

CUESTIONARIO RULE OF LAW

<https://ec.europa.eu/eusurvey/runner/RuleofLawReportStakeholderConsultation2021?surveylanguage=EN>

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)

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

3000 character(s) maximum

The system for appointing trial judges is based on a merit and opposition model. The system allows not to consider the merits and, nevertheless, to consider political criteria and economic interests. Regarding the presidency of the courts, all those judges who do not maintain a trajectory that follows the lines established by the CGPJ, have no possibility of being appointed to a higher position.

In recent months, with the Council "in office", appointments surrounded by wide controversies over the lack of compliance with the rules have multiplied. Here are some articles that describe it.

<https://aspertic.org/>

Promotion of judges and prosecutors

3000 character(s) maximum

The promotion of judges in Spain, in reality and with the current CGPJ, is not based on professional merits but on aspects related to submission to the lines set by the CGPJ, which, in turn, is 100% appointed by the Legislative Power, that is to say, the politicians.

The Prosecutor's Office, de facto, is completely subject to the Political Power. The current Attorney General is the former Minister of Justice of the PSOE Government.

Transfers are also decided based on earned merits. But not because of his action or activity, but because of his collusion with the lines set by the CGPJ. Dignified and honest judges may be rotting in a court of first instance and instruction, while

others, who follow the lines established by the CGPJ, have dazzling trajectories of professional growth.

Allocation of cases in courts

3000 character(s) maximum

The distribution is one of the key points for the control of the political, economic and business elites. In Spain, there have been cases of a political nature in which files were advanced or rejected so that the investigation fell on a judge ideologically opposed to the accused. The same thing happens in the Prosecutor's Office.

There is no real guarantee that the assignment of cases is truly random. Many cases of distributions awarded to those Judges or Courts where they would be treated according to the interests of the powerful are known, especially in the provinces, just as there are cases of intimate relationships that lead, in a habitual way, to the clients of the Judge's lover falling in the court of the mistress in a way that she favors the interests of her lover's clients. Subsequently, any complaint against this type of action, if it is discovered, is systematically inadmissible by the fellow judges.

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 there is no real judicial independence. It is presupposed, but it does not exist. The promotion of judges depends on their superiors and the CGPJ. If a judge comes up with a case in which he does not comply with the interests of his direct superior or the CGPJ, the judge who must decide knows that he will not grow in his professional career, that he will be isolated and that he will have to abandon the career. If, however, he listens to them and passes a resolution that violates the Law, Union law or the rules, he knows that it will not have consequences for him. The existing corporatism between Judges and Prosecutors gives them complete impunity against the Law. Between acting conscientiously or doing it for the benefit of their professional future, many abandon their conscience and the Law, pass resolutions violating the rule of law, destroy lives and families of innocents who are judging and act for the benefit of corrupt or criminals. Finally, they go unpunished.

Judicial independence, in reality, is a fallacy in Spain.

The CGPJ's own election model, through a political process, is already an element that justifies what has been said above.

In a recent tweet, Judge Carlos Viader Castro stated: "The CGPJ cast show is a NATIONAL SHAME. Politicians sharing the government of the judges without dissimulation. How can citizens not think that Justice is politicized? Burdening the separation of powers is YES a crime against democracy "

<https://twitter.com/ViaderCarlos/status/1363845692607889408?s=20>

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

3000 character(s) maximum

Depending on the judge or prosecutor and their discomfort against the CGPJ, the disciplinary regime is different. The CGPJ receives constant complaints that, depending on the judge, open investigation proceedings or are immediately filed.

The figures published by the Council itself show that monitoring of the discipline of judges in the application of the Law is practically non-existent by the Council: in 2017 (the last year in which these data were published),

- 12,024 complaints were filed. Only 16 of them ended in sanctions. 0'13% of the complaints. In addition, sanctions against judges are in a large majority ridiculous. Normally not more than Eur 500.
- With respect to the 12,024 complaints presented to the Council, 1,008 Informative Proceedings were opened (8.4% of the complaints).
- Of these Informative Proceedings, only 34 ended in Disciplinary Files (0.28% of the complaints).

The judges feel absolutely unpunished and act as such. They act against de EU Law on a systematic way and are fully immune.

