 judges are of the opinion that in order to be promoted it is necessary to have contacts with the highest political-judicial authorities. Merit and ability are not enough, it is not enough to do good judicial work.
Finally, a Fiscal General del Estado (State Attorney General) who is appointed directly by the government in power has a strong impact on the image of the lack of independence of the judiciary in our country. This should also be changed. The current attornney general was appointed directly, after leaving the current government as minister of justice

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 "type of information".)

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

3000 character(s) maximum

According to the Spanish Constitution, in Spain there is free legal assistance for those who do not have resources. Consequently, lack of financial resources is not an obstacle to access to the courts.
Article 24[1] of the Spanish Constitution provides that every person has the right to effective protection by the judges and the courts and the right to be assisted and defended by a lawyer in order to prevent anyone from being left without a lawyer. The free legal aid is a consequence of the need of protection of that fundamental right
The free legal aid does not include just free lawyer assistance but also other benefits like representation by a Procurator if necessary, advisement, legal assistance to detainees, free legal publications, exemption from the payment of court fees as well as free expert assistance inter alia
The free legal aid is aimed at people who are in a bad economic situation and do not have the resources needed to be able to litigate with the purpose of protecting their rights
Therefore, the essential requirement that must meet the natural people is that their resources and incomes cannot be higher than the following thresholds established in article 3 of the Free Legal Aid Law
It is twice the IPREM (the reference indicator for determining social benefits) prevailing at the time of request, when it comes to people in no family unit. For instance, by 2021, the IPREM was € 6.778,80 per year. The threshold which cannot be exceeded in this case was € 13.557,6 per year
Two and half times the current IPREM when it comes to people that are included in a family unit with less than four members. Being in this case the maximum yearly rent € 16.947
It is three times the IPREM, in case of family units with four or more members. In 2017 was € 20.336,4
As regard of language, the defendant can use Spanish at Court or the official language of the autonomous community in which the legal demand takes place
Regarding court fees, in Spain there is a national tax that must be paid in certain cases by users, whether natural or legal persons, for going to court and making use of the public service of the administration of justice. The Ministry of Finance and Public Administration is legally responsible for managing this tax. The requirement to pay this fee was introduced on 1 April 2003 and it is currently governed by Law 10/2012 of 20 November 2012. Under Article 1 of Law 10/2012, the fee for the exercise of judicial power in civil, administrative and social cases is a national fee that is uniformly chargeable throughout Spain in the circumstances provided for by that Law, without prejudice to the fees and other taxes charged by the Autonomous Communities in the exercise of their respective financial powers
Nevertheless ruling 140/2016 of 21 July 2016 of the Constitutional Court of Spain, amongst other pronouncements and with regards to court fees declared the nullity of a series of fixed fees established by civil social and admin

Resources of the judiciary (human/financial/material)

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

3000 character(s) maximum

Material resources refer e.g. to court buildings and other facilities.
The Judiciary of Spain consists of Courts and Tribunals, composed of judges and magistrates (Justices), who have the power to administer justice in the name of the King of Spain.
This year, judiciary is expected to reach 2,048 million euros from the general budgets, 7% more than in 2020.
Nevertheless, the chapter for judiciary in the general state budgets is one of the lowest in the EU countries.
Spain is below the average number of judges per inhabitant in the EU countries. Our country has 5.419 judges.
The figures are: per 100,000 inhabitants, Spain has 12 judges. The European average is 22 judges. The 2008 crisis strongly affected justice, increasing the number of cases in the courts.
The number of judges is reduced and the number of cases in the courts is increased.
Although the central government pays our salaries, the rest of the material means (buildings, computer systems) may be transferred to the autonomous communities. There are 17 autonomous communities of which 12 have the competence of justice transferred to them.
There is a body called Sectorial Conference on Justice between the State and the Autonomous Communities to cooperate between the state and the autonomous communities.
The computer systems have been developing without being compatible with each other. There are many differences between autonomous communities in terms of buildings and material resources

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

3000 character(s) maximum

The training of judges is the competence of the CGPJ at the central level (continuous training service) and there is also training at the autonomous level. It is a broad training, specialized by jurisdictions, face-to-face and not face-to-face. As a consequence of the pandemic, face-to-face training has been suspended and non-face-to-face courses have been offered instead.
The training of court personnel depends in some cases on the autonomous communities. In general, employees who are not permanent lack training. In each court of the criminal jurisdiction there must be an official trained in the victim's statute, but there is none.

