

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.

If you encounter persisting difficulties in submitting your contribution, please submit it directly by email to 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

Public authority or network of public authorities

* Organisation name

250 character(s) maximum

Supreme Court of Kingdom of Spain.

It should be noted that, in accordance with the instructions contained in the questionnaire, the responses will be brief and concise, in English, and limited to those aspects directly related to the jurisdictional

* Main Areas of Work

- 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

<https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/>

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

Juan Manuel

* Surname

San Cristóbal Villanueva

* Email Address of the organisation (this information will not be published)

tribunalsupremo.vicepresidencia@justicia.es

* Publication of your contribution and privacy settings

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- Public - Your personal details (name, organisation name, transparency register number, country of origin) will be published with your contribution.
- No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

I agree with the [personal data protection provisions](#).

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

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
- 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

The appointment and selection of judges and prosecutors and court presidents corresponds to the General Council of the Judiciary. It is worth highlighting that the General Council of the Judiciary has now been in extended functions for two years due to the expiration of its five-year mandate, and the parliamentary groups have not reached an agreement that allows its renewal. To unblock this negotiation, the two parliamentary groups that support the Government of Spain have presented a future law that will prevent appointments to a General Council whose mandate has expired.

It should be noted that the judges who are members of the various Chambers of the Supreme Court are not very numerous, and in the event of a vacancy, any delay in the appointment causes serious damage to the functioning of the court. As an example, in the last two years, there have been for various reasons (retirements, deaths, resignations), a total of 17 vacancies of judges, being the entire TS staff adding the members of all its Chambers that of 79 judges. It can be understood the serious disruption that for the functioning of the Court would have meant that the Council would not have been able to make appointments in those two years of interim, due to the blockade of the negotiation between the parliamentary groups, leaving the staff of the different Chambers seriously diminished, and with it, the good progress of the Court, with serious damage to the citizen.

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

3000 character(s) maximum

Promotion of judges and prosecutors

3000 character(s) maximum

Allocation of cases in courts

3000 character(s) maximum

Regarding the Supreme Court, as with the rest of the Courts of Spain, the Organic Law of the Judiciary (art. 152) establishes that it corresponds to the Government Chambers, to carry out the function of government of their respective courts, and in particular they are responsible for:

1. To approve the rules for the distribution of cases between the different Sections of each Chamber.
2. To establish annually with objective criteria the precise shifts for the composition and operation of the Chambers and Sections of the Court as well as in a binding way the rules for assigning the cases that the Magistrates must take turns.

The Government Chamber of the Supreme Court is presided by the President of the Court, and is made up of 10 more members: five ex officio members (the presidents of the five Chambers of Justice) and five elected members (Supreme Court judges who are chosen from among their peers).

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

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

3000 character(s) maximum

Remuneration/bonuses for judges and prosecutors

3000 character(s) maximum

Independence/autonomy of the prosecution service

3000 character(s) maximum

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

3000 character(s) maximum

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

3000 character(s) maximum

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

Resources of the judiciary (human/financial/material)

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

3000 character(s) maximum

The Supreme Court of Spain lacks budgetary autonomy, so any training, institutional, or international activity that it intends to undertake requires approval by the General Council of the Judiciary. Regarding the needs for material resources in the Supreme Court, it should be noted that, although the investment in technological means (electronic communications, telematics devices) has been important, the lack of a total digitization of the procedures in the bodies Judicial levels at the initial levels make it difficult to develop a technician justice, and as an example, we can refer to the problems that the Covid-19 pandemic and the confinement measures during the first months of 2020, which caused a slowdown in the operation of the Court, given the material impossibility of adopting, as a matter of urgency, a complete telework formula. Despite everything, thanks to the effort and dedication of the judges of the Court, the lawyers of the Technical Cabinet and the officials who provide their services there, it was possible to offer a yield close to 80%.

During the period of the first declaration of the state of alarm (from March 14 to June 21), it continued deliberating electronically almost normally, in addition to addressing the precautionary measures requested to the Third and Fourth Chambers in relation to the pandemic and the lack of protective equipment. All the public hearings that were scheduled during that period were suspended. And normality was not restored until September (throughout the Court). Regarding the number of decisions, understood as non- interlocutory final resolutions, it is not foreseeable that it will decrease significantly compared to the previous year, as it has been, since the different Chambers and Sections continued to deliberate telematically from the beginning of the declaration of the state of alarm, as did the Technical Office (Lawyers advisor team) that continued to carry out its functions in telework generally.

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

3000 character(s) maximum

The Supreme Court actively participates in the training tasks of judges, not only collaborating with its members in the training courses organized by the General Council of the Judiciary as speakers, but also attending them and developing and promoting them, through various specific courses and with a stay in the Court itself, knowledge of the jurisprudence of each of its Chambers by the members of the lower judicial bodies.

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

As in the Commission document of December 2, 2020 SWD (2020) 540 final, the data from Spain were not included since the responses from our country - according to the report itself - were narrative and not numerical, It should be noted that 100% of the notifications to the parties in the cases addressed by the Supreme Court are made electronically, which means that all communications with the outside, that is, notifications to lawyers and litigants, are in its entirety through telematics means (LexNet System) and likewise, the digitized processing of all procedures and the use of the digital signature by the judges of their decisions has been standardized.

The adaptation to the health and safety requirements of the justice system in the Supreme Court has been quite satisfactory, through the various measures adopted by the General Council of the Judiciary and from the Court's governing chamber itself, promoting teleworking, providing security measures, and implementing telematics deliberations of all kinds.

Regarding the production of the Supreme Court during the past year despite the pandemic, we refer to the previous answer.

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

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

As regards the Supreme Court, it is true that response times have lengthened. The 2020 report on the Rule of Law in Spain prepared by the European Commission already pointed out that "The duration of legal proceedings in Spain is increasing. (...) It is especially long in civil and commercial matters before the Supreme Court, where it exceeds 600 days". The difficult circumstances faced during 2020 due to the Covid-19 pandemic have meant that those times, as a consequence of the stoppage of deadlines and slowdown in the Court's production - despite the great effort made by judges, lawyers from the Technical Cabinet and civil servants- have increased. In any case, it should be noted that the registration of cases in the Supreme Court continues an unstoppable rise, and in 2020 almost 30,000 cases have entered the Supreme Court, of the more than 7,500 were civil cases, the same number (7.500) in criminal cases, almost 5,000 labor cases, and more than 9,500 administrative cases, and has to be faced with the same staff of judges that was established by law more than 30 years ago.

Other - please specify

3000 character(s) maximum

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

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

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

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

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

3000 character(s) maximum

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

3000 character(s) maximum

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

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

3000 character(s) maximum

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

3000 character(s) maximum

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

3000 character(s) maximum

Access to information and public documents

3000 character(s) maximum

Lawsuits against journalists (incl. defamation)

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

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

The Supreme Court, during the year 2020, has resolved numerous claims against the decisions of the health administration in relation to measures to contain the Covid -19 Pandemic, and this both in relation to precautionary measures, and in matters of substance in protection of fundamental rights, such as the limits to citizen mobility, the mandatory use of masks, the possibility of using biocides, or the obligation of the Administration to provide civil servants at risk (doctors, nurses, police, etc.) with equipment of security, as well as occupational risk prevention.

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

Other – please specify

3000 character(s) maximum

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