They act independently of the law. They may not be independent. They know that nothing will happen to them. They can be impartial and not feel subject to the Rule of Law, which is, however, what is established in art. 117.1 of the Spanish Constitution.

There is no one to monitor them effectively, and no one who dares to do so. The judiciary in Spain has become a dark cave through which many criminals circulate who know each other and feel absolutely unpunished.

One of the consequences is the absolute impunity of the judges in the exercise of their jurisdiction.

<https://lavozyberica.wordpress.com/2019/12/20/el-poder-judicial-en-espana-es-un-gran-engano-una-falacia-una-estafa-intolerable/>

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 highest part of the judiciary in Spain is awash in cases of judicial corruption.

Even the judges themselves already speak openly about it. An example is the tweet "30 seconds: another episode of legal corruption."

<https://twitter.com/eutimius/status/1363088382092599297?s=20>

In turn, the Civic Platform for Judicial Independence recently published the article: "From courtesy to contempt" making clear reference to corruption in the judicial sphere.

<https://plataformaindependenciaindicial.es/2021/02/18/de-la-descortesia-al-desprecio/>

The judges who carry it out go unpunished for all of this.

Independence/autonomy of the prosecution service

3000 character(s) maximum

The Spanish Public Prosecutor's Office totally lacks independence and autonomy, since it is a hierarchical body that depends directly on the General State Prosecutor's Office, whose president is elected by the government in power.

The current Attorney General is the former Justice Minister of the socialist government currently in power.

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

3000 character(s) maximum

Bar associations in Spain are controlled by large law firms that defend the interests of the elites and not the rights of lawyers. The judges know this and use it to pressure the lawyers.

Especially noteworthy is what happened this year with the Arriaga Law Firm, which denounced a group of judges for issuing decisions that were totally contrary to what was established by the ECJ in regard to abusive clauses by Banks against consumers. The CGPJ, in retaliation, requested the Bar Associations to sanction the Firm and its lawyers for this, something that the Barcelona Bar Association, in a certain way, folded to do at the request of the General Council of the Judiciary.

<https://www.lavanguardia.com/economia/20200523/481359065868/cgpi-arriaga-querella-codigo-deontologico-irph.html>

As can be seen, the CGPJ carries out what appears to be clear extortion and a threat to lawyers who face alleged corruption by judges, exercise their fundamental right to report and defend the rule of law and the Union law. In doing so they win the utter contempt and wishes of retaliation from the Council itself.

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

3000 character(s) maximum

The volume of sentences favorable to the political, financial, economic and business elites -twisting the law and the Law of the European Union on many occasions- generate a perception in the Spanish citizenship that Justice is controlled by the elites and only serves to their interests. In Spain, for example, there are courts that are 100% effective when filing or issuing judgments favorable to a particular bank. Later in the questionnaire, the case of Judge Enrique López is presented as one of the clearest examples of the lack of independence of the judiciary. The fact that the current Government of the Nation has 3 Magistrates as Ministers is yet another example. Recently, there have been several cases of complaints against Judges, which we accompany below. None of them so far are being investigated. All are ultimately inadmissible.

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

Court fees are, in many cases, a brake for citizens to go to Justice. Despite the fact that there is free assistance, in many cases, such as when presenting a popular accusation in a criminal case, exorbitant bail is imposed to prevent the proceedings from continuing. Especially when the accused is a person or an organization with political or economic power.

Resources of the judiciary (human/financial/material)

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

3000 character(s) maximum

In the General State Budgets for Spain, approved for the year 2021, a budget is allocated for Justice equivalent to 78.8 Euros per inhabitant per year. Almost double what is spent, on average, in the European Union (40.79 Euros). However, in Spain there are only 11.7 judges per 100,000 inhabitants, compared to 17.7 on average in the European Union. Only 5.2 Prosecutors, compared to 11.25 in the European Union. And the time for resolving issues in Spain, in the first instance, takes an average of 200 days, placing Spain as the 17th State of the 27 that make up the European Union.

If to the lack of control in spending is added judicial corruption, the lack of effectiveness in spending, and the way in which the General Council of the Judiciary is controlled by the two main political parties, it can be deduced that it does not exist an independent Justice. And, of course, neither an effective judicial protection.

