

2024 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The annual Rule of Law Report lies at the centre of the Annual Rule of Law Cycle, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, four editions of the Rule of Law Report have been published in 2020, 2021, 2022 and 2023.

The Commission would like to invite stakeholders to provide contributions to the 2024 Rule of Law Report. This survey provides information on the type of information and topics that will be covered in the 2024 Rule of Law Report, in order to allow stakeholders to provide input. More targeted input may be requested at a later stage of preparation of the 2024 Rule of Law Report, including in the context of country visits, or bilateral contacts.

The 2024 Rule of Law Report will continue to deepen the assessment under the existing four pillars, and will also follow-up on the implementation of the recommendations to Member States, that were issued as part of the 2023 Rule of Law Report. The contribution to be provided should include **(1) information on measures taken to implement the recommendations addressed to the Member State in the 2023 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2023^[1] falling under the ‘type of information’ outlined in section II.**

The input should consist of a short summary, if possible in English, covering the areas referred to below. Legislation or other documents may be referenced with a link. Contributions should focus on significant developments since the last Rule of Law Report both as regards the legal framework and its implementation in practice.

[1] Unless the information was already submitted in the input for the previous Rule of Law Reports.

Type of information

The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

A) Legislative developments

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

B) 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

C) Developments related to the judiciary / independent authorities

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire [2])

D) Any other relevant developments

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

Please also indicate whether the developments reported are linked to the implementation of reforms and investments under the RRP, where applicable.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[2] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

About you

* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☐ Civil society organisation/NGO
- ☐ International organisation
- ☐ Judicial association or network
- ☐ Media organisation or association
- ☐ Public authority or network of public authorities
- ☐ Other

If "Other", please specify

* Organisation name

250 character(s) maximum

Plataforma Cívica por la Independencia Judicial

Main Areas of Work

- ☒ JusticeSystem
- ☐ Anti-corruption
- ☐ MediaPluralism
- ☐ Other

If "Other", please specify

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

Civic Platform for Judicial Independence
<https://plataformaindependenciajudicial.es/>
Twitter: @PCIndepJudicial

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

It is a non-profit association, transversal, plural and absolutely independent of public powers and political, union, business or any other type of organisation.

As it is not a judicial association but rather a transversal citizen organization that includes among its ranks, not only judges, but also lawyers, university professors, as well as other jurists and citizens in general from civil society, it therefore has the advantage of being disconnected from corporate interests that lead others to conceal significant data in the description of the problem of lack of independence of the Judiciary in Spain.

He promoted the "Manifiesto for depoliticization and judicial independence" supported by more than 1,400 Spanish judges. He has created the Appointments Observatory, preparing prestigious reports on the arbitrariness and politicization in the appointment of senior judicial positions.

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

Transparency register number

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

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

- * Country of origin
- * España

Name:

Plataforma Cívica por la Independencia Judicial

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

pcijud@gmail.com

* 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, organization name, transparency register number, country of origin) will be published with your contribution.
- ☐ No publication- Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

☐ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2023 rule of law report.pdf](#)

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[list of topics 2024 Report.pdf](#)

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

The Civic Platform for Judicial Independence has already presented its contributions to the 2021, 2022 and 2023 Rule of Law Report and, unfortunately, the situation has worsened.

Throughout this year, 2023, the same anomalies that the Platform already reported to the European Commission in previous reports have continued, among them: maintenance of the election system for the highest body of the judiciary (the General Council of the Judiciary, CGPJ) by political power, control of the CGPJ and the Constitutional Court by the Executive and Legislative powers, lack of independence and autonomy of the State Attorney General and arbitrariness in the appointment of senior prosecutors, revolving doors between politics and the judiciary and serious verbal attacks of certain political groups to judges for acts related to the mere exercise of their jurisdiction, including with the intention of establishing parliamentary commissions on alleged lawfare matters to compel the appearance of judges who have investigated or prosecuted alleged crimes committed by politicians.

1.- In 2023, Spain continues to find itself in a serious and anomalous situation with respect to the rest of the Member States of the European Union in terms of judicial independence. Thus, Poland and Spain are the only two countries in the Union in which the appointment of all the members of their Justice Councils (which will subsequently be responsible for the appointment of the highest judicial levels) are appointed entirely by politicians. through Parliament. There is an obvious parallel between the appointment of members of the National Council of the Judiciary in Poland (CNPJ) and the General Council of the Judiciary in Spain (CGPJ).

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

Likewise, in the **European Commission Report on the Rule of Law in 2021** , on the situation in Spain, reference is made to the concern about the lack of renewal of the General Council of the Judiciary (CGPJ) since **the European standards that establish that at least half of the members of the CGPJ must be judges appointed by their counterparts at all levels of the Judiciary** , as GRECO recalled in a letter dated October 14, 2020. And in the **Reports on the State of Law in 2022 and 2023** , published on July 13, 2022 and July 5, 2023 respectively, the European Commission recommends proceeding with the renewal of the CGPJ as a priority and starting, immediately after the renewal, a process with a view to adapt the appointment of its member judges taking into account European standards.

Such recommendations have not been fulfilled. However, you cannot call for renewal and at the same time demand a change in the appointment system that complies with European regulations, since renewal with the current system of election of members in Spain would clearly fail to comply with the regulations. European Union and would involve the violation of fundamental rights (right to an independent and impartial judge (art. 19 of the Treaty of the European Union, art. 47 of the Charter of Fundamental Rights of the European Union and art. 6 of the European Convention on Human Rights This is apparent from numerous CJEU jurisprudence in the different infringement proceedings against Poland [judgment of June 24, 2019, Commission/Poland C-619/18, EU: C: 2019:531, paragraph 58 and CJEU ruling of November 19, 2019, joined cases C-585/18, C-624/18 and C-625/18; and ruling of March 2, 2021, C-824/18) and the rulings of the ECtHR of 22 July 2021 (Reczkowicz), November 8, 2021 (Dolińska-Ficek and Ozimek), and February 3, 2022 (Advance Pharma), which declare that the right of various Polish citizens to have their cases examined by an independent and impartial court (art. 6 ECHR) has been violated, having been resolved by a court - the Supreme Court of Poland - whose members had been entirely or partially appointed by a council of the judiciary whose judicial members, in turn, had been elected by Parliament.

The **parallelism between the Polish system and the Spanish system is obvious** , since also in Spain the members of the CGPJ are elected by the Legislature and the CGPJ in turn, at its discretion, designates all the magistrates who will make up Section 6. of the Contentious-Administrative Chamber of the TS, in charge of reviewing the disciplinary sanctions imposed on Spanish judges and magistrates. In this regard, we find ourselves in a similar situation to that of Poland, as explained in the following article <https://www.hayderecho.com/2022/02/16/nubes-de-tormenta-en-europa-para-el-Spanish-judicial-system/>

Furthermore , the **important legal consequences that would arise from the renewal of the CGPJ without a prior reform of the election system to adjust it to European standards on judicial independence** must be taken into account . These legal consequences are analyzed in the following report <https://plataformaindependenciaindicial.es/2021/10/26/renovacion-cgpi-riesgos-juridicos/> and article in which the consequences of the latest jurisprudence of the ECHR are studied, with reference to some rulings of the CJEU, which could become applicable to the Spanish CGPJ if the current

election system is maintained <https://www.hayderecho.com/2021/11/19/consecuencias-de-la-ultima-jurisprudencia-del-tedh-sobre-separacion-de-poderes/>

On the other hand, it is paradoxical that, despite undertaking two express reforms of the LOPJ to limit the powers of the CGPJ with an extended mandate (LO 4/2021 of March 29) and so that it could appoint two magistrates of the TC (LO 8/2022, of July 27), on the other hand, **there is not the same determination and political will to undertake the reform of the LOPJ to modify the system of election of 12 of the 20 members of the CGPJ so that these 12 members of the judicial shift are chosen by the active judges and magistrates themselves, without any interference or political influence**, as required by the European standards on judicial independence set by GRECO, the European Commission (being one of its recommendations in the Reports on the Rule of Law of the European Commission published on July 13, 2022 and July 5, 2023) and jurisprudence of the CJEU and ECtHR and in accordance with the spirit of art. 122.3 CE and the criteria established by the Constitutional Court in Sentence 108/1986 of July 29.

