

2023 Rule of Law Report

Targeted stakeholder consultation

(English)

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)

In relation to the recommendation on the renewal of the General Council of the Judiciary (hereinafter, CGPJ), no progress has been made. Neither in regard to the modification of the appointment system. As of December 4, 2023 the mandate has expired for five years. The situation is institutionally unsustainable and the loss of legitimacy of the CGPJ is very serious. This is more so when the CGPJ issues opinions, for example, on the amnesty draft law, which are not shared by all members.

With respect to the recommendation on the Office of the Prosecutor General of the State, no progress has been made with respect to the temporary dissociation of the mandates of the Prosecutor General of the State (hereinafter, FGE) with respect to the Government, nor in any other aspect aimed at promoting its neutrality, professionalism and autonomy. On the contrary, as it will be developed in the following sections, some steps have been taken in the opposite direction. Hence, the doubts regarding the independence and professionalism of the FGE are increasing. Several judicial rulings on this matter have deepened this discredit, as we shall refer below.

A. Independence

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

With regard to the appointment system of judges and magistrates, as has already been pointed out in our contribution to the 2023 Rule of law Report, and as the Commission is already aware, the main problem is the deadlock in the renewal of the CGPJ, on which we will elaborate in depth below.

The CGPJ is in charge of making discretionary appointments in the judicial career. In addition, the CGPJ is responsible for proposing two of the twelve magistrates of the Constitutional Court. The Organic Law 4/2021 was modified as a measure to force the unblocking of the CGPJ. Under this law, the CGPJ is deprived of the power to make appointments in the The Superior Courts of Justice, the High State Court (*Audiencia Nacional*) or the magistrates of the Supreme Court until it's renovate (while in *interim* situation). As we pointed out in the Foundation's Rule of Law Report (2018-2021)¹, this situation has led to a large number of vacant seats in these important Courts and is seriously affecting their activity, with a serious prejudice to the justice system.

Law 38/1988, of December 28, on Demarcation and Judicial Plant establishes the number of seats of magistrates in the different courts and their respective chambers. Thus, for example, the Contentious-Administrative Chamber of the Supreme Court should have 33 magistrates (president

¹ Report available at: <https://www.hayderecho.com/primer-informe-estado-derecho-espana-2018-2021/>

included), and currently has 24 magistrates, that is, 9 fewer². The Fourth Chamber should have 13 magistrates and currently has 7³. The same situation occurs in Provincial Courts (*Audiencias Provinciales*), National High Court (*Audiencia Nacional*) and Superior Courts of Justice. At the beginning of the year (18 January 2023), the technical cabinet of the Supreme Court's Governing Chamber made a report outlining the situation of the Court. It was pointed out that there were 19 vacant seats, among the 79 legally provided for (24%) and that in the following months of 2023 it would add 24 vacancies out of 79 (30.37%). In addition, it added that in 2023 only in the two chambers most affected by this situation, which are the Social and the Contentious-Administrative, some 1,230 fewer court decisions will be issued in 2023 (570 less in Contentious-Administrative Chamber and 660 in the Social Chamber)⁴. On February 16, the Permanent Commission of the CGPJ issued a statement urging the Ministry of Justice to create 15 legal counsel positions in the Supreme Court to address the situation⁵. Some media outlets have collected data from the CGPJ, raising the figure to 22 vacancies out of 79⁶ (July 2023) and 24 out of 79⁷ (October 2023). These media outlets also echo the seriousness of the situation in other of the aforementioned courts, both at national, regional and local levels.

As for the Public Prosecutor's Office, Article 2.1 of its Organic Statute approved by Law 50/1981, of December 30, which regulates the Organic Statute of the Public Prosecutor's Office states: "The Public Prosecutor's Office is a body of constitutional relevance with its own legal personality, integrated with functional autonomy in the Judiciary, and carries out its mission through its own bodies, in accordance with the principles of unity of action and hierarchical dependence and subject, in any case, to the principles of unity of action and hierarchical dependence and subject, in any case, to those of legality and impartiality."

However, the Prosecutor General of the State (FGE) is appointed by the Government with total freedom, which has often led to the appointment of persons very close to the Executive, including persons who have been part of it, as happened with the former Minister of Justice (Dolores Delgado) who became FGE. Perhaps the most important problem is that the most relevant positions of the Prosecutor's Office are proposed by the FGE to the Government with total discretion, a fact that historically has resulted in appointments of persons that are very close to the FGE (the Government usually approves the person proposed by the FGE). The intervention of the Fiscal Council⁸ is merely advisory.

In addition, in terms of mandate, the FGE holds the position for four years (the same term as the Government), which means that its appointment is closely linked to the Government that emerges from Parliament. In addition, the FGE is appointed and ceases with the government that has proposed him/her (art. 31 EOMF). Thus, if the legislature ends earlier, the Prosecutor General awaits for the new government to renew her/him (the FGE may be renewed provided that he/she has not held the position for a period of more than two years).

In recent months there have been specific events that show the dependence of the FGE on the Government. On May 29, 2023, the President of the Government, Pedro Sanchez, called for general

² According to data published on the CGPJ website, the update date is unknown: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Portal-de-Transparencia/Estructura-organizativa/Salas-ordinarias---Sala-Tercera---Composicion#:~:text=La%20Sala%20Tercera%2C%20de%20lo,y%20treinta%20y%20dos%20magistrados>.

³ <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Informacion-institucional/Estructura-organizativa-del-TS/Salas-Jurisdiccionales/Relacionados/Salas-ordinarias---Sala-Cuarta---Composicion>.

⁴ Link to the statement of January 18, 2023: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/La-Sala-de-Gobierno-del-Tribunal-Supremo-insta-a-las-Cortes-a-dar-una-solucion-inmediata-a-la-situacion-insostenible-del-tribunal-con-un-30-por-ciento-de-vacantes>.

⁵ Link to the press release of February 16: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Sala-de-Prensa/Archivo-de-notas-de-prensa/El-CGPJ-pide-al-Ministerio-de-Justicia-la-creacion-de-15-plazas-de-letrado-en-el-Tribunal-Supremo-para-afrontar-la-situacion-causada-por-las-vacantes>.

⁶ <https://elpais.com/espana/2023-07-18/una-nueva-jubilacion-en-el-supremo-agrava-el-deterioro-del-tribunal-que-ya-tiene-22-plazas-vacantes.html>.

⁷ <https://theobjective.com/espana/2023-10-01/vacantes-jueces-gobierno-cgpj-tribunal-supremo/>.

⁸ The Fiscal Council is an organ that assists the FGE in his/her functions.

elections for July 23, 2023. The FGE (Alvaro Garcia Ortiz) had been appointed on August 1, 2022 (after the resignation for personal reasons of Dolores Delgado, former Minister of Justice, who held the position from February 2020 to July 2022). After the formation of the new government, the question of the renewal of Alvaro Garcia Ortiz in his position was raised. The Council of Ministers of November 28, 2022 launched its renewal, requesting a prior report to the CGPJ (the report has no binding effects). On November 30, the CGPJ issued the report⁹ considering that Alvaro Garcia Ortiz was not suitable for office for a number of reasons related to the lack of independence shown in his performance. In the section of this questionnaire on the independence of the Prosecutor's Office, a summary of the arguments put forward by the CGPJ in its report is included.

Moreover, it should be noted that last July 2023, the Supreme Court annulled the appointment of Eduardo Esteban Rincon as Prosecutor of the Juvenile Chamber, made at the proposal of the former FGE, Dolores Delgado. The Supreme Court had already annulled a previous attempt by the FGE to appoint the same person for the same position. The Supreme Court annulled the appointment for the second time, stating that it had not been sufficiently motivated. It added that the suitability of access to the highest level of the fiscal career (chamber prosecutor) was not being questioned, but rather whether it is possible to prefer a candidate without any theoretical or practical experience in the subject over another who has proven to be a specialist in it, or not. On November 29, 2023, the Government finally complied with the judgements and annulled the appointment¹⁰. This was made following the request of the Association of Prosecutors, which expressed its discomfort because that person was kept in office despite the Supreme Court's decision 4 months ago¹¹.

There is also "sub iudice" (pending resolution) the appeal filed before the Supreme Court against the appointment of Dolores Delgado, former FGE, as prosecutor of Democratic Memory and Human Rights. This appointment was challenged by the Association of Prosecutors and Prosecutor Luis Ibañez (who was opting for the position). The basis of the appeal is that the FGE did not allow the Fiscal Council (to which the jurisdiction corresponds) to rule on the possible incompatibility of the FGE given that his partner, Baltasar Garzón, runs a foundation (FIGBAR) with a very similar scope of action. In addition, it is mentioned that the report issued by the Fiscal Council on her appointment cannot be considered valid since the majority of the members abstained from participating in the deliberation and voting. The appellants have extended the appeal because they consider that there have been "new facts", specifically the annulment by the Courts of the appointment of Dolores Delgado as Prosecutor of the Military Chamber, as the Court considered that there had been a deviation of power¹².

All these points show a worrying dependence of the FGE on the government in office, as well as the existence of nepotism and cronyism in the promotions and discretionary appointments of the fiscal career, some of them already annulled by the Supreme Court.

Promotion of judges and prosecutors (incl. judicial review)

In line with what was expressed in our contribution last year and with regard to promotions in the Office of the Prosecutor, it is important to note that in the Office of the Prosecutor there are no clear rules of evaluation, objective scale of merits, system of classification of candidates or sufficient publicity of vacancies and the requirements to fill them, making it difficult to respect the constitutional principles of merit and ability with regard to discretionary appointments. There are also problems of bureaucracy and excessive rigidity and slowness in the procedures to fill vacancies, as well as legal uncertainty.

⁹ Report available

at: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/El-Pleno-del-CGPJ-considera-que-Alvaro-Garcia-Ortiz-no-es-idoneo-para-el-cargo-de-fiscal-general-del-Estado>

¹⁰ Resolution available in: <https://www.boe.es/boe/dias/2023/11/29/pdfs/BOE-A-2023-24266.pdf>

¹¹ <https://www.elmundo.es/espana/2023/11/28/65648474e9cf4a816c8b4589.html>

¹² Court decision available at: <https://www.poderjudicial.es/search/DeActualidad/TS/>. Article from El Pais available at: <https://elpais.com/espana/2023-11-21/el-supremo-anula-el-nombramiento-de-dolores-delgado-como-fiscal-de-sala-de-lo-militar.html>

In recent months these circumstances have been highlighted by the associations of prosecutors. The Progressive Association of Prosecutors, in a statement dated 23 January 2023¹³, expressed its discomfort with regard to Royal Decree 45/2023, of 24 January, which promoted 77 prosecutors. In this statement, the association states that these people have had to wait more than 11 years to be promoted since they took office as prosecutors, when the average of the last 27 years for promotion was 5 years and 2 months. In addition, they denounce the long interval between the creation of the new seats and the moment they are filled and the fact that promotions are only made once a year. Thus, the association has requested the Ministry of Justice to make a minimum of 4 promotions a year in order not to reduce economic rights, the professional promotion of the prosecutor's careers and to guarantee an equivalence with promotions in the judicial career.

Moreover, in a recent statement¹⁴ on December 13, 2023, the Association of Prosecutors denounced the lack of transparency and legal uncertainty in the scoring and assignment of destinations process for new prosecutors. During the process, the distribution of places and the ranking were changed on up to three occasions with the damage that this implies to those affected. This has generated numerous claims that are yet to be resolved. The Progressive Union of Prosecutors has also raised this concerns in a statement of 14 December 2023¹⁵.

In relation to judicial review, it is important to mention, as has been indicated in the previous section, that the legal system of professional promotion in the Prosecutor's Office is being subject to judicial remedies. However, they are faced with the difficulty of the wide discretion enjoyed by the FGE. Only in very obvious cases of arbitrariness in the election has the appointment been annulled by the Supreme Court.

As for promotions in the judicial career, those made by merit do not pose problems. However, for discretionary appointments the situation is very problematic, since they have been paralyzed since June 2021 as a result of Organic Law 4/2021 mentioned before. Moreover, and given the way in which the CGPJ is chosen, its politicization and the intervention of the Judicial Associations aligned with the parties (APM with PP and JJxD with PSOE), the discretionary appointments in the judicial career present similar problems to those of the Prosecutor's Office. Therefore, beyond the necessary renewal and reform of the system of election of the members of the CGPJ in line with European standards, a profound reform of the system of discretionary appointments -as proposed by the current CGPJ President, Vicente Guilarte¹⁶-, is necessary in order to facilitate its renewal, given that political parties are interested in having an influence in the appointments of the most relevant positions in the judicial career through control and politicization of the CGPJ. The current President proposes, first, that the appointments of the Presidents, at the provincial and regional level, of Provincial Courts and Superior Courts of Justice, be made directly by the judges of the corresponding body, without intervention of the CGPJ. Secondly, that in relation to the Supreme Court, the appointments are to be made based on a list of merits, to reduce the margin of discretion. In addition, a selection panel would be formed, chaired by a member of the CGPJ and made up of qualified persons: Judges of the Supreme Court Chamber in question and, where appropriate, professors, state lawyers, registrars, etc. notaries or other senior officials. Members of that panel would be appointed randomly or by rotation to avoid possible attempts of political influence¹⁷. The so-called "Guilarte formula" aims, after all, to strip the CGPJ of its most attractive function for parties, the discretionary appointments of the President and the Supreme Court magistrates, and presidents of Courts and Chambers. The President of the Government, Pedro Sanchez, has been open to consider the proposal of the current President of the CGPJ, according to the newspaper El Pais¹⁸.

¹³ Available in: <https://www.upfiscales.com/2023/01/comunicado-sobre-los-ascensos-en-la-carrera-fiscal/>

¹⁴ Available

in: <http://asociaciondefiscales.es/index.php/espacio-00/actividades-a-f/cartas/item/907-carta-de-la-asociacion-de-fiscales-al-fiscal-general-del-estado-en-relacion-a-la-61-promocion>

¹⁵ <https://twitter.com/UPFiscales/status/1735267522365001942>

¹⁶ Article published in the country: <https://elpais.com/espana/2023-12-02/diluir-la-tension.html>

¹⁷ The President presented in an article about the country his proposal, accessible at: <https://elpais.com/espana/2023-12-02/diluir-la-tension.html>

¹⁸ <https://elpais.com/espana/2023-12-06/pedro-sanchez-se-abre-a-explorar-la-formula-guilarte-para-renovar-el-poder-judicial-si>

Allocation of cases in courts

We are not aware of any progress on this point.

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)

On this point, we can refer almost entirely to our contribution last year, given that the situation has not changed. The CGPJ has been in office for 5 years, cannot make appointments of the highest positions in the judicial career and there are no signs (at the time of writing these lines) that the situation may change in the short term. On 22 December 2023 a meeting took place between the President of the Government and Alberto Nuñez Feijoo (President of *Partido Popular*-PP-) in which they agreed to unblock the CGPJ with the supervision of the European Commission. In the absence of knowing more in detail the agreement, everything indicates that it is a question of renewing the members and then proceeding to the reform of the system of appointments¹⁹. Media outlets have reported that the European Commission will evaluate the request to act as mediator²⁰.

The judicial year began on September 7, 2023. At the opening ceremony, the President of the Supreme Court, Francisco Marin called on political representatives to reach an agreement as soon as possible. The President highlighted the precarious situation in the Supreme Court as a result of the blockade of the CGPJ with 30% of vacancies in courts and some sections of these courts "on the verge of collapse"²¹.

On the other hand, the Presidents of the Congress and the Senate have not proceeded to convene the plenary sessions necessary to proceed with the renewal of the members of the CGPJ, as is their legal obligation, regardless of whether or not there is an agreement between the parties. In this sense, it should be remembered that the CGPJ fulfilled in 2018 its obligation (established in art. 20 of the LOPJ) according to which "six months before the expiration of the mandate of the outgoing Council its President will address those of the legislative chambers, interested in proceeding to the election of the members that they correspond to designate." It is the Presidents of the Congress and Senate who have not complied with their legal obligation.

Hay Derecho Foundation is trying to promote to renovate the CGPJ through a draw as a transitional method to break the deadlock, and then to reform the appointment system in accordance with European Union standards and in particular, with the recommendations of the Commissioner for Justice²².

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)

As was also noted in the contribution to the 2023 report, in Spain all judges and magistrates as well as prosecutors, are subject to a special jurisdiction in order to guarantee their independence in the prosecution of the processes in which they are involved. Therefore, in those cases where a judge commits a crime in the exercise of his office, this case is processed by the High Court of Justice where the judge works²³. The so-called, *aforamientos*. This issue will be further elaborated in the section on obstacles to the prosecution of high-level corruption cases under the anti-corruption framework.