In Spain, currently, the State Attorney General was the former Minister of Justice of the Socialist Party in power. And the Socialist Party is promoting that the judges stop carrying out the instruction of criminal cases, so that the Prosecutors do so, without previously providing the Prosecutor's Office with the necessary independence from the executive power.

In those countries where you begin by controlling Justice, you end up building a dictatorship.

If there is no independent Justice, there can be no division of powers. If there is no division of powers, one cannot speak of the existence of a rule of law. If there is no rule of law, there can be no democracy. And if there is no democracy, it is practically impossible to speak of justice.

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

3000 character(s) maximum

In some areas of special importance that affect citizens in their fundamental rights, training is insufficient.

For example, in the fight against violence against women; with respect to the protection of whistleblowers of infringements of Union Law; with respect to the care of those under guardianship such as minors or the elderly.

In all of them there are systematic abuses, with the complete indifference of the judiciary, which allow the systematic violation of the rule of law.

It is also important to highlight the scarcity of training regarding the financial and economic sphere. The judges of first instance show relevant inconsistencies to be able to deal with security, for example, matters related to abusive clauses against consumers by banks or also in bankruptcy processes, in which corruption and alleged collusion between judicial administrators and the judges who appoint them end up causing real financial losses for the benefit of third parties and rarely of creditors, employees or partners.

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

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

3000 character(s) maximum

There is a shortage of courts of first instance specialized in economic crimes, crimes against consumers, crimes against minors or elders under guardianship and in the protection of whistleblowers against violations of Union law.

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

The lack of means of the Spanish Justice determines that the processes are improperly prolonged, even leading to the exoneration of the accused by prescription of the crime. On the other hand, in reference to matters that affect the financial, political and economic elites, there are too many cases in which it is the courts themselves that artificially lengthen the procedures to reach the statute of limitations and that the accused are exonerated.

Other - please specify

3000 character(s) maximum

The 2020 rule of law report on the investigation and prosecution of Corruption crimes in Spain, indicated with respect to the Anti-Corruption Prosecutor's Office, on the one hand that it had 38 prosecutors among the 29 indicated in the 2018 report and the 9 designated in 2019, and on the other hand, regarding the allocation system, it reported GRECO's concern about its autonomy since the allocation of prosecutors is decided by the Ministry of Justice.

The experience of different complainants shows that for the investigation and prosecution of crimes of corruption, it is necessary to have prosecutors with experience and specific training in the field of corruption in the field of public administration. Currently a prosecutor for minors goes directly to be appointed instructor on corruption matters in the public administration.

An example: DIP 48/12 filed with the Valencia Public Prosecutor's Office due to a complaint by an official for serious irregularities in agricultural subsidy files financed by the EAGF fund and other complaints about multiple subsidy files co-financed by the EAFRD, which were filed by the same prosecutor designated instructor without conducting an investigation. However, there is evidence of the inexperience of this newly appointed anti-corruption prosecutor who did not know how to approach OLAF

An effective fight against corruption in the public administration requires that anti-corruption prosecutors have experience and specific training as well as that the process prior to filing them includes the obligation of a prior investigation by a specialized criminal investigation body that justifies it.

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

There is a long list of authorities in Spain, in charge of the prevention, detection, investigation and prosecution of corruption. But it does not bear fruit.

The Catalan Anti-Fraud Agency used his information to extort money, even from the corruption whistleblowers who came to it. Its president was a magistrate who is still in office and who has not even been sanctioned or investigated.

In the Spanish case, the list of authorities, national agencies or bodies in charge of prevention, detection, investigation and prosecution is actually irrelevant.

The problem is threefold:

- a) The savage corporatism that exists in Spain between judicial authorities and also between them and the body of State officials.
- b) The impunity with which judges act, violating the Law when they want to.
- c) The intimate link between the political power and the judiciary

The national implementation of these three realities makes corruption rampant in Spain and that very few citizens, much less authorities, dare to confront it. It is the authorities themselves that are corrupt, including many judges, and it is they who manage the control of corruption.

In the case of the "Royuela File" there are indications of more than 1,300 murders organized by a team led by the then Chief Prosecutor of Catalonia. The authorities have refused to investigate and jailed the complainants.

A judge denounced the corruption of a Chief Prosecutor in Talavera de la Reina and ended up expelled from the judicial career on the basis of false accusations.

