

EUROPEAN CONVENTION
ON HUMAN RIGHTS



CONVENTION EUROPÉENNE
DES DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Annual Rule of Law
Report - Council of
Europe input

Directorate General Human Rights and Rule of Law (DG I)

Spain

I Justice System

A. Independence

1. Appointment and selection of judges and prosecutors

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

2. Irremovability of judges, including transfers of judges and dismissal

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

3. Promotion of judges and prosecutors

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

4. Allocation of cases in courts

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

5. 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)

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules.

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

7. Remuneration/bonuses for judges and prosecutors

8. Independence/autonomy of the prosecution service

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

9. Independence of the Bar (chamber/association of lawyers)

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

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

11. Other - please specify

CPT

Report on the CPT's 2016 periodic visit ([CPT/Inf \(2017\) 34](#), para. 13) and report on the 2018 ad hoc visit to Catalonia ([CPT/Inf \(2020\) 5](#), para. 16)

EU Directive 2013/48 was transformed into the national legislation through the amendment of Article 520 of the CCP (i.e. a detained person has the right to meet with a lawyer "without delay" and to confer in private with the same before giving a statement to the police).

The CPT's findings from the 2016 and 2018 (Catalonia) visits confirm that this was implemented in practice.

That said, in the Catalanian context, the CPT found that the access to ex officio lawyers was subject to consistent delays due to a cumbersome system of double notification to the Bar Association (hence several suspects could not avail of the presence of a legal counsel during their interviews with the police).

B. Quality of justice

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

13. Resources of the judiciary (human/financial)

14. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)

15. Other - please specify

European Commission for the Efficiency of Justice (CEPEJ)

<https://www.coe.int/en/web/cepej/country-profiles/spain>

C. Efficiency of the justice system

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

16. Length of proceedings

17. Enforcement of judgements

18. Other - please specify

European Court of Human Rights - country profile

https://echr.coe.int/Documents/CP_Spain_ENG.pdf

Execution of Judgments of the European Court of Human Rights - country factsheets

<https://rm.coe.int/1680709746>

II Anti-corruption framework

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates that have occurred since these documents were published.

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

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

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

B. Prevention

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

- 20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)
- 21. Rules on preventing conflict of interests in the public sector
- 22. Measures in place to ensure Whistle-blower protection and encourage reporting of corruption
- 23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other).
- 24. Any other relevant measures to prevent corruption in public and private sector

C. Repressive measures

GRECO

<https://www.coe.int/en/web/greco/evaluations/spain>

5th round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

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- 25. Criminalisation of corruption and related offences,
- 26. Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)
- 27. Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

III Media pluralism

A. Media regulatory authorities and bodies

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

Relevant recommendation of the Committee of Ministers of the Council of Europe to member states:

[Recommendation Rec \(2000\) 23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector](#)

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

B. Transparency of media ownership and government interference

30. The transparent allocation of state advertising (including any rules regulating the matter)

31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)

32. Rules governing transparency of media ownership

Relevant recommendation of the Committee of Ministers of the Council of Europe to member states:

[Recommendation CM/Rec\(2018\)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership](#)

[Recommandation CM/Rec\(2018\)1 du Comité des Ministres aux États membres sur le pluralisme des médias et la transparence de leur propriété](#)

C. Framework for journalists' protection

33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

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

Relevant recommendation of the Committee of Ministers of the Council of Europe to member states:

[Recommendation CM/Rec\(2016\)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors](#)

35. Access to information and public documents

36. Other - please specify

Platform to promote the protection of journalism and safety of journalists

<https://www.coe.int/en/web/media-freedom/spain>

Freedom of expression chapters of the annual reports of the Secretary General of the Council of Europe featuring indicators on media pluralism and transparency of ownership, media independence and safety of journalists as well as country-specific assessments:

2018

<https://rm.coe.int/state-of-democracy-human-rights-and-the-rule-of-law-role-of-institutio/168086c0c5>

2017

<https://edoc.coe.int/en/an-overview/7345-pdf-state-of-democracy-human-rights-and-the-rule-of-law.html>

2016

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680646af8

2015

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168058e01e

IV Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

37. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, 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).