From a legal and democratic point of view, **it would be appropriate to start a new process for appointing members of the CGPJ and reform the LOPJ so that the members are chosen according to strict criteria of merit and capacity**, without interference or political influence and with the twelve members being of proven origin. judicial elected by the Judges and Magistrates themselves in active service, by personal, equal, direct and secret vote.

This reform of the LOPJ could be approved in less than three months by the Cortes Generales (as has happened with the reforms carried out by LO 4/2021 of March 29 and LO 8/2022 of July 27) and would only require approval by 176 votes (compared to the 210 votes currently necessary to renew the 20 members of the CGPJ, a majority that would only be necessary to appoint the 8 non-judicial members of the CGPJ).

From Civic Platform for Judicial Independence **we have prepared a proposal to reform the system of electing members of the CGPJ** that complies with European requirements to guarantee judicial independence and the separation of powers: <https://plataformaindependenciajudicial.es/2022/09/04/reforma-lopi-propuesta-de-la-plataforma/>. This proposal is based on conclusions from a report in which models of electoral systems are analyzed and compared, with different scenarios and data variations, to guarantee the greatest representativeness of the plurality that exists in the judicial career: <https://plataformaindependenciajudicial.es/2023/10/23/contra-el-fraude-electoral-informe-sobre-la-eleccion-de-las-vocalias-judiciales-del-cgpi/>

2.- Five years have passed since the CGPJ had to be renewed, whose designation, according to arts. 567 et seq. LOPJ in force, **corresponds to the Congress and the Senate**, whose Presidents have not adopted the necessary measures for said renewal to occur within the deadline as provided in art. 568 LOPJ.

Although formally the designation is made by the Cortes (Congress and Senate), the truth is that **it is the political parties that support the Government and the main opposition party that make the election, outside of Parliament, of the members of the CGPJ, including of its President**, leaving in a “farce” the staging of the appointment of the members by the Cortes and the election of its President by the members in the first meeting of the renewed CGPJ, which demonstrates the partitocratic control of the current system and affects the appearance of judicial independence and the confidence of citizens in justice.

The current situation of the CGPJ is irregular and exceptional, but derived from the attempt by political parties to control the CGPJ and place like-minded people in high judicial positions, taking advantage of the current election system. That's why it has to be changed.

If the appointment of high judicial positions were governed by strict objective criteria of merit and capacity, and not according to the greatest affinity to the members of the CGPJ, there would not be so much interest in controlling who is placed in said members.

And if the election of members of the CGPJ did not depend on political will but on the free and direct election of 12 members by active judges and magistrates and the objective designation of 8 members by Congress and the Senate, according to merit and capacity, the CGPJ would have been renewed for years and would be more independent.

The problem of political control of the CGPJ is aggravated because there are also maximum attempts to politically influence the appointment of members of the TC and, consequently, in the meaning of its resolutions, to avoid the necessary controls on the actions of the Executive and Legislative and to end the system of democratic checks and balances.

The repeated actions carried out this year by political groups deepen the lack of appearance of impartiality of the CGPJ, senior judicial officials and magistrates of the Constitutional Court :

- 1.- All attempts to renew the CGPJ are carried out through opaque and undocumented contacts between political parties. The parliamentary assemblies, where the procedure for the appointment of new members of the CGPJ should take place, remain inactive and isolated.
- 2.- The conviction has been conveyed to citizens that the political party that wins an election has the right and democratic legitimacy to appoint like-minded people to senior positions in the judiciary.
3. They speak colloquially of a conservative or progressive magistrate, depending on whether they have been appointed by one political party or another, it is expected that they will vote and make decisions as a bloc, and according to the political orientation of the party that appointed them.
- 4.- All this represents a loss of the appearance of impartiality of Justice before the citizens, as shown in some data and surveys.

*Justice Scorecard 2022.

https://www.niusdiario.es/nacional/politica/20230108/barometro-gad3-mayoria-justicia-cree-politizada-culpa-partidos_18_08387835.html

All the reforms and actions of 2021, 2022 and 2023 aimed at controlling the CGPJ and the TC, together, **would violate the prosecution standard of judicial independence, principle of non-regression** (Judgment of April 20, 2021, Republika v. Il -Prim Ministru (C-896/19, ECLI:EU:C:2021:311) "a Member State "may not amend its legislation in such a way as to result in a reduction in the protection of the value of the rule of law", so that it must "avoid, in relation to this value, any regression of its legislation regarding the organization of the Administration of Justice, refraining from adopting measures that may undermine judicial independence"). Member States cannot reduce the guarantees existing at the time of their accession. Not allowing setbacks in its system of guarantees of independence , nor worsening the effectiveness of its counterweights.

3.- Regarding the Prosecutor's Office, in Spain it does not have the minimum guarantees of independence and impartiality: the appointment of the State Attorney General is made by the Government; The appointment of the Fiscal Council and the senior officials of the Prosecutor's Office is carried out in a discretionary manner, but without objective and regulated criteria (article 22 et seq. Organic Statute of the Prosecutor's Office).

This implies **a strong politicization of the institution, which has worsened in recent times** with the appointment of the Minister of Justice Dolores Delgado as Attorney General of the State, belonging to the Progressive Union of Prosecutors association, several of whose members were promoted by it. (as

indicated in this article <https://www.economistjurist.es/economia/cepsa-pretende-vender-el-49-de-sus-estaciones-de-servicio/>, some of said appointments being judicially revoked even in two occasions (as indicated in this article <https://confilegal.com/20230704-por-segunda-vez-el-supremo-anula-el-nombramiento-de-eduardo-esteban-como-fiscal-de-sala-de-minors/>)

Ms. Delgado resigned in 2022 citing health reasons and was replaced by her deputy, Alvaro García Ortiz, who promoted her to Prosecutor of the Military Chamber of the Supreme Court, an appointment that was revoked by Sentence No. 1499/2023 of November 21, of the Administrative Litigation Chamber of the Supreme Court when appreciating a misuse of power not only in making said appointment but also in promoting her as Chamber Prosecutor, which would also affect her subsequent appointment as Prosecutor of the Chamber of Democratic Memory and Human Rights, pending resolution of the appeal that was filed against this appointment.