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)

(Factual information presented in Commission Staff Working Document of 2 December 2020, SWD(2020) 540 final, does not need to be repeated)

3000 character(s) maximum

The administration of justice has been immersed in a digitization process for ten years. It is a slow and uneven process. While some autonomous communities have already completed it and have a digital file, others such as the Basque country have just started. It does not depend on the income level of the autonomous community; they are political decisions.
The court offices are not interconnected. All communications between courts are done in writing, on paper, which delays the proceedings. Communications with other users (police, forensics) are also made on paper. However, communications with the parties, including the prosecutor, have begun to be done digitally. Communications to individuals are mostly done on paper. In Spanish courts fax is the technology of daily use to communicate with prison, police, and other courts.
Although there is a project to make all computer systems at the regional and central level compatible, it has not yet become a reality. The trials are recorded, and all rooms have video conferencing. However, it is common for them to fail due to the existence of different systems in courts and prisons that make it difficult to operate and cause delays. As a result of the pandemic, prisons are not transferring prisoners for trials and the number of videoconferences has increased. During the pandemic, in the first wave, the judiciary was stopped with the exception of the guard services nearly for three months. Most of the courts lacked the tools to work from home. That problem has not been fixed. The use of computer applications such as zoom or skype depends on the central or autonomous administration. It is not widespread. The different courts do not share information on the causes they have open, so it is common for criminals to move from one place to another free until they enter prison due to the accumulation of files

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

In Spain, there are no management systems for judicial processes, nor judicial statistics that can be of practical use, nor evaluation or satisfaction surveys among users. Judicial statistics is directed by the General Council of the judiciary to carry out its studies, especially in matters of gender violence. There are no surveys or studies on user care, duration of procedures, good practices, or at a general level on matters of criminal policy such as crime prevention, ways of serving sentences, recidivism, etc ... legislative changes that affect sentences or Procedures, when they occur, are not evaluated which leads to an impoverishment of the processes.

Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialization

3000 character(s) maximum

In 2019:
Number of inhabitants: 47.332.614
431 judicial districts
3747 single-person courts
309 courts
5593 judges
11.9 judges for every 100.000 inhabitants
Jurisdictions: civil, criminal labour and administrative courts
https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Actividad-de-los-organos-judiciales/Juzgados-y-Tribunales/Justicia-Dato-a-Dato/

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 "type of information".)

Length of proceedings

3000 character(s) maximum

Length of proceedings has increased during 2020 due to Covid-19 pandemic. From March to June the activity of the courts and the entire judicial system ceased almost completely and most hearings and other judicial acts were adjourned. By then, the docket in many courts and tribunals was already overloaded and new assignments have been difficult.

The Ministry of Justice has drafted a program to reinforce the judicial system, but it is mainly focused on labour and commercial courts and on new cases arising from the pandemic – such as cases about dismissals, allowance`s refusals or bankruptcy -, and no specific measures have been adopted to help courts deal with the hearings delayed during the first half of 2020.

It is well known that the number of judges in Spain is below UE average and the situation after Covid- 19 pandemic has put the Spanish judicial system under heavy stress. Some hearings involving employees´claims for wrongful termination, for instance, has been assigned for 2023 or even 2024 in some jurisdictions, which is an unacceptable response of the justice system. Allocation of financial resources has been insufficient to provide for redress.

A new Code of Criminal Procedure has been drafted, but no impact can be expected in the short or medium term from the new legislation, should it be finally enacted. A minimum period of 7-10 years is supposed to be necessary before the new Code could be first applied, taking into account the budgetary implications of the legislation drafted.