38. Regime for constitutional review of laws

The European Commission for Democracy through Law – Venice Commission

CDL-AD(2017)003 English 13/03/2017 - Public

Spain - Opinion on the law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court, adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017)

B. Independent authorities

39. independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies

C. Accessibility and judicial review of administrative decisions

40. modalities of publication of administrative decisions and scope of judicial review

41. implementation by the public administration and State institutions of final court decisions

D. The enabling framework for civil society

42. Measures regarding the framework for civil society organisations

43. Other - please specify

Expert Council on NGO Law report on criminalisation of NGO activity in relation to migration and a compendium of developments 2017-2019 in NGO law, freedom of association

<https://rm.coe.int/expert-council-conf-exp-2020-1-ngos-developments-in-standards-mechanis/16809ccd3a>

<https://rm.coe.int/expert-council-conf-exp-2019-1-criminal-law-ngo-restrictions-migration/1680996969>

Private Office procedure on human rights defenders interacting with the Council of Europe

https://www.coe.int/en/web/secretary-general/news-2019-thorbjorn-jagland/-/asset_publisher/9j1gCsAwfdMt/content/revised-private-office-procedure-on-human-rights-defenders-interacting-with-the-council-of-europe

CPT

CPT findings in 2018 in Spain (CPT inf, Spain: Visit 2018, [CPT/Inf \(2020\) 5](#), paragraphs 45, 46.) show, concerning the issue of impunity in prisons

“As regards the investigation of allegations of ill-treatment by prison officers, the CPT’s delegation received information at the outset of the visit that since 2014 the Inspectorate of the DGSP had investigated a total of 131 cases of alleged ill-treatment of inmates by prison staff. In only five cases did the Inspectorate recommend the initiation of disciplinary proceedings; in respect of a further 31 cases the Inspectorate had instituted a confidential file but had decided not to initiate disciplinary proceedings. The CPT would like to be informed whether any additional steps were taken with regard to these 31 cases.

In the course of its visit, the CPT’s delegation had the opportunity to examine part of the investigative files provided to it by the management of Brians 1 and Mas d’Enric Prisons concerning eight cases of alleged physical ill-treatment of inmates since 2017 where the Inspectorate had requested that the prison management clarify the circumstances of the allegations. The requests of the Inspectorate to the prison management originated from complaints filed by inmates to an NGO or to the Catalan Ombudsman.

An analysis of the documentation showed that the files provided by the prison management of Brians 1 and Mas d’Enric Prisons to the Inspectorate included the written statements of the relevant parties and witnesses to the event, the CCTV recording of the incident and a copy of the medical examination conducted by the prison doctor. However, the files consulted by the delegation showed that the Inspectorate was not always applying the necessary criteria of thoroughness in trying to establish the facts in the light of the inmates’ allegations. For example, in relation to a case of alleged physical ill-treatment of an inmate at the time of his immobilisation in

a cell (not covered by CCTV) at the DERT module of Mas d'Enric Prison on 18 April 2018, the Inspectorate rejected the inmate's allegations in the light of the "credible and concordant statements provided by prison staff even in the absence of CCTV recording". The Inspectorate also failed to address the origin of the various injuries which the inmate displayed and which were recorded by the prison doctor at the time of the inmate's mechanical fixation.

Further, in two cases the description of the injuries observed by the prison doctor on the inmates did not contain an assessment of their compatibility with the allegations made by the inmates and so the cases were dismissed. In a third case, the contradictory statements of the inmate and prison officers were resolved in favour of the prison officers due to the inmate's alleged and unsubstantiated "lack of credibility". In another case, the prison management concluded that the ill-treatment alleged to have occurred in a cell (not covered by CCTV) could not have taken place as the inmate in question was later observed on the CCTV recording walking without any impediment. Finally, in respect of a case of alleged ill-treatment of an inmate during the application of a measure of mechanical fixation, the prison management at Mas d'Enric Prison could not provide the requested CCTV recording of the restraint measure to the DGSP Inspectorate as allegedly it could not retrace the relevant file in the system less than one month after the alleged incident. Such an explanation is at odds with the assertion by the Prison Director of Mas d'Enric Prison to the CPT's delegation that CCTV recordings of fixation measures of inmates in the DERT were kept for six months. Moreover, in none of the cases examined did the Inspectorate actively interview or take statements from the inmates who were making the allegations.

The CPT would like to be informed whether any of the above-mentioned eight cases resulted in the opening of disciplinary proceedings or a criminal investigation. Further, it trusts that the Catalan regional authorities will ensure that steps are taken to ensure that all future allegations of alleged physical ill-treatment of inmates by prison staff are investigated effectively, in the light of the above remarks."