In the disciplinary field it is important to emphasize that the Promoter of Disciplinary Action of judges and

[-fracasa-su-cita-con-feijoo.html](#)

¹⁹ <https://elpais.com/espana/2023-12-22/sanchez-y-feijoo-pactan-que-la-comision-europea-medie-en-la-negociacion-para-renovar-el-poder-judicial.html>

²⁰ See:

<https://elpais.com/espana/2023-12-23/bruselas-sopesa-la-peticion-de-mediacion-entre-gobierno-y-oposicion-para-renovar-el-poder-judicial.html>

²¹ Speech available at this

link: <https://www.poderjudicial.es/cgpi/es/Poder-Judicial/Tribunal-Supremo/En-Portada/El-presidente-del-TS-reclama-una-cooperacion-leal-entre-los-diferentes-actores-politicos-que-situa-a-la-Justicia-por-encima-de-los-intereses-partidarios>

²² More information at this link: <https://www.hayderecho.com/portfolio-item/propuestas-para-salir-de-la-paralisis-en-el-cgpi/>

²³ Article 73.3, b) Organic Law of the Judiciary

prosecutors is a position of free appointment by the Prosecutor General or by the President of the CGPJ, which is problematic from the point of view of its independence, since there is the possibility of opening or maintaining open disciplinary proceedings against disgruntled or uncomfortable judges or prosecutors. In the case of Prosecutor Stampa, this interference is being investigated by the courts. The Prosecutor Stampa occupied a place within the Anti-Corruption Prosecutor's Office and was investigating one of the corruption pieces of the so-called "Villarejo case", the so-called "Tandem case".

At the Prosecutor's Office, a disciplinary procedure was initiated after the complaint of an individual. Although the prosecutor did not see any reason to proceed with the investigation, it remained artificially protracted (supposedly by pressure from the former FGE, Dolores Delgado, whose partner's law firm carried out the defense in the Villarejo case). These proceedings where the reason why Stampa's candidacy for a fixed position in the anti-corruption office was not considered, and he had to abandon his position and the investigation of the case. The current FGE, Alvaro Ortiz was at the time the technical general secretary who allegedly transferred the FGE's instructions so that the disciplinary file was not closed before the celebration of the Fiscal Council that was to evaluate the candidatures presented. These actions are being investigated in the courts at the request of prosecutor Stampa. The information that led to the initiation of the disciplinary proceedings against Stampa was ultimately proved false and the case against him was filed²⁴.

In this area, the appointment of Manuel Moix as the Promoter of Disciplinary Action in the Public Prosecutor's Office²⁵ also stands out, since he had to resign as Chief Prosecutor of Anti-Corruption after it became known that he owned 25% of an off-shore company in Panama. The Associations of Prosecutors who supported his appointment to the Anti-Corruption Prosecutor's Office called for his resignation²⁶.

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

In 2023 there have been changes in the remuneration of judges and prosecutors (and other justice operators) as a result of the strikes promoted by these officials. The strike of the Judicial Secretaries (*Letrados de la Administración de Justicia*) began in January and ended in March after reaching an agreement with the Ministry of Justice that led to a salary increase. In February the four judges' associations and the majority association of prosecutors (Association of Prosecutors-AF-) requested a meeting with the Ministry to address their request for pay improvements. In the course of the negotiations, two additional associations of prosecutors joined. In May these associations called off the strike planned for May 22 by accepting the Ministry's offer that meant a salary increase of 450 euros per month. The majority association of judges (Professional Association of the Magistracy-APM-) voted against the agreement as insufficient²⁷. The agreement is retroactive, applies with effect from 1 January 2023 and will be implemented gradually between 2023 and 2024. This increase is made in accordance with the provisions of Law 15/2003, of May 26, regulating the remuneration regime of the judicial and fiscal careers²⁸.

In terms of transparency, we have to note the resolution of the Council of Transparency and Good

²⁴ The newspapers have echoed this

issue: <https://www.publico.es/politica/fiscal-general-renueva-mandato-cisma-carrera-sentencia-ascenso-dolores-delgado.html> ; <https://elpais.com/espana/2022-07-26/fuego-a-discrecion-contra-el-nuevo-fiscal-del-estado.html> ; <https://www.epe.es/es/politica/20220902/fiscales-exigen-garcia-ortiz-justifique-intervencion-stampa-miguel-angel-blanco-14402122>

²⁵ Communication of the appointment of Manuel Moix: <https://www.fiscal.es/promotor-accion-disciplinaria>

²⁶ <https://www.elmundo.es/espana/2017/05/31/592f0e17e2704ea8738b463f.html>

²⁷ <https://cincodias.elpais.com/economia/2023-05-18/jueces-y-fiscales-desconvocaran-la-huelga-tras-aceptar-la-subida-salarial-de-450-euros-al-mes.html>

²⁸ Text of the law available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2003-10524>

Governance²⁹ (27.01.2023) (CTBG), which urges the Ministry of Justice to send the applicant information on the performance percentage applied to each of the variable remuneration received in the years 2019, 2020 and 2021 by the judges of the Administrative Courts of Madrid. This resolution is part of the request made by the complaining party to access information on the overall amount of the remuneration of members of the judicial career, total credit for variable remuneration, the number of judges who obtained such remuneration and, in particular, the amounts paid to the magistrates of these Courts. The problem of variable remuneration in Spain not only in relation to judges and magistrates but with other officials is in its opacity and the suspicions of arbitrariness generated by its distribution, as it should theoretically be based on objective criteria and that it can constitute an important part of the total salary of officials.

Independence/autonomy of the prosecution service

The Public Prosecutor's Office in Spain is framed within the Judicial Power and endowed with functional autonomy through the Organic Statute of the Public Prosecutor's Office. With regards to the recommendation of the Rule of Law Report 2023 on *Strengthening the status of the Prosecutor General*, no progress has been made.

As mentioned in the section on appointments, in Spain it is usual to appoint FGEs aligned with the Government. In addition to this, as the CGPJ has pointed out in its report on the renewal of Alvaro Ortiz as FGE, there is another problem linked to the role of prosecutors' associations. The CGPJ report, which considered that Alvaro Ortiz should not be renewed as FGE³⁰, states the following reasons:

- **Deficient legality in the administrative management of the prosecution:** It refers to the Supreme Court (STS) ruling 1499/2023, which annulled the appointment of Alvaro Ortiz's predecessor, Dolores Delgado, as Prosecutor of the Chamber (highest category of the fiscal career) to the Military Chamber, considering that it did not meet criteria of merit and capacity and that it incurred a deviation of power³¹. The court decision, taken unanimously, is very critical of the action of the FGE as it did not take into account the criteria of merit and capacity. It states that "whatever opinion each one deserves, the truth is that this automatic promotion [of the FGE has not been wanted by the legislator, nor is it foreseen in the law. And, of course, the power of the FGE to propose candidates is not intended to rewrite the rules of promotion in the prosecution career, adjusting them to their personal preferences.". Dolores Delgado declared in the media the court decision was unjust³².
- **Poor transparency in discretionary appointments:** The CGPJ report states that the FGE has a high degree of discretion given that appointments are the responsibility of the government at the proposal of the FGE, but its proposal is ratified at all times. The report states that the appointments made during the previous mandate of the FGE (August 1, 2022 until the cessation of the previous government-July 24, 2023) have been largely from persons belonging to an Association of Prosecutors (the Progressive Union of Prosecutors), to which the current FGE and his predecessor belong. In that sense, of 33 discretionary appointments of prosecutors, 22 are associated members the Progressive Union of Prosecutors (which has 200 associates of the 2,700 prosecutors in total). This means that 7.4% of prosecutors have taken 66.6% of the discretionary charges, 14 of them promoting in a higher category. 5 of the appointments (15%) have corresponded to the Association of Prosecutors, which has 630 associates (23% of the total); finally 4 appointments have corresponded to the non-associated prosecutors (12% of appointments for 40% of prosecutors)³³.

These numbers also highlight the relevant role of prosecutors' associations in appointments, and it is absolutely common that members of the association on duty in the Fiscal Council (part of which are elected by members of the fiscal career) endorse their associates against other candidates.

- **Poor direction for the proper procedural operation of the Prosecutor's Office:** This section refers to Circular 1/2023 issued by the Prosecutor's Office in which a criterion was established for the interpretation of Organic Law (LO) 10/2022, of September 6, of integral guarantee of sexual freedom (a law whose technical and legal defects have led to numerous - unwanted - reductions in penalties for crimes against sexual freedom). The report states that the criterion of interpretation (which was the one held by the

²⁹ Access to

resolution: https://www.consejodetransparencia.es/ct/Home/dam/jcr:2eb7a638-f176-4d6e-a648-983a226acdcc/R_041-23.pdf

³⁰ <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/En-Portada/El-Pleno-del-CGPJ-considera-que-Alvaro-Garcia-Ortiz-no-es-idoneo-para-el-cargo-de-fiscal-general-del-Estado>

³¹ <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Noticias-Judiciales/El-Tribunal-Supremo-aprecia-desviacion-de-poder-en-la-propuesta-del-Fiscal-General-del-Estado-para-promover-a-Dolores-Delgado-como-fiscal-de-Sala>

³² <https://www.europapress.es/nacional/noticia-dolores-delgado-dice-sentencia-ts-anula-plaza-injusta-asegura-va-pelear-20231121225738.html>

³³ P. 9 of the CGPJ report of 30 November 2023.

Minister of Equality of the Government, driving the law) was contrary to the one held by the majority of the prosecutors and which has been considered inadmissible by the jurisprudence of the Chamber II of the Supreme Court (Criminal Chamber). Finally, the law was reformed to correct the technical effects that had resulted in unintended consequences through LO 4/2023. Therefore, the FGE's criterion on this point was aligned with the government's position, trying to avoid the political attrition derived from the reduction of penalties of sex offenders.

- **Lack of protection of the fiscal career in guarantee of the principle of legality in the exercise of its functions:** The CGPJ report criticizes the inaction of the FGE when protection was required by the prosecutors that had worked in in the procedure against the Catalan secessionist politicians. The report highlights the inclusion of the term "lawfare" in the agreement to form a government between the Socialist Party and the Junts per Catalunya Party.

As it is mentioned below in this questionnaire, the Public Prosecutor's Council has finally agreed to grant protection to the prosecutors of the *procés*, by virtue of Article 118 of the Regulations of the Public Prosecutor's Office³⁴

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

In last year's contribution we already referred to the case of Pablo Zapatero Miguel, who became Secretary of State for Justice in January 2020 and returned to his original position as Technical General Secretary in the General Council of Spanish Lawyers in June 2022. This case represents an example of revolving doors that introduces doubts as to the independence of the General Council of Spanish Lawyers (CGAE) from the Ministry of Justice. Recently after Zapatero's resignation, a similar movement has taken place, with another former high official of the Ministry of Justice, Magistrate Francisco de Borja Vargues³⁵, appointed to the post. He was the secretary General for Innovation and Quality of the Public Service of Justice at the time when the Minister of Justice was Juan Carlos Campo, now a member of the Constitutional Court.

Therefore, not only are there no progress in this area, but the revolving doors between the Ministry of Justice and CGAE seem to be reinforced.

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

In recent years, politicians and members of Government have made declarations in social media not longer against the content of certain judicial rulings but against specific judges and magistrates. In addition, prominent members of Government have derided the judges in general on the occasion of its interpretation of rules that presented important technical defects, as has happened with the former Minister of Equality, Irene Montero, in relation to the law promoted by her Department, the LO 10/2022 of September 6. The technical problems led to the release of many sex offenders and the Minister and her senior officials declared that the judges who interpreted the Law contrary to their designs where "fascist" and "machistas"³⁶.

It should also be noted that the step has been taken to accuse certain judges of "lawfare" for their actions with respect to certain politicians. At this point, the qualitative leap has taken place by expressly including the term "lawfare" in the government agreement of the Socialist Party and *Junts per Catalunya*³⁷ published on November 9 2023.

This has provoked innumerable reactions, not only political but also from different legal agents and, in particular, from the judges and magistrates who consider their independence and, therefore, the separation of powers at risk.

The agreement provides the possibility for parliamentary committees of inquiry to investigate what politicians regard as lawfare cases which may lead to "accountability actions or legislative modifications." The agreement presupposes that in Spain there is judicial persecution on political grounds and they intend to place judicial action under the supervision of political bodies,

³⁴ Press release (20 December 2023):

<https://www.fiscal.es/-/el-consejo-fiscal-otorga-unanimemente-el-amparo-a-los-fiscales-actuales-en-todos-los-procedimientos-derivados-del-proces-independentista-de-cataluna>

³⁵ <https://confi legal.com/20231219-francisco-de-borja-vargues-nuevo-secretario-general-tecnico-del-consejo-general-de-la-abogacia-espanola/>

³⁶ Media coverage

(examples): <https://elpais.com/espana/2022-11-16/irene-montero-acusa-a-los-jueces-de-incumplir-la-ley-por-machismo-al-rebajar-penas-por-la-ley-del-solo-si-es-si.html>; <https://www.elmundo.es/espana/2022/11/16/6374ccc421efa00e5b8b4570.html>

³⁷ The agreement can be found at this

link: <https://estaticos-cdn.elperiodico.com/epi/public/content/file/original/2023/1109/11/231107-acuerdo-psoe-junts-pdf-2.pdf>

something unacceptable under the rule of law³⁸. This type of statements generates distrust in the citizenship and encourage normative changes against the separation of powers, all of which raises serious concerns.

There have been numerous judicial associations and institutions that have spoken out against these statements:

- [Joint communiqué of the judicial associations](#)
- [Statement by the Presidents of the National Hearings](#)
- [Statement from the Progressive Union of Prosecutors](#)
- [Communiqué of the Permanent Committee of the CGPJ](#)
- The Public Prosecutor's Council has approved the protection (*amparo*) of prosecutors who participated in the so-called *procés* (judicial proceeding before the Supreme Court on the actions that led to the declaration of independence in Catalonia in 2017), in response to the request for protection from some prosecutors in view of the PSOE-junts agreement³⁹.

The joint statement of the four judicial associations is specially relevant, given that the APM is aligned with the PP and JJxD with the PSOE, and they do not usually make joint statements.

In addition to the communiqués, there were a number of declarations of judges⁴⁰, and magistrates, in universities, professional associations (mostly bar associations), etc. against the agreement. Some examples:

- [Ilustre Colegio de la Abogacía de Madrid](#)
- [Ilustre Colegio de Abogados de Granada](#)
- [Ilustre Colegio de Procuradores de Madrid](#)

In addition, more than 40 relevant law firms adhered to the statement of the Madrid Bar Association. Among them are: Pérez Llorca; Garrigues; Uria Menéndez; Ontier; Broseta; Gomez-Acebo & Pombo; White&Case; Elizaburu; Clifford Chance.

It is also noteworthy that the reactions of the judges and magistrates, not only against the "lawfare" allegations but also against the proposal of an amnesty law have provoked, in turn, numerous criticisms from the Government and the political parties that support it -as well as certain media- against judges and magistrates. All this has generated a growing tension between the executive, legislative and judicial powers, causing deep concern for large sectors of Spanish society and, in particular, legal agents.

For example, the Association of Judges for Democracy (JJxD) issued a statement, warning of the damage that could have to the appearance of independence these demonstrations.

In this context, on 13 December, the constitution of three parliamentary committees of inquiry was approved in the Congress of Deputies⁴¹, as agreed between the PSOE and its government partners, at the proposal of the nationalist parties. They aim to investigate certain cases related to Catalonia to resolve possible political responsibilities. The possibility of calling judges who had heard of these cases or others to declare in these committees, has provoked numerous reactions and requests for the Government to clarify the purpose of these commissions.

