

# 2024 Rule of Law Report - targeted stakeholder consultation

Fields marked with \* are mandatory.

## Introduction

---

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

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

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

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

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

## Type of information

---

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

## **A) Legislative developments**

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

## **B) Policy developments**

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

## **C) Developments related to the judiciary / independent authorities**

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

## **D) Any other relevant developments**

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

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

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

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

## **About you**

---

\* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☐ Civil society organisation/NGO

- ☐ International organisation
- ☐ Judicial association or network
- ☐ Media organisation or association
- ☐ Public authority or network of public authorities
- ☒ Other

If "Other", please specify

Political party

**\* Organisation name**

*250 character(s) maximum*

Esquerra Republicana de Catalunya (Republican Left of Catalonia)

**Main Areas of Work**

- ☒ Justice System
- ☒ Anti-corruption
- ☒ Media Pluralism
- ☒ Other

If "Other", please specify

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

*500 character(s) maximum*

<https://en.esquerra.cat/en/about-us>

**Transparency register number**

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

**\* Country of origin**

Please add the country of origin of your organisation

- ☐ Afghanistan
- ☐ Albania
- ☐ Algeria
- ☐ Andorra
- ☐ Angola
- ☐ Antigua and Barbuda
- ☐ Argentina

- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan
- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados
- ☐ Belarus
- ☐ Belgium
- ☐ Belize
- ☐ Benin
- ☐ Bhutan
- ☐ Bolivia
- ☐ Bosnia and Herzegovina
- ☐ Botswana
- ☐ Brazil
- ☐ Brunei Darussalam
- ☐ Bulgaria
- ☐ Burkina Faso
- ☐ Burundi
- ☐ Cabo Verde
- ☐ Cambodia
- ☐ Cameroon
- ☐ Canada
- ☐ Central African Republic
- ☐ Chad
- ☐ Chile
- ☐ China
- ☐ Colombia
- ☐ Comoros
- ☐ Congo
- ☐ Costa Rica
- ☐ Côte D'Ivoire
- ☐ Croatia
- ☐ Cuba
- ☐ Cyprus
- ☐ Czechia
- ☐ Democratic Republic of the Congo
- ☐ Denmark
- ☐ Djibouti
- ☐ Dominica
- ☐ Dominican Republic
- ☐ Ecuador
- ☐ Egypt
- ☐ El Salvador
- ☐ Equatorial Guinea

- ☐ Eritrea
- ☐ Estonia
- ☐ Eswatini
- ☐ Ethiopia
- ☐ Fiji
- ☐ Finland
- ☐ France
- ☐ Gabon
- ☐ Gambia
- ☐ Georgia
- ☐ Germany
- ☐ Ghana
- ☐ Greece
- ☐ Grenada
- ☐ Guatemala
- ☐ Guinea
- ☐ Guinea Bissau
- ☐ Guyana
- ☐ Haiti
- ☐ Honduras
- ☐ Hungary
- ☐ Iceland
- ☐ India
- ☐ Indonesia
- ☐ Iran
- ☐ Iraq
- ☐ Ireland
- ☐ Israel
- ☐ Italy
- ☐ Jamaica
- ☐ Japan
- ☐ Jordan
- ☐ Kazakhstan
- ☐ Kenya
- ☐ Kiribati
- ☐ Kuwait
- ☐ Kyrgyzstan
- ☐ Laos
- ☐ Latvia
- ☐ Lebanon
- ☐ Lesotho
- ☐ Liberia
- ☐ Libya
- ☐ Liechtenstein
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Madagascar

- ☐ Malawi
- ☐ Malaysia
- ☐ Maldives
- ☐ Mali
- ☐ Malta
- ☐ Marshall Islands
- ☐ Mauritania
- ☐ Mauritius
- ☐ Mexico
- ☐ Micronesia
- ☐ Monaco
- ☐ Mongolia
- ☐ Montenegro
- ☐ Morocco
- ☐ Mozambique
- ☐ Myanmar
- ☐ Namibia
- ☐ Nauru
- ☐ Nepal
- ☐ Netherlands
- ☐ New Zealand
- ☐ Nicaragua
- ☐ Niger
- ☐ Nigeria
- ☐ North Korea
- ☐ North Macedonia
- ☐ Norway
- ☐ Oman
- ☐ Pakistan
- ☐ Palau
- ☐ Panama
- ☐ Papua New Guinea
- ☐ Paraguay
- ☐ Peru
- ☐ Philippines
- ☐ Poland
- ☐ Portugal
- ☐ Qatar
- ☐ Republic of Moldova
- ☐ Romania
- ☐ Russian Federation
- ☐ Rwanda
- ☐ Saint Kitts and Nevis
- ☐ Saint Lucia
- ☐ Saint Vincent and the Grenadines
- ☐ Samoa
- ☐ San Marino

- ☐ Sao Tome and Principe
- ☐ Saudi Arabia
- ☐ Senegal
- ☐ Serbia
- ☐ Seychelles
- ☐ Sierra Leone
- ☐ Singapore
- ☐ Slovakia
- ☐ Slovenia
- ☐ Solomon Islands
- ☐ Somalia
- ☐ South Africa
- ☐ South Korea
- ☐ South Sudan
- ☒ Spain
- ☐ Sri Lanka
- ☐ Sudan
- ☐ Suriname
- ☐ Sweden
- ☐ Switzerland
- ☐ Syrian Arab Republic
- ☐ Tajikistan
- ☐ Tanzania
- ☐ Thailand
- ☐ Timor-Leste
- ☐ Togo
- ☐ Tonga
- ☐ Trinidad and Tobago
- ☐ Tunisia
- ☐ Turkey
- ☐ Turkmenistan
- ☐ Tuvalu
- ☐ Uganda
- ☐ Ukraine
- ☐ United Arab Emirates
- ☐ United Kingdom
- ☐ United States of America
- ☐ Uruguay
- ☐ Uzbekistan
- ☐ Vanuatu
- ☐ Venezuela
- ☐ Viet Nam
- ☐ Yemen
- ☐ Zambia
- ☐ Zimbabwe

First name

Jordi

Surname

Solé i Ferrando

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

\* Publication of your contribution and privacy settings

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

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

☒ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2024 rule of law report.pdf](#)

## Questions on horizontal developments

---

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

Overview topics for contribution

[List of topics 2024 RoL Report.pdf](#)

Please provide any relevant information on horizontal developments here

*5000 character(s) maximum*

## Questions for contribution

---



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

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

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

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

Member State covered in contribution [only one choice possible]

**If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.**

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czechia
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania

- ☐ Slovak Republic
- ☐ Slovenia
- ☒ Spain
- ☐ Sweden

## 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)

*5000 character(s) maximum*

On 15 December 2022, the reform of the Penal Code was approved by the Congress of Deputies. The reform eliminates the crime of sedition and modifies some offences against public order, but we see that it still fails to ensure that peaceful protest are not unduly criminalised.