Mr. García Ortiz has been confirmed again as State Attorney General by the new Government formed in November 2023, without the endorsement of the CGPJ, which issued a report on his unsuitability for the position <https://www.poderjudicial.es/cgpi/es/Judiciary-Power/On-Cover/The-CGPJ-Plenary-considers-that-Alvaro-Garcia-Ortiz-is-not-suitable-for-the-position-of-attorney-general-of-State>

Public opinion and citizens perceive the Prosecutor's Office as an institution strongly linked to the Government, since the latter considers the Prosecutor's Office as dependent on the Government, which follows its instructions. Just listen to the statements of several members of the Government: <https://www.facebook.com/watch/?v=574958976603850>
<https://mobile.twitter.com/AFiscals/status/1615301873665187840>

4.- The Spanish system allows the so-called *revolving doors* and favors the appearance of “robed politicians”: judges can go directly from politics to judicial practice and vice versa. By virtue of a reform introduced in the LOPJ in 2011 by LO 12/2011 of September 22, judges are allowed to hold any political or trust position in the central or regional government or representative public office by election at any level, through the special services regime, which adds to the effects of seniority in the ranks. The reform retroactively benefited all judges who had previously held political positions.

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

It would be desirable to proceed with a reform that would prevent, at least temporarily, the return of a robed politician to the exercise of jurisdictional power, as has been approved in Italy: https://www.abc.es/internacional/abci-magistrados-italians-enter-politics-never-more-can-dress-toga-202202120148_noticia.html#vca=rss-induced&vmc=abc-es&vso=tw&vli=noticia.foto and that unfair grievances in seniority be resolved so that the periods during which a political office is held are not counted.

5. - In November 2022, Spanish judges were victims of a **defamation campaign orchestrated by political power with insults in the media, calling them “fascists in toga” or “sexists”**. And this was simply because they limited themselves to applying a legislative reform approved by parliament at the request of the Government that reduced penalties for crimes of a sexual nature. The attack was so serious that the Judicial Council itself issued a statement of support for the Spanish judges. <https://www.poderjudicial.es/cgpi/es/Poder-Judicial/En-Portada/Comunicado-de-la-Comision->

[Permanente-en-relacion-con-las-resoluciones-judiciales-dictadas-como-consecuencia- de-la-entrada-en-vigor-de-la-Ley-Organica-10-2022--de-garantia-integral-de-la-libertad-sexual](#) Also from PCIJ we made a statement: [https://plataformaindependenciajudicial.es/ 2022/11/17/flight-forward-if-it-is-and-the-attacks-on-the-judges-communication-from-the-platform/](https://plataformaindependenciajudicial.es/2022/11/17/flight-forward-if-it-is-and-the-attacks-on-the-judges-communication-from-the-platform/)

These attacks against judges for applying the rules against the opinion of some political groups have continued in 2023.

More recently, **the investiture pact between the PSOE and Junts includes the creation of parliamentary investigation commissions into alleged cases of " lawfare "** to force the appearance of judges who have investigated or prosecuted alleged crimes committed by politicians and that the promoters of said commissions consider that said judicial action could be considered persecution for ideological or political reasons . Commissions whose legality has been asked to study nine members of the CGPJ, who have also refused to allow the judges to appear before Congress. However, Junts has warned the judges that failure to attend could lead to prison sentences and attacked certain judges on several occasions, in parliament and outside before the media. This has created great unrest in the judicial career and in the CGPJ: <https://www.publico.es/politica/cgpi-dice-pacto-psoe-y-junts-implica-inadmisible-injerencia-independencia-judicial.html> <https://www.elmon.cat/es/politica-es/espana/criticas-junts-jueces-escuecen-poder-judicial-773264/> <https://www.rtve.es/noticias/20231220/junts-reafirma-criticas-jueces-protestas-cgpi-no-son-intocables/2468631.shtml> <https://www.publico.es/politica/asociaciones-jueces-califican-sumamente-graves-criticas-junts-al-supremo.html>

6.- During the year 2023, the PCIJ has continued to defend the Judicial Independence of the Spanish State before European bodies. Thus, after the **formal Petition to the Petitions Committee of the European Parliament (registered with number 0353/2021)** , <https://plataformaindependenciajudicial.es/2021/03/31/peticion-de-auxilio-al-parlamento-europeo/> of the year 2021, extended in 2022 due to the existence of new attacks on judicial independence (thus, on June 25, 2022 as a result of the new legislative reform to empower the CGPJ to appoint two judges of the TC [https://plataformaindependenciajudicial .es/2022/06/26/parlamento-europeo-nueva-peticion-de-la-plataforma/](https://plataformaindependenciajudicial.es/2022/06/26/parlamento-europeo-nueva-peticion-de-la-plataforma/) ; on December 1, 2022 to report that the Spanish Government proposed two jurists as magistrates of the Constitutional Court who, in Instead of being “jurists of recognized competence”, as required by the Spanish Constitution, they are politicians with a long career at the service of the political interests of the Executive branch <https://plataformaindependenciajudicial.es/2022/12/01/intervencion-europea-la -plataforma-acude-al-parlamento-europeo-magistrados-tc/> ; and on December 18, 2022 <https://plataformaindependenciajudicial.es/2022/12/18/llamamiento-a-europa-mobilacion-ciudadana/>), again In 2023, this petition was expanded, denouncing the control of the CGPJ by maintaining the limitation of its functions from 2021 and this measure being ratified by the TC, a highly politicized body: <https://plataformaindependenciajudicial.es/2023/10/25/parlamento- european-third-platform-request/>

Likewise, in November 2023, PCIJ presented **a formal petition to the Petitions Committee of the European Parliament (registered with number 1230/2023). in relation to the bill presented by the Socialist Parliamentary Group** , within the pact with ERC and Junts so that they would support the investiture of Pedro Sánchez as President of the Government, **for the amnesty for those involved in the Catalan independence process** , eliminating responsibilities criminal, administrative and accounting sanctions to the Catalan separatists, granting impunity to certain crimes committed by them, including crimes of embezzlement of public funds and terrorism with few exceptions. This petition can be accessed at this link: <https://plataformaindependenciajudicial.es/2023/11/13/espana-denuncia-la-amnistia-a-europa/>

It was Minister Félix Bolaños who announced the presentation of the bill (despite not being presented as a Government bill, which required longer processing and prior reports from advisory bodies and the CGPJ) and has been meeting with the European Commissioner for Justice Didier Reynders to defend its adaptation to European regulations. But the truth is that **the amnesty is contrary to arts. 20 and 47 of the DFUE Charter and arts. 2 and 19 TEU, the principle of non-regression may apply** and the delivery of European funds may be conditioned. Furthermore, it is an exceptional figure that does not fit into the Spanish Constitution since it affects various rights and principles provided for in arts. 9, 14, 24 and 117 and said Constitution does not contemplate amnesty as an exception to them. This is how we explain it in this report: <https://plataformaindependenciaindicial.es/2023/12/12/informe-sobre-la-amnistia/>

Questions for contribution

The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member States in the 2023 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2023 Rule of Law Report and (2) any other significant developments since January 2023^[3]. Please always include a link to and reference relevant legislation/documents (in the national language and/or where available, in English). Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

[3] Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

Spain

I. Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system (if applicable)

3000 character (s) maximum

Neither the recommendations of the European Commission in reports on the Rule of Law of 2021, 2022 and 2023 nor those of GRECO have been complied with.