As for new legislation to improve the efficiency of the justice system, last 11th February 2021 was the deadline for public reports to the new bill drafted by the Ministry of Justice. We think that incentives to promote alternative dispute resolution procedures are not strong enough and no significant improvement in this field can be expected. Other changes in procedural laws might have a positive impact, but not so deeply as to cause a relevant reduction of the length of the proceedings. Structural reforms are needed to meet this goal and neither the Government nor the Parliament have shown so far the political and financial commitment required to accomplish it

Other - please specify

3000 character(s) maximum

There are two main problems about efficiency of the justice system that should be remarked here.

The first one has to do with a dysfunctional organization of the judicial system. Many attempts have been made to reform the working processes of the court`s staff but none have succeeded so far, even if legislation was first passed in that respect in 2003. However the new system has been scarcely implemented since then and all Governments have lacked the energy required to do it.

The failure to develop interoperable ICT tools between the different levels of Government (national and regional) with competence over the judicial system is the second main problem affecting the efficiency of the

justice system. Each level has implemented its own tools and they are not compatible, which is nowadays a major obstacle in order to design and develop new programmes in this field.

In addition, it should be remarked that procedural legislation do not provide for adequate criteria regarding the use of ITC in the proceedings, in particular after Covid-19 pandemic – when the use of ITC tools has become inevitable - which may affect the right to a fair trial and the due process of law

Anti-Corruption Framework - Spain

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

List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant).

3000 character(s) maximum

Prevention

Integrity framework including incompatibility rules (e.g.: revolving doors)

3000 character(s) maximum

As far as the judiciary is concerned, revolving doors are one of the principal problems of the Spanish judicial system, and together with the parliamentary appointment of all of the members of the General Council of the Judiciary, the cause of the widespread perception of lack of impartiality that has been consistently remarked in every survey about independence of the judiciary during the last decade.

Organic Law 1/1985, on the Judiciary, prevent judges from joining political parties, but they are allowed to run for election as members of national or regional Parliaments – of course they cannot keep on working on the court during the process –, which requires to be included in the electoral list by a political party. They can also be appointed for public office by the national, regional or local Governments. While they are holding office they have their judicial post in the court reserved, they are enabled to ask for vacancies in other courts - which will be reserved as well for them in case they are appointed – and all the time they spend in politics will be considered as time of judicial service in order to meet the requirements to be appointed for the Supreme Court or other higher courts.

This legislation establishes a link between politicians and judges that undermines public confidence in the impartiality of the courts and must be considered and indirect form of corruption that should be avoided.

The present Minister of Justice, the Minister of Home Affairs and the Minister of Defence are examples of the problem described, being judges themselves, but it should be retained that the prosecution service is concerned as well, and the present General Prosecutor is in fact the previous Ministry of Justice.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

3000 character(s) maximum

Rules on preventing conflict of interests in the public sector.

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 relevant measures taken/envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other).

3000 character(s) maximum

Measures taken to address corruption risks in the context of the COVID-19 pandemic

3000 character(s) maximum

No specific measures have been taken in this field in the context of Covid-19 pandemic. On the contrary, we would like to point out the reduction of the activity of the Council of Transparency and Good Governance during the state of alarm declared by the Government, which, in addition to the limitation of the control by the Parliament and the judicial review in that time (due to confinement and movements restrictions), and the enhanced powers of the Government to pass legislation on his own, resulted in an endangering of the constitutional rights of the people and weakened the monitoring of governmental activity1.

Moreover, during the state of alarm – which is still in force – a great number of new regulations indirectly affecting fundamental rights have been approved by regional Governments, sometimes in short periods of time. This has created great legal uncertainty and the expectable length of the proceedings are discouraging people from seeking judicial redress for interferences on their rights. It is especially true in the case of the Constitutional Court, which is competent to declare null and void new legislation found in breach of the Constitution but has not given priority to any case regarding regulation approved during the state of alarm

1For instance, https://www.elespanol.com/invertia/opinion/20200421/transparencia-libertad-informacion-covid- 19/484071595_12.html

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

3000 character(s) maximum

Repressive measures

Criminalisation of corruption and related offences.

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 the implementation of EU funds

3000 character(s) maximum

Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g. political immunity regulation).