We celebrate the elimination of the crime of sedition. As a result, in January 2023, when reviewing the various convictions for the crime of sedition in light of the reform, the Supreme Court dropped this charge against politicians and activists, resulting in some of them no longer being banned from holding any public office. For those politicians convicted of other crimes, however, the ban from holding public office remains in place.

We also appreciate to see the reform of the crime of public disorders that includes the derogation of article 559, which refers to penalizing the dissemination of messages that incite to alter the public order. We consider it an important step to protect the freedom of speech and peaceful assembly.

The new definition of the article 557.1 for the crime of public disorders incorporates, in the case of invasion or permits, the condition that "the effective functioning of essential services at these locations has been seriously disrupted" as a restrictive condition for it to be applicable. However, we regret that the reform increases the minimum penalty up to 3 years of prison for the crime of aggravated public disorders typified under the article 557.2 (being 1 year the minimum penalty with the current version of the Penal Code). The reform also modifies article 557 bis. (former 557 ter.), addressed to punish specifically peaceful occupations of public and private buildings with 6 months to up to 6 years of prison.

This modification endangers the right to peaceful demonstration, and it could still be used to criminalize social movements and peaceful protesters. Unfortunately, Spain has a history of disproportionate applications targeting social and political activists, such as members of the movement for the right to housing or those advocating for the right to self-determination in Catalonia.

This reform, although being a step in the right direction, was a missed opportunity to repeal the crime of rebellion and to strengthen the right to freedom of expression by repealing other crimes, like the crimes of insult to the Crown, that is analysed in the next point of the report. In our opinion, these political crimes should have been eliminated, as we consider they could be used to criminalise social movements and peaceful protests.

On 21 June 2022, the CoE PACE Committee on Legal Affairs and Human Rights declassified a follow-up report on the implementation of PACE Resolution 2381 entitled "Should politicians be prosecuted for statements made in the exercise of their mandate?" (1). The purpose of the follow-up report was to assess whether and to what extent the two states that have been the subject of special attention, namely Spain and Turkey, have implemented the Assembly's recommendations addressed to them in Resolution 2381 (2). At the time of writing the present input for the upcoming European Commission's rule of law report, most of the

recommendations were not yet addressed. The recommendations included the reform of the Penal Code, granting the pardon to the Catalan politicians convicted for their role in the organization of the referendum in 2017 and drop the prosecutions for low-ranking officials, as well as entering into an open, constructive dialogue with all political forces in Catalonia. The Catalan Ombudsman submitted a report to provide input to the follow-up report about the implementation in Spain of the recommendations addressed to the Spanish authorities.

(1) <https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2022/AS-JUR-2022-15-EN.pdf>

(2) <https://pace.coe.int/en/files/29344/html>

(3) [https://www.sindic.cat/site/unitFiles/8601/Follow\\_upAssemblyCoE\\_eng.pdf](https://www.sindic.cat/site/unitFiles/8601/Follow_upAssemblyCoE_eng.pdf)

In December 2023, a new proposal to reform the Penal Code was presented. The proposal foresees the derogation of five criminal offenses, including Art. 578 concerning penalties for “glorifying terrorism” or “humiliating the victims of terrorism or their relatives” (1). Spain has been largely criticized for the misuse of its counter-terrorism legislation, which includes the abuse and misuse of Art. 578. The Council of Europe and international organizations such as Amnesty International are some of relevant voices that expressed concern on this matter (2). At the time of writing, the legislative process to adopt the reform of the Penal Code is still ongoing.

(1)

[https://www.eldiario.es/politica/psoe-facilitara-inicio-tramitacion-ley-sumar-despenalizar-inurias-corona\\_1\\_10779137.html](https://www.eldiario.es/politica/psoe-facilitara-inicio-tramitacion-ley-sumar-despenalizar-inurias-corona_1_10779137.html)

<https://www.newtral.es/proposicion-ley-sumar-libertad-expresion/20231219/>

(2)

<https://www.coe.int/fi/web/commissioner/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression>

## A. Independence

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

*(The reference to ‘judges’ concerns judges at all level and types of courts as well as judges at constitutional courts)*

*5000 character(s) maximum*

The Council of Europe Group of States Against Corruption (GRECO) has repeatedly warned that the Spanish mechanism of election of judges (nor the selection of Public Prosecutors) is insufficient to guarantee independence, nor its “appearance” of neutrality, “that the Parliament has failed in the need to remove the selection of the judicial shift of politicians even after the Organic Act 2018 amendment”, and that the composition of the high- ranking courts could “cast a doubt on the impartiality of the process.”

On several occasions, Esquerra Republicana has put forward the politicised nature of the Spanish judiciary and of the high-ranking courts in other instances, e.g. the Constitutional appeal lodged by Esquerra Republicana’s political prisoners Mr Junqueras, president, and Mr Raul Romeva, former Member of European Parliament (MEP) and Minister of foreign Affairs. See please:

<https://www.lavanguardia.com/local/barcelona/20200207/473324813242/catalunya-el-parlament-pide-una-reforma-del-poder-judicial-que-corrija-el-sesgo-ideologico.html>

<https://static1.ara.cat/ara/public/content/file/original/2018/0214/11/recurs-d-empara-junqueras-al-tribunal-constitucional-84778cc.pdf>

This situation has stood out as a negative note in several reports and rankings, including all the previous Rule of Law reports from the European Commission, the latest GRECO report and the Economist’s EIU democracy index, which downgraded Spain to a “flawed democracy”, mainly due to the long-running dispute centred on the judges ([https://www.elnacional.cat/en/politics/spain-institutional-mess-the-economist-liberation\\_939729\\_102.html](https://www.elnacional.cat/en/politics/spain-institutional-mess-the-economist-liberation_939729_102.html)).