Currently, **we find ourselves in Spain with a CGPJ that should have been renewed in December 2018 but that has not been renewed.** Precisely, **the problem lies in the fact that the election of the members is carried out by agreement between the governing political party and the main opposition party, through a distribution of the members among their supporters**, a distribution in which three of the four Associations participate. Judicial, which do not represent more than half of the judges and magistrates, since 42.20% of the judges are not associated.

Furthermore, according to the current system of electing members of the CGPJ, **judges have the right to present themselves as candidates** if they obtain endorsement from an association or 25 colleagues (therefore, there is the right to relative passive suffrage) **but they do not have the right to elect their representatives in the CGPJ (there is no right to active suffrage).**

As we explained in the following report on the renewal of the CGPJ <https://plataformaindependenciajudicial.es/2023/12/04/informe-sobre-renovacion-cgpi-actualizacion-2003/>, **The current system of electing members of the CGPJ lends itself to political corruption, affects the appearance of judicial independence and citizens' trust in justice, and also lacks democratic legitimacy**, since the negotiations for said election are carried out by the representatives of two political parties (PSOE and PP) outside the parliamentary groups and the Cortes Generales, which formally proceed with the designation in an act of mere institutional farce, despite the fact that according to current regulations, it corresponds to each Chamber (Congress and Senate) and therefore to all parliamentary groups, the effective election of 10 members of the CGPJ to each Chamber by a majority of 3/5 of its members. **No action is being taken by the Chambers to proceed with the renewal of the CGPJ, despite the provisions of article 568.1 LOPJ :** “ *The Presidents of the Congress of Deputies and the Senate must adopt the necessary measures so that the renewal of the Council is carried out. produce on time .*”

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

On a day-to-day basis, **the current interim situation of the CGPJ, despite being exceptional and an irregular situation, the truth is that it would not affect if it were not for the limitation of functions that was approved by LO 4/2021 of March 29, 2021**, which prevents the appointment of judicial positions and therefore vacant positions are being filled, leading to Chambers and Courts being overwhelmed and collapsed due to not having filled positions and not being able to take on existing work, which leads to further delays in resolution. of matters, affecting the effective judicial protection of defendants and the right of every person to have a fair trial within a reasonable time. This is reported in various media such as <https://www.larazon.es/espana/20221204/2bqsoadxgfbwhdlsy6ccf2i5ma.html> and the CGPJ itself in <https://www.poderjudicial.es/cgpi/es/Poder-Judicial/Tribunal-Supremo/En-Portada/La-Sala-de-Gobierno-del-Tribunal-Supremo-reitera-que-la-no-renovacion-the-CGPJ-will-shortly-create-extraordinary-difficulties-for-its-operation>

Said LO 4/2021 was appealed before the Constitutional Court in April and May 2021 by deputies of the Vox and Popular parliamentary groups, but only the one filed by the first of them has been resolved, failing, as usual, to comply with the legal deadlines for resolution of matters that the Constitutional Court has, a body that is also highly politicized since its 12 members are appointed by the Cortes Generales, by the Government and by the CGPJ (remember, formally elected by them although in fact by the Government and the main party of the opposition).

Paradoxically, of the two unconstitutionality appeals filed in 2021 against said Organic Law 4/2021 and admitted for processing by two Rulings of September 16, 2021 of the Plenary Session of the Constitutional Court 1, only the one filed by the deputies of the Vox Parliamentary Group has been resolved. , being rejected by Sentence No. 128/2023 of October 2 2, supported by seven of the eleven magistrates of said Court (the so-called "progressive" sector, given their election by the Government at the end of 2022 or at the proposal of the Socialist Party and related parties). , the other four members (called the "conservative" sector, given their election at the proposal of the Popular Party and related parties) having cast a dissenting vote. The appeal filed by the deputies of the Popular Parliamentary Group is still pending resolution, despite having been admitted for processing on the same day as the one already resolved.

After this ruling of the TC, it is clear that **the CGPJ has become a hostage of the Executive Branch, the Legislative Branch and the political parties, since it is at the mercy of what all of them decide about its renewal or not and about the functions that it can or not to exercise at all times** , with maximum attempts to politically influence the appointment of members of the CGPJ, either by limiting their functions to pressure their renewal, or by promoting legislative reforms to reduce the majorities necessary to renew it (reform attempted in 2021 but which was not approved after calls for attention from the European Commission, although it intends to reactivate said reform again by some political parties and parliamentary groups, even attributing the designation of 16 members of the CGPJ to Congress, where the current Government has greater support, leaving the appointment of only 4 members to the Senate, where there is an absolute majority of the opposition to the current Government, instead of maintaining the current system of appointment of 10 members for each legislative Chamber).

The problem is aggravated because there are also maximum attempts to politically influence the appointment of members of the TC, to avoid the necessary controls on the actions of the Executive and Legislative Branches and to end the system of democratic checks and balances.

Precisely, the rush in the recent renewal of the TC carried out at the end of December 2022, with two of the four new appointments falling on people closely linked to the Government that appointed them (a former minister of justice and a former senior official of the Ministry of the presidency) and the other two appointments in two magistrates appointed by the CGPJ after strong pressure (among them, an attempt at legislative reform that was suspended by the TC before its last renewal) and continuous blockades between the members of the CGPJ that influenced the final designation made, and the decision of the new president of the TC, the candidate publicly preferred by the Government chaired by Pedro Sánchez and who was Attorney General of the State with a Government of the same sign, to resolve certain issues that had been pending in the TC for some time. many years, of important ideological significance, predict the **intention of said Government to obtain pronouncements from the TC favorable to its interests and those of its ideology** . This has been seen in recent decisions of the TC in which it has rejected the appeals raised by the Popular Parliamentary Groups and/or Vox against the law on sexual and reproductive health and voluntary interruption of pregnancy, the so-called Celaá Law (on education). , the law regulating euthanasia and the aforementioned LO 4/2021 of March 29.

¹ As stated in BOE No. 227 of September 22, 2021, <https://www.boe.es/buscar/doc.php?id=BOE-A-2021-15304> and <https://www.boe.es/search/doc.php?id=BOE-A-2021-15305>

² Sentence of the Plenary Session of the Constitutional Court No. 128/2023 of October 2 https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2023_077/STC%20RI%202379-2021%20Y%20VOTO.pdf and informative note of said sentence: https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2023_077/NOTA%20INFORMATIVA%20N%C2%BA%2077-2023.pdf

https://www.elespanol.com/espana/tribunales/20230117/primer-decision-conde-pumpido-diluir-minoria-secciones-tc/734176922_0.html <https://www.libertaddigital.com/espana/2023-01-17/conde-pumpido-estrena-mandato-pleno-constitucional-primer-12-anos-recurso-aborto-6976609/>

lack of counterweights that this politicized Constitutional Court entails is evident in deciding on the constitutionality or not of the norms approved by the Government that partially appointed it and validated by the Cortes in which the Executive has a majority or approved directly by them. , in which said Government has the support of the parliamentary majority in Congress.

In this regard, it must be taken into account that, although the TC is not formally integrated into the Judiciary, its demands for impartiality and independence are equivalent, so its resolutions would be subject to appeal before the ECtHR, due to the lack of independence of the Legislative and Executive. In this regard, the ECtHR (in a ruling of May 7, 2021, case 4907/18, Xero Flor) has declared the guarantee applicable to an independent and impartial court of art. 6 of the ECHR to national constitutional courts.