3000 character(s) maximum

The main challenge for the investigation of high-level corruption cases comes from interference from Government and politicians. In 2020 the Minister of Home Affairs failed to explain in the Parliament the reason why a public official commanding a Law Enforcement unit in charge of a criminal investigation involving the delegate of the Government in Madrid had been relieved of his duties, while the media informed that the real reason was the refusal to give the Government access to the outcome of the investigation – which was being conducted by a Judge of Instruction -2. This is an example of the kind of interference that could cause the failure of the investigation of corruption cases.

The legal frame for the public prosecution service might as well be an obstacle to that kind of investigations, in particular due to the political link between the General Prosecutor and the Government – the present General Prosecutor was the Minister of Justice in the previous Government. This is because the Prosecution Service Statute enables the General Prosecutor to give instructions to the prosecutor in charge of a case and to freely assign cases to prosecutors or order the prosecutor in charge to hand the case over to another prosecutor3.

Finally, some legal provisions could have great impact on the effectiveness of corruption cases involving politicians, because in such a cases criminal investigations will be conducted by a Judge of the Criminal Chamber of either the Supreme Court or the Regional High Court, and the trial will take place before the former or the latter. And we must remember that judges of the Criminal Chamber of both courts are appointed by the General Council of the Judiciary, all of its members being elected by the Parliament. And one out of three of the judges of the Criminal Chamber of the Regional High Courts is appointed by the General Council of the Judiciary from a list of three candidates nominated by the Regional Parliament4. This is another way to interfere with criminal investigations in high- level corruption cases

2https://www.elconfidencial.com/espana/2020-06-02/nota-secreta-reverla-marlaska-ceso-de-los-cobos-filtrarle-
investigaciones-judiciales_2620479/
3Articles 23, 25 and 26 of the Prosecution Service Statute (Law 50/1981, de 30 de diciembre), https://www.boe.es/buscar/act.php?id=BOE-A-1982-837&p=20100311&tn=1#aveintidos

4Articles 57, 73, 330, 336, 342, 345 of the Organic Law 1/1985, on the Judiciary https://www.boe.es/buscar/act.php?id=BOE-A-1985-12666&p=20190725&tn=1#asetenta

Other – please specify

3000 character(s) maximum

Media Pluralism - Spain

Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies.

3000 character(s) maximum

The transposition into the Spanish legal system of Directive 2018/1808 is to be carried out through the Draft General Law of Audiovisual Communication, which is in the public information phase, for allegations and, when approved, will replace the current norm from 2010.
The National Markets and Competition Commission acts as the national regulatory authority for the supervision and control of the audiovisual market and, in particular, of many of the obligations contained in this draft law.
In accordance with the European standard, the preliminary draft regulates the records of the audiovisual communication service, in order to contribute to greater transparency in the audiovisual sector and allow the user to know easily and directly who is responsible and in what way. is responsible for the content broadcast, and other information obligations are regulated for providers of the audiovisual communication service and the video exchange service through the platform.

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

3000 character(s) maximum

The National Markets and Competition Commission (CNMC) is the body that promotes and preserves the proper functioning of all markets in the interest of consumers and companies.
It is a public body with its own legal personality. It is independent of the Government and is subject to parliamentary scrutiny. It went into operation on October 7, 2013.
The members of the Council (10 members), the President and the Vice-President, will be appointed by the Government, by Royal Decree, at the proposal of the Minister of Economy and Competitiveness, from among persons of recognized prestige and professional competence in the scope of the Commission. , the prior appearance of the proposed person before the corresponding Commission of the Congress of Deputies. Congress, through the competent Commission and by resolution adopted by an absolute majority, may veto the nomination of the proposed candidate within a period of one calendar month from the receipt of the corresponding communication. After the said period has elapsed without express manifestation of the Congress, the corresponding appointments will be understood to have been accepted.
The mandate of the members of the Council will be six years without the possibility of re-election. The

renewal of the members of the Council will be done partially every two years so that no member of the Council remains in office for a period exceeding six years