Moreover, the 2023 report from the Secretary General of the Council of Europe, Marija PEJCINOVIC BURIC, entitled “State of democracy, human rights and the rule of law”, states that “In Spain, reforms remain necessary to introduce additional safeguards against undue political influence in the selection process of members of the judicial council, to solve the deadlock in the designation of the general council for the judiciary and to address concerns regarding the system of appointments, especially by ensuring that judges are elected by their peers.” (<https://rm.coe.int/secretary-general-report-2023/1680ab2226>).

To conclude, Spain has had long-lasting problems regarding the appointment of judges, disregarding the repeated recommendations. The current framework is not adapted to European standards and it lacks inclusiveness for the judiciary, which is at the mercy of the parties with majority in Spanish Parliament to the detriment of those with minor representation.

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

*5000 character(s) maximum*

Promotion of judges and prosecutors (incl. judicial review)

*5000 character(s) maximum*

The General Council of the Judiciary (Consejo General del Poder Judicial – CGPJ, with the mandate expired since December 4, 2018) is a body that emanates from the Spanish Constitution. It is a collegiate body made up of judges and jurists that exercises the functions of government of the judiciary. One of the main objectives and functions of this body is to guarantee the independence of judges in the exercise of their functions.

One of the functions of this body is that of appointments, promotions and transfers.

In addition to the president of the CGPJ, this body is composed of twenty members, called vocales. These are chosen by a qualified majority of three-fifths of the Cortes Generales, the Congress of Deputies and the Senate (NOTE: Spanish Constitution 1978, Article 122.3).

The recent report published on 5 December 2022 from the Group of States against Corruption (GRECO) on "Corruption prevention in respect of members of parliament, judges and prosecutors" points out that "Concerning judges, a critical issue revolves around the selection system of the General Council of the Judiciary (CGPJ) and its perceived politicisation. This is no minor concern since the CGPJ is responsible for some crucial decisions in the judiciary, including the designation of top rank judges which has been halted for the time being and until the CGPJ is renewed. In this connection, there is now a four-year deadlock in the designation of the CGPJ. This is a highly unsatisfactory situation; the authorities are urged to take determined action in this key area."

Also, the same report states that "GRECO again reiterated the need to remove the selection of the judicial shift from politicians."

Lastly "GRECO refers again to the standards of the Council of Europe regarding the election of the judicial shift in judicial councils: when there is a mixed composition of judicial councils, for the selection of judge members, the standards provide that judges are to be elected by their peers (following methods guaranteeing the widest representation of the judiciary at all levels) and that political authorities, such as Parliament or the executive, are not involved at any stage of the selection process<sup>2</sup>. Last but not least, the four-year deadlock in the designation of the CGPJ is a matter of critical concern, which needs to be addressed as a matter of priority".

As per international recommendations on judicial councils, the Council of Europe Commissioner, in addition to the UN Special Rapporteur on Independence of Judges and Lawyers (SR IJL) in its 2018 annual Report, advised that "appointments and promotions should be based on objective criteria based on merits and qualifications, not on the government's political considerations." In addition, the SR IJL recommended the Constitution to include provisions regarding its autonomy.

About the politicization of the judiciary, and the political blockage in the renewal of the Presidency of the Supreme Court and the General Council of the Judiciary, the Vice-President of the European Commission, Věra Jourová, has addressed a letter to the President of the General Council of the Judiciary (CGPJ). See please:

<https://www.lavanguardia.com/politica/20220912/8518511/cgpj-limite-incumplir-plazo-fijado-nombrar-dos-magistrados-tc.html>

Finally, the blockage of the CGPJ in the appointment of the Constitutional Court, which should give a new progressive majority, is summarised in this news:

<https://www.rtve.es/noticias/20231204/como-eligen-consejo-general-poder-judicial/2168084.shtml>

LINK report GRECO: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a93b24>

The renewal of the mandate of the members of the CGPJ has been blocked since it expired in 2018. On 22 June 2023, the European Court of Human Rights (ECtHR) criticized Spain's Constitutional Court for rejecting an appeal by six Spanish judges who denounced the paralysis in the renewal of the country's highest judicial

body. These judges presented their candidacy in 2018, when the mandate of the CGPJ expired. The ECtHR emphasized the existence of the violation of the rights of these six judges and pointed out that it is a case "closely linked to guaranteeing respect for the legal procedure for renewing the composition of the governing body of the judiciary and the proper functioning of the justice system". The Court concluded that the right of these judges to a fair trial was violated.

There have been several unsuccessful attempts by the current Spanish Government to try to overcome the political blockage since the PSOE is in office. In December 2023, POSE and PP agreed to request to the European Commission to act as a mediator on the negotiations to renew the organ.

[https://www.elnacional.cat/en/politics/european-justice-spain-failure-renew-judicial-power\\_1049493\\_102.html](https://www.elnacional.cat/en/politics/european-justice-spain-failure-renew-judicial-power_1049493_102.html)  
<https://www.echr.coe.int/w/judgment-concerning-spain>

#### Allocation of cases in courts

*5000 character(s) maximum*

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

*5000 character(s) maximum*

Not “impartiality”, nor “independence” is guaranteed in the Spanish Constitution as a fair trial right (see wording of Article 24 Constitution). Contrary to international counterparts, e.g ECHR or International Covenant on Civil and Political Rights. “Independence” appears in the wording under Article 117 of the Spanish Constitution. On international standards, CoE Human Rights Commissioner compels States “to provide guarantees through constitutional or other means”.