Everything described constitutes an **attack on the separation of powers, since there is governmental and political control of the highest interpreter of the Constitution** and, unfortunately, it is part of a broader campaign of subjection of Justice to politics with absolute contempt for the principles basics of the rule of law and the regulations of transnational European institutions. This is what we denounce in the following statement: <https://plataformaindependenciaindicial.es/2023/02/13/tribunal-constitucional-llamamiento-de-la-plataforma-para-defender-el-estado-de-derecho/>

A.independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

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

5000 character (s) maximum

The separation of powers requires that the system of appointment of the highest judicial authorities be objectified with greater intensity, subjecting discretion to strict rules of control and that the autonomous appointment of magistrates in the Superior Courts of Justice be eliminated.

Access to the judicial career through the so-called **autonomous shift** , provided for in article 330.4 LOPJ, allows one in every three positions of magistrates of the Civil and Criminal Chamber of the TSJ to be covered by the CGPJ with appointments made among jurists from recognized prestige with more than ten years in the practice of the profession among a shortlist presented by the Autonomous Assemblies. In many cases, these judges are responsible for hearing the investigation and possible prosecution of the autonomous deputies who have been proposed to them, and, in any case, they constitute an important body of jurists within the judicial career in which the ideological component is defining. and key to its designation.

The problem is that **there are more and more positions designated on a discretionary basis by the CGPJ and the discretionary decision has become a way of rewarding and retaliating for the judges' careers** . An added tool, used in recent years by the CGPJ to return favors, is the **discretion in granting service commissions** , that is, the coverage of vacant places in high courts by judges with other destinations.

“Discretion” becomes “arbitrariness” since not the most competent and capable person is chosen for the position but rather the most loyal or the most like-minded. To this end, the bases of the call for the position are generic and focus on a personal interview and the defense of an action program. Something very subjective. The candidate is chosen and then a motivation is created.

GRECO, after the reform by Organic Law 4/2018 of article 326.2. LOPJ and its subsequent regulatory development, continues to denounce that Spain does not comply with the requirement of avoiding the appearance of partiality in appointments, since **prior and public rules are not established for the appointment of judges based on each type of court, but rather they are set generic prior rules in a regulation and in each call the appointment requirements are established ad hoc**, which helps the CGPJ to ensure the appointment of the preselected or preferred candidate.

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

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

From PCIJ we propose the following measures:

- **Democratic election by the judges and magistrates of all the internal governing bodies of the judiciary:** presidents of the Provincial Courts, the Superior Courts of Justice and the National Court, as well as their Chambers, and the senior judges; **and creation of the figure of the Judge's Ombudsman**, representative of the entire judicial career, elected by free, universal, equal, direct and secret suffrage among all judges and magistrates, and whose duties include spokesperson functions and defense of independence judicial response to attacks that threaten it, whether they come from the media, political, economic or other powers.

- **Objectification of the appointments of high judicial positions**, subjecting the discretion of their election to strict control rules. They will continue to be carried out through a merit-based competition, but establishing scaled, prior and public criteria for each type of body in accordance with principles of merit and capacity. These same criteria and rules for controlling discretion will be followed **for temporary secondment appointments**. The autonomous designation of judges of Superior Courts of Justice will be eliminated.

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

5000 character (s) maximum

Promotion of judges and prosecutors (incl. judicial review)

3000character(s) maximum

1.- In the area of senior judicial positions of a discretionary nature, **there is strong discrimination against female judges**, who despite being the majority in the judicial career only occupy 20% of these positions; placing itself at the bottom of the EU in the percentage of women holding senior positions. During this year the Platform has prepared a Report in which statistical data is analyzed and it is evident that discretionary appointments discriminate against women: the greater the politicization, the greater the discrimination: https://plataformaindependenciajudicial.es/2022/01/21/informe_updated-gender-equality-in-the-judicial-career/

The Platform has carried out a campaign on social networks in which several judges denounce this situation. <https://www.youtube.com/watch?v=hhHUY-Et9og>
<https://twitter.com/PCIndepJudicial/status/1491031809299468289>
<https://twitter.com/PCIndepJudicial/status/1489905578445049860>

2.- The Platform has also prepared a report on the **relevance of introducing a horizontal career for judges**, not only to motivate and stimulate a very hopeless career at the grassroots in the face of the reality that only a few prosper (the political ones), but also to promote the improvement and acquisition of new professional skills through performance evaluation. Judges would not have to rise to the highest judicial levels to achieve adequate remuneration and recognition of their professional competence and merits. Thus, without prejudice to maintaining the possibility of internal vertical promotion to certain positions with greater governmental content, it is appropriate to implement the horizontal career as a system of professional promotion that would link the category and salary remuneration to the competence of the judge or prosecutor and his objective periodic evaluation based on their merits, the quality of their work, constant training and obtaining good results in said evaluation, which would be carried out by an autonomous and technical body. We develop it in this report: <https://plataformaindependenciajudicial.es/2022/01/21/carrera-horizontal-informe-actualizado-de-la-plataforma/>

Allocation of cases incourts

5000character(s)maximum

In Spain the principle of the ordinary judge predetermined by law governs. However, **in judicial procedures that have greater media significance and in which senior political officials may be involved, there are important distortions in the assignment of judicial cases.**

A. Due to the **special regime of privileges** enjoyed by members of the Government and all parliamentarians, deputies and senators (art. 102.1 and 71.3 CE, 57 LOPJ), it will be competent to hear criminal cases against these privileged politicians. , the Criminal Chamber of the Supreme Court, Second Chamber. Hence the special importance for politicians of controlling the appointment of these TS magistrates, who are competent to hear criminal cases against members of the Government and parliamentarians. The appointment of the magistrates that make up said Chamber of the TS is carried out by the politicians themselves, using the CGPJ as an intermediate body. The members of the CGPJ are appointed by the politicians, who subsequently, and at their discretion, (326.2. LOPJ), will carry out the appointment of the TS magistrates in charge of judging said politicians.

This special prerogative and privilege that the capacity represents for parliamentarians extends to all the parliamentarians that exist in each of the Legislative Chambers of the Autonomous Communities. Granting special jurisdiction to hear these criminal cases to the Superior Courts of Justice of each Autonomous Community. The Autonomous Assemblies themselves also intervene in the appointment of these TSJ magistrates.

The assessments represent an alteration of the general rules of attribution of judicial cases. They imply that politicians have a greater interest in controlling that small group of senior judicial officials who would have to be in charge of the investigation of their cases.

Thus, the Group of States against Corruption of the Council of Europe (GRECO) has repeatedly singled out Spain for this special regime of assessments, highlighting its impact in the field of corruption, and requesting their suppression.

In this report <https://plataformaindependenciaindicial.es/2023/04/25/informe-aforamientos-y-juez-predeterminado-por-la-ley/> we analyze the serious dysfunctions that the current regulation presents and the possible solutions.

B. Another important distortion occurs in the **discretion of granting service commissions**, that is, the coverage of vacant positions in high courts by judges with other destinations.

The coverage of these vacant positions by the service commission system within the National Court, due to the media and politically significant cases that are processed there, is of special importance.