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

3000 character(s) maximum

The art. 12 of the Draft Bill establishes that the competent audiovisual authority will promote self-regulation so that the providers of the audiovisual communication service, the providers of the video exchange service through the platform or the organizations that represent them, in cooperation, if necessary, with others Stakeholders such as industry, commerce or professional or user associations or organizations, voluntarily adopt guidelines among themselves and for themselves and are responsible for the development of these guidelines, as well as the monitoring and enforcement of their compliance.
Along with this self-regulatory framework, the draft includes co-regulation through collaboration agreements signed between the competent audiovisual authority and the self-regulation body

Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference

3000 character(s) maximum

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

Rules governing transparency of media ownership and public availability of media ownership information

3000 character(s) maximum

In this matter, it is necessary to separate the public media, whose political influence derives from the control (even indirect) of the political leaders, from the private media, distinguishing those that are listed on the stock market, from those that do not.
Although both listed and unlisted groups present serious deficiencies in these areas, there are important differences between them. The unlisted groups do not provide hardly any information about their owners, there is no way to know who is behind the control of these groups.
In the case of listed companies, it is known who their owners are, since they are legally obliged to provide this information due to their presence in the listing market, but there are no legal mechanisms or procedures in the owner structure to ensure their suitability and reinforce editorial independence

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

3000 character(s) maximum

In Spain art. 20 of the Constitution protects freedom of expression and information as a fundamental right, which may be exercised by anyone (STC 6/1981, of March 16), without prejudice to the fact that at least the second, is usually exercised by professionals information, for which they have specific guarantees such as

the conscience clause and the right to professional secrecy. The Constitutional Court has highlighted the prevailing or preferential nature of freedom of information due to its ability to form a free public opinion, inextricably linked to the political pluralism of the democratic State (STC 21/2000, of January 31; SSTC 9 and 235 / 2007).
Likewise, the Constitution prohibits censorship.
As a fundamental right, it has reinforced protection that can be enforced before the Courts of Justice.

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

3000 character(s) maximum

There is no specific norm that endows journalists with a specific protection status for the mere fact of being journalists, beyond the protection of the right to information (which must be “truthful”). Their physical integrity and moral indemnity are guaranteed with the generic protection that the legal system provides to all persons. The mechanisms of the rule of law guarantee the effective investigation of possible crimes of which journalists may be victims.
The Board of Directors of the Madrid Press Association has already issued more than 30 statements in a year in defense of journalists attacked for expressing their opinions and disseminating information, the attacks proceeding mainly from social networks (with supposedly informative content) and party leaders far left and far-right politicians.
Spain remains 29th out of 180 in the 2020 World Press Freedom Classification in the Reporters Without Borders (RSF) 2020 World Press Freedom Classification, which places threats above all in the sphere of political parties. polarized (extremists from the right and left or in the realm of nationalism).

Access to information and public documents

3000 character(s) maximum

In Spain, there is no restriction to information and public documents other than that which may be derived from the data protection legislation of individuals and the regulations on State secrets.
In the judicial sphere, the secrecy of the proceedings governs, in certain circumstances to preserve judicial investigations, although with a temporary limitation and as long as it is necessary for the purposes of the investigation

Lawsuits against journalists (incl. defamation)

3000 character(s) maximum

Even though we do not have statistical evidence of their number, in Spain there are civil procedures (for the protection of honor, privacy, and self-image) and criminal (for insults or slander) that are directed against journalists. The purpose of such protection instruments is to guarantee the veracity of the information that is disseminated and the proportionality in the way it is done and respect for other rights worthy of protection such as privacy or honor.
In any case, the prosperity of such procedures is approached from the constitutional prism of the prevalence of freedom of information to form an informed public opinion, as a requirement of the rule of law

Other - please specify

3000 character(s) maximum

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

Other institutional issues related to checks and balances - Spain

The process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms) and transparency and quality of the legislative process