Article: <https://app.congreso.es/consti/constitucion/indice/titulos/articulos.jsp?ini=117&tipo=2>

Regarding conduct, the Special Rapporteur on independence of judges and lawyers recalls that judges should show restraint on any activity that may undermine appearance of impartiality or be inconsistent with separation of powers. The European Court has had many cases arriving from Spain and declared violation of Article 6.1 (see case-law, including notorious case Otegi). In similar lines, the UN Human Rights Committee found recently, in the Garzón case, that the “trials were arbitrary and failed to comply with principles of judicial independence and impartiality”. The Committee also criticised the fact that he did not have the right to a second instance to appeal, given that he was tried on the first and only instance by the Supreme Court, Spain's highest judicial body, for his condition as judge. See please:

<https://www.ohchr.org/en/press-releases/2021/08/baltasar-garzon-trials-were-arbitrary-and-failed-comply-principles-judicial?LangID=E&NewsID=27410>

See the communication for more info: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27548>

In its opinions Num. 6/2019 and Num. 12/2019, the Working Group on Arbitrary Detention (WGAD) of the UN stated that deprivation of liberty of Oriol Junqueras, president of Esquerra Republicana, Raul Romeva, former Minister of Foreign Affairs in the Catalan government, and Dolors Bassa, former Minister of Labour, Social Affairs and Families in the Catalan Government was arbitrary. In addition, it considered that it was motivated by discriminatory motives, political opinion (para.142), finding violations of impartiality (para.136), noting elements such as the judges’ pre-established ideas or lack of jurisdiction. In line with other international organizations, it considered misuse of sedition as disproportionate for acts protected by freedom of speech and assembly.

We are concerned by the current and out-dated legislation that does not seem to sufficiently guarantee impartial trials. In addition, as stated by the SR IJL, particular circumstances which give rise to violations of independence of judges and the proper administration of justice include in our case “reasons of State”, including national or public security, but also counter-terrorism, and states of emergency, which is what this organization has tried to put forward.

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

*5000 character(s) maximum*

Different tools exist within the Spanish legislation for the accused during a proceeding. They should be activated alleging one of the following causes (Article 219 of the Organic Act of the Judiciary) e.g having interest in the proceedings, having participated in the investigation stage or in deciding, holding public office, or any office or employment whereupon the judge has been directly or indirectly involved in the subject matter of the present suit, or taken part in other proceedings related to the latter, etc. In sum, any reason that may jeopardise or contaminate the judge's decision and appearance of impartiality.

Concerning tools available for judges themselves, whenever judges that see their independence threatened in a case, ought to transfer this to the judicial council, but on their own motion and not by external control (Article 14.1 Organic Act). This may be done via two mechanisms:

- Through abstention, which is governed in the Organic Act (Article 217, 221, 222), which ought to be done as soon as there is knowledge of the cause, on the judges' own motion (Article 217).
- By challenging the judge for reasons that may affect the neutrality, impartiality or objectivity (Article 223.1 Organic Act) which may be done by the parties.

Concerning the international framework, the Committee of Ministers' (CoM) in its 2010 recommendation already highlighted that "where judges consider that their independence is threatened, they should be able to have recourse to a council for the judiciary or another independent authority, or they should have effective means of remedy".

Please see:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805afb78](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805afb78)

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

*5000 character(s) maximum*

Independence/autonomy of the prosecution service

*5000 character(s) maximum*

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*



The EU Justice Scoreboard continues to show that the perceived judicial independence in Spain in 2023 falls back to even lower levels than previous years, with more than 56% of the population considering the independence of the judicial system "fairly bad" or "very bad". The main reason continues to be the "interference or pressure from governments and politicians."

Justice scoreboard 2023:

[https://commission.europa.eu/system/files/2023-06/Justice%20Scoreboard%202023\\_0.pdf](https://commission.europa.eu/system/files/2023-06/Justice%20Scoreboard%202023_0.pdf)

In addition to the fact that repression maintains the same mechanisms it has been using imprisonment, economic and judicial repression, investigations against Parliamentary Bureau members, public officials, mayors, protesters, etc. there are new ones that add to existing tools, such as, for example, spying on politicians and members of civil society with Pegasus malware, with more than 65 victims. The lack of consequences increases the perception that citizens are unprotected and that justice is not on their side. This is in addition to the fact that the Penal Code has been used for political purposes and, despite the amendments proposed by the government, which are very insufficient, the judiciary does not seem ready to accept any element that would increase the democratic level of the state.

On this, the Committee on Legal Affairs and Human Rights of the Council of Europe' Parliamentary Assembly (PACE) in AS/Jur (2022) 15 Resolution (Doc. 2381), say: "numerous criminal cases against other Catalan officials or former officials related to the events surrounding the unconstitutional referendum in 2017 are still pending, as are the arrest warrants against several politicians living abroad. Also, the pardons are now challenged in court. This shows that reconsideration of the provisions on sedition and rebellion remains crucial for ensuring compliance with Council of Europe standards". Please see this report:

<https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2022/AS-JUR-2022-15-EN.pdf>

Another aspect that increases the lack of confidence that individuals have towards justice is the perception that it has a poor democratic culture. The first governments of democracy renounced to an institutional and structural transformation of the judicial system, seeking the maximum political power in the election of the top of the judicial branch. This strategy has been a huge mistake for the quality of democracy as it has led to a politicization of the judiciary. A serious consequence that citizens suffer is the political blockage in the renewal of the Presidency of the Supreme Court and the General Council of the Judiciary (CGPJ, with the mandate expired since December 4, 2018).

The judicialization of Catalan language has reached unacceptable levels in its attempt to destroy the educational model and social cohesion, and it contributes to the perception that, in Spain, justice is not at the service of citizens, but of political interests.

Another example of politisation of justice affects the trial to four members of the Board of the Parliament, when chaired by MH Carme Forcadell. In Novembre 2022, the Superior Court of Justice of Catalonia had to repeat the trial due to the lack of impartiality of the president of the court and the speaker.

## B. Quality of justice

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

*2)*

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

*5000 character(s) maximum*

### Resources of the judiciary (human/financial/material)

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

## C. Efficiency of the justice system

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

*2)*

### Length of proceedings

*5000 character(s) maximum*

Article 24 of the Constitution guarantees the right to public trial without undue delays. However, the Constitutional Court has stated that article 24.2 of the Constitution does not foresee a “constitutional right to time-limits”.