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

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

c. The entry into force of the new Organizational Efficiency Law, which provides for the configuration of the so-called Courts of Instance, could establish a **discretionary and politicized appointment of the Presidents of said Courts**, potentially altering the general rules of attribution of matters. In a similar way to what happens in the area of the Prosecutor's Office.

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

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

5000 character(s) maximum

1.- Taking into account European standards on judicial independence, which have been reiterated in the Reports on the Rule of Law published by the European Commission on July 20, 2021, July 13, 2022 and July 5, 2023 as well as in the latest GRECO report published on December 5, 2022, and also to the spirit and will of the Spanish constituent (since we must not forget the tenor of art. 122.3 CE and the Constitutional Court Sentence No. 108/1986 of July 29) **it is necessary to reform the current system of election of the members of the CGPJ judges so that they are elected by the active judges and magistrates themselves by personal, direct and secret vote, without intervention of political parties but also of judicial associations** (some strongly ideologized and linked to certain parties), it must be taken into account that 42.20% of the judicial career is not associated with any and, therefore, it would not be a representative CGPJ if the judicial associations were the ones that could control or direct the presentation of candidates for members.

In this sense, the Platform insists that, as stated by the Spanish Constitutional Court in Sentence No. 108/1986 of July 29, the composition of the Council of the Judiciary must reflect the existing plurality, not only in society, but within of the judicial career itself. To meet these objectives, a mere reform would not be enough by virtue of which the judges themselves are empowered to elect a part of the

members of the aforementioned Council , but, in addition, said reform would have to implement an electoral system that guarantees maximum representativeness, in such a way so that the final results are not controlled by powerful groups, whether judicial associations or other minorities capable of distorting the final meaning of the vote. The Platform has prepared a **report where, from a mathematical and statistical point of view**, analyzing and comparing various electoral system models with different scenarios and data variations, **the risks are diagnosed and solutions are proposed to guarantee the greatest representativeness of the plurality that exists in the judicial career:** <https://plataformaindependenciajudicial.es/2023/10/23/contra-el-fraude-electoral-informe-sobre-la-eleccion-de-las-vocalias-judiciales-del-cgpi/>

The Platform has also presented to all parliamentary groups a proposal for articles to reform the Organic Law of the Judiciary, a regulation that regulates the provision of positions in the Judicial Council. This is a **concrete proposal to reform the system of electing members** that complies with European standards of judicial independence and that would avoid the risks of politicization and corporatism that could occur . You can access this proposal through this link: <https://plataformaindependenciajudicial.es/2022/09/04/reforma-lopj-propuesta-de-la-plataforma/>

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

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

Said reform cannot be subsequent or parallel to the renewal of the CGPJ in accordance with the current election system, but must be prior and the renewal must proceed in accordance with the new election system , therefore, if the renewal occurs in accordance with the current election system, It would continue to be flawed and contrary to European standards on judicial independence, with the legal consequences indicated in the following report being applicable <https://plataformaindependenciajudicial.es/2021/10/26/renovacion-cgpi-riesgos-juridicos/> and article in which the consequences of the latest jurisprudence of the ECHR are studied, with reference to some rulings of the CJEU, which could become applicable to the Spanish CGPJ if the current election system is maintained <https://www.hayderecho.com/2021/11/19/consecuencias-de-la-ultima-jurisprudencia-del-tedh-sobre-separacion-de-poderes/>

On the other hand, it must be taken into account (as we argue in the report <https://plataformaindependenciajudicial.es/2023/12/04/informe-sobre-renovacion-cgpi-actualizacion-2003/>) that **the renewal of the CGPJ is not possible with the current system continuing with the process started in 2018** (the candidates who presented themselves five years ago) **since** , when Congress was dissolved in 2019, **the process expired and a new candidate proclamation process should begin with the opening of a period for the presentation of candidacies** , so that the current circumstances of the judicial career can be taken into account in the appointment of members of the judicial shift (number of members of each Judicial Association and of non-members and the current situation and category of each possible candidate , having changed that of many of the candidates who presented themselves in 2018) and the judges from the latest promotions who have joined the race in the last five years can participate in said process, in addition to all the judges and magistrates who do so. wish.

It makes no sense to continue in 2024 with a process of appointing members with the data provided in August 2018 and the candidates for the judicial turn presented in September 2018 (remember that the candidacies of jurists who were presented were withdrawn), when the data

consider have changed and the circumstances of each of the candidates who presented themselves in 2018 are also different (category, seniority, etc.), seven of them not being in active service in the judicial career and it is unknown if the candidates maintain their endorsements that they presented in their day.

In this regard, we must not forget the reform approved by Organic Law 4/2018 of December 28, which provides that all members of the CGPJ carry out their functions with exclusive dedication, this position being incompatible with any other professional activity, a provision that is not It existed at the time of submitting candidacies for judicial members in September 2018 and for jurists in November 2018.

Furthermore, in this period there have been five other promotions of judges, who were not able to participate in the process that began in August 2018 and, like the rest of the active judges and magistrates, if said process is currently continued, they will be It would be preventing participation in a process of this type until five years after the next CGPJ is appointed.

If the appointment of the members of the judicial shift occurs following the process initiated in 2018, as it has expired according to art. 207 of the Congress Regulations and by affecting a fundamental right of the judges (those from the last five promotions, who have been excluded from participating, and the judges who did not appear in 2018 because then it was a position without relief of functions, not exclusive dedication) such as the right to access public positions under conditions of equality and without discrimination (art. 23.2 Constitution), **the appointments of the new members of the judicial shift would be vitiated by radical nullity ex art. 47 Law 39/2015** .

The appointments of legal members would be the same if the legally established procedure for their appointment was not followed , since we must not forget that the candidacies presented in November 2018 were withdrawn, so a new parliamentary process for presenting candidacies for members should begin. by the turn of jurists and hold appearances by them before the Appointments Advisory Commission.

2.- The CGPJ cannot be a politicized body or a body at the service of politicians to appoint senior judicial positions, but rather it is the governing body of the Judiciary and must be independent of the other powers of the State.

Likewise, **the TC cannot be a body at the service of politicians, their political program and their respective ideology** , but rather it is the maximum interpreter of the Constitution and it owes itself only to it. Although the TC is not formally integrated into the Judicial Branch, its demands for impartiality and independence are equivalent.

Political parties cannot continue distributing positions in both bodies as if they were trading cards. It is not acceptable that the renewals of constitutional bodies such as the TC and the CGPJ depend on who obtains the parliamentary majority or is in the Government at any given time, nor that it is considered that said bodies should represent the parliamentary majorities or be an expression of the plurality of political forces with representation in the Chambers, since these are bodies that must be independent of the Executive and Legislative Branches, so that they can fulfill their functions with autonomy, impartiality and independence and that the separation of powers and the Rule of Law in Spain.

If European standards on the rule of law and separation of powers are not met, one of the values on which the European Union is based and which its Member States must comply with, according to articles 2 and 7 of the TEU, **we can begin to find ourselves in a imminent with decisions of the CJEU and the ECtHR that place the Spanish justice system in an unsustainable situation, questioning the legitimacy of these politicized bodies and their resolutions.**

For all this, **The election system of the CGPJ and the TC must be reformed to prevent their distribution by political parties.** In this regard, at PCIJ we propose the following measures:

- **Reform of the system for electing members of the General Council of the Judiciary** , in accordance with European standards of judicial independence. We propose a **mixed system of election** : twelve members for and among judges and magistrates in active service, through personal, direct and secret vote, with the single electoral constituency, telematic voting and the open list electoral system that guarantees the greatest representativeness of the plurality of the judicial career; and eight members among jurists of recognized competence with more than fifteen years of experience in any of the legal professions and who demonstrate outstanding merits in their practice, by election by a majority of 3/5 of the Congress and the Senate, four for each Chamber. In both cases, incompatibilities would be foreseen due to having held a politically appointed position.