There is also a technical and legal question concerning the duty of judges and magistrates to appear in a parliamentary committee of inquiry in relation to their jurisdictional functions. The CGPJ issued a statement on December 21⁴² urging Congress and the Senate not to call on judges and magistrates to testify about facts related to their judicial activity, in which it states that the parliamentary chambers do not have functions relating to disciplinary and criminal liability. In a technical report,

³⁸ For more information related to the agreement, Editorial Hay Derecho available

at: <https://www.hayderecho.com/2023/11/10/editorial-de-hay-derecho-sobre-el-acuerdo-psoe-junts/>

³⁹ See:

<https://www.europapress.es/nacional/noticia-consejo-fiscal-acuerda-unanimidad-amparar-fiscales-proces-frente-acusaciones-la-wfare-20231220134256.html>

⁴⁰ Some news covering the

demonstrations: <https://www.publico.es/politica/jueces-salen-calle-primera-vez-acuerdo-politico-amnistia-del-proces.html>; https://www.eldiario.es/sevilla/juez-decano-sevilla-llama-concentrarse-acuerdo-psoe-junts-referencias-lawfare_1_10682452.html; https://www.eldebate.com/espana/20231114/jueces-toda-espana-concentran-ante-juzgados-protestar-contr-ley-amnistia_153638.html; <https://www.heraldo.es/noticias/aragon/2023/11/22/manifiesto-profesores-facultad-derecho-universidad-zaragoza-pacto-psoe-junts-1692915.html>; <https://www.lavanguardia.com/vida/20231114/9377682/alrededor-800-jueces-cinco-provincias-espanol-as-protestan-pacto-psoe-junts-agenciaslv20231114.html>

⁴¹ <https://www.democrata.es/actualidad/los-detalles-de-las-tres-comisiones-de-investigacion-aprobadas-por-el-congreso-plazos-y-composicion-de-operacion-catalunya-pegasus-y-atentados-del-17-a/>

⁴² Press release available

at: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Oficina-de-Comunicacion/Archivo-de-notas-de-prensa/El-Pleno-del-CGPJ-inslorta-por-unanimidad-al-Congreso-y-al-Senado-a-no-citar-a-jueces-y-magistrados-para-declarar-sobre-hechos-conocidos-en-las-actuaciones-objeto-de-su-actividad-jurisdiccional>

the Francisco de Vitoria Judicial Association⁴³ concludes that it is not technically possible for judges and magistrates to appear before a commission of inquiry in Congress, a position that has been confirmed by the President of the Government and the Minister of Presidency, Justice and Relations with the Courts: Felix Bolaños has clarified that the Constitution, the organic law of the General Council of the Judiciary (CGPJ) and the Regulations of the Congress do not allow this possibility: "It follows from this legal and constitutional framework that the committees cannot review judicial decisions or bind the courts. Judges and magistrates have no obligation to attend committees of inquiry."⁴⁴

As for the accusations against specific Judges and Magistrates, it is necessary to highlight the intervention of the spokesperson of Junts per Catalunya, Miriam Nogueras (December 13, 2023), in which she named judges of the Supreme Court who had intervened in the proceedings regarding Catalan illegal secession of 2017 and pointed at the responsibility of the former president of the CGPJ and a judge of the Constitutional Court. These statements have led to the issuance of numerous statements by judges, prosecutors and the CGPJ in the sense of defending the separation of powers and these specific judges and magistrates.

- [Statement from the President of the CGPJ](#): Vicente Guilarte has declared that: *"The identification – and the purpose that follows from it – of several magistrates of the Supreme Court is inadmissible in a rule of law one of whose fundamental principles is the separation of powers"*.
- [Statement from some associations of judges and prosecutors](#): Professional Association of the Judiciary, Francisco de Vitoria Judicial Association, Independent Judicial Forum, Association of Prosecutors and Professional and Independent Association of Prosecutors (the Association of Judges and Judges for Democracy has not spoken).
- Twenty-one prosecutors from the Chamber and the Criminal Section of the Supreme Court have called on the State Prosecutor General to take action⁴⁵.

From another political point of view, the senator of the Popular Party, José Antonio Monago, made a public statement to the judge of the National Court, José Ricardo de Prada, for the ruling of the so-called "Gurtel case" (corruption case of the Popular Party) that resulted in the motion of censure that defeated the PP government of Mariano Rajoy. This politician pointed out in an interpellation to the Minister Félix Bolaños, that the biggest case of "lawfare" in Spain had occurred in that court decision, in which, according to him, a paragraph was introduced that brought down the government of that time, chaired by Mariano Rajoy. Some judicial associations have expressed their rejection (Judges and Judges Association for Democracy, Francisco de Vitoria Judicial Association and Independent Judicial Forum-No statements have been found in this sense of the Professional Association of the Magistracy-):

- The Association Judges for Democracy (JJxD) has issued a [statement](#) in which the President of the CGPJ is asked to act with the same forcefulness as he did with the statements issued by Miriam Nogueras of the Junts per Catalunya party. The Francisco de Vitoria Judicial Association has denounced the statement of the senator on its [social networks](#), considering that "the public announcement of a magistrate by a PP senator, this Tuesday, in parliamentary seat, is unacceptable in democracy." [Foro Judicial Independiente](#) has also denounced it.
- The President of the CGPJ has referred to these statements in a ceremony of awards of the Observatory against Domestic and Gender Violence, urging the powers of the State not to be "complicit" in the delegitimization of the Judiciary, In the face of the "frequent and unjust attempts to delegitimize the judiciary" (...), as "we saw on Tuesday in Congress and in the Senate"⁴⁶.

Another recent event in this regard is the request of the Prosecutor's Office to the Supreme Court to dismiss the complaints filed by the Sumar party and by Unidas Podemos against Judge Manuel García-Castellón. The lawsuit against the judge was filed after the judge reopened the proceedings against the Unidas Podemos party for alleged crimes of illegal party financing, money laundering and tax crime, after obtaining new information on the occasion of the statement of the former head of the Venezuelan Intelligence Hugo 'Pollo' Carvajal. The parties alleged that the reopening of the case by the judge could result in crimes of prevarication, disclosure of secrets and failure to pursue criminal conduct in an alleged lawfare case⁴⁷. Finally, the Supreme Court has disallowed the complaint⁴⁸.

⁴³ <https://www.ajfv.es/nota-de-prensa-informe-expertos-ajfv-comparecencia-parlamento/>

⁴⁴ <https://www.democrata.es/claves-del-dia/la-legislacion-cercena-la-posibilidad-de-que-jueces-y-magistrados-comparezcan-en-comisiones-de-investigacion-parlamentarias/>

⁴⁵ See:

<https://www.europapress.es/nacional/noticia-fiscales-supremo-piden-garcia-ortiz-actue-contrataques-junts-jueces-20231219150153.html>

⁴⁶ <https://www.poderjudicial.es/cgpi/en/Judiciary/General-Council-of-the-Judiciary/Pressroom/Press-Releases/El-presidente-del-CGPJ-exhorta-a-los-poderes-del-Estado-a-no-ser-complices-de-la-deslegitimacion-del-Poder-Judicial-con-sus-actitudes-o-con-sus-silencios->

⁴⁷ <https://www.europapress.es/nacional/noticia-fiscalia-pide-supremo-archivar-querella-podemos-contrajuez-garcia-castellon-la-lawfare-20231219115730.html>

⁴⁸ <https://www.poderjudicial.es/cgpi/es/Poder-Judicial/Tribunal-Supremo/Noticias-Judiciales/El-Tribunal-Supremo-inadmite-una-querella-de-Podemos-contralos-jueces-Garcia-Castellon-y-Joaquin-Gadea-por-la-reapertura-de-la-causa-de-financiacion-ilegal>

At the time of writing these lines, the tension between the executive branch, and the legislative branch and the judiciary is increasing. It places the judiciary as a power subject to continuous attacks from the political sphere.

B. Quality of justice

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

The judgment of November 30 of the Supreme Court 1611/2023⁴⁹ is a very positive advance in relation to the recognition of the legal standing of organizations working in the defense and promotion of the rule of law. This ruling recognizes the right of Hay Derecho Foundation to appeal a decision of the Government that did not comply with the legally established criteria to make the appointment of the President of the Council of State. The Council of State is a constitutional body whose function is to be the supreme consultative body of the government. Law 3/1980 of April 22 of the Council of State requires the president to be a jurist of recognized prestige and have experience in matters of state. The person chosen for the position, Magdalena Valerio, did not have a recognised jurist career, according to the Supreme Court.

This marks a trend toward a less rigid understanding of the legitimate interest necessary to base legal standing, which opens the door to an end to the impunity of arbitrary decisions of the Public Powers. This might improve the proper functioning of institutions through strategic litigation actions. This is undoubtedly an important milestone that favors greater access to justice for civil society organizations working in the field of the rule of law, or in other relevant areas and that can also potentially benefit from this extension of legal standing

Paradoxically, however, the Government, represented by the Minister of Justice, has considered this ruling as a problem, as it extends the legal standing to “private” entities and not as the progress it is to control the acts of the Executive Power -and has said so in a press conference in Brussels after his meeting with the Commissioner of Justice, Reynders⁵⁰. Media and jurists close to the government have been very critical of the ruling, which is another example of the growing illiberalism and questioning of the Judiciary as a power that must control the executive power. In this sense, the arguments used by some jurists recall the old theory of the political acts of Franco’s regime, which defended the exemption from the jurisdictional control of certain acts of the Government. It reappears now⁵¹, but only when the result of judicial control is contrary to the political interest that is being defended, which is also profoundly inconsistent. Other analysts have underlined the importance for the rule of law that civil society organisations are able to challenge government actions that may contravene legal precepts, and the importance of a system with objective criteria for appointments, such as the one used in the European Union for the election of judges and advocates general of CJEU⁵².

The first tendency is also inconsistent with the transposition of EU directives such as Law 2/2023 of 20 February, regulating the protection of whistleblowers.

⁴⁹ Available

in: https://www.hayderecho.com/wp-content/uploads/2023/11/2022_0000918_002_20231062463627320231130131512_001_2807913004320239000000904.pdf

⁵⁰ <https://www.europapress.es/nacional/noticia-amp-bolanos-cree-ts-abre-puerta-entidades-privadas-cuestionen-gobierno-revo-car-valerio-20231130183918.html>

⁵¹ See for example: https://www.infolibre.es/opinion/ideas-propias/tribunal-supremo-abre-caja-pandora_129_1660920.html#google_vignette

⁵² See: <https://twitter.com/danielsarmiento/status/1730539073775825118?s=48&t=kAhs40cOgv3YiBLXF9hk>

Resources of the judiciary (human/financial/material)

In recent years, Spain's spending on justice in relation to GDP is above the European average (according to CEPEJ 2020 data published in its 2022 assessment⁵³). And yet the number of judges and prosecutors per inhabitant is low, which shows a problem of efficiency. The investment does not have, for now, an appreciable return in terms of improving the administration of Justice.

According to data from the Ministry of Justice itself, the budget of the Ministry of Justice for 2023 amounts to 2,304 million euros, which is 7.83% more than in 2023⁵⁴. The CEPEJ 2022 report stated that the justice budget in Spain is 87.9 euros per inhabitant, which is equivalent to 0.37% of GDP. In Europe, the median is 64.5 euros per capita, 0.30% of GDP.

In the last CEPEJ evaluation report, the figure was 11.2 judges per 100,000 inhabitants, with the average in Europe being 17.6 judges per 100,000. According to data from the CGPJ relating to 2022 (published in 2023), the number of judges per 100,000 inhabitants is 12.1⁵⁵. We can thus see a slight improvement.

In the absence of new available data from the CEPEJ and without the chance to make comparisons with respect to previous years and with respect to other countries, it should be stressed that the judiciary calls for a greater number of seats of judges and magistrates to be able to cope with the bottlenecks and remedy the current slowness of justice. On June 1, 2023, the CGPJ developed a strategic plan to know the situation of the judicial branch and the needs for an increase in staff until 2032. It was warned of *the need for an annual offer of between 310 and 320 places during the analyzed period to ensure the proper development and functioning of the Administration of Justice*⁵⁶. In this communication it was also noted that there are 5,799 units (seats), 18 of which are pending to enter into operation. However, according to the data available to the CGPJ, the places actually filled are 5,490, which means that there are 309 vacancies. The study concludes that the number of judges in ten years should be 6,499 to ensure the proper functioning of the Justice.

On November 2, the call for new positions of judges and prosecutors was published: A total of 200 (120 for the judicial career and 80 for prosecutors)⁵⁷. The judges and prosecutors' associations have considered that these places are scarce, since it represents a reduction of 33% compared to previous years (in 2019 and in 2020, a total of 300 places were called each year). No reasonable justification has been provided considering that Spain has fewer judges per inhabitants than the European average⁵⁸.

It should be noted as positive progress the recent approval of Royal Decree 1170/2023, of December 27, creating seventy judicial units for 2023, and an change in the judicial distribution⁵⁹. This royal decree supposes an extension of the resources that can contribute to alleviate the situation of collapse of the justice system, and consequently improve access to justice.

However, we do want to highlight a growing anomaly regarding temporary posts (*comisiones de servicio*) granted by the CGPJ to fill positions that are vacant and which they could not access under a merit contest

⁵³ https://www.coe.int/en/web/cepej/special-file-report-european-judicial-systems-cepej-evaluation-report-2022-evaluation-cycle-2020-data-?p_p_id=56_INSTANCE_Pec933yX8xS5&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-4&p_p_col_pos=1&p_p_col_count=2

⁵⁴ <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/justicia/Paginas/2022/071022-pge-2023.aspx#:~:text=%5BPre%20Actualidad%5D-.El%20presupuesto%20del%20Ministerio%20de%20Justicia%20para.a%202.304%20millones%20de%20euros&text=De%20ellos%2C%202.197%2C36%20millones.PGE%202023%20%2D%20Ministerio%20de%20Justicia.>

⁵⁵ CGPJ 2022 memory, p.429.

⁵⁶ Communication available at this

link: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/En-Portada/El-CGPJ-calcula-que-la-oferta-anual-de-plazas-en-los-proximos-diez-anos-debe-oscilar-entre-310-y-320-para-garantizar-un-buen-servicio-publico-de-Justicia->

⁵⁷ Link to the call: <https://www.boe.es/boe/dias/2023/11/02/pdfs/BOE-A-2023-22434.pdf>

⁵⁸ Access to the press release at: <https://twitter.com/FJuecesIndepend/status/1720024930358530189>

⁵⁹ [https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-26453#:~:text=A%2D2023%2D26453-.Real%20Decreto%201170%2F2023%2C%20de%2027%20de%20diciembre%2C%20de.a%20172809%20\(39%20p%C3%A1gs.%20\)](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-26453#:~:text=A%2D2023%2D26453-.Real%20Decreto%201170%2F2023%2C%20de%2027%20de%20diciembre%2C%20de.a%20172809%20(39%20p%C3%A1gs.%20))

because they lack sufficient objective merits⁶⁰. In this way, these *comisiones de servicios* of judges and prosecutors can be used to grant professional promotions or place in key positions specific people who owe a favor to those who have appointed them. They may allow for the placement of “ad hoc” judges in certain positions and are often renewed for longer than the law allows (two years), reconvening the position once two years have elapsed, and again awarding it to the same candidate.

Finally, the legal standing of judicial associations to appeal the decisions of the CGPJ on this type of appointments is limited, given the restrictive interpretation of the legal standing that has been maintained so far by the Supreme Court on similar occasions. In this sense, the problem is that the burden of litigation falls on the judges who presented their candidacy to the position, and an individual judge will rarely be able to invest necessary time and money to litigate against the CGPJ.

It is surprising how many positions in the *Audiencia Nacional* (national judicial body that instructs and prosecutes certain crimes of corruption, terrorism, drug trafficking or large-scale scams) that are covered in this way. Ordinary access is by seniority and only the presidencies of Courts are elected by the CGPJ. However, these commissions, provided for by law to solve exceptional situations are used in practice constantly, which means modifying the composition of the Court⁶¹.

It is also interesting to note that the Supreme Court has ruled in three recent judgments that judges who are occupying positions assigned to the category of magistrates (which is possible through a *comisión de servicios*) should only collect their salary as a judge⁶².

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

In 2023 we are not aware that there have been significant changes affecting the training of judges in Spain.

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)

It should be noted that on 20 December, Royal Decree-Law 6/2023⁶³ of 19 December was published, approving urgent measures for the implementation of the Recovery, Transformation and Resilience Plan (RRP) in the field of public justice, civil service, civil service, civil service, civil service, civil service, civil service, civil service, civil service, etc. local regime and patronage. This Royal Decree-Law responds to Spain's commitment to the Recovery, Transformation and Resilience Plan, included in Component XI, and includes measures aimed at transparency, efficiency and accountability of public authorities in the context of the digital transformation of Spanish justice. We highlight the following measures:

- On a positive note, it highlights the drive to digitalization that aims to guarantee the interoperability of data between all judicial and fiscal bodies, the identification and access to signature of those

⁶⁰ Article 216 bis of the Organic Law of the Judiciary establishes the criteria for covering these places, but they enjoy a great breadth, which allows the CGPJ a great margin of appreciation. [STS 18 November 2020](#) has confirmed the broad discretion of the CGPJ by noting that. “The designation must be made ... in a casuistic and singularized manner according to the specific concurrent circumstances; and, for this reason, the Council must be recognized with broad discretion in order to determine the criterion that must decide the designation according to the singularity that each situation presents.”

⁶¹ More

information: <https://www.hayderecho.com/2023/11/09/manual-de-trampas-las-comisiones-de-servicio-en-la-audiencia-nacional-o-como-hacer-carrera-con-independencia-de-la-antigüedad-y-los-meritos/>

⁶² More

information: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Noticias-Judiciales/El-Tribunal-Supremo-establece-que-los-jueces-en-plazas-de-magistrados-deben-cobrar-el-sueldo-base-de-juez> . Judgments: 1648/2023, of 11 December, [1691/2023, of 14 December](#), and [1670/2023, of 13 December](#).