According to the European Commission for the Efficiency of Justice (CEPEJ), the quality of justice is measured by the “reasonable duration of the proceedings” and it will depend on how norms on acceptable length of judicial proceedings are defined”. The European Court on Human Rights (ECtHR) contemplates, for simple criminal cases, one year and five months at one instance only as reasonable. For higher instances, one year. However, on liberty issues (Article 5.4 European Convention on Human Rights) it will “require particular expedition”. That means, e.g 3 years in all instances in a detention case is a violation, and at one instance within weeks.

According to the Fundamental Rights Agency, in Spain the issue of excessive duration of legal proceedings is well known. Further, it has stated that where the National Court acts as the Court of first instance proceedings tend to last longer and are not always concluded within a reasonable time.

In 2021, there were over 4.959 cases pending to be resolved before the Constitutional Court, highest rate since 2017. We look at previous years such as 2019 with 3,505 cases and 2020 with 3,356 cases. These numbers have increased significantly compared to what we contributed last year. The ECtHR has already stated that undue delay at last instance may pose problems of access to the Court (Article 34 ECHR).

Turning to remedies, there is a compensation mechanism (Organic Act Article 292.1), in addition to an amparo appeal on the basis of Article 24, but it’s a remedy that needs to be exhausted first.

The Committee of Ministers notes, according to the ECtHR, that the most effective solution is a remedy that expedites proceedings since it also prevents violations”. This should only provide a redress in so far “it hastens the decision by the (authority) concerned”.

On adequate policies for undue delays, States ought to ask themselves e.g “if the norms concerning acceptable length are clear, or measures are taken to speed up delayed cases and reduce backlog”.

The Consultative Council of European Judges (CCJE) recommends: adequate resources, personal assistants, use of a single judge for criminal (and non complex cases) or alternative dispute resolution, as mechanisms to remedy undue delays. The ECtHR recalls that a “persistent backlog (...) indicates length of judicial proceedings remains a major problem”.

In sum, Spanish legislation on time-frames is not sufficiently insured, delays particularly affecting higher instances. While there are mechanisms for reparation, the preventive ones might not be sufficiently accessible, nor speedy enough to redress the violation given the current backlog.

Other - please specify

*5000 character(s) maximum*

## Lack of impartiality

On 30th December 1976, three Royal Decree Laws were approved by the Council of Ministers and came into force on 5th January 1977 when they were published in the Boletín Oficial del Estado (BOE). These three important royal decrees were: the suppression of the Tribunal de Orden Público -TOP (Public Order Courts) (Franco's repressive court), the creation of the Audiencia Nacional (AN) with jurisdiction over the entire national territory, and a decree law transferring jurisdiction over terrorism to this new body of ordinary jurisdiction.

The new judicial body was created by means of a decree law. In Spanish legislation, both the current and the legislation of the Franco regime, the creation of judicial bodies by decree law is not permitted. Article 10 of the Ley de Cortes of 1942 required approval by ordinary law in order to set up judicial bodies. The same requirement was also demanded in Articles 81 and 122 of the 1978 Constitution, the current one.

There is an unjustified derogation from the principle of the natural judge or jurisdiction by reason of the place where the crime has been committed. This judicial body, by having jurisdiction over the entire national territory, does not comply with the principle of the natural judge, which implies that the competent judge to judge any crime must be the judge of the place where the crime was committed, since it is assumed that the latter has better means for the investigation.

The Audiencia Nacional (AN) is an institution created illegally, by means of a Decree-Law, to provide a continuation of the Tribunal de Orden Público (as we have said, the repressive tribunal of the Franco regime) in a very subtle way. This body must therefore be abolished or reformed as a matter of urgency. We say this both because of the nature of the crimes, which the AN has jurisdiction over, and which are very closely related to those of the Tribunal de Orden Público and the Tribunal Central de lo Penal. This is also due to the exceptional nature of the court, which breaks with the principle of the natural or ordinary judge and jurisdiction based on the place where the crime was committed.

This institution also has a background of decisions that have led to the abuse of anti-terrorist laws. Please see this report:

<https://igualtat.gencat.cat/web/.content/Ambits/drets-igualtats/informes-DDHH/informe-terrorisme.pdf>

Finally, as a point of interest, it should be noted that the Audiencia Nacional, in terms of its architectural structure, maintains the original location of the Tribunal de Orden Público.

For more information see please:

<https://creandopueblo.files.wordpress.com/2011/09/olarieta-el-origen-de-la-audiencia-nacional.pdf>

[http://e-spacio.uned.es/fez/eserv/bibliuned:RDUNED-2015-17-5120/Creacion\\_Audiencia\\_Nacional.pdf](http://e-spacio.uned.es/fez/eserv/bibliuned:RDUNED-2015-17-5120/Creacion_Audiencia_Nacional.pdf)

## II. Anti-Corruption Framework

---

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

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

*5000 character(s) maximum*

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

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

## B. Prevention

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

*5000 character(s) maximum*

### Transposition of the “Whistleblower Directive”

Spain has failed to transpose the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (“Whistleblower Directive”), into Spanish legislation within the official deadline of 17 December 2021. Transparency International and the Whistleblowing International Network have closely monitored the transposition process across all Member States since 2019. Following the European Commission referral of Spain to the CJEU for failure to transpose the EU Directive on Whistleblowing, on 16 February 2023 Spain adopted a long-awaited whistleblower law (1). However, a coalition of NGOs, including the Whistleblower International Network and X-net, have warned that the law fails to provide comprehensive whistleblower protection (2).

(1) <https://www.boe.es/buscar/act.php?id=BOE-A-2023-4513>

(2) <https://whistleblowingnetwork.org/News-Events/News/News-Archive/Civil-society-urges-Spanish-Senate-to-amend-harmfu>

The last corruption perceptions index published by Transparency International shows a significantly worse score for Spain compared to previous years (1). Some of the cases that have drawn public attention in the last years are related to the revelations into the former Spanish king’s finances. Juan Carlos’s serious troubles began in 2012 when he went on a hunting trip to Botswana. A photo of the king proudly standing in front of a dead trophy elephant was widely published, and harshly criticised at home; at the time he was the honorary president of the Spanish branch of the World Wildlife Federation. Spain was still recovering from the global recession, with a 23 percent unemployment rate, rising to 50 percent among people under 30. The monarchy began to be widely questioned, and the first concerted calls arose for an investigation into the king’s finances. The clamor grew, and in 2014 he abdicated. When prosecutors began investigating his finances, he flew to the United Arab Emirates in 2020 to escape corruption investigations. Given that the alleged wrongdoing took place before his abdication, when Juan Carlos had immunity from prosecution, prosecutors see little hope for success in a raft of remaining corruption cases. Several cases have been resolved or dropped, although proper investigations have never taken place.