A lawyer, with more than 60 years and an exemplary file, denounced the prevailing judicial corruption in Jerez de la Frontera and has been in jail for more than seven years on the basis of a false complaint.

The relationship between lovers of a lady judge and the representative of one of the parties was discovered in a proceeding in her court. The irregularity was reported. Nothing has been investigated and the complainant has ended up ruined, with his life destroyed and his main assets in the hands of the client of Mrs. Judge's lover, after multiple violations of European Union law.

Corruption is installed systemically among the high levels of Justice.

Prevention

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

3000 character(s) maximum

In Spain, of all the professions that a judge could reconcile with his position as judge, only that of political office is allowed. That is, the one that most affects independence and impartiality.

However, article 389 of the LOPJ establishes that judges cannot perform any paid public or private employment, with some exceptions. The art. 127 of the Constitution and article 395 of the LOPJ do not allow them to stand for popularly elected or political appointment and they cannot belong to political parties. They cannot criticize politicians, nor congratulate them and neither attend public meetings that are not judicial in nature.

In the current Spanish Government there are 3 ministers who are judges, exercising the position of Ministers.

The politicians have been modifying the Law to create an absolutely PRIVILEGED system that allows judges to carry out the activities that are prohibited to them and that nevertheless interests the politicians who carry them out: political or trust positions.

In 2011 PSOE and PP reformed the Law so that the Judges would bow to the requests of politicians and have the following benefits (art. 354 LOPJ):

- a) Reservation of place and right to compete during their political stage;
- b) Time in politics is computed for the purposes of promotions, seniority and passive rights;
- c) And... in addition to the salary as a political position, he receives the remuneration for his seniority in the judicial career.

The reform was made retroactively, for the benefit of all judges who were or had been in politics.

This reform was agreed with the current Minister of Justice, Judge Juan Carlos Campos, being the Secretary of State for Justice, who is a clear example of this situation: he has not been a judge for 20 years, always in politics, he has maintained his ranks and currently It is destined for the National Court.

The Law has allowed the CGPJ (elected by politicians) to take into account the experience in politics to compute for the 15 years of judicial exercise necessary to be able to reach the Supreme Court. Juan Carlos Campos could apply for and win a seat directly in the Supreme Court if he so wanted.

CONCLUSION: the absolute incompatibility between politics and justice has become absolute compatibility. A mockery of Article 47 of the Charter.

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

Transparency in Spain constantly collides with “reasons of state”. Under these alleged reasons, information that is requested under Union law, and is denied.

Rules on preventing conflict of interests in the public sector.

3000 character(s) maximum

The 2020 Rule of Law report, in its section on the Anti-Corruption Framework, indicates that several instances share powers and responsibilities in the development and application of anti-corruption policies, as well as prevention, detection, investigation and prosecution of corruption cases; as well as indicates that the Office of Conflicts of Interest, established in 2015, has the responsibility of controlling the declarations of assets and patrimonial rights, while the Council of Transparency and Good Governance, established in 2014, supervises access to information and compliance with transparency and good governance obligations.

However, the conflict of interest has not been taken into account when prosecuting the alleged corruption of the public administration. And when the courts request assistance from the administration itself to investigate and it turns out that that same administration is the alleged party responsible for the irregular actions that are being investigated. It is even admitted that this helpful information is provided by the officials allegedly responsible for the irregularities of fraud and embezzlement. Even still appearing in the documentation of the irregular file under investigation.

This is the case in the DP 2912/15 of the Court of Instruction 4 of Valencia. The same official, head of the service and signatory of the documentation that is proof of the allegedly criminal action in the files that are investigated and are informed by OLAF answers the Court. Despite this, the Magistrate requests and admits the assistance of that party - evidently interested -, admitting in the judicial process

the information prepared and provided by the specific officials responsible for the irregularities.

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

3000 character(s) maximum

The kingdom of Spain is not yet applying the Whistleblower Directive despite the fact that it came into force in December 2019 and is mandatory based on the principle of vertical direct effect and the compliant interpretation, as well as the ECJ *Egenberger* ruling. The Courts of Justice, including the Supreme Court, systematically deny its application, claiming that it is not yet transposed into national law. Something absolutely contrary to Union law.

The organizations that should be the protectors of the complainants of corruption, become the executing arm of the repression and reprisals against these complainants, even giving the appearance of legality to their decisions.