⁶³ Link to the publication in the Official State Gazette of the Royal Decree-Law: <https://www.boe.es/buscar/doc.php?id=BOE-A-2023-25758>

involved in non-face-to-face actions through the incorporation of a unique and personalized access system: The Justice Folder (*Carpeta Justicia*) with the Citizen Folder of the State Public Sector.

- It is committed to digitalization in all phases of the procedure, including now also the first citation of legal entities (until now it was done on paper).
- Telematic court hearings are generalized, except in the case of interrogation of parties, witnesses and experts, although they may request that it be telematic if they reside elsewhere. The implementation of this provision is subject to the judicial body having the necessary technical resources.
- The rule establishes mandatory electronic processing and adds a provision for administrations to provide the bodies with the necessary and adequate means to carry it out⁶⁴.

In short, this Royal Decree-Law includes important measures to speed up the digitization of public justice services, and to overcome some obstacles that prevented the proper functioning of electronic justice, especially in terms of interoperability⁶⁵. However, it would have been desirable that measures of such magnitude had been approved after a calm process within the framework of the common legislative procedure and not through a Royal Decree-Law that are foreseen by law for “extraordinary urgency and necessity” situations, given that in this way relevant institutions such as the CGPJ, The Prosecutor General’s Office, the Council of State and the professional associations of lawyers and solicitors have not been able to issue opinions on this rule, nor with the mandatory reports required by a bill (the ordinary way of processing the laws) nor through the procedure of public consultation that requires an ordinary procedure. Royal Decree-Laws, by virtue of Article 86 of the Constitution, must be validated within 30 days of their approval in order to continue to have effect. On 10 January, the Congress of Deputies validated this Royal Decree-Law “in extremis” in exchange for new concessions to the Junts party, which had announced its vote against and finally abstained⁶⁶.

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)

Although the CGPJ remains the main body that produces studies, statistics and data in relation to the Judiciary, it is important to note that these studies still suffer from some problems related both to their scope and ease of downloading and viewing. On the other hand, we are not aware if satisfaction surveys are carried out to professional users of the Administration of Justice, such as solicitors and lawyers.

In relation to citizens, the preliminary results of a study of the Centre for Sociological Research (CIS) on the quality of public services have been recently published (26.12.2023)⁶⁷. The results show that the public service of justice is the worst valued: 66% of citizens feel little or not satisfied with the administration of justice, 18% consider themselves quite satisfied and only 3% very satisfied.

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

⁶⁴ A more detailed analysis can be found

at: <https://delajusticia.com/2023/12/21/impacto-del-real-decreto-ley-6-2023-sobre-el-proceso-contencioso-administrativo/>

⁶⁵ In this article by Magistrate Natalia Velilla we can observe the problem of the lack of interoperability to provide a good service of justice to citizens: <https://www.hayderecho.com/2023/12/11/el-sistema-fallo-en-el-parricidio-de-sueca/>

⁶⁶ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2024-665

⁶⁷ Link to the results

progress: <https://www.cis.es/-/avance-de-resultados-del-estudio-3430-calidad-de-los-servicios-publicos-xiv-?redirect=%2Finicio> and to the press

release: <https://www.cis.es/-/el-73-8-de-los-espanoles-utiliza-internet-para-gestiones-con-la-administracion-publica>

There are no significant changes on this point. The development of specialized judicial bodies in corruption crimes, as in other cases, such as gender-based violence, remains desirable.

C. Efficiency of the justice system

Length of proceedings

Although in Spain citizens are equal before the law, in practice the administration of justice depends on where they reside. The latest data published by the CGPJ for the year 2022⁶⁸ and in relation to the average time of resolution (in months) of the courts of 1st Instance and 1st Instance and of Instruction (proc. civilians), reads as follows:

In Navarre it takes on average 4.2 months in 2022

In Aragon it takes on average 5.2 months in 2022

In Castilla y Leon it takes on average 9.8 months in 2022

In Murcia it takes on average 10.8 months in 2022

In Madrid it takes on average 8.7 months in 2022

On the other hand, if we compare Courts of First Instance and Courts of Instance and Instruction (proc. penalties),

In Navarre it takes on average 2.0 months in 2022.

In Aragon it takes on average 1.7 months in 2022

In Castilla y Leon it takes on average 5.2 months in 2022

In Murcia it takes on average 3.5 months in 2022

In Madrid it takes on average 2.2 months in 2022

Therefore, although there is one judicial power, there is a lot of disparity between the Autonomous Communities. Differences may have implications not only for citizens' rights, but also in terms of legal certainty and even investment opportunities.

The deadlock in the CGPJ and the law that has prevented the incumbent CGPJ to appoint new magistrates in the Supreme Court has lengthened the duration of proceedings in this Court. In this regard, as noted above, the Governing Chamber of the Supreme Court published on January 18, 2023 a report indicating that the impossibility of making appointments, together with the uncertainty about when the CGPJ will be renewed, undermines the capacity of the Supreme Court. The vacancies at the time of publication of the communication were 9 of the legal staff of 79 (24%) and in the coming months of 2023 it was estimated that they will add 24 vacancies of 79 places, What will represent a percentage of 30.37 percent also indicates the report that in 2023 only in the two rooms most affected by vacancies, which are the Social and the Contentious-Administrative, about 1,230 fewer court decisions will be issued in 2023 (570 less in Contentious and 660 in Social)⁶⁹.

II. Anti-Corruption Framework

Please provide information on measures taken to follow-up on the recommendations

⁶⁸ Information accessible at this

link: <https://www.poderjudicial.es/cgpj/es/Temas/Transparencia/Estimacion-de-los-tiempos-medios-de-duracion-de-los-procedimientos-judiciales/>

⁶⁹ Link to the statement of January 18,

2023: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/La-Sala-de-Gobierno-del-Tribunal-Supremo-insta-a-las-Cortes-a-dar-una-solucion-inmediata-a-la-situacion-insostenible-del-tribunal-con-un-30-por-ciento-de-vacantes>

received in the 2023 Report regarding the anti-corruption framework (if applicable)

The 2023 report included the following recommendations regarding the framework for the fight against corruption:

- to proceed with the approval of the law on the activity of interest groups, including the establishment of a mandatory public register of interest groups;
- Intensify efforts to address problems arising from the duration of investigations and prosecutions in order to increase efficiency in the conduct of high-level corruption issues, in particular by completing the reform of the Criminal Prosecution Act;
- Strengthen the rules on conflicts of interest and declarations of assets of senior officials of the Administration by strengthening the sanctioning powers of the Office of Conflicts of Interest;
- Making progress in improving access to information, in particular by reforming the Official Secrets Act, taking into account European rules on access to official documents.

No progress has been made on these recommendations during 2023.

However, Law 2/2023 regulating the protection of persons reporting on regulatory violations and the fight against corruption has finally been approved. This law transposes Directive (Eu) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting on infringements of Union law, although it is still pending development in many essential aspects. Importantly, regarding the creation of the Independent Authority for the Protection of the Informer, which is also the guarantor of ensuring compliance with the obligations established in the rule and imposing, where appropriate, the corresponding sanctions.

On the other hand, the processing of a bill is underway that can represent a significant setback in the fight against corruption, in addition to a significant erosion of fundamental principles of the rule of law. We refer to the proposal of an amnesty law⁷⁰ (the official name is proposal of organic amnesty law for institutional, political and social normalization in Catalonia) that is currently in parliamentary proceedings: This law was required by the Junts per Catalunya (whose leader, Carles Puigdemont, is a fugitive from the Spanish Justice) in exchange for the seven votes that Pedro Sanchez needed to be re-invested President of the Government.

This bill includes the amnesty of the crimes of embezzlement of public funds in addition to all those committed in relation to the pro-independence process of Catalonia, sending a very worrying message to the citizens in the sense that if votes are necessary at a certain juncture, rule of law and the principle of equality before the law can be waived. Certain crimes, in particular, those of embezzlement and illicit use of public funds, can be amnestied if a political purpose is invoked.

Hay Derecho Foundation informed the Commissioner of Justice of the risk presented by the announced legal text (not known at that time)⁷¹. Although it is true that the draft law, with the clear aim of preventing the intervention of the European Union, expressly leaves out of its scope the crimes of embezzlement that affect European funds. It is not clear to what extent it will be feasible in practice. In any case public embezzlement crimes should not be amnestied for political reasons, whether they are European funds or not. This is a very important step back in the fight against corruption. It adds to the reform of the crime of embezzlement introduced by Organic Law 14/2022, which reforms Organic Law 10/1995, of November 23, of the Criminal Code, a change also imposed by the pro-independence partners of the coalition government to the benefit of their politicians.

In addition, there is a certain risk that certain pro-independence politicians convicted of “ordinary” corruption will try to avail themselves of the amnesty law, as is the case Laura Borrás, president of Junts party, who was sentenced to four and a half years in prison for corruption in March 2022. The conviction stems from the fraudulent award of public contracts worth more than 300,000 euros when she held the position of

⁷⁰ https://www.congreso.es/public_oficiales/L15/CONG/BOCG/B/BOCG-15-B-32-1.PDF

⁷¹ Letter available at: <https://www.hayderecho.com/portfolio-item/asunto-sobre-el-estado-de-derecho-en-espana/>

president of the Institution of Catalan Literature (ILC), which depends on the Ministry of Culture. Although this case is not linked to the independence process, the inclusion of the mention “lawfare cases” in the agreement between Junts and PSOE could lead to an attempt to include cases such as this in the amnesty. It is noteworthy that Laura Borrás made a change in the party’s statutes, introducing that in the event that a militant was convicted of “lawfare cases” he/she would not be dismissed from office⁷².

In short, we are facing a frontal attack on basic principles of the rule of law that heightens the risk of corruption regarding the financing of political parties. There is no doubt that this is an amnesty introduced to benefit certain specific people: former high officials of the Government with pending trials for embezzlement for various actions related to the independence process. It applies for crimes committed from January 1, 2012 until November 13, 2023 and it can also be extended.

In our view, regardless of other considerations on the amnesty law, in the specific field of the fight against corruption, the message that is sent to politicians with open causes or with convictions for embezzlement is of total impunity as long as their votes are necessary for the current government.

Finally, the recommendation in the 2023 report on the need to complete the reform of the Criminal Procedure Act (LECrim) has not been implemented. In this respect, we do not know whether it will be carried out, since it clearly does not appear to be a political priority.

In any case, we consider that entrusting the instruction to the Prosecutor’s Office in a situation of extreme politicization and polarization such as the current one introduces a very great risk for the rule of law in Spain. This reform should only come together with the reform of the Statute of the *Ministerio Fiscal* to reinforce the autonomy and professionalism of the prosecutors, ending with the possibility of hierarchical superior being able to distribute the cases⁷³.

It should be added that the processing of the amnesty law and its subsequent application will face big challenges, given the enormous doubts about the constitutionality and fairness of this law. The Senate’s Bureau (*La Mesa del Senado*) has asked the European Commission for Democracy through Law (Venice Commission) for an opinion on the draft law⁷⁴.

For this reason there is a clear push for the political control of the Prosecutor’s Office, the State Advocate General’s Office and, ultimately, of the Constitutional Court itself. Media outlets and academics close to the government maintain that the political majority of Congress must be reproduced in the Constitutional Court. The attempts of both parties to control the Constitutional Court (TC) led to the crisis of December 2022. A new deadlock in the nomination for the vacancies led to an attempt to change the appointment via amendment in a law that was not related to the matter. A precautionary measure was taken by the TC that prevented the vote in Parliament. The media repeatedly talk of “conservative” and “progressive” magistrates⁷⁵. Although they are named by a large majority and therefore should be persons non aligned to any party, the reality is the parties name their closest judges or jurists and the media refer to this situation as if it were normal.

Finally, it should be noted that the Council of Europe’s Group of States against Corruption (GRECO) has concluded in its plenary session held from 27 November 2023 to 1 December that Spain has not complied with the recommendations of the Fifth Evaluation Round. The evaluation document has not yet been published; it is awaiting the government’s authorisation⁷⁶.

⁷² https://www.elconfidencial.com/espana/cataluna/2023-11-14/laura-borras-ley-amnistia-corrupcion_3773120/

⁷³ More information: <https://www.publico.es/politica/sera-nuevo-proceso-penal-reforma-ley-enjuiciamiento-criminal.html>

⁷⁴ See: https://www.iustel.com/diario_del_derecho/noticia.asp?ref_iustel=1239582

⁷⁵ Some examples of the use of “conservative” and “progressive” labels in the media: https://www.eldiario.es/politica/72-horas-secreto-recuperar-mayoria-progresista-tribunal-constitucional_1_9827004.html ; <https://www.publico.es/politica/via-libre-mayoria-progresista-tribunal-constitucional-despues-nueve-anos-medio.html> ; https://www.elconfidencial.com/espana/2022-12-19/constitucional-mayoria-conservadora-recusacion_3542826/

⁷⁶ <https://www.coe.int/en/web/greco/plenary-meetings#/%2222360354%22%7B%7D%7D>

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).

Another significant setback is the attempt to eliminate the Office of Prevention and Fight against Corruption of the Balearic Islands, at the proposal of the new government in the Autonomous Community (Popular Party and VOX). On October 9, the Popular Party registered in the regional parliament a proposal for a law that provides for the elimination of the office. This proposal has been prepared without having carried out a study or previous report on the activity of the office and its contribution to the prevention and fight against corruption in the Balearic Islands. Numerous civil society organizations⁷⁷ and anti-corruption organizations within the framework of the NEIWA (Network of European Integrity and Whistleblowing Authorities) network have expressed their concern about this situation⁷⁸.

In addition, other similar institutions may be at risk, such as the Anti-Fraud Agency of the Valencian Community. The Popular Party that has replaced the PSOE in the government of the Valencian Community, thanks to the coalition with VOX, after the elections of May 2023 has sown doubts about the operation and effectiveness of the Agency, announcing that changes will be made. These changes have so far materialized in the reduction of the Agency's budget for 2024 by 3.61%⁷⁹. It is noteworthy that the Valencian Agency has been highlighted by the European Commission as the best practice in Spain in the fight against corruption in the manual of fight against corruption of 2023⁸⁰.

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

As mentioned, the Whistleblower Directive has been transposed through law 2/2023, that establishes an Independent Authority for the Protection of the Informer (A.A.I). Although it represents an advance, given that there is currently no such state agency, there are various doubts about its real independence. Indeed, this Authority is linked to the Ministry of Justice, whose holder appoints its President and no open and transparent procedure is specified to allow the submission of nominations for its management, effective accountability mechanisms, and the administration of the Ministry of Justice. As well as the participation of civil society in the Authority.

Although the law has generated obligations for companies and public entities at different times according to their size (the creation of channels to report on violations), the National Authority has not yet been created and therefore these obligations can be breached without any consequence. In short, there is currently no body in charge of monitoring law enforcement at the national level.

At the regional level the AVAF is carrying out this work for the Valencian Community, concluding that of the

⁷⁷ <https://www.hayderecho.com/portfolio-item/declaracion-conjunta-de-organizaciones-de-la-sociedad-civil-en-contra-de-la-eliminacion-de-la-oficina-de-prevencion-y-lucha-contra-la-corrupcion-en-las-illes-balears/>

⁷⁸ <https://www.antifrau.cat/es/red-neiwa-autoridades-europeas-integridad-proteccion-personas-alertadoras-expresado-preocupacion-delante-cierre-oficina-prevencion-lucha-contra-corrupcion-islas-baleares>

⁷⁹ https://www.eldiario.es/comunitat-valenciana/bipartito-pp-vox-baja-presupuesto-agencia-valenciana-antifraude_1_10643077.html

⁸⁰ https://home-affairs.ec.europa.eu/news/handbook-good-practices-fight-against-corruption-2023-02-15_en

municipalities of more than 10,000 inhabitants have fulfilled the 31 of 102 and of those of less than 10,000 50 of 440⁸¹.

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

Law 2/2023 establishes that the Government “within a maximum period of eighteen months from the entry into force of this law, shall approve a strategy against corruption that shall at least include an assessment of the fulfillment of the objectives established in this law as well as the measures deemed necessary to alleviate the deficiencies that have been found in that period of time.” This means that the strategy must be approved by 13 September 2024. We are not aware at this time that procedures have been initiated for its preparation, nor how the process will be carried out.

A. Prevention

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

We are not aware of any progress in terms of incompatibilities rules, codes of conduct or training in the field of integrity in public administration.