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

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

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

5000 character(s) maximum

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

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

5000 character(s) maximum

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

5000 character(s) maximum

## C. Repressive measures

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

5000 character(s) maximum

### Report UN experts on political persecution

On 8 February 2023, five United Nations rapporteurs published a letter addressed to Spanish Government stating that Esquerra Republicana de Catalunya suffers extreme reprisal as an organization and urging the Spanish government to take measures to cease the political “persecution” of the party and the pro-independence Catalan movement as a whole. This position of the UN special rapporteurs responded to a communication presented by the secretary general of Esquerra Republicana, Marta Rovira, in exile in Geneva, on behalf of a representation of victims of the party to denounce the repression against the pro-independence Catalan movement. The letter explicitly mentions the cases of Rovira herself and the president of Esquerra Republicana, Oriol Junqueras, as well as Greens/EFA MEP Jordi Solé and former Greens/EFA MEP Raül Romeva, among others. The UN rapporteurs expressed concern about the “improper use of criminal law and the supervisory power of the State to prosecute leaders and members of civil society who sympathize with Esquerra Republicana” and the “persecution and stigmatization” of Esquerra Republicana members. They also demand to the Spanish government clarification of these series of grievances and information on the measures it will take in this regard (1).

(1) <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27719>

### Creation of fake corruption cases to attack the opposition by the state government

In the so-called "Operation Catalonia", the state government, led by the president, Mariano Rajoy, and the interior minister, Jorge Fernández Díaz, used the national police force to create false reports about accounts held in tax havens by Catalan pro-independence leaders, which were then leaked to the press. These leaks often took place just before election periods, in order to particularly damage the leaders of the most significant political parties at the time. Moreover, these operations were carried out with the express intention of directing the actions of prosecutors and judges in order to coordinate the timing of corruption charges and leaks to the press, clearly breaking the separation of powers between the executive and the judiciary.

More information:

<https://www.lavanguardia.com/politica/20240115/9497133/gobierno-rajoy-puso-cupula-policial-servicio-maniobras-proces-margen-ley.html>

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*



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

5000 character(s) maximum

Other - please specify

5000 character(s) maximum

#### Reform of the Citizens Security Law (gag law)

The Council of Europe Commissioner for Human Rights sent a letter to the Spanish authorities on February 2022 concerning the resumption by the Congress of Deputies of the review of the 2015 Law on Citizens' Safety. She expressed the concern that "the review did not include changes to the provisions of the Law that have had the most harmful impact on the enjoyment of the rights to freedom of expression and freedom of peaceful assembly on the one hand, and the right to seek asylum and the prohibition of refoulement on the other hand."

She also stressed that the law seems be contrary to the case-law of the ECtHR and the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, which stipulate that the organizers of an assembly cannot be held responsible for the actions of other participants if they did not participate explicitly or implicitly in such acts, and she asked for reviewing "the Citizens' Security Law to bring it in line with European standards, including under the European Convention on Human Rights, make Spain's comply with its human rights obligations, ensure that the changes to the law result in a legal framework that better protects the exercise of human rights in Spain."

Moreover and as also mentioned in previous Rule of Law reports, the Constitutional Court of Spain issued two judgements on the Citizens Security Law, concluding that most of its provisions are constitutional, if interpreted in good faith and with due regard to the principles enumerated in the law, in particular as regards the principles of proportionality, non-discrimination, efficiency, and respect for rights and freedoms.

Nonetheless, one provision of the Citizens Security Law was declared unconstitutional in relation to the prohibition of the "unauthorised" use of photo and video images of police officers at duty or in a private setting. Linked to this, in March 2021, the Venice Commission issued an opinion (1) on the law, highlighting that even in cases when a norm is considered to be constitutionally acceptable, if in practice it has led to abuses it should be changed, circumscribed, or accompanied by additional safeguards. Despite the numerous criticisms that the Law has received and the attempt to reform it in March 2023, we regret that even the most controversial provisions of the Law were not amended. Esquerra Republicana de Catalunya has always defended the complete derogation of the Law.

In the report published in April 2023 following her visit to Spain in November 2022, the Council of Europe Commissioner for Human Rights continued to expressed concerns regarding the law, in particular the high number of sanctions imposed by law enforcement on the basis of some articles of the Law and the difficulties for victims to appeal the sanctions, and she regretted the failed attempt to reform the Law (2).

(1) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)004-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)004-e)

(2) [https://www.ecoi.net/en/file/local/2092688/CommHR%282023%299\\_Report+on+Spain\\_EN.pdf](https://www.ecoi.net/en/file/local/2092688/CommHR%282023%299_Report+on+Spain_EN.pdf)

#### Amnesty Law

In November 2023, a draft text of the Organic Amnesty Law for the institutional, political and social

normalization in Catalonia ('Amnesty Law') was submitted to the Congress of Deputies. The proposed Amnesty Law aligns with the constitutional framework of Spain and follows a precedent set by previous legislation, such as the Amnesty Law of 1977. The initiative will cover all events related to the Catalan independence bid from 2012 until 23 November 2023, which is the date when the proposal for amnesty law was presented, and will benefit both, pro-independence politicians and activists affected by judicial procedures and/or sentences, as well as police officers indicted for having used excessive force during the 2017 independence referendum.

This objective contrasts with other amnesties in Spain, such as fiscal amnesties in 1984 and 1991 promoted by socialist governments or that of 2012 under the Partido Popular government. The persecution of political opposition through abusive state power generates instability and threatens the principles of democracy. International bodies such as the European Court of Human Rights and the Court of Justice of the European Union recognize amnesty as a useful and democratic instrument for resolving conflicts, since they are used to reduce tensions and create a positive environment for the resolution of conflicts. Esquerra Republicana de Catalunya believes that the Amnesty Law is a turning point which offers an opportunity to open a new phase for dialogue and negotiation to reach a political solution.