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

Justice
Banking
Politics
Public function
Journalism

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

3000 character(s) maximum

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

3000 character(s) maximum

The only possibility to achieve homologation of the rule of law in Spain is the intervention, from the European Union, of the General Council of the Spanish Judicial Power and the State Attorney General's Office.

In Spain, it is not possible to guarantee that there is a true effective judicial protection, much less impartiality or independence on the part of the Judicial Power. Very especially when it affects the great powers and the judicial caste, structured as a power that serves itself. Especially in the High Courts.

The obligations imposed by Union law and, in particular, Article 19 (1) TEU, second subparagraph, are not systematically fulfilled. Nor what is established in art. 22.1 of Directive 2019/1937 that places the CDFUE as the supreme norm in terms of effective judicial protection and the right to an impartial judge.

In order to prevent corruption in the public and private sectors, by virtue of the principle of subsidiarity, art. 52 of the Charter and art. 26, 2 of Directive 2019/1937, we understand that the following measures should be implemented:

1) Intervention of (a) CGPJ, by removing its members, reviewing the appointments made in previous years (many of them violating the rules) and monitoring new appointments so that they always comply with current legislation and regulations and (b) the State Attorney General's Office.

Both in one case and the other, said measures would not affect the independence of the Judicial Power.

2) Institutionalize the elimination of internal borders in the field of the Administration of Justice within the European Union, in order to be able to enjoy the effective judicial protection of art. 47 of the Charter, especially in the face of doubts regarding the independence and impartiality of the judges. In such a way that citizens of the Union who are involved in this situation, in particular Spanish citizens, can go to the national courts of other Member States and process their claims.

Repressive measures

Criminalisation of corruption and related offences.

3000 character(s) maximum

Corruption is very cheap in Spain, especially since it is common for the corrupt not to be prosecuted, complaints are rejected or not properly investigated. It is common for those who report to be persecuted.

The Penal Code contemplates the following crimes in relation to corruption:

- Influence peddling: arts. 428 to 431 CP
- Prevarication: arts. 404 to 406 of the CP.
- Fraud and illegal levy: arts. 436 to 438 of the CP.
- Bribery: art. 419 CP.
- Embezzlement: arts. 432 to 435 CP.

The Penal Code covers in an extensive and comprehensive way the possible crimes related to corruption.

What is the problem?

Prosecutors and judges, on many occasions, simply look the other way.

Either they allow the crimes to be committed, despite having been denounced and denying the complaints they receive with any type of falsehood or apology, or they allow the investigations to drag on for years and, finally, if the investigated are convicted, they allow either the penalties to be greatly reduced, or else that in the vast majority of cases, they never return what was defrauded.

On the other hand there is the corporatism between judges, prosecutors, officials and authorities, which is amazing in Spain. And the impunity with which judges and prosecutors act. The combination allows corruption to continue for years.

Of the complaints before the CGPJ, 8.4% are investigated and only 0.13% lead to sanctions (CGPJ Report 2017), and complaints before Courts or Prosecutor's Office are also inadmissible in the vast majority of cases, even though they are fully criminal evidence documented. And when it is rarely sanctioned, the sanctions are ridiculous.

High corruption in Spain is protected by Judges and Prosecutors. It cannot be said that the rule of law exists in Spain in this area.

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 prosecution of corruption offenses usually occurs when (1) Complaints are filed with the Prosecutor's Office and only if the Prosecutor files a complaint. The complainant does not have access to the procedure, or (2) The official files complaints and legal complaints where he can be a party. They represent an unaffordable high cost for the official.

After taking the step of facing corruption, the official finds himself: either without information or without resources to follow up on the complaint.

However, the corrupt by virtue of their position of power have, on the one hand, the resources that their position grants them and, on the other, the resources that they have taken away thanks to their corrupt activities. They use both to stop or archive the procedures supported by the existing judicial corruption, the corporatism with judges and prosecutors and the impunity with which the latter act against the Law.

And the citizen who detects corruption in his work environment is regularly extorted, threatened or retaliated. It ends up preferring to consent to corruption rather than denounce it.