In the field of revolving doors, we can mention the approval in 2022 of the Draft Law on Transparency and Integrity in the activities of stakeholders by the Council of Ministers, which was finally paralyzed after the public information phase. The procedure is desirable to be resumed in the new legislature.

With regard to revolving doors, particularly within the public sector, recent examples highlight that this practice has been accentuated in recent months:

- Miguel Angel Oliver has been appointed president of the EFE news agency (public company). Miguel Angel had held the position of Secretary of State for Communication in the previous legislature of Pedro Sanchez between 2018 and 2021. This appointment has been strongly criticized by public opinion given the damage to the appearance of impartiality of the public agency that it can entail, due to Oliver's closeness to the government and given his role as Secretary of State. It has generated protests among journalists. The editorial of the newspaper El Pais of December 8 is⁸² very critical of this appointment for damaging the image of the state agency and the government itself. The newspaper includes this appointment in an observable drift of the government to prioritize the *occupation without complexes of the spaces of power by those closest* to the needs of effective management of these organizations.
- Another case is the renewal of the presidency of the Center for Sociological Research (CIS) of José Felix Tezanos. Tezanos was named in 2018 and was then a member of the PSOE executive as secretary of studies and programs, and Sanchez's trusted man. His previous mandate has not been without controversy, highlighting the criticism of experts due to its repeated failures in polls (always with a strong bias for the PSOE) and the biases in the formulation of specific questions related to government action⁸³.
- The former Minister of Transport, Mobility and Urban Agenda from 2021 to 2023, has passed to chair the public company *Paradores de Turismo*⁸⁴, which manages tourist accommodation

⁸¹ Information available

at: <https://www.antifraucv.es/solo-134-administraciones-publicas-han-presentado-en-el-registro-de-la-agencia-valenciana-antifraude-a-los-responsables-de-su-sistema-interno-de-informacion/>

⁸² <https://elpais.com/opinion/2023-12-08/respeto-a-la-agencia-efe.html>

⁸³ In this article by Kiko Llaneras in El Pais, Tezanos' performance during his term is described in light of the renewal: <https://elpais.com/actualidad/newsletter-kiko-llaneras/2023-12-09/tezanos-no-acierta-falla-de-la-peor-forma-siempre-e-n-una-direccion.html>

⁸⁴ https://www.elespanol.com/invertia/empresas/turismo/20231227/exministra-raquel-sanchez-nueva-presidenta-paradores/820418236_0.html?utm_medium=Social&utm_campaign=Besocyt&utm_source=Twitter&tcode=N2Zjdmx

belonging to the State heritage. Although this entity is public and not private, it is striking the use as a reward of positions in public companies (which are usually better paid than those of Minister)

- The former Secretary of State for Transport, Mobility and Urban Agenda Isabel Pardo de Vera, was about to take office as President of Asval (Association of Homeowners for Rent). The appointment was awaiting the report of the conflict of interest office but ultimately has not occurred. The announcement of the possible appointment by the media generated much controversy, given that Pardo de Vera was part of the government team that was responsible for negotiating the Housing Law, which includes a provision that allows to limit rental prices in stressed areas. According to the media, Pardo de Vera would have shown a more aligned position with the protection of the housing market and the owners, which would have brought her closer to Asval⁸⁵.

This is especially worrying as it gives an image of lack of independence, especially at a time of great tension between the executive and the legislative branches and the judiciary.

The transition from the Judiciary to politics and vice versa is being normalized. The case of Victoria Rosell, a magistrate who has held the positions of Delegate of the Government of Gender Violence, stands out. During the previous legislature, she has served as spokesperson for the Justice Commission, 1st Vice-President of the commission for the follow-up of the State Pact against Gender Violence, 1st Secretary of the Joint committee on Relations with the Ombudsman and member of the Equality Committees, Of democratic quality and territorial policy and public function. Victoria Rosell left her place as a magistrate in 2016 to be a congresswoman with the Podemos party and has been until today. Victoria Rosell has requested re-entry into the judicial career, which has been approved by the Permanent Commission of the CGPJ on December 13, 2023⁸⁶.

Last year, in one of the attempts of the PSOE and PP to renew the CGPJ, the possibility of a *cooling off period* of two years before returning to judicial activity was considered. This measure had already been proposed by the Popular Party on the occasion of the re-entry of Juan Carlos Campo into the National Court (Minister of Justice during the first years of the previous legislature)⁸⁷. He is currently a judge of the Constitutional Court (another example of this widespread practice of revolving doors between politics and justice).

This measure would prevent cases that undermine the appearance of independence of the judicial system. This practice is widespread in relation to the so-called revolving doors between public and private officials, as stated in the European Commission Report 2023 on the Rule of Law⁸⁸. This has been positively valued in relation to the judges of the Hungarian Constitutional Court by the Venice Commission in its Opinion No 665 / 2012⁸⁹.

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)

We are not aware of any progress. The regulation of lobbying in Spain is still pending. On other issues, relating to transparency in relation to gifts, declarations of goods and interests or transparency of party financing, the problem in general focuses on the lack of measures to ensure compliance in a way that depends basically on the will of those affected.

Rules and measures to prevent and address conflicts of interest in the public

⁸⁵ <https://www.elmundo.es/economia/2023/12/15/657c412621efa01b3f8b4593.html>

⁸⁶ Access to the CGPJ

agreement: <https://www.poderjudicial.es/cgpj/en/Services/Agreements-of-the-CGPJ/Agreements-of-the-Standing-Committee-of-the-CGPJ/Acuerdos-de-la-Comision-Permanente-del-CGPJ-de-13-de-diciembre-de-2023>

⁸⁷ <https://www.europapress.es/nacional/noticia-pp-plantea-dar-vuelta-reingreso-politicos-carrera-judicial-pedir-campo-volver-an-20210714185251.html>

⁸⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023DC0800>

⁸⁹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)009-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)009-e)

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)

In the field of prevention and regulation of conflicts of interest, we are not aware of any improvements or progress.

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

It is important, as already mentioned, to highlight the transposition of Directive 2019/1937 into Law 2/2023 regulating the protection of persons reporting on regulatory infringements and the fight against corruption of 20 February and which entered into force on 13 March.

Law 2/2023 establishes for the first time a general protection framework for whistleblowers that takes the spirit of the Directive in creating a culture of reporting wrongdoings.

However, the law presents a number of important shortcomings, as we have already indicated, which can become practical obstacles to implementing European standards for the protection of whistleblowers in Spain:

- As it has already been pointed out, the law establishes an Independent Authority for the Protection of the person who reports (A.I.A.), responsible for the processing of corruption complaints, but whose link to the Ministry of Justice raises doubts about its independence.
- Furthermore, a system of non-admission of complaints is established that exceeds the provisions of the Directive. Article 18.2 states that inadmission/dismissal is permitted where the communication is manifestly groundless or there are rational indications that it has been obtained by the commission of a crime, which is not covered by Article 21 of the Directive.
- In the same direction, a protection exclusion regime is laid down that is broader than that provided for in the Directive (Article 35.2). Thus, protection is excluded in cases of contracting files that contain classified information or have been declared secret or reserved.
- Limiting protection to very specific criminal and administrative offenses (serious and very serious administrative offenses or offenses) means that citizens must have a good knowledge of criminal and administrative law (if reported behaviors are not framed in these cases, complaints will not be processed). In short, whistleblowers can observe wrongdoings and not find an adequate channel to report them.
- Furthermore, Article 36.2 provides for a two-year time limit on the protection of the complainant, which is not covered by the directive and which is also very limited if taking into account the duration of proceedings and the persistence of reprisals.

In relation to the number of reports received and the follow-up given, it is advisable to point out the work of the Valencian Anti-Fraud Agency (AVAF), which is the only territorial agency that has the powers to protect informants since its creation in 2016. As mentioned, AVAF was included in the *Handbook of good practices in the fight against corruption* of the European Commission. The AVAF Annual Report 2022 (published in 2023)⁹⁰ shows that a total of 453 reports have been received, 60.71% refer to matters related to the municipal administration. 44% to human resources management and 14% to public procurement. Regarding the follow-up, of the complaints analyzed in 2022, 42% have been archived, 33% have been inadmitted and 25% have led to starting an investigation procedure. Among those reports under investigation, 88% have resulted in the issuance of recommendations.

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

- **Measures taken/envisaged for monitoring and preventing corruption**

⁹⁰ AVAF 2022 annual report available in: <https://www.antifraucv.es/memorias-informes-y-dictámenes-2/>

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)**

In general, as we explained last year, the areas most linked to corruption and the illegal financing of parties are public procurement, especially major infrastructure or service works. No particular progress is observed on these points. On a positive note, the Central Court of Administrative Appeals and similar regional bodies allow a certain control of the abuses of public procurement for contracts of significant amounts, but for the rest it is necessary to go before the contentious-administrative jurisdiction.

The Ministry of Defense can be pointed out for the reserved nature of its contracts and for its large volume. Thus, in 2023 it is worth mentioning the fine of the National Commission of Markets and Competition (CNMV) to 4 companies and six managers for distributing tenders of the Ministry of Defense through two cartels⁹¹.

It is also worth highlighting the following cases:

- The Socialist Party of the Valencian Community awarded 500,000 euros in contracts to the son-in-law of the former treasurer of the party⁹² Pepe Catalunya. The latter was charged with alleged irregular party funding in the 2007 and 2008 campaigns.
- In the last year, a Supreme Court ruling confirms the court decision to Manuel Chaves and José Antonio Griñan for the plot of prevarication and embezzlement of public funds known as the "Case of the ERE". The reactions of PSOE to the ruling, such as that of the secretary of Organization of the Andalusian PSOE, Juan Cornejo, on the "honesty and honorability" of the former presidents of the Junta because the illicit enrichment has not been proven⁹³. In 2023, the ruling of the Provincial High Court of Seville (Audiencia Provincial de Sevilla) on a separate piece of the ERE case, which condemns the founders of a company that received more than 300,000 euros from the Junta de Andalucía⁹⁴.

Repressive measures

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

We understand that there is a clear setback in relation to repressive measures around corruption crimes in general and with regard to the crime of embezzlement in particular, based on what is already stated in a previous section of this questionnaire on the reform of the crime of embezzlement contained in the Organic Law 14/2022, of December 22, of transposition of European directives and other provisions for the adaptation of criminal legislation to the law of the European Union and reform of crimes against moral integrity, public disorder and smuggling of dual-use weapons.

The current wording of the amnesty bill in relation to embezzlement crimes in the current state of the bill

⁹¹ <https://www.cnmcc.es/prensa/sancionador-licitaciones-material-militar-20230725>

⁹² https://www.elespanol.com/espana/comunidad-valenciana/20230209/psoe-valencia-adjudico-euros-contratos-extesorero-imp-utado/740176087_0.html

⁹³ <https://www.lavanguardia.com/politica/20191120/471763841551/psoe-corrupcion-andalucia-ere-chaves-grinan.html>

⁹⁴ <https://www.poderjudicial.es/cgpi/es/Poder-Judicial/Sala-de-Prensa/Archivo-de-notas-de-prensa/La-Audiencia-de-Sevilla-imp-one-condenas-de-dos-anos-y-medio-y-dos-anos-de-carcel-a-dos-empresarios-en-una-pieza-separada-del-caso-ERE-por-la-ay-uda-de-384-841-euros-a-EDM-Seneca>

processing is as follows:

Art. 1.1 of the proposed amnesty law in relation to the proceedings to which amnesty is granted:

- The acts determining criminal, administrative or accounting liability, executed within the framework of the consultations held in Catalonia on November 9, 2014 and October 1, 2017:
- (A) *In any case, the acts classified as crimes of usurpation of public functions or embezzlement aimed at financing, suffocating or facilitating the performance of any of the conduct described in the first paragraph of this letter shall be understood to include; directly or through any public or private entity, as well as any other act classified as a crime that has the same purpose.*

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

We are not aware of any progress on this point.

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)

In Spain there are a number of problems or obstacles to investigations of high-level corruption cases.

Firstly, as was pointed out in the contribution to last year's report, it is worth mentioning the existence of a large number of positions under the *aforamiento* figure (competence rules *ratione personae* on privileged jurisdiction in matters of criminal responsibility of members of the Government and the legislative and judicial branches⁹⁵). This implies altering the normal order of adjudication of cases based on jurisdiction, establishing that if one of the accused persons is *aforado*, the procedure will be heard by a specific court (and not by the competent court of investigation for similar cases). This implies that there is a special interest of public and political officials to influence the judicial bodies that are assigned with procedures related to persons with the status of *aforado*.

For example, in the case of deputies (regional parliament members) and high regional officials of the Autonomous Communities, *aforamientos* are maintained before their Superior Courts of Justice, whose Civil and Criminal Chamber includes a magistrate appointed directly by the regional parliament in most cases. In the case of the *aforamientos* before the Supreme Court (for national parliamentarians and high-ranking state officials) the influence is exercised through the appointments of the CGPJ in the Supreme Court. This implies that (indirectly) politicians influence the appointment of the specific judges who would potentially judge them.

On the other hand, we mentioned in the previous report the problem of time limits to the investigation of corruption cases contained in Article 324 of the Criminal Procedure Law. Taking into account the lack of

⁹⁵ As per the explanation of the term included in the 2021 Rule of Law Report. Country Chapter on the rule of law situation in Spain, p.4.

judges (Spain is one of the countries with the lowest number of judges per inhabitant), which is an obstacle in the investigation of the cases, especially regarding macro-causes and those affecting politicians.

Finally, the problem of pardons must be mentioned. In Spain, a Law of 1870 is in place, which allows a wide discretion when granting pardons. All governments have used it in a very wide and very discretionary manner. This tendency is less noticeable thanks to the watchdog role of civil society.

However, in 2022, pardons were granted to the leaders of the Catalan “procés”, convicted by final judgment (against the criteria of the Prosecutor’s Office and the report of the Supreme Court) without the condemned repenting and without appreciable reasons of equity, justice or public utility (the concepts handled by law). The reasons were basically those derived from the need for independence votes by the coalition government. The justifying report included, by the way, a legal differentiation between the pardons (constitutional) and the amnesty (unconstitutional) prepared by the Ministry of Justice⁹⁶.

In the year 2023, we can mention the collection of signatures to request the pardon of José Antonio Griñan⁹⁷, former president of the Regional Government of Andalusia, Sentenced to prison for a firm court decision for his legal responsibility in the case of corruption of the ERE of Andalusia as well as numerous statements by people of his party, such as Guillermo Fernandez Vara (former president of the Junta and general secretary of the PSOE of Extremadura) but also from other environments stating that it is “a good person”⁹⁸.

Despite these difficulties, it is noteworthy that judges and individual prosecutors often perform their functions well, independently and professionally even in mediatic cases where politicians and other people with power are involved, but they certainly have to overcome many obstacles. As evidenced by what happened with the prosecutor Stampa in the so-called “Tandem case”, especially when their hierarchical superiors do not support them or are even responsible for their difficulties.

Finally, it is necessary to mention the progress consisting in the suppression of the *aforamientos* in the Statutes of several Autonomous Communities. This is however pending in other Autonomous Communities and at state level (it was promised by the current President of the Government). In particular, the Autonomous Communities that have suppressed this figure for their deputies and members of the regional government, are: Cantabria, Murcia, Canary Islands, Balearic Islands, And Aragon⁹⁹. La Rioja has approved the statutory modification in the regional parliament and is waiting for approval at state level (in the Congress of Deputies)¹⁰⁰. Such a reform at the state level would be desirable, as it is mentioned in the 2021 Rule of Law report in line with GRECO’s recommendations: *In Spain there are rules of competence ratione personae relating to the privileged jurisdiction in matters of criminal responsibility of members of the Government and of the legislative and judicial powers (known as “aforamiento”). The Group of States against Corruption (GRECO) recognizes the independence and impartiality of judges and prosecutors; it has also highlighted the very broad conditions of the Spanish law enforcement regime and pointed out the*

⁹⁶ Report of June 22, 2021: Reasoned proposal submitted by the Minister of Justice for the granting of pardon to Don Oriol Junqueras I Vies, available at: (Reference to page

30): https://www.elindependiente.com/wp-content/uploads/2021/06/21.06.22_Oriol-Junqueras.pdf

⁹⁷ https://www.elconfidencial.com/espana/2022-08-28/entorno-de-grinan-3-000-firmas-apoyo-indulto_3480460/

⁹⁸ <https://www.lavanguardia.com/local/extremadura/20220726/8433047/vara-afirma-sique-pensando-grinan-buena-persona-con-firmarse-condena-ere.html>

⁹⁹ Cantabria ([Organic Law 2/2021, of 23 March, on the reform of Organic Law 8/1981, of 30 December, on the Statute of Autonomy for Cantabria, for the elimination of the endorsement of the deputies of the Parliament and the President and Councillors of the Government](#)); Murcia ([Organic Law 1/2021, of 15 February, on the reform of Organic Law 4/1982, of 9 June, on the Statute of Autonomy of the Region of Murcia](#)); Canary Islands ([Organic Law 1/2018, of 5 November, on the reform of the Statute of Autonomy of the Canary Islands](#)); Balearic Islands ([Organic Law 1/2022, of February 8, on the reform of Organic Law 1/2007, of February 28, on the reform of the Statute of Autonomy of the Balearic Islands. For the abolition of the approval of the Members of Parliament of the Balearic Islands and of the members of the Government of the Balearic Islands](#)); Aragon ([Organic Law 15/2022, of 27 December, on the reform of Organic Law 5/2007, of 20 April, on the reform of the Statute of Autonomy of Aragon](#))

¹⁰⁰ The procedure was paralyzed at the end of the previous parliamentary term and the new procedure has already begun: See: https://www.congreso.es/gl/propuestas-de-reforma-de-estatutos-de-autonomia?p_p_id=initiativas&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&initiativas_mode=mostrarDetalle&initiativas_legislatura=XV&initiativas_id=127/000001 and <https://www.parlamento-larioja.org/recursos-de-informacion/estatuto-de-autonomia-de-la-rioja-1>

*need to revise the system*¹⁰¹.