[https://www.congreso.es/public\\_oficiales/L15/CONG/BOCG/B/BOCG-15-B-32-1.PDF](https://www.congreso.es/public_oficiales/L15/CONG/BOCG/B/BOCG-15-B-32-1.PDF)  
<https://www.newtral.es/claves-proposicion-ley-amnistia/20231114/>

### III. Media pluralism and media freedom

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

*5000 character(s) maximum*

According to the Press Freedom Index of RSF, in 2022 Spain received a score of 32, whereas in 2023 it lowered 4 points (score: 36). Some of the elements that RSF underlines with regards to the lower performance of Spain in press freedom are the high level of concentration of media, the attacks against journalists, including anti-SLAPP cases and the controversial Citizens' Security Law (<https://rsf.org/en/country/spain>)

<https://www.naciodigital.cat/noticia/256413/espanya-cau-ranquing-mundial-llibertat-premsa-superen-cap-verd-seychelles>

#### A. Media authorities and bodies

*(Cf. Article 30 of Directive 2018/1808)*

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

*5000 character(s) maximum*

In one hand, as it is reported in <https://www.media.cat/2022/02/22/policies-contra-periodistes/>, during the demonstrations, and especially when there are clashes between demonstrators and the police, there are photojournalists who have to face difficulties in documenting what is happening and have been hit by police projectiles. During the evictions, many photojournalists also encounter problems in carrying out their work: they are identified and, in several cases, sanctioned without being recognized as professionals. According to this report, an upward trend is observed in terms of sanctions against professionals in application of Law 4

/2015, on the protection of public safety.

On the other hand, measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies.

It is very important to adopt measures that promote the independence of the media. It is for this reason that we also need to expose those laws that make it to guarantee media freedom and media pluralism.

The Royal Decree-Law 14/2019, of 31 October, adopts urgent measures for reasons of public security in the areas of digital administration, public sector procurement and telecommunications. This Decree facilitates and speeds up the closure of websites by the State. Specifically, in article 6 of the law, it allows the government to assume control and directly intervene in electronic communications networks and services. All this without having to ask for a court order, which makes it even more dangerous.

We consider that this new law puts at risk the rights to freedom of expression and information of citizens, allowing unsupervised digital censorship.

For more info: <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/el-real-decreto-digital-propicia-la-censura-previa-y-el-secuestro-de-contenidos-en-internet-por-part/>

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

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

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

*5000 character(s) maximum*

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions

- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

5000 character(s) maximum

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

5000 character(s) maximum

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

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

5000 character(s) maximum

In its Resolution 1577 (2007) "Towards decriminalisation of defamation", the PACE already warned that in some states prosecution for defamation is misused in what could be seen as attempts by the authorities to silence media criticism. Such abuse can lead to a genuine media self-censorship and cause progressive shrinkage of democratic debate and of the circulation of general information. There is also a growing recognition that defamation laws should not be of criminal nature.

In Spain, both current criminal and civil law provisions on reputation give potential to bring such cases and are often abused by powerful forces in the society to silence critics.

- The Spanish Penal Code contains a number of problematic speech-related offences that are used against journalists and the media outlets. These include criminal insult and defamation, offences against public officials and public institutions, and revelation of secret information. Criminal complaints are often initiated by public officials or the police. The mere existence of such provisions and the possibility of their abuse creates a chilling effect on freedom of expression.
- Journalists are also targeted by civil law provisions on protection of honour, privacy and one's own image. Spanish courts have set the standards of relevant defences that the media can use, including reasonable publication or public interest defence, and found that public officials should tolerate a higher level of criticism than private individuals. However, public officials involved in the mismanagement of funds and corruption can still misuse these provisions to target journalists.
- Criminal prosecutions and abusive civil lawsuits also have implications for the financial sustainability of the media. Journalists must bear the costs of legal proceedings and the consequences of being under investigation, sometimes for years, until a verdict is reached and regardless of the result of the judicial proceedings.

The Spanish Penal Code also contains a number of offences that provide heightened protection to the royal family (so-called *lèse-majesté*). Namely:

- Article 490(3) criminalises 'slander' and 'insult' against various members of the Spanish Royal Family

during or related to the exercise of their official functions. Article 491(1) criminalises ‘slander’ and ‘insults’ against various members of the Spanish Royal Family, without the connection to the exercise of their official functions.

- Article 491(2) criminalises the use of images of past, present, or future Kings or Queens, or other present members of the Royal Family, ‘in any way that could damage the prestige of the Crown’.

The existence of such provisions, even as historical relics, in the Penal Codes of democracies, including when they do not lead to prosecutions, sets a regressive example internationally.

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

*5000 character(s) maximum*

According to the CoE Platform on the “Safety of Journalists”, the number of alerts issued in the past years regarding incidents against the safety of journalists has increased. The indicators on journalistic profession, standards, and protection as well as journalism and data protection published by the Centre for Media Pluralism and Media Freedom for Spain, have worsened during the last years. Digital harassment of journalists has increased, and the attacks, which mainly occur through social media and the section of comments on news, are frequent and often come from the extreme right. Critical journalists and fact-checkers also have been under attack. In addition, women journalists continued to be the object of sexist attacks, particularly on social networks, some of them leading to self-censorship. With regard to journalism and data protection indicators, Spain has not yet transposed or communicated transposition measures regarding the Data Protection Law Enforcement Directive.

During the year 2023, the Council of Europe Platform on the Safety of Journalists published 45 alerts in Spain. Among others, the alerts include cases of detention, harassment and attacks against journalists covering protests, as well as death threats against journalists covering far-right movements.

<https://fom.coe.int/en/alerte>

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

*5000 character(s) maximum*

In the recommendations of the 2023 Rule of Law report, the European Commission already called on Spain to advance with strengthening access to information, in particular via revision of the Official Secrets Law, taking into account European standards on access to official documents. The current law was enacted in 1968, under Franco’s dictatorship, and has been in force since then. In August 2022, the Spanish Government presented a proposal for a new Official Secrets Law. However, civil society organizations strongly criticized the short deadline for public consultation and raised several concerns on the proposal, in particular, the consequences for transparency relating to current government activities, for protection of whistleblowers, and for media freedom and investigative journalists given the potentially huge fines (ranging from €50,000 to €3 million for disseminating classified documents).