- **Reform of the system of election of magistrates of the Constitutional Court** , to prevent their distribution and control by political parties. It is required that **it be made up of professionals independent of all partisan influence and that they be appointed based on strict criteria of merit and capacity, and the election of part of its members by the Government must be eliminated** and incompatibilities must be established due to having held a politically appointed position.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

5000 character (s) maximum

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

5000 character (s) maximum

Independence/autonomy of the prosecution service

5000 character (s) maximum

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

Superior prosecutors can issue orders to hierarchically subordinate prosecutors; They can call a prosecutor in their presence and can give him specific instructions and remove them from their positions and replace them with other prosecutors in the conduct of matters. Prosecutors depend on their superiors not only for the endorsement of their reports and procedural positions in the specific procedure, but also regarding their working conditions (leaves, vacations). Senior prosecutors also have disciplinary powers over their subordinates.

All of this implies a **strong politicization of the institution** , which has worsened in recent times with the appointment of the Minister of Justice Dolores Delgado as Attorney General of the State, belonging to the Progressive Union of Prosecutors association, several of whose members were promoted by that one (as indicated in this article <https://www.economistjurist.es/economia/cepsa-pretende-vender-el-49-de-sus-estaciones-de-servicio/> , some of said appointments being judicially revoked even in two occasions (as indicated in this article <https://confilegal.com/20230704-por-segunda-vez-el-supremo-anula-el-nombramiento-de-eduardo-esteban-como-fiscal-de-sala-de-minors/>)

Ms. Delgado resigned in 2022 citing health reasons and was replaced by her deputy, Alvaro García Ortiz, who promoted her to Prosecutor of the Military Chamber of the Supreme Court, an appointment that was revoked by Sentence No. 1499/2023 of November 21, of the Administrative Litigation Chamber of the Supreme Court when appreciating a misuse of power not only in making said appointment but also in promoting her as Chamber Prosecutor, which would also affect her subsequent appointment as Prosecutor of the Chamber of Democratic Memory and Human Rights, pending resolution of the appeal that was filed against this appointment.

Mr. García Ortiz has been confirmed again as State Attorney General by the new Government formed in November 2023, without the endorsement of the CGPJ, which issued a report on his unsuitability for the position <https://www.poderjudicial.es/cgpj/es/Judiciary-Power/On-Cover/The-CGPJ-Plenary-considers-that-Alvaro-Garcia-Ortiz-is-not-suitable-for-the-position-of-attorney-general-of-State>

Public opinion and citizens perceive the Prosecutor's Office as an institution strongly linked to the Government , since the latter itself considers the Prosecutor's Office as dependent on the Government, which follows its instructions. Just listen to the statements of several members of the Government: <https://www.facebook.com/watch/?v=574958976603850>
<https://mobile.twitter.com/AFiscals/status/1615301873665187840>

For all these reasons, **the approval of measures that guarantee the full autonomy, independence and impartiality of prosecutors and senior prosecutors, including the Attorney General of the State, is required, providing for the appointment based on strict criteria of merit and capacity, in accordance on objective and regulated bases duly publicized.**

In this regard, PCIJ has developed guidelines for appointments to the prosecutor's office: <https://plataformaindependenciajudicial.es/2017/11/18/bases-nombramientos-fiscalia/> and for a future reform of criminal investigation in which the Prosecutor's Office is completely independent, impartial and detached from any influence of politics. <https://plataformaindependenciajudicial.es/2018/09/26/bases-investigacion-criminal/>

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

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

5000 character(s) maximum

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

5000 character(s) maximum

Without prejudice to what is stated in point 5 of section 1 on general issues, in Spain there are **continuous attempts by different groups to discredit the Judiciary and undermine citizens' confidence in justice, publicly questioning certain judicial resolutions** with which they do not agree or that they do not satisfy certain interests, without providing legal arguments but rather generic disqualifications to the court or personal disqualifications to a judge or magistrate, and even adopting measures (such as pardons, amnesty or inhibition to demand compliance by third parties) that limit the effects agreed upon in some of those judicial resolutions.

For the 2022 Rule of Law report, we provide several examples of such attacks as a news annex. And in 2023, these attacks have continued from various political groups, **failing in these cases to comply with the Commission's Recommendations (2010) 12 No. 18, 2016/1374, 2017/146 and 2017/1520**, in the sense of limiting the criticism that The executive and legislative branches can act in response to judicial decisions, so as not to undermine public confidence in justice. Some more recent examples: <https://www.publico.es/politica/asociaciones-jueces-califican-sumamente-graves-criticas-junts-al-supremo.html>, https://www.eldebate.com/espana/20230925/jueces-fiscales- react-criticas-sanchez_141960.html https://www.cope.es/actualidad/espana/noticias/gobierno-dice-que-anular-nombramiento-valerio-questiona-separacion-poderes-20231205_3036919 and <https://www.elindependiente.com/espana/2023/12/05/the-supreme-remembers-pilar-alegria-the-role-of-the-judicial-power-after-criticizing-the-valerio-case/>

Likewise, **the repeated actions carried out this year by political groups deepen the lack of appearance of impartiality of the CGPJ, senior judicial officials and magistrates of the Constitutional Court** :

- 1.- All attempts to renew the CGPJ are carried out through opaque and undocumented contacts between political parties. The parliamentary assemblies, where the procedure for the appointment of new members of the CGPJ should take place, remain inactive and isolated.
- 2.- The conviction has been conveyed to citizens that the political party that wins an election has the right and democratic legitimacy to appoint like-minded people to senior positions in the judiciary.
3. They speak colloquially of a conservative or progressive magistrate, depending on whether they have been appointed by one political party or another, it is expected that they will vote and make decisions as a bloc, and according to the political orientation of the party that appointed them.
- 4.- All this represents a loss of the appearance of impartiality of Justice before the citizens, as shown in some data and surveys.

*Justice Scorecard 2022.

https://www.niusdiario.es/nacional/politica/20230108/barometro-gad3-mayoria-justicia-cree-politizada-culpa-partidos_18_08387835.html

B. Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section

2)

Accessibility of courts (eg court/legal fees, legal aid, language)

5000 character(s) maximum

Resources of the judiciary (human/financial/material)

(Material resources refer e.g. to court buildings and other facilities. Financial resources include salaries of staff in courts and prosecution offices.)