An example of this is an agricultural engineer civil servant who was a whistleblower in Andalusia for public crimes. She was sanctioned for doing so, a sanction she appealed and won 10 years later. In the Valencian Community, she was a complainant up to 6 times before the Public Prosecutor's Office, OLAF and also a complainant in DP 2912/15 of the Examining Court No. 4 of Valencia. In all of them at his expense and without finding Justice in any.

We know dozens of cases.

All this despite the fact that the EU Directive 2019/1937 for the protection of whistleblowers and whistleblowers is in force. In Spain, the Courts do not take into account the Law of the Union in its aspects of the principle of direct vertical effect and the principle of consistent interpretation. Neither does the case law of the ECJ. The judges deny and / or ignore the Law of the Union in their decisions.

Other – please specify

3000 character(s) maximum

That a Directive has been transposed for a long time does not mean that it is correctly transposed. The reality in Spain is that there is a conspiracy to avoid transposing what is not interesting, with the help of media silence.

A good example is the regulations on urban leases, which have been modified and adapted several times from 2009 to now. The last two being, Law 42/2015 of October 5 of the Civil Procedure Law (in force as of 7.10.2015) and Royal Decree-Law 7/2019 of March 1 (in force on 6.03.2019).

Despite the fact that successive modifications have been made, the legislator has avoided transposing into national law the regulations of Union law that referred precisely to the economic activity of housing rental contracts.

Directive (EU) 2006/123 / EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of December 12, 2006 on services in the internal market should be fully transposed before December 28, 2009. It is, therefore, DIRECTLY APPLICABLE and ON NATIONAL LEGISLATION in that which has not been transposed or badly transposed, by the principles of Primacy and Direct Effect of the Union regulations.

In its Article 2.2, it establishes a “number clausus” of those activities that are not regulated by the aforementioned Directive, and THE ECONOMIC ACTIVITY OF HOUSING RENTALS IS NOT ONE OF THE EXCEPTIONS OF THE DIRECTIVE.

In its Article 14, it establishes as Prohibited Requirements for the State the obligation to constitute a financial guarantee, to participate in it or to subscribe an insurance with a provider or body established in the national territory. Confirmed otherwise by the CJEU, accumulated cases C-724/18 and C-727/18.

Well, if we carefully read Article 36 of the current Urban Leasing Law, it speaks of a forced guarantee, not a surety. Similar to the hidden rate of the “sanitary cent” (CJEU Judgment of February 24, 2014).

We suspect that, among other things, the non-adaptation has been to try to avoid the benefits that the tenant would suppose to be considered as a consumer.

We find the same problem with the issue of interim officials, or the abusive clauses applied by banks, media silence is applied, and when they reach the higher courts, or Union Law is not applied, or the rule is twisted to be applied in favor of the banks.

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

In Spain, in general, the media are not independent but are subjected to a constant bribery system based on advertising revenue. Unlike other countries, where the media, especially digital, subsist through other channels and have other tools to survive, in Spain there is an absolute dependence on advertisers, both public and

private. In this regard, the dictatorship exercised by these advertisers forces the media to choose between their economic independence and their journalistic independence since, if a medium publishes news contrary to the interests of these advertisers, the financing tap is closed. For example, a case of political corruption of a party that governs a certain administration, if it is removed by a medium that is advertising, will automatically lead to the withdrawal of campaigns, both those contracted and future ones. The same is true for private advertisers. In other words, a process of corruption is produced and a gag system is applied whereby if a media outlet acts freely and independently, it is guaranteed that it will not obtain advertising revenue.

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

This system also applies to the appointment of directors or journalists. In Spain there are frequent cases in which advertisers demand the dismissal of journalists who write, research and publish about advertisers.

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

3000 character(s) maximum

Las asociaciones de prensa no actúan más allá de un mero apoyo institucional a favor de los medios y los periodistas frente a la mordaza que imponen los anunciantes.

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 are rules for institutional advertising, mostly based on audience data through tools like Comscore. However, ideological issues are imposed if it is necessary not to advertise a particular medium by breaking those same rules. The lack of transparency and the fear of losing future contracts means that the media does not complain about the concession of advertising campaigns.

The financing model of the media in Spain has been characterized by abundant injections of public money.