Moreover, the proposal also include long classification periods (between four and 50 years, with a potential extension to 65 years for the most sensitive documents), and the lack of retroactive declassification, thereby limiting access to many documents classified during the Franco regime or during the transition to

democracy. There are 256 laws that were enacted during Franco's dictatorship still valid in Spain. Furthermore, according to Access Info, Spain has a public participation score of just 2%, compared to the OECD average of 21%, and the difficult process of declassifying information will not improve participation (1). Esquerra Republicana de Catalunya has also raised strong concerns about the proposal as we believe that it falls short of being adapted to democratic societies and in line with European standards.

(1) <https://www.access-info.org/2022-08-13/spain-secrets-law/>

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

*5000 character(s) maximum*

In December 2022, Reporters Without Borders (RSF) urges Spain to adopt measures recommended by the European Commission to fight against Strategic Lawsuits Against Public Participation (or SLAPPs) to curb abusive use of such "gag-lawsuits". In response to the SLAPP problem, which is common to all of Europe, the European Commission adopted an anti-SLAPP package, which included a proposal for a Directive and non-binding recommendations (<https://rsf.org/en/rsf-calls-strong-anti-slapp-measures-eu-parliament-member-states>) designed to ensure that journalists can continue to do investigative reporting about the powerful businessmen and politicians who resort to SLAPPs to discourage and silence them. On 30 November 2023, the EU institutions concluded the negotiations on the anti-SLAPPs Directive. Member States have two years to transpose it into their national legislation from the entry into force of the Directive. However, the scope of the Directive is rather limited since it only covers civil cases whereas most anti-SLAPP cases are criminal (2).

Link: <https://rsf.org/en/rsf-condemns-gag-lawsuits-spain-and-urges-government-provide-protective-legislation-media>

(1) [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL\\_STU\(2023\)756468\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL_STU(2023)756468_EN.pdf)

The use of spyware to target Catalan politicians and activists

In April 2022, Citizens Lab published an extensive investigation known as the 'CatalanGate' revealing that at least 65 individuals in Spain had been targeted by spyware technologies such as Pegasus and Candiru. The victims included Catalan politicians, their family members and members of civil society (1). Following the concerning revelations of the 'CatalanGate' as well as other information published by an international coalition of investigative journalists co-ordinated by Forbidden Stories, with the technical support of Amnesty International's Security Lab ("the Pegasus Project") (2), on May 2022 the European Parliament set up an inquiry committee to investigate the use of Pegasus and equivalent surveillance spyware (PEGA committee). A mission to Spain took place at the very end of the PEGA committee's mandate, but criticism was raised concerning the limited programme of the mission, since there was almost no space to properly listen to the victims and no high official of the Spanish Government was available for a meeting.

During the year 2023, both the European Parliament and the Council of Europe Parliamentary Assembly adopted resolutions which provided a list of specific recommendations addressed to Spain (3). The recommendations include the conducting of a full, independent and effective investigation into all cases of the use of spyware. After a lot of political pressure, on 12 December 2023 the Congress of Deputies in Spain agreed to set up an inquiry committee on the use of Pegasus in Spain. Given the evidence of the abusive and undemocratic practices that the use of spyware represents, including the lack of effective redress, which undermines the rule of law and fundamental rights in societies, we urge the European Commission to cover the use of spyware in its upcoming rule of law reports and to closely monitor the work of the inquiry

committee at national level.

(1) <https://citizenlab.ca/2022/04/catalangate-extensive-mercenary-spyware-operation-against-catalans-using-pegasus-candiru/>

(2)

<https://www.amnesty.org/en/latest/news/2022/04/spain-pegasus-spyware-catalans-targeted/>

<https://forbiddenstories.org/case/the-pegasus-project/>

(3)

[https://www.europarl.europa.eu/doceo/document/TA-9-2023-0244\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0244_EN.html)

<https://pace.coe.int/en/files/33116/html>

(4) <https://www.ohchr.org/en/press-releases/2023/02/spain-un-experts-demand-investigation-alleged-spying-programme-targeting>

Other - please specify

*5000 character(s) maximum*

The organisation Article 19 has carried out a thorough analysis of the Spanish legal framework and has come up with a series of recommendations that the Spanish Government should take into consideration in order to adequately protect the right of freedom of expression and media pluralism in Spain. From Esquerra Republicana, we support these recommendations and ask the European Commission to include them in its upcoming RoL report on Spain:

1. Although on 15 December 2022 the reform of the Penal Code was approved by the Congress of Deputies, part of the reform did not conform to international standards on freedom of expression. Articles 208–216, 490(3), 491(1) and (2), 504, and 543 should be repealed. In the interim, either the government or the legislative body should impose a moratorium on the application of these criminal provisions.
2. Article 197 of the Penal Code on revelation of secret information should be amended to incorporate explicit exceptions for disclosure of information in the public interest.
3. Article 7(7) of Organic Law 1/1982 should be amended in order to abolish the reference to ‘value judgments that negatively impact the dignity of a person, undermining their reputation or attacking their sense of self-worth. Instead, Articles 7(3) and 7(7) of Law 1/1982 should ensure that the scope of protection of honour and reputation is limited to false statements of fact that cause actual harm to an individual’s reputation.
4. Article 8 of Organic Law 1/1982 should be amended to reflect that exceptions under Article 8.2. a) – which concerns limitations on protecting privacy of people in public positions and individuals with public notoriety or visibility – are applicable to protection of honour and any realm of individuals’ privacy.
5. Spanish courts should uphold the broad protection of opinions and stop relying on the lack of a ‘right to insult’ under the Spanish Constitution to restrict offensive opinions or critical discourse used in journalistic material and reporting.
6. Opinions on matters of public interest should not be subject to a necessity threshold. Spanish courts should impose a moratorium on the application of this standard. Instead, the courts should look into the circumstances in which an assessment is required to determine whether the claims involve facts or value judgments.
7. Spanish courts should apply the rules of good faith under Article 247 of the Civil Procedure Law 