5000 character(s) maximum

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

5000 character(s) maximum

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, procedural rules, access to judgments online)

5000 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)

5000 character(s) maximum

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

5000 character(s) maximum

C. Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section

2)

Length of proceedings

5000 character(s) maximum

Other - please specify

5000 character(s) maximum

The reform and modernization of the administration of justice is urgent and cannot be postponed, with improvements at four levels: a) at the level of demarcation and judicial plant , bringing this closer to the ratio of judges per inhabitant that exists on average in the European Union and with adoption of special replacement measures in view of the planned retirement of one fifth of the judicial career in ten years; b) at the organizational and work and media management level , with a review and clear delimitation of the functions attributed to the Lawyers of the Administration of Justice and the General Bodies of the Administration of Justice and review of templates; c) at a technological level , with substantial improvements in the communications system and its control by an independent CGPJ (not by the Ministry of Justice or the Autonomous Communities with powers) and the interconnection between the computer systems of the different courts and administrations;

and **d) at a procedural level** , by simplifying some processes, although without diminishing the guarantees and rights of the defendant. Among other measures to improve said public service.

In any case, these reforms must be carried out in a consensual manner with the various agents and professionals involved in the administration of justice, respectful of the rights of citizens and the work of all legal operators as well as freedom and independence. of these, and providing it with all the personal, material and structural means necessary to provide an adequate public service and with the corresponding budget forecast, putting an end to the lack of control of powers and lack of coordination currently existing between the State, the Autonomous Communities with transferred powers and the Council General of the Judiciary.

II. Anti-Corruption Framework

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

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the anti-corruption framework (if applicable)
5000 character(s) maximum

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

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic and with foreign authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable).

5000 character(s) maximum

Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption.

5000 character(s) maximum

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators.

5000 character(s) maximum

B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training).

5000 character(s) maximum

General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

5000 character(s) maximum

Rules and measures to prevent and address conflict of interests in the public sector. Please specify the features and scope of their application (e.g. categories of officials concerned, types of checks and corrective measures depending on the category of officials concerned)

5000 character(s) maximum

If available to you, for the three preceding questions, you are also invited to provide figures on their application, such as number of detected breaches/irregularities of the various rules in place and the follow-up given (investigations, sanctions, etc.).

Measures in place to ensure whistleblower protection and encourage reporting of corruption, including the number of reports received and the follow-up given

5000 character(s) maximum

Sectors with high-risks of corruption in your Member State:

- Measures taken/envisaged for monitoring and preventing corruption and conflict of interest in public procurement
- List other sectors with high risks of corruption and the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. healthcare, citizen /residence investor schemes, urban planning, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

5000 character(s) maximum

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

5000 character(s) maximum

C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences including foreign bribery

5000 character(s) maximum

Data on the number of investigations, prosecutions, final judgments and application of sanctions for corruption offences (differentiated by corruption offence if possible) including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds

5000 character(s) maximum

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high- level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

5000 character(s) maximum

Information on effectiveness of non-criminal measures and sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders.

5000 character(s) maximum

Other - please specify

5000 character(s) maximum

III. Media pluralism and media freedom

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding media pluralism and media freedom (if applicable)

5000 character(s) maximum

A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Measures adopted to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

5000 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

5000 character(s) maximum

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

5000 character(s) maximum

B. Safeguards against government or political interference and transparency and Concentration of media ownership

Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

5000 character(s) maximum

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

5000 character(s) maximum

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

C. Framework for journalists' protection, transparency and access to documents

Rules and practices guaranteeing journalists' independence and safety, including as regards protection of journalistic sources and communications, referring also, if applicable, to follow-up given to alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists

5000 character(s) maximum

Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

5000 character(s) maximum

Access to information and public documents by public at large and journalists (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

5000 character(s) maximum

Lawsuits (incl. SLAPPs - strategic litigation against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

5000 character(s) maximum

Other - please specify

5000 character(s) maximum

IV. Other institutional issues related to checks and balances

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the system of checks and balances (if applicable)

5000 character(s) maximum

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (including consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase

[1] This includes also the consultation of social partners

5000 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)

5000 character (s) maximum

In these last 4 years, excessive use has been made by the Government of Decree Laws , a legislative instrument designed for cases of extraordinary and urgent need, but which has been approved even without justifying the concurrence of said circumstances, limiting its parliamentary processing to its subsequent validation by the Cortes, in which the Executive has the necessary support for this.

Likewise, **there has been a trend towards urgent processing of certain legislative reforms , to dispense with procedures such as consultations and prior reports from the sectors involved and reduce processing times.** A relevant case was the approval of Organic Law 4/2021 of March 29, which limits the functions of the CGPJ with an extended mandate, and Organic Law 8/2022 of July 27, by which it was returned to the CGPJ the power to appoint judges of the TC, setting a deadline for its exercise, which were approved by the emergency procedure in just 3 months and 1 month, respectively, enabling a period that is usually non-working and without having the reports of the CGPJ itself (which requested it and was denied) nor of the Venice Commission, against the recommendations that have been made by different representatives and European institutions (such as the Commissioner of Justice Didier Reynders , Venice Commission and GRECO and recommendations of

the Commission European 2017/1520 and 2018/103) to be able to carry out any reform of the judiciary.

The Council of State itself recently issued an opinion in which it warns of unjustified emergencies that affect the quality of the laws and the control of legality and constitutionality and warns of guarantees that suffer, describing the Government's actions as nonsense close to fraud. law that could infringe EU law: https://www.vozpopuli.com/economia_y_finanzas/informe-consejo-estado-alerta-chapuzas-legislativas-gobierno.html

In this regard, at PCIJ we consider that the quality and legislative technique and processing of standards must be improved with due publicity and transparency, complying with the legally established procedures.

The Constitution guarantees in article 9.3 the principle of legality, the normative hierarchy, the publicity of the norms, the non-retroactivity of sanctioning provisions that are not favorable or restrictive of individual rights, legal certainty, responsibility and the prohibition of the arbitrariness of the public powers. Likewise, art. 117.1 provides that judges and magistrates are subject only to the rule of law. Legal certainty, that the law is applied promptly, fairly and effectively, on equal terms for all members of a society, is a principle that is based on the rule of law.

To do this, the rules must be clear and processed with due publicity and transparency. The legally established procedures must be complied with, without incurring in legal fraud, reduction of deadlines or urgent processing when there are no duly justified causes for this. And a hearing process must be granted to all the agents who must apply them and to the sectors affected by them, who are the ones who fully know the aspects to be regulated, so that they are of higher quality and to facilitate their application and compliance, avoiding gaps. and interpretations that lead precisely to the emergence of conflicts or undesired results. The reports issued must be publicly accessible. Likewise, every standard must be approved with its corresponding economic report and budget estimate also approved, followed by a subsequent evaluation of its application and result, which allows possible modifications and improvements to be assessed.

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)

5000 character(s) maximum

Rules and application of states of emergency (or analogous regimes), including judicial review and parliamentary oversight

5000 character(s) máximo

Regime for constitutional review of laws

5000 character(s) maximum

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B. Independent authorities

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

audit institutions

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

5000 character(s) maximum

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years.

5000 character(s) maximum

C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

5000 character(s) maximum

Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review).

5000 character(s) maximum

Rules and practices related to the application by all courts, including constitutional jurisdictions, of the preliminary ruling procedure (Art. 267 TFEU)

5000 character(s) maximum

Follow-up by the public administration and State institutions to final (national/supranational including the European Court of Human Rights) court decisions, as well as available remedies in case of non-implementation

5000 character(s) maximum

D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

5000 character(s) maximum

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

5000 character(s) maximum

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

5000 character(s) maximum

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

5000 character(s) maximum

E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society, education initiatives, etc.)

5000 character (s) maximum

Other - please specify

5000 character (s) maximum