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

Far from making progress there has been some significant setback such as the elimination of the Valencia Asset Recovery Office. The current coalition government of the Popular Party (PP) and VOX in the Valencian Community (formed after the autonomous elections of May 2023) agreed to close the Office of Asset Recover. The agency was created in the image and likeness of the office of the same name at the national level. Among its functions are those of “assisting the judicial and prosecutorial bodies” in the location and recovery of profits from criminal activities such as drug and arms trafficking or money laundering¹⁰².

In Valencia its creation coincided with the need to recover the funds subject to cases of political corruption in the region. These functions are assigned to the Advocate Office (*abogacía*) (the office of asset recovery was under the presidency and carried out the monitoring and promotion of the action of the Advocate Office in judicial proceedings and for the execution of court decisions). According to government data up to January 2023, these actions recovered 8,130,139 euros for public funds.

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)

No progress has been made on the recommendation of the 2023 Rule of law report on *Advance with strengthening access to information, in particular via revision of the Law on Official Secrets, taking into account European standards on access to official documents*. The processing of the Draft Law of classified information (official secrets), was paralyzed. We consider that this text has a number of shortcomings, as explained in last year's contribution.

There is also no progress in relation to institutional advertising, nor on safeguards against political interference in the media. On the contrary, there is a growing use of institutional advertising for partisan or electoral purposes. This is particularly evident in the launching of institutional campaigns in electoral periods relating to campaigns not temporarily linked to elections. It stands out for example, the case of the city of Madrid that increased very significantly the amount of money destined to include advertising campaigns in media related to the popular party (PP, which is the party holding the office)¹⁰³. Another example to highlight is the authorization by the council of Ministers of a millionaire institutional advertising contract on the same day as the announcement of the general elections¹⁰⁴.

¹⁰¹European Commission (2021), Report on the rule of law in 2021. Chapter on the situation of the rule of law in Spain, pp. 5-6. (<https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:52021SC0710>)

¹⁰² <https://www.newtral.es/oficina-recuperacion-activos/20230815/>

¹⁰³ <https://www.publico.es/politica/almeida-multiplica-publicidad-institucional-medios-webs-afines-pp.html#md=modulo-portada-bloque:2col-t4:mm=mobile-big>

¹⁰⁴ <https://theobjective.com/economia/2023-05-29/moncloa-440-millones-publicidad/>

A. Media authorities and bodies

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

We are not aware of any progress on this point. In fact, we can name a number of developments that raise some concerns:

- The Ministry of Finance, through the General Intervention of the State Administration (IGAE) has detected unjustified expenses in the leadership of Radio Televisión Española (RTVE-public corporation of radio and national television), denoting a “weakness of internal control” in the justifications of the expenses made in 2021 by the then president of RTVE, José Manuel Pérez Tornero, and seven senior executives¹⁰⁵.
- For years, it has been common for parties to speak openly about the interest in appointing senior officials aligned with their political party on RTVE¹⁰⁶. The previous president, José Manuel Pérez Tornero, resigned declaring the difficulty to manage the public entity given the absence of transversal consensus, or the opportunity to form a plural, stable and coherent majority.”¹⁰⁷ The board of directors of the entity is composed of representatives of the political parties (PSOE, Unidas Podemos, PP and PNV, which are the parties that reached an agreement on its renewal).
- It also highlights at the regional level the case of Radio Television Madrid (regional public entity). In recent years, under the Presidency of the Popular Party in the Community of Madrid, several reforms have been made that have increased the control of the regional Government over the regional public radio and television entity. On June 9, 2021, an amendment to the radio television law of Madrid was approved in single reading, which consisted of the possibility of appointing a provisional administrator by the regional parliament, in the event that the position of director general is not renewed after the end of his term of office. In a further step in the same direction, on December 22, an *omnibus* law was approved (a single law that regulates different matters), which includes the decision to increase the number of members of the Board of Directors of Radio Television Madrid, from 5 to 7 members and a new system for the appointment of the Director General, who will be elected by the General Shareholders Commission (Junta General de Accionistas) at the proposal of the Board of Directors. It should be borne in mind that the General Shareholders Commission is composed of a single shareholder, which is the regional Government. That is, it goes from a system of appointment which required a transversal majority of the regional parliament to an appointment of the government.

The previous draft of the law was subject of a report by the lawyers of the region who warned of the capacity of the proposed measures to increase the control of the regional government over the public entity against constitutional principles such as pluralism of the media¹⁰⁸. In response to this report the law has been slightly amended, although the current wording maintains a higher level of political control than that of the previous system in place¹⁰⁹.

¹⁰⁵ <https://elpais.com/economia/2023-01-12/hacienda-detecta-gastos-sin-justificar-en-la-cupula-de-rtve-en-el-mandato-de-perez-tornero.html>

¹⁰⁶ Some examples of related news: <https://www.elmundo.es/opinion/2018/07/06/5b3e5667e5fdea4b638b4629.html> ; <https://www.elmundo.es/espana/2021/03/01/603d2121fc6c8321058b4573.html> ; https://www.elconfidencial.com/comunicacion/2022-09-27/consejo-informativos-tve-rtve-situacion-limite-tornero-salida_3497291/.

¹⁰⁷ <https://www.newtral.es/eleccion-presidente-corporacion-rtve/20220928/>

¹⁰⁸ <https://elpais.com/espana/madrid/2023-12-13/los-letrados-de-la-asamblea-de-madrid-ponen-en-duda-la-nueva-ley-de-ayuso-para-controlar-aun-mas-telemadrid.html>

¹⁰⁹ The law has been approved and published and accessible

at: https://noticias.juridicas.com/base_datos/CCAA/824135-I-16-2023-de-27-dic-ca-madrid-medidas-para-la-simplificacion-y-mejora-de.html#a6

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

Last year's contribution made reference to the interim situation of the current president of RTVE (as mentioned, the former president, José Manuel Pérez Tornero, resigned due to pressure from the government. PP and PSOE reached an agreement to appoint Elena Sanchez as interim president). This means that the election of the current president has not been carried out through the ordinary procedure that involves the evaluation of the merits of several candidates and the motivation of the election. The interim situation also means that the President has limited powers.

On the other hand, the current composition of the Board of Directors is hampering decision-making, given the distribution of directors by political parties quotas, which hinders the appointment of the management team¹¹⁰.

This situation should be reversed by proceeding to the election of a new Director General in the Plenary of the Congress of Deputies by a majority of ⅔ as set out in the law. The current parliamentary arithmetic makes it difficult for this to happen and there is no willingness to reach consensus and unblock the situation. The interim President herself has called for the new Parliament to elect a full-fledged President¹¹¹.

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

In Spain the Directorate for Telecommunications and Audiovisual Sector of the National Commission of Markets and Competition (Comisión Nacional de los Mercados y la Competencia-CNMV-), authority is in charge of the audiovisual regulation. Among its functions are market analysis, development of regulations on obligations and sanctions to media and market operators, resolution of conflicts and queries raised on the regulations by the various operators, among others.

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

¹¹⁰ <https://www.publico.es/politica/consejero-transfuga-psoe-alia-pnv-pp-boicotear-elena-sanchez-presidencia-rtve.html>

¹¹¹ <https://theobjective.com/economia/2023-07-07/elena-sanchez-rtve-presidente/>

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

We are not aware of any progress on this point. As mentioned in last year's contribution, it is worth noting the lack of transparency in the award of contracts (as the Council of Transparency and Good Governance-*Consejo de Transparencia y Buen Gobierno*- (CTBG) has pointed out, see below) and the political use of institutional advertising campaigns, especially in electoral periods.

In 2023:

- The year has been marked by elections (autonomous and municipal- May 28-, general- July 23-). This has meant an increase in the budget heading for institutional advertising, which has been coupled with an upward trend in recent years (In 2017 with the government of Mariano Rajoy 92 campaigns were launched, while 193 were foreseen for 2023)¹¹². It is important to note that the budget finally executed is usually lower than that expected.
- The National High Court (*Audiencia Nacional*) has confirmed the existence of a cartel of several communication agencies that distributed institutional advertising contracts. This case reached the *Audiencia Nacional* after a sanction by the CNMC in 2018¹¹³.
- The reports on institutional advertising and communication of the General Administration of the State are published annually¹¹⁴, including the adjudicators of the contracts, as required by article 14 of Law 29/2005 of December 29, on Institutional Advertising and Communication. However, this information is related to media or creativity agencies, and it is very difficult to know what specific media outlet the money has finally been allocated to (for example, to which specific newspaper). It is important to note that in 2020 the adjudicators were not included.
- The CTBG called the government to report on which media outlets received public money through institutional advertising. In a resolution of 17 April 2023¹¹⁵, the CTBG asked the Government to report on *which media outlets have been the final recipients of the money invested in institutional campaigns*. The CTBG has marked this resolution as fulfilled¹¹⁶, which happens when the institution communicates to the CTBG what is required of it.

It is important to note that the institution in charge of monitoring institutional advertising is the above mentioned National Commission of Markets and Competition (CNMC).

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

¹¹² Link to the institutional advertising plan 2023: <https://www.lamoncloa.gob.es/serviciosdeprensa/cpci/paginas/PlanesEInformes.aspx>

¹¹³ <https://www.cnmc.es/2018-05-07-la-cnmc-sanciona-5-empresas-y-3-directivos-por-un-cartel-consistente-en-intercambiar>

¹¹⁴ Annual reports accessible at: <https://www.lamoncloa.gob.es/serviciosdeprensa/cpci/paginas/PlanesEInformes.aspx>

¹¹⁵ Link to CGTB Resolution of April 17,

2023: https://www.consejodetransparencia.es/ct_Home/dam/jcr:f0cd370d-edc9-460f-83ac-0a89dbff2aca/R%20CTBG%202023-0251%20%5BResoluci%EF%BF%BDn_expte.%20R-0754-2022%5D.pdf

¹¹⁶ Access to the CGTB monitoring of compliance with

resolutions: https://www.consejodetransparencia.es/dam/jcr:843e9061-f95b-4e5c-b0d4-e45a1a8f5c13/Cumplimiento_AGE_06-10-2023.xlsx

Although we are not aware of any progress on this point, we can provide illustrative examples of various actions of political parties in relation to vetoes and withdrawal of licenses to certain journalists and media outlets.

Throughout 2023, the political party Vox has continued to bar journalists from various media outlets from attending to its campaign events, installations or events- These actions have been reported by the Central Electoral Board in relation to similar events in 2019, decision that was ratified by the Supreme Court through Judgment 357/2021, Judgment 400/2021 and Judgment 543/2021. In this case there was a veto to all media outlets under the PRISA group (media agency) in the acts of the electoral night of July 23¹¹⁷.

On the other hand, as already mentioned, the Partido Popular of Madrid has recently approved (27 December 2023) a law that includes amendments to Law 8/2015, of 28 December, on *Radio Television Madrid*¹¹⁸. It includes some prerogatives that may pose an obstacle to the independence of the body, including the translation of the distribution of political parties in the regional parliament to the election of the Board of Directors. Thus, this goes in the line of reinforcing the political control of the public entity with the traditional “distribution of cards” of the members of the Council among the political parties. Several civil society organizations and trade unions such as *Comisiones Obreras*, *CGT* and *UGT*¹¹⁹ have raised concerns on this measure.

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

We refer here to what was stated in last year's contribution regarding the adoption of Law 13/2022, of 7 July, General on Audiovisual Communication, transposing Directive 2018/1808, on Audiovisual Communication Services¹²⁰. In Chapter IV it provides for the creation of a register of providers and advertising of the ownership regime of audiovisual communication services and video exchange services through a platform.

Precisely, in the Official State Gazette (*BOE*) of December 21, 2023, Royal Decree 1138/2023, of December 19, regulating the State Register of providers of audiovisual communication service, has been published. The law establishes the obligation of providers of audiovisual communication services to register. A sanctions regime is also established in case of non-compliance¹²¹.

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

¹¹⁷ More information about the news: <https://elpais.com/opinion/2023-07-21/vox-veta-a-el-pais.html>

¹¹⁸ The law has been approved and published and accessible at: https://noticias.juridicas.com/base_datos/CCAA/824135-l-16-2023-de-27-dic-ca-madrid-medidas-para-la-simplificacion-y-mejora-de.html#a6

¹¹⁹ <https://twitter.com/FSCdeCCOO/status/1724718136463663139>

¹²⁰ Accessible at: <https://www.boe.es/buscar/act.php?id=BOE-A-2022-11311>

¹²¹ Report of normative impact analysis of the draft Royal

Decree: <https://technical-regulation-information-system.ec.europa.eu/ga/notification/23942/text/I/ES>

of Europe's Platform to promote the protection of journalism and safety of journalists

Last year, we referred to a positive development regarding the presentation of a draft Organic Law on the Protection of the Professional Secret of Journalism, which would regulate the definition of professional secrecy, the personal scope of protection, etc. Likewise, the 2023 Rule of law report states that *journalists continue to face certain difficulties in the exercise of their professional activity*¹²².

The legislative process of the bill has not been continued. The process remained in the request for a report phase on December 14, 2022 and during 2023 no political party has promoted it. The process has automatically declined with the call of general elections. Associations of journalists and trade unions denounced the inaction of political parties during 2023¹²³.

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

As it has been pointed out, a draft law protecting the professional secrecy of journalism was started in December 2022¹²⁴, although it has not been approved.

The arrest of two journalists (from the newspapers El Mundo and El Español) during the protests outside the headquarters of the Socialist Party against amnesty¹²⁵ can also be mentioned.

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)

Public information requests submitted by citizens continue to grow steadily over the years. According to data from the CTBG published in its 2022 report¹²⁶ *in 2022, 2,369 initiatives have been presented by the citizens and other legitimized entities before the CTBG. 88.13% of them (2,088) were complaints filed under Article 24 of the Law on Transparency, Access to Public Information and Good Governance (LTAIBG), both at the state level and at the regional and local level. The rest of the initiatives (...): 146 complaints about the application of the transparency law, 89 requests for access to information and, finally, 47 contentious-administrative appeals against CTBG resolutions issued in complaint proceedings.*

December 9, 2023 marked the 10th anniversary of the approval of the LTAIBG. The law provided for the elaboration of a development regulation that has not yet been carried out (aimed at providing with more details on the application of the law). In 2021 a working group was created for the reform of the Transparency Law, which is a commitment of the IV Open Government Plan 2020-2024. On October 29,

¹²² P.24.

¹²³ <https://www.apmadrid.es/la-futura-ley-de-proteccion-del-secreto-profesional-del-periodismo-lleva-cuatro-meses-paralizada-en-el-congreso/>

¹²⁴ https://www.congreso.es/gl/proyectos-de-ley?p_p_id=iniciativas&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&iniciativas_mode=mostrarDetalle&iniciativas_legislatura=XIV&iniciativas_id=121%2F000135

¹²⁵ More information: <https://www.elmundo.es/espana/2023/11/16/655656a2e9cf4a8a578b45d7.html>

¹²⁶ Available at: https://www.consejodetransparencia.es/ct/Home/Actividad/memorias_planes/memoria2022.html

2022, the initiative to elaborate the development regulation was canceled. The updated version of the Plan includes as commitments the reform of the regulatory framework through the ratification of the Tromsø Convention (see last paragraph of this section) and the reform of the LTAIBG.