This mixed model of media financing has undergone important changes in recent years, but these have not been aimed at reducing the waste of public resources. The trend followed is towards a financing system in which the guarantee of

financing is at the cost of increasing State contributions. The trickle of public resources continues, not only in the predominant form of subsidies, but also through millionaire institutional advertising campaigns or massive subscriptions to the media by the Administrations.

(<https://dialnet.unirioja.es/servlet/articulo?codigo=4378846>)

The government of Spain recently approved a grant of an exceptional nature, endowed with fifteen million euros, destined to offset a part of the costs of the providers of the audiovisual communication service of digital terrestrial television at the state level. It is one more way of financing private communication entities to maintain their influence.

The Junta de Andalucía continues to use “institutional advertising” to promote the image of the Andalusian government, in relation to the COVID19 pandemic. To the limit of legality, public resources are used for political dissemination.

https://www.eldiario.es/andalucia/junta-andalucia-publicidad-ilicita-covid-19_1_2263417.html

https://www.lavozdelsur.es/actualidad/politica/la-junta-gastara-13-millones-de-euros-en-promocionar-andalucia-como-destino-seguro_190706_102.html

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

3000 character(s) maximum

The media report, in one way or another, who the real owners of the publishing companies are.

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

3000 character(s) maximum

The reality is that at a regulatory level, freedom of the press is protected in Spain. Another thing is how it is applied or if it is applied.

In addition to the systems of repression and corruption mentioned above, in Spain there are too many cases of judges who, by breaking all deontological norms, break the security that confidentiality and protection of these sources gives to journalists' sources. A frontal attack from the State towards the freedom of the press that, for the moment, is not persecuted.

Spain does not have a general legal framework that establishes protection and guarantees for all those who carry out journalistic activities, either as a paid professional activity or in any other way. Article 20 of the Constitution entrusts

the legislator with the regulation of professional secrecy, which particularly includes the fundamental guarantee of the right to protection of sources. Since the approval of the Constitution in 1978, this law is still pending approval. There is also no regulation aimed at protecting filter feeders or whistleblowers.

<http://libertadinformacion.cc/wp-content/uploads/2019/07/EPU-Espan%CC%83a-2019-nforme-CSO-Final.pdf>

Citizen Security Law and its application to journalism

On July 1, 2015, Organic Law 4/2015, of March 30, on the protection of citizen security came into force. Known as the "gag law" due to its wide range of detractors, it consists of a modification of the old Penal Code of 1995.

- (a) Reform regarding the disclosure of secrets. The crime of revealing secrets has always been a sword of Damocles on investigative journalism.

https://www.eldiario.es/politica/periodistas-revelar-contenido-sumario-cdr_1_1242317.html

- (b) the Citizen Security Law: with regard to freedom of expression and information, it is the new infraction regulated in article 36.23 of the law

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

3000 character(s) maximum

In 2020 not only has there been no progress in the area of freedom of expression and information, but it has been a year, like the previous ones, with serious threats to these fundamental rights, according to the annual balance of the Platform in Defense of Freedom of Information (PDLI), that collects the attacks to the journalists who have denounced.

Some of them:

- Oct 2019: [El fotógrafo de El País Albert García es detenido tras negarse a dejar de grabar en vídeo actuaciones policiales](#)
- Oct 2019: [La PDLI traslada a organizaciones internacionales las agresiones a periodistas en las protestas por la sentencia del 'procés' y pide explicaciones a Interior y a los Mossos](#)
- July 2018: [La PDLI exige responsabilidades al director general de la Policía por la agresión a Jordi Borrás](#)
- Aug 2018: [La PDLI condena la agresión por parte de los manifestantes a un cámara de Telemadrid en un acto contra los lazos amarillos](#)
- March 2018: [La justicia española deja impunes agresiones policiales a periodistas en la manifestación 'Jaque al Rey' de 2014 pese a considerarlas probadas](#)

- Oct2017: [La PDLI exige a Interior que actúe ante las agresiones 'ultras' a periodistas](#)
- Sept2017: [La PDLI condena el acoso de un sindicato policial a la periodista Cristina Fallarás](#)
- Jul2017: [La PDLI lleva al Defensor del Pueblo la multa contra un periodista de 'Hala Bedi'.](#)
- Feb2016: [La PDLI denuncia ante la Comisión Europea las detenciones y juicios a periodistas](#)
- Jan2016: [Juicio al fotógrafo Raúl Capín,](#)
- Mar2015: [La PDLI exige responsabilidades por la detención del periodista Jaime Alekos,](#)
- Feb2015: [La PDLI envía una queja a Cifuentes por la denuncia a la reportera que cubría un desahucio.](#)

Access to information and public documents

3000 character(s) maximum

The Transparency Law in Spain has many shortcomings. Access to certain public documents, especially in judicial cases, is forbidden at all with the systematic application of summary secrecy that, too often, is imposed, not as a means of protecting the judicial investigation, but as an element that protects to those accused of corruption.