3000 character(s) maximum

There is no specific legal provision that requires consultation of judicial associations prior to the promulgation of regulations that affect the status of judges and magistrates, the General Council of the Judiciary, or, in general, the field of Justice.
However, recently it has been promoted the processing of the legislative reform planned in our country called Proposed Law – Amendment to Law 6/1985, of 1 July, on the Judiciary, for the establishment of the legal regime applicable to the acting High Judicial Council.
The purpose of this proposal, according to its explanatory memorandum, is to limit the decisions adopted by the Spanish Council of the Judiciary when its members have exceeded their term of office. Thus, it establishes that powers such as proposing the appointment of the President of the Supreme Court, the Presidents of High Courts, the Supreme Court Judges or Presidents of Chambers of Supreme Court, or the Judges of the Constitutional Court, should remain outside the Council's competences although they are still in office.
Following the presentation of the proposed Law, the Spanish Council of the Judiciary requested the Bureau of the Parliament, as the highest governing representative of the legislative body, that prior to parliamentary procedures, this proposal must be submitted to the analysis of the Spanish Council of the Judiciary itself and to the Venice Commission and that, likewise, all those affected by the proposed reform be heard; in particular, the associations of judges and prosecutors, as well as other representative bodies and public institutions in the field of Justice
By agreement of 13 January 2021, the Bureau of the Congress of Deputies agreed to continue the parliamentary activity through an urgency procedure and without hearing any organ or body.
We believe that this procedure not only undermines the requirements of transparency but also, in the opinion of the association, it disregards important opinions that deprive parliamentary representatives (deputies and senators) of aspects that may be relevant to assess the timeliness and perception of the reform.
We are concerned that judicial associations are not given a specific hearing in this type of reforms, because we consider that this omission contravenes the recommendations of CoE advisory bodies and the spirit of European legislation on strengthening and guaranteeing judicial independence.
In this regard, the recent GRECO report of late 2020 on San Marino underlines:
it goes without saying that judges should be consulted and have a say in basic decisions about the shape of modern justice and the priorities involved. Such a consultation process should be vested with adequate assurances of inclusiveness, transparency, and accountability
Likewise, the CCJE in its Opinion No. 23 (2020) stated:
41.- More generally, the opinion of associations of judges should be requested and considered by the executive power at all levels in respect of judicial

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

By the General Council of the Judiciary of March 14, 2020, it was agreed, in an extraordinary session, the suspension throughout the national territory of the scheduled judicial actions and procedural deadlines, in view of the measures contained in the Royal Decree approved by the Council of Ministers in relation to the COVID-19 coronavirus pandemic in which the state of alarm is declared and while it is maintained.
The measures included in the affected essential services that were not affected by the stoppage were defined with specific mention of them, being the following:
1. Any judicial action that, if not practiced, could cause irreparable damage.
2. Urgent internments of article 763 of the LEC. (involuntary internments in psychiatric establishments)
3. The adoption of precautionary measures or other actions that cannot be postponed, such as the protection measures for minors in article 158 CC.
4. Courts for violence against women will carry out the corresponding guard services. In particular, they must ensure the issuance of protection orders and any precautionary measure in matters of violence against women and minors.
5. The Civil Registry will pay permanent attention during the hours of the hearing. In particular, they must ensure the issuance of burial licenses, birth registrations within a peremptory period, and the celebration of marriages of article 52 CC.
6. Actions with a detainee and others that cannot be postponed, such as the adoption of urgent precautionary measures, removal of the body, entries, and searches, etc.
7. Any action in the case with prisoners or detainees.
8. Urgent actions regarding prison surveillance.
9. In the contentious-administrative jurisdictional order, urgent and non-postponable sanitary entry authorizations, fundamental rights whose resolution is urgent, urgent precautionary and precautionary measures, and contentious-electoral resources.
10. In the social jurisdictional order, the holding of lawsuits is declared urgent by law and urgent and preferential precautionary measures, as well as the processes of EREs and ERTEs.
11. In general, the processes in which the violation of fundamental rights is alleged and which are urgent and preferential (that is, those whose postponement would prevent or make the claimed judicial protection very burdensome).
12. The President of the Superior Court of Justice, the President of the Provincial Court, and the Dean Judge will adopt the appropriate measures regarding the cessation of activity in the judicial dependencies in which their respective headquarters are located, and their closure and/or eviction, if appropriate, informing and in coordination with the competent Monitoring Commission.
There is no statistical evidence of the percentage of urgent resolutions compared to those that do not have this character.

Regime for constitutional review of laws.