It is important to note that the CGTBG does not have the sanctioning power to enforce its own resolutions. Thus, paradoxical situations arise: When a Public Administration agency does not implement the CGTB resolution and does not appeal the decision to the courts, the inaction goes unpunished and the applicants are left without access to the required information. The reform of the transparency law must go in the direction of ensuring that the CGTBG has sufficient powers to ensure that its resolutions are complied with.

In terms of compliance, the percentage is usually between 80 and 90%¹²⁷. Among the bodies that do not comply with the resolutions, the Ministry of the Interior stands out in both 2022 and 2023.

It is worth highlighting a positive milestone in 2023: The ratification of the Council of Europe Convention on Access to Public Documents on 23 October 2023¹²⁸.

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

We are not aware of any progress made in regulations on SLAPPs - strategic lawsuits against public participation-; although some of the claims filed against the media and publishing groups against certain information published by them and that had been the subject of concern have been resolved in 2023:

In particular:

- A court has dismissed Iberdrola's lawsuit against the newspaper El Confidencial for alleged damage to honor, when this newspaper published about the alleged relations between the company and ex- police officer José Manuel Villarejo, accused of criminal organization, bribery and money laundering¹²⁹. The amount claimed by Iberdrola was up to EUR 17.6 million, which is surprisingly high given that Iberdrola's total turnover in 2022 (year of the lawsuit) was 23.9 million¹³⁰, i.e. the company requested more than 70% of what it bills.
- A court has declared the provisional dismissal of the case initiated by Vox candidate to Andalusia, Judge Francisco Serrano, against the newspaper *InfoLibre* for alleged disclosure of secrets, when this media published a corruption case in which the candidate participated¹³¹.

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)

¹²⁷ CGTBG compliance

data: https://www.consejodetransparencia.es/ct_Home/gl/Actividad/Datos-actividades/Estadisticas2023/Estadisticas-Globales-2023.html

¹²⁸ Ratification document available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-21730

¹²⁹ https://www.elconfidencial.com/empresas/2023-03-21/iberdrola-pierde-demanda-elconfidencial_3596014/

¹³⁰ <https://dircomfidencial.com/medios/record-de-facturacion-en-el-confidencial-gracias-a-la-nueva-estrategia-comercial-y-las-suscripciones-20230808-0405/>

¹³¹ https://www.infolibre.es/politica/juez-estrella-vox-fracasa-sentar-infolibre-banquillo_1_1445837.html

As mentioned in previous contributions, in Spain there is a significant deterioration in relation to its independent authorities and other “checks and balances”, due to its growing politicization and the extension of the reprehensible practice of distributing seats among political parties, ignoring the constitutional requirements of broad consensus for its renewal.

We have already mentioned the well-known case of the CGPJ, but it is also worth mentioning that of the Constitutional Court, which in cases of greater political relevance is systematically resolving by blocs (7 progressive magistrates versus 4 conservative magistrates) which raises concerns¹³². It also draws attention to some demonstrations made on public radio about laws that most likely will be challenged before the Constitutional Court by a magistrate of the organ, Maria Luisa Balaguer¹³³.

Another constant practice is the prior announcement of the content of the judgments by means of press releases when the judgment has not yet been notified to the parties, a practice that results in the public conversation revolving around the press release rather than the actual content of the court decision. Moreover, on an occasion the press release referred to a matter that was not the subject of the judgment: In a press release dated October 20, 2023, on the ruling regarding the amendment of the Organic Law of the Judiciary whereby the CGPJ cannot make appointments while in interim situation. The ruling included a paragraph that generated much controversy when talking about the possibility that the CGPJ would be renewed only by one of the parliamentary chambers. Faced with this media stir, the Constitutional Court issued a press release developing that mention of the ruling. The criticisms of this press release have to do with the possibility that a document from the Cabinet of the President of the Constitutional Court acts as interpreter of the constitutional doctrine¹³⁴. The case is especially striking, especially considering that the judgment had not yet been published in the Official Gazette (BOE)¹³⁵. Finally, the informal writing style of many of these notes is to be pointed out.

On a positive note, it is to highlight, the already mentioned ruling of the Supreme Court annulling the appointment of the President of the Council of State. This Council is a control body whose function is to ensure the observance of the Constitution and the proper functioning of the Public Administration and Public Services.

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'/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

The main instrument for evaluating legislative activity is the Regulatory Evaluation Report (*Informe de Evaluación Normativa*), which is prepared to evaluate the annual regulatory plans (*Plan Anual Normativo*) drawn up by the Government itself with the forecasts made for the approval of laws and regulations in the corresponding year. The 2022 Report, published in 2023¹³⁶, follows the trend of previous years with medium-low level of compliance:

- Degree of compliance: 53%

¹³² Some examples: [Judgment on corporate tax, STC 171/2023, of 22 November: JUDGMENT 170/2023, of 22 November:](#)

¹³³ <https://www.rtve.es/play/audios/las-mananas-de-rne-con-inigo-alfonso/maria-luisa-balaguer-amnistia-puede-tener-encaje-no/7002035/>

¹³⁴ <https://www.elmundo.es/espana/2023/10/20/65327b78e9cf4a0b498b45a8.html>

¹³⁵ Analysis on this question: <https://www.hayderecho.com/2023/11/05/requiem-por-el-tribunal-constitucional/>

¹³⁶ <https://transparencia.gob.es/transparencia/ca-valencia/dam/jcr:1fa3dad1-e0e0-4dba-a2eb-5269682c6aed/IAEN%202022.pdf>

- Most of the approved initiatives are royal decrees (138 of 194), in accordance with the annual regulatory plan (276 royal decrees of 368 proposed rules)
- In relation to the planned rules that incorporate or implement EU law, 68% have been approved (69 out of 102)
- Rules not included in the Annual Normative Plan, 186 of which 179 are royal decrees.

It should be noted that in this report, the Royal Decree-Law (Real Decreto-Ley) are not separately counted (fast-track procedure for reasons of extraordinary and urgent need), but are incorporated into the concept of "law" as they have such rank. We will refer to the increase in the use of the Royal Decree-Law in the next section.

As for public policies, currently in Spain there is no uniform system of evaluation of public policies systematically neither ex ante nor ex post. Still, there has been some positive progress on this matter.

Experts note that this is related to the management of the COVID-19 pandemic and given the need for comprehensive monitoring of the implementation of the EU Recovery and Resilience Plan. In particular, it is to note the commitment included in component 29 of the Recovery and Resilience Plan on the efficiency of expenditure involved in the realization by the Independent Authority of Fiscal Responsibility (AIReF) of the so-called *Spending Reviews*¹³⁷, under the principle of *compliance or explanation*. This report is carried out every 6 months and its third edition was published in March 2023.

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)

In recent years and especially during the last legislature (XIV) there has been a disproportionate use of the royal decree-law (Real Decreto-Ley), a fast-track legal instrument, as stated in our Constitution, which considers this instrument for cases "of extraordinary and urgent need" (art. 86.1). The preference for this instrument during these years supposes a degradation given that the ordinary procedure allows for the elaboration of norms to be done in a calm way, attending to criteria of strict necessity, after processes of rigorous evaluation based on the evidence, with amendment procedure and having listened to the citizens (public consultation) and the specific groups affected by the draft law, and with the mandatory reports indicated by the implementing regulations (usually that of the Council of State¹³⁸ and also that of the CGPJ¹³⁹)

¹³⁷ English version

available at: <https://www.sepg.pap.hacienda.gob.es/sitios/sepg/es-ES/Presupuestos/IRG/Paginas/InformesRecomendaciones.aspx>

at: <https://www.sepg.pap.hacienda.gob.es/sitios/sepg/en-GB/Presupuestos/irg/Paginas/InformesRecomendaciones.aspx>

¹³⁸ The opinions of the Council of State are mandatory in the following cases, among others: Regulatory provisions issued in the execution of laws; laws and regulations issued in the execution of international treaties or Community law; of challenging general provisions before the Constitutional Court; of appeals for review; of contractual modifications; resolution of contracts and concessions when contractors formulate opposition to that resolution; or in the case of property liability files, among others. Article 2 of Organic Law 3/1980, of April 22, of the Council of State provides that *consultation with the Council shall be mandatory when this or other laws so established, and optional in other cases. The opinions of the Council shall not be binding, unless the law provides otherwise.*

¹³⁹ Pursuant to Article 561 of the Organic Law of the Judiciary, preliminary draft laws and general provisions dealing with the following matters shall be submitted to the General Council of the Judiciary: Amendments to the Organic Law of the Judiciary; Determination and modification of the judicial demarcations, as well as their capital.; Establishment and modification of the organic staff of Judges and Magistrates, Judicial Secretaries and Personnel at the service of the Administration of Justice; Organic Statute of Judges and Magistrates; Organic Statute of the Judicial Secretaries and of the rest of the personnel in the service of the Administration of Justice; procedural rules or that affect legal-constitutional aspects of the guardianship before the Ordinary Courts of the exercise of fundamental rights; Rules affecting the constitution, organization, operation and governance of the Courts; criminal laws and prison rules; any other matter that the Government, the Courts General or, where appropriate, the Legislative Assemblies of the Autonomous Communities deem appropriate.

In the case of the *Real Decreto-Ley* it is not possible to introduce amendments that can improve the rule, since it is only possible to validate or reject it in a vote on the whole text (the validation process happens within 30 days from its passing). In this regard, it must not be forgotten that this instrument is becoming more and more common. This is often coupled with the introduction of many different kinds of matters in the same law, which makes their validation even more problematic without a quiet parliamentary debate that makes possible the introduction of amendments. This is similar to the so-called *leyes de acompañamiento* that traditionally accompanied the General State Budget Laws, that had little relation with the content of the Budget Law and that were already criticized at the time by the Constitutional Court (although not declared unconstitutional).

As we illustrated in the Report on the Rule of Law of Spain prepared by the Foundation with data from the Congress of Deputies itself, this growing trend in the use of *Reales Decretos-Ley* is to be seen especially during the last legislature. The average of *Reales Decretos-Ley* per month (2.88) stands out as the highest in our democratic history. Thus, by way of example in 2019, 18 *Reales Decretos-Ley* were passed out of a total of 26 approved rules, in 2020, 39 of 53 and in 2021, 32 of 65. This trend has decreased in the last two years: 20 from 74 in 2022, and 5 from 22 in 2023. Although 2023 is not significant because of the holding of elections and the situation of interim government for almost 4 months. However, it is worth mentioning the *Reales Decretos-Ley* 6/2023, of December 19, which approves urgent measures for the implementation of the Recovery and Resilience Plan in the field of public service of justice, public service, local regime and patronage. This law covers different matters. In this sense, it is striking to include in the same law important measures that would have required a differentiated treatment, in the corresponding legal texts through an ordinary legislative procedure, respecting the procedures of public consultation and the issuance of mandatory reports. Using this instrument is especially striking, particularly in attention to some of the measures, such as those relating to the efficiency of justice, given that the ordinary procedure had already begun and some reports had even been collected¹⁴⁰ Thus, continuing such procedure to the end would have been desirable, instead of using a fast-track procedure. The urgent and extreme need for the use of the *Real Decreto-Ley* has been justified on the need to meet the milestones required to receive EU funds within the framework of the Spanish Recovery and Resilience Plan. On 10 January 2024, the Congress of Deputies validated this Royal Decree-Law "in extremis" in exchange for new concessions to the Junts party, which had announced its vote against and finally abstained.

Apart from the use of this fast-track procedure, the Government is also using somewhat problematic instruments when implementing reforms in matters of great importance. We refer to the use of the so-called *proposición de ley*, which represents the legislative initiative of deputies, senators or the public (which requires 500,000 signatures of citizens). This procedure has less requirements than when the draft law is at the initiative of the Government (*proyecto de ley*). For example, the *proyectos de ley* require the issuance of impact assessment reports regarding economic, budgetary, gender, childhood, and environmental impact (MAIN-Memory de Análisis de Impacto Normativo). It also requires the procedures of public information, and the mandatory reports or opinions of the advisory bodies (such as that of the State Council or the General Council of the Judiciary), and the report of the Technical General Secretariat of the Ministry or Ministries that propose the draft law.

In recent years this instrument is being used even when the draft law comes from one of the parliamentary groups that make up the coalition government, instead of presenting the draft law as an initiative of the government and complying with the above mentioned requirements. This ultimately hampers the quality of the laws¹⁴¹.

¹⁴⁰ See here the processing of the draft law on procedural efficiency measures of the public service of justice, which has finally been approved by royal decree: https://www.congreso.es/en/proyectos-de-ley?p_p_id=iniciativas&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&iniciativas_mode=mostrarDetalle&iniciativas_legislatura=XIV&iniciativas_id=121/000097

¹⁴¹ MARÍA ISABEL ÁLVAREZ VÉLEZ (2023), INICIATIVA LEGISLATIVA DE LAS PROPOSICIONES DE LEY: ¿EXISTEN TÉCNICAS DE CONTROL DE CALIDAD O MECANISMOS DE EVALUACIÓN EX ANTE?, UNED. Teoría y Realidad

Some examples are:

- *Proyecto de ley* for the modification of Organic Law 10/1995, of November 23, of the Criminal Code, in crimes against sexual freedom, Criminal Procedure Law and Organic Law 5/2000, of January 12, regulating the criminal liability of minors, That was introduced to alleviate the effects of Organic Law 10/2022, of September 6, on the integral guarantee of sexual freedom, called the “sí es sí” Law,
- Proyecto de Ley Orgánica on the transposition of European directives and other provisions for the adaptation of criminal legislation to the European Union, and reform of crimes against moral integrity, public disorder and smuggling of double-use weapons that resulted in Organic Law 14/2022, Of 22 December, on the transposition of European directives and other provisions for the adaptation of criminal law to the law of the European Union, and reform of crimes against moral integrity, public disorder and smuggling of dual-use weapons. This law modified the crime of embezzlement and eliminated the crime of sedition.
- The current amnesty bill to which we have already referred.

Another practice to highlight is the use of the emergency path (*vía de urgencia*) (for example, in the amnesty draft law), which is the procedure by which the processing times are reduced by half, under art. 93 of the Rules of Procedure of the Congress of Deputies. Thus, the controversial amnesty draft law is being processed in this way. The territorial chamber of the Parliament-*Senado*-, in which the opposition party (Partido Popular-PP-) has a majority of seats, in response to this, has introduced an “ad hoc” reform of the Rules of Procedure of that Chamber, which means that it can decide whether to accept the *vía de emergencia* introduced by the Congress of Deputies or not¹⁴². This reform has been carried out with the explicit objective of slowing down the processing of the Amnesty draft law, in response to the will of Congress and the Government to process it as fast as possible.

In short, there is a constant and accelerated deterioration in recent years of the procedure for drafting laws in our country, which must be stressed. Also, the practices of parliamentary obstructionism are being generalized and normalized against what would be desirable.

Finally, the data from the Annual Report of the Council of State 2022 (published in 2023) is to be pointed out. This body issues opinions on legislative and normative texts, within an ordinary period of 2 months, which can be reduced to 15 days if requested by the consulting authority. In 2022, 122 opinions were adopted as a matter of urgency, 20 of them with a reduced time limit. The total number of opinions approved was 1929. The reports alludes to the fact that there is an upward trend in processing the requests for opinions through this fast-track procedure.

*In recent years, although within a historical trend that is perfectly appreciable even forty years ago, the urgent request for opinions has intensified. In 2022 it was noted once again the high use of this technique, often without responding to a sufficient and reasoned motivation for urgency. Finally, it is the plenary session of the Council of State that ends up suffering this dynamic, as its pronouncement is avoided in certain cases of special urgency deadlines*¹⁴³.

Regime for constitutional review of laws

There are no modifications in this point although it is worth noting what is included in the proposed amnesty law on request for preliminary rulings before the Constitutional Court (*cuestión de inconstitucionalidad*) and the lifting of precautionary measures, whose unconstitutionality some jurists have warned. Article 4 of the proposed law establishes that the interim measures in the course of the proceedings that fall within the

Constitucional, núm. 51, 2023, ISSN 1139-5583, p.338.

¹⁴² The text of the reform is available at this link: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-23340

¹⁴³ 2022 annual report accessible at this link: <https://www.consejo-estado.es/actividad/memorias/>

object of the law shall be lifted, even if a request for a preliminary ruling before the Constitutional Court has been submitted. The organic law of the Constitutional Court in its article 35 establishes that the request for preliminary ruling will cause the provisional suspension of the proceedings in the process until the Constitutional Court rules on the admission of the request, and if admitted, it will be suspended until the court render the judgment. It is paradoxical that this provision is designed on the basis of a provision that judges will do their best not to implement or delay the application of the law and with the aim that the elimination of penalties and interim measures is immediate. The reservations have to do with the fact that this article is a singular order to the judge who is removed from the general submission of judges to the law (sometimiento del juez a la ley)¹⁴⁴, which is their obligation and is presumed to be.