Law 19/2013, of December 9, on Transparency, right of access to public information and good governance. Norm highly criticized by experts that has been anchored by our legislators in article 105.b of the Spanish Constitution, as an administrative right of citizenship.

They have not wanted to link it with freedom of information, despite having been requested on multiple occasions.

The right of access to information collides with excessive formal requirements that prevent its effective exercise.

Before the new transparency laws, there was no regulation on the right of access to public information. Now we have transparency laws and numerous control institutions, but the paradox is that journalists encounter the same difficulties as always.

<https://www.educacion.gob.es/teseo/imprimirFicheroTesis.do?idFichero=S2VyF3yhegM%3D>

Spain is not complying with EU standards as access to information has not been recognized as a fundamental right by legislators or by the courts, despite the fact

that various experts in constitutional law have concluded that this would be covered by article 20.1 of the Constitution

Despite the fact that the access law guarantees the right to appeal refusals, including the possibility of going to court, there are numerous obstacles in practice regarding access to justice. First, given the complexity of the legal framework, the appeal procedures are also different at the regional and national levels. It is really very difficult for an applicant to know where to turn to enforce his right and what to do in case of a denial. Second, the various Transparency Councils that have been established at the regional and national levels are relatively weak, in the sense that they cannot issue binding decisions or sanction violations of the law.

Lawsuits against journalists (incl. defamation)

3000 character(s) maximum

Threats and lawsuits against journalists are multiplying in Spain. Any news published against a company or against an influential person is immediately responded to with the threat of legal action or with the filing of lawsuits despite the fact that the information is verified or accompanied by documents that prove it to be true. The very system that regulates the right to rectification includes a section indicating that said right can be applied despite the fact that the news published is truthful.

The organization Reporters Without Borders (RSF), denounced in its 2018 report that the disclosure of secrets is still being used in Spain as a weapon against journalists. For the organization, it is "especially striking" the case of the editor of Europa Press in the Balearic Islands and the journalist of 'Diario de Mallorca', to whom the National Police confiscated their mobile phones, computers and other work material to find out the authorship of a leak.

<https://www.lavanguardia.com/vida/20190208/46291125023/rsf-denuncia-en-su-informe-2018-que-la-revelacion-de-secretos-se-sigue-usando-en-espana-como-arma-contra-periodistas.html>

Other - please specify

3000 character(s) maximum

Spain must adopt a general legal framework that establishes protection and guarantees for all those who carry out journalistic activities, especially with regard to the right to protection of information sources.

A suitable protection system for so-called filter feeders or whistleblowers must also be included. It is in force, but both judicial authorities and officials systematically refuse to apply the provisions of EU law.

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

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

3000 character(s) maximum

Regime for constitutional review of laws.

3000 character(s) maximum

COVID-19: provide update on significant developments with regard to emergency regimes 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

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

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

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

3000 character(s) maximum

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

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

The only measure that we understand as truly effective in order to promote a culture of the rule of law in Spain is through the intervention by the European Union of both the General Council of the Judiciary and the State Attorney General's Office.

Once they have been intervened, and it is likely that it will only work if they do it with NON Spanish personnel, they must proceed with the exhaustive investigation and the conviction of those Judges or Prosecutors who have violated Union Law in their resolutions. There are many more than you can imagine.

Only when the set of Judges and Prosecutors understand that their impunity has ended, will it be possible to speak of the possibility of a culture of the rule of law in Spain. When this is the case, they will all begin to dictate their resolutions in accordance with the Law of the Union and the corrupt and criminals will see the door closed to impunity. But this can only happen when Judges and Prosecutors clearly and emphatically understand that their current and complete impunity has ended when they violate EU Law in their resolutions.

Other – please specify

3000 character(s) maximum