3000 character(s) maximum

The Constitutional Court, as the supreme interpreter of the Constitution, is independent of the other constitutional bodies of the State and is subject only to the Constitution and its Organic Law. It is unique in its order and extends its jurisdiction to the entire national territory.
The Constitutional Court hears, among other matters:
- Of the appeal and the question of unconstitutionality against laws, normative provisions or acts with force of the law of the State and the Autonomous Communities;
- The appeal for protection for violation of the fundamental rights listed in articles 14 to 30 of the Constitution;

- Concerning constitutional conflicts of jurisdiction between the State and the Autonomous Communities or between them;
- Of conflicts between constitutional bodies of the State, etc

COVID-19: provide update on significant developments with regard to emergency regimes 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 by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- measures taken to ensure the continued activity of Parliament (including possible best practices)

3000 character(s) maximum

Due to the health emergency caused by the COVID-19 coronavirus pandemic, the Government of Spain declared a state of alarm through Royal Decree 463/2020 of March 14 for the entire national territory.
The possibility of granting extraordinary powers to the government is contemplated in the Constitution in three possible situations (states of alarm, exception, and siege, respectively) included in article 116 of the Constitution. They are regulated and developed by Organic Law 4/1981, of June 1, on states of alarm, exception, and siege. Among them, the state of alarm is the one foreseen to face, among other assumptions, the sanitary crises, such as epidemics and serious contamination situations
The Constitutional Court in STC 83/2016, on the occasion of the appeal for protection presented in its day by several air traffic controllers after the declaration of the first state of alarm in the democratic history of Spain (the only precedent to the current declaration), said: " Unlike states of emergency and siege, the declaration of a state of alarm does not allow the suspension of any fundamental right (art. 55.1 CE contrary sensu) although it does allow the adoption of measures that may imply limitations or restrictions on its exercise
The declaration of the state of alarm, regardless of the cause that precedes and motivates its declaration, does not interrupt the normal functioning of the constitutional bodies. In this sense, it corresponds to the Judicial Power to protect the individual and collective rights and freedoms of citizens while it corresponds to the Congress of Deputies to control the measures adopted by the Government of the Nation.
A) Judicial control
Regarding judicial control, there has been no remission of the powers of the judges on the occasion of the pandemic, but the judicial bodies have been deprived of their personal resources ordering the cessation of judicial activity, for health reasons, limiting their activity to emergency cases, which has, in fact, reduced the powers of control of the judicial bodies
B) Parliamentary control
Parliamentary control of the government in the exercise of exceptional powers occurred with the validation of the "alarm" decrees in a period of 15 days, although, with the last, in which powers are delegated to regional governments, the control period has been extended to six months
The Parliament has had limited activity, abandoning the usual control mechanisms by not being able to meet in plenary session by agreement of the "Board of Spokespersons", except in exceptional circumstances, with a minimum of parliamentary activity remaining in any case through the Bureau of Congress of the Deputies, which is controlled in its composition mainly by the parties that make up the Government. It is dangerous that the parliamentary majority that controls the Table of the Congress of Deputies may restrict, suspend or interrupt parliamentary activity and control of the Government during the period

Independent authorities

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

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

3000 character(s) maximum

The functions of defense of citizens are articulated in Spain in an institutional way through the figure of the Ombudsman, which has a national scope, and there are also similar figures in some territories that have created similar figures within their territorial scope.
The Ombudsman is the High Commissioner of the General Courts in charge of defending the fundamental rights and public liberties of citizens by supervising the activity of Spanish public administrations.
The Ombudsman is elected by the Congress of Deputies and the Senate, by a three-fifths majority. His mandate lasts five years and he does not receive orders or instructions from any authority. He performs his functions independently and impartially, autonomously, and according to his criteria. He enjoys inviolability and immunity in the exercise of his office.
Any citizen can go to the Ombudsman and request his intervention, which is free, to investigate any action by the Spanish public administration or its agents, allegedly irregular. You can also intervene ex officio in cases that come to your attention even if no complaint has been filed about them

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)