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

We are not aware of any progress on this point.. We highlight below the “state of play” of some independent institutions.

The Court of Auditors (hereinafter TCU) is systematically breaching the obligation contained in art. 136.2 of the Constitutions concerning the external control of public expenditure, which is exercised by the TCU, exclusively with respect to the state administration and the agencies and entities dependent on it. The non-compliance is related to TCU's obligation to issue an annual report under Article 13 of the Organic Law of the Court of Auditors, which develops the constitutional mandate..

This report should include: A) compliance with the economic and financial regulations of the public sector; b) budgetary implementation; c) rationality in the execution of public expenditure based on efficiency and economy criteria; and d) economic and financial activity of public enterprises and subsidized matters. However, the report published by the TCU has no supervisory nature, that is, it does not allow to know the control carried out by this institution and on the control of public expenditure and makes it very difficult for citizens to know the extent of compliance / non-compliance with the rules related to public expenditure.

In this sense, we have to highlight as relevant action, the requirement by the Congress of Deputies to the TCU to comply in its entirety with Article 136.2 of the Constitution. This request is made within the framework of the Second Agreement of the *Resolution of December 21, 2022, of the Presidency of the Congress of Deputies and of the Presidency of the Senate, Providing for the publication of the Opinion of the Joint Committee on Relations with the Court of Auditors in relation to the Declaration on the General Account of the State for the financial year 2020*, which was published in the Official State Gazette (BOE) of 6 January 2023¹⁴⁵.

Another issue is related to the Amnesty draft law. Article 8 establishes the effects on civil and accounting liability arising from the law. Thus, in relation to the latter, it is established that the amnesty law involves the extinction of accounting responsibilities, *including those that are being subject to proceedings before the Court of Auditors, except those that have already been declared by virtue of a judgment or administrative decision firm and executed*. This is especially relevant, since, if the bill is finally approved with this wording, it would mean that the open case against the Catalan leaders who carried out the so-called *procés*, for the alleged diversion of public funds to organize the illegal referendum of October 1, it would be annulled. That is, if it is not resolved with a firm court decision before the amnesty law is passed. The trial before the TCU ended in November 2023 and a period of final considerations was opened for the defenses and accusations- It will issue a court decision within a certain period of time. At the time of writing these lines, the court ruling has not yet been issued, and the amnesty law is still in parliamentary proceedings. The

¹⁴⁴ See: <https://www.hayderecho.com/2023/12/13/es-posible-la-suspension-cautelar-de-la-ley-de-amnistia-segunda-parte/>

¹⁴⁵ Access to the agreement at this link: <https://www.boe.es/boe/dias/2023/01/06/pdfs/BOE-A-2023-440.pdf>

latest development is that the TCU has refused to suspend the case because of the possible approval of the amnesty law as requested by the defendants¹⁴⁶.

Another relevant issue that was included in the report on the rule of law of 2023, is the adoption of Law 15/2022, of July 12, integral to equal treatment and non-discrimination. It provides for the creation of an independent Authority for equal treatment and non-discrimination. The law established a period of six months from its entry into force, i.e. the Authority should have been operational from 1 January 2023. However, this Authority has not yet been created. Some civil society organizations have called the government to set it up¹⁴⁷. The law also provides for the development of a Royal Decree establishing the specific functions of the Authority, as well as the administrative services, agencies and entities that would form part of it¹⁴⁸. This Royal Decree has not been promulgated either.

As for another relevant checks and balances body, the Ombudsman, it is noteworthy that there have recently been appointments of active politicians, after an electoral defeat, thus breaking with a previous tradition in which they tried to avoid such appointments, as happened with Angel Gabilondo, who went from being a PSOE candidate in the regional elections to the Community of Madrid to ombudsman¹⁴⁹. There is an increasing impression that such institutional positions are being used to reward political sacrifices (the real chances of the PSOE candidate winning the elections were very low).

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

According to the ombudsman, the public administration's average response time to the ombudsman is 37.05 days (in 2023). This figure represents a slight improvement over previous years, a trend that has been observed since 2021 (58.89 in 2019; 60.37 in 2020; 47, 15 in 2021; 44.73 in 2022)¹⁵⁰. With regard to the enforcement of the Ombudsman's resolutions by the administration, It can be noted that the Ministry of the Interior and the Ministry of Culture and Sport are described by the ombudsman as "administrations that do not collaborate" for not having responded after the third request¹⁵¹. Between the two, the Ministry of the Interior stands out especially for the days of delay. The issues are related to border posts and stateless posts. This information is consistent with that reflected by the General Council of Transparency and Good Governance (CTBG), in which the Ministry of the Interior stands out as an organization that does not comply with the resolutions (as has already been mentioned in this document).

¹⁴⁶ See:

<https://www.europapress.es/nacional/noticia-tribunal-cuentas-rechaza-suspender-causa-contra-puigdemont-gastos-pese-amnistia-20240111123423.html>

¹⁴⁷ Communiqué of 12 March 2023 of the Spanish Committee of Representatives of Persons with

Disabilities: <https://diario.cermi.es/entry/el-cermi-insta-al-gobierno-a-crear-ya-la-autoridad-independiente-para-la-igualdad-de-trato-y-la-no-discriminacion>; Communiqué of 1 March 2023 of the Platform for Seniors and Pensioners: <https://www.pmp.org.es/actualidad/noticias/la-pmp-insta-al-gobierno-crear-la-autoridad-independiente-para-la-igualdad-de-l>; Communiqué of 26 May 2023 from the Alliance for the Equal Treatment

Act: <https://www.accem.es/alianza-por-la-ley-de-igualdad-de-trato-reclama-al-gobierno-que-demuestre-compromiso-contra-el-racismo-con-creacion-de-autoridad-independiente/>;

¹⁴⁸ First additional provision of Law 15/2022, of July 12, integral for equal treatment and non-discrimination

¹⁴⁹ See, for example: <https://www.publico.es/politica/angel-gabilondo-ministro-candidato-madrid-defensor-pueblo.html>

¹⁵⁰ Data accessible at this

link: <https://www.defensordelpueblo.es/transparencia/informacion-institucional-y-organizativa/tiempos-medios-de-respuesta/>

¹⁵¹ <https://www.defensordelpueblo.es/transparencia/informacion-institucional-y-organizativa/administraciones-entorpecedoras/>

C. Accessibility and judicial review of administrative decisions

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

In general, in Spain no specific publicity is given to judicial or administrative decisions that review or are contrary to the actions of a public entity.

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)

In general, the regime of judicial review of administrative decisions privileges the Public Administration. Their acts have presumption of legality and traditionally there have been strong limitations on granting legal standing to challenge them.

However, there has been an important milestone, that has been already mentioned: In a judgment of November 30, the Supreme Court has considered the appeal presented by Hay Derecho Foundation against the appointment of Magdalena Valerio as President of the Council of State for failing to comply with the legally required requirement of being a jurist of recognized prestige. The Supreme Court underlines the need for senior public officials to comply with the requirements established to validate their appointment, Setting a fundamental precedent that will prevent political reasons or individual interests from prevailing over compliance with the legally established requirements for making appointments of senior positions. Compliance with these requirements is especially necessary in relation to checks and balances bodies, such as the Council of State. Its function is to ensure the observance of the Constitution and the proper functioning of the Public Administration and Public Services. The judgment **recognizes the legal standing of the Foundation**, to challenge decisions that violate the principles of the rule of law. The high court recognizes the legitimate interest of the Foundation, given that its purposes include the defense of the rule of law and in attention to its constant action, maintained regularly over the years and promotion and participation in rigorous initiatives to study and reflect on the principles and institutions that distinguish the rule of law in order to promote the former and to strengthen and improve the latter. This ruling marks a very positive precedent that opens the door to ending the impunity of arbitrary decisions, recognizing the interest of civil society organizations to defend the rule of law and the institutional functioning through strategic litigation¹⁵².

Despite this progress, the Government's reaction has been very negative, questioning the decision of the Supreme Court regarding the legal standing and the possibility of civil society to resort to this type of "political" action. Recently in the process, an incident of nullity of actions has been raised, which is pending right now to be resolved.

The Foundation has two other appeals pending the admission of its legal standing so that the court (*Audiencia Nacional*) can enter to resolve on the merits of the matter.

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

The CGPJ collects data on the referral of questions for a preliminary ruling of the Spanish courts and tribunals before the CJEU pursuant to art. 267 TFEU. The latest data published are from 2022 (Spain sent 41 questions for preliminary rulings out of the 537 that were made throughout the EU). The largest number was represented by the Supreme Court and the Superior Courts of Justice. The approximation of laws (13), social policy (11) and fundamental rights (9) stand out under

¹⁵² More information and access to the sentence at this

link: <https://www.hayderecho.com/portfolio-item/hay-derecho-gana-el-recurso-del-tribunal-supremo-y-se-anula-el-nombramiento-de-la-presidenta-del-consejo-de-estado/>

the main matters covered¹⁵³.

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

According to the report prepared by the European Implementation Network and Democracy Reporting International, Spain is among the countries that have more than 50% of the main judgments of the European Court of Human Rights pending implementation in the last 10 years (53%). It currently has 21 pending judgments, which the report considers to be moderately weak in compliance¹⁵⁴.

In recent months, we can highlight the events that took place on the occasion of the visit of a delegation from the European Parliament's Committee on Petitions on language immersion in Catalonia. From 18 to 20 December, nine MEPs travelled to Catalonia and met with petitioners, representatives of families and teachers, associations, civil society, members of the judiciary and authorities. They also visited two educational centres¹⁵⁵. According to several media reports¹⁵⁶, the Superior Court magistrates mentioned to the MEPs that "the Generalitat (regional government) has prevented the enforcement of the 25% ruling". This is the ruling ratified by the Supreme Court that requires a second subject to be taught in Spanish in all schools in the Autonomous Community. The judges also referred that the Govern passed a decree and a law with the aim of blocking the effective implementation of the sentence. The Constitutional Court is hearing an appeal against this norm presented by Popular Party and Ciudadanos.

¹⁵³ The data is available at this

link: <https://www.poderjudicial.es/cgpi/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Aspectos-internacional/es/Cuestiones-prejudiciales-iniciadas-ante-el-Tribunal-de-Justicia-de-la-Union-Europea/>

¹⁵⁴ Data from the report "Justice delayed, justice denied" available at this

link: https://static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/64a29f5698963750a81c90f7/1688379227726/Justice+Delayed+and+Justice+Denied_Final%282%29.pdf

¹⁵⁵ <https://www.europarl.europa.eu/committees/en/fact-finding-visit-to-catalonia-spain-/product-details/20231129MIS02562> ; <https://barcelona.europarl.europa.eu/es/news/fact-finding-visit-peti-delegation>

¹⁵⁶ https://www.elconfidencial.com/espana/cataluna/2022-09-13/constitucional-revisara-ley-catalana-evita-aplicacion-castellano_3489944/ ; <https://www.elmundo.es/cataluna/2023/12/19/6581fcffdddf671e8b45cb.html>

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)

It can be highlighted the defective functioning of the Protectorate and the Registry of Foundations, which in practice poses an additional problem for civil society organizations that have this legal form, possibly due to the lack of human resources sufficiently prepared for this task in the competent Ministries.

On the positive side, we can mention the changes introduced in relation to the tax regime of non-profit entities through Royal Decree-Law 6/2023, of December 19 (Official State Gazette 20 December), which modifies Law 49/2002, of December 23, 1999. Tax regime for non-profit entities and tax incentives for patronage¹⁵⁸: We highlight some of the measures:

- Incentives for individuals and legal entities: Individuals may deduct 80% from their personal income tax on the first 250 euros donated (instead of the previous 150), and the deduction percentage applicable in general is increased from 35% to 40%. Legal entities go from having a 35% deduction to 40% in Corporation Tax.
- The assignment of the use of a movable or immovable property during a certain time, is also included as a donation that can generate tax deduction. The costs incurred in the provision of services to these entities may also be deductible, which are included as a form of collaboration.

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 on- line –, 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

The government pact between the political parties, PSOE and SUMAR for the legislature that has recently begun, includes the commitment to repeal the Law of Protection of Citizen Security. This law, colloquially known as “Ley mordaza”, was passed in 2015 following the wave of social protests that followed the economic crisis of 2008. The same parties already committed to it in the previous legislature.

It is worth recalling that the law allows the State Security Forces (FCSE) to impose important economic (administrative) sanctions to those who participate in protests, which means that the sanctioning power of the AAPP -which does not have the same guarantees as that of the proceedings before criminal courts of law- can have a very relevant disincentive impact. The law also prohibits recordings of FGSE members in certain cases and enables a legal framework for so-called “*devoluciones en caliente*” (deportation of migrants or refugees without access to due process and without being able to challenge such an act through an effective judicial remedy). For all these reasons, the law has been challenged by NGOs such as Amnesty International and Human’s Right Watch. The Council of Europe’s Commissioner for Human Rights also spoke against it in 2022, urging Spain to amend some of its articles.

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)

Hay Derecho Foundation, in our report on the rule of law, includes an analysis of the civic space in Spain in relation to the defense of the rule of law. In the absence of the update that will be carried out in the next edition, the data related to the year 2021, which were collected in the contribution of last years, are included here:

According to data collected by our Foundation in 2021 for an analysis of the civil society entities that defend the rule of law

¹⁵⁷ https://www.elconfidencial.com/espana/cataluna/2022-09-13/constitucional-revisara-ley-catalana-evita-aplicacion-castellano_3489944/

¹⁵⁸ <https://www.boe.es/buscar/act.php?id=BOE-A-2023-25758>

in Spain, we identified 106 organizations dedicated to this issue, which in turn we classify by their annual level of funding in the following three sections: large (more than 1,000,000 euros), medium (between 1,000,000 euros and 150,000 euros), small (less than 150,000 euros).

It is important to highlight here the practically total absence of public funds for the promotion and defense of the rule of law at both national and European Union level. It is noteworthy, for example, that grants under the CERV program are mainly focused on the defense of social rights, which, although crucial in a rule of law, leaves aside specific lines relating to the defense of the institutional framework that makes it possible, in the end, the effective implementation of social rights.

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.)

As we have mentioned in previous sections, there was a fairly restrictive jurisprudence regarding the legal standing of civil society organizations, particularly in the contentious-administrative order (which is the one that questions the acts of the Administration and the Government). In recent months there have been a couple of precedents that could help reverse this trend, thus reinforcing the civic space in Spain and the usefulness of strategic litigation for civil society organizations.

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.)

At Hay Derecho, we actively work to promote a culture of the rule of law. In 2022 we presented the first Report on the Rule of Law in Spain, which analyzes the period 2018-2021 using different objective indicators elaborated from official statistics. We have now begun the preparation of the next edition (2022-2023) which will be aligned with the European Union report but which descends to a higher degree of detail.

In addition, the Foundation maintains different activities that contribute to strengthening this culture of the rule of law. Among them we highlight as milestones of this year:

- [Hay Derecho blog](#) continues to be a reference in the legal-political field, having expanded this year the base of authors and subscribers.
- [VIII Hay Derecho Award Gala](#), 2 November 2023. Consuelo Ordoñez (activist for the recognition of the victims of all terrorisms) and Diego Gómez (lawyer and promoter of an initiative to end the mandatory previous appointment in the Public Administration-that hampers access to public services-) were granted with the award.
- [Amnesty](#): Elaboration of analysis, infographics, and dissemination materials with different positions on the impact of this law on the rule of law. A signature collection campaign gained more than 101,000 adherents/signatories.
- [Organization of an event on legal standing and strategic litigation](#) that brought together more than 20 civil society organizations who defend social rights.
- [Dissemination on the Supreme Court ruling](#) that judged the Foundation's claim over the appointment of the President of the Council of State and granted legal standing to the organization.
- Participation as panelists in several conferences on rule of law related matters.
- [Dedometro 2023](#): Publication of a report on the observance of the criteria of merit and capacity for the appointment of leaders of public entities.
- Follow-up of the approval of Law 2/2023 on whistleblowing with organization of events with civil society and territorial anti-fraud agencies. Creation of a consortium of organizations for the development of a project on whistleblowers under the CERV Programme that has passed to the preparation phase of the *Grant Agreement*.
- Participation in the EU Anti-Corruption Network - national meeting in Spain on 19 October 2023.
- [Manifesto for institutional improvement](#): 10 proposals for good institutional functioning.
- Elaboration and dissemination with relevant actors of a [proposal for the unblocking of the renewal of the CGPJ](#).
- Organization of 20 events for the promotion and defense of the rule of law
- Participation in a seminar in Brussels on strategic litigation and the rule of law within the framework of the [ROLL \(Rule of Law for Lawyers\) project](#) of the CERV program. Participation in a seminar under the [RESILIO program](#).