3000 character(s) maximum

The control of the legality of administrative action in the Spanish legal system is nothing more than a consequence of the principle of legality and is constitutionally attributed, in an ordinary way, to the Judges and Courts.
The general principle is that administrative acts are immediately executive, a general rule that is the consequence of the constitutional presumption of art. 103.1 of the Spanish Constitution according to which "The public Administration serves the general interests objectively."
This means that not even the filing of an administrative appeal supposes, by itself, that the execution of the contested act is suspended except in those cases in which that consequence is foreseen, that is, that a provision establishes that the filing of an appeal administrative supposes the suspension of the act that is contested.
The filing of any administrative appeal will not suspend the execution of the contested act, although the possibility of adopting the precautionary measure consisting of the suspension of the enforceability of the contested act is included in the law.
When a request for suspension of an administrative act occurs, both administratively and judicially, until the request is resolved, the execution of the act will not be possible.

Impact of Covid-19 on these problems (when applicable): The severity of the sanitary measures imposed by the administration, has led to the issuance of regulations that provide that non-compliance with them by citizens, give rise to possible administrative sanctions.

Implementation by the public administration and State institutions of final court decisions

3000 character(s) maximum

The art. 118 of the Spanish Constitution establishes two different constitutional obligations, namely: on the one hand, that of "complying with the sentences and other final resolutions of the Judges and Courts"; on the other, that of "providing the collaboration required by them in the course of the process and in the execution of the resolution."
The jurisprudence of the Constitutional Court has said: "Compliance with the Sentences corresponds, as a general rule, to those who appear convicted in them, as a duty constitutionally imposed on everyone without exception (art. 118 CE))" (STC 206/1993, of June 22); also in this sense STC 1/1997, of February 13). So much so that, for example, the Constitutional Court has naturally extended this obligation to comply with final judicial decisions also to the public powers, and not only to the Administration (SSTC 166/1998, of July 15, and 228 / 1998, of December 1, but even to the Courts themselves, which also have the obligation to comply with what is resolved by other different judicial bodies in the resolutions that have reached final (for example, assuming what was declared by a higher judicial body when deciding a question of jurisdiction —STC 136 /1997, of July 21—).
Failure to comply with judicial decisions or final administrative acts may give rise to criminal responsibility for disobedience to authority

The enabling framework for civil society

Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)

3000 character(s) maximum

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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, etc.)

3000 character(s) maximum

In Spain, there is no institutional concern to disseminate the values of the rule of law, beyond the political debates that are usually limited to the parliamentary sphere and in the academic world (Universities), through courses.
The civic pedagogy of the privilege of enjoying the rule of law does not figure among the concern of the rulers, and there are no institutional campaigns that affect these aspects.

Even so, there are initiatives aimed at that end, such as the creation of the website https://www.thisistherealspain.com/es/quienes-somos, dependent on the Ministry of Foreign Affairs and the European Union, and certain institutions such as the Royal Institute Elcano, which is a "think tank" that, under the patronage of HM The King brings together relevant politicians and businessmen to promote the image of Spain in the world.
But, often, political alliances to govern are locked with parties that are not supporters of the state model, either in their territorial organization or in their political organization (populist or anti-system parties) and that composition makes the references to the rule of law that it is assimilated with the postulates of the liberal state, they are not usually seen with good eyes, so, to avoid inconvenience to the partners, their public or compromised defense is avoided

Other – please specify

3000 character(s) maximum

The traditional democratic division of powers that exists as a regime in Spain is, as in the rest of Europe, undergoing a review phase interested in a sector of politics (usually with populist and nationalist overtones) that seeks to reside in the democratic legitimacy of the votes citizens an absolute prerogative of control of the three branches, altering the system of checks and balances that their separation guarantees.
In Spain, therefore, there are parties that habitually question the legitimacy of judges, alluding to the inadequacy of their election system that would guarantee (in their personal criteria) that only an elite can access the judicial function, -something that surveys deny-, such as the one published in November 2020 by the independent company METROSCOPIA, which refers that the body of judges is a faithful reflection of the economic and political situation reflected by Spanish society.
Likewise, the legitimacy has been questioned due to territorial interests, as is the case of certain political leaders who look for a territorial division of some parts of Spain, for which there is no legal basis, precisely because the judges guarantee the observance of the Law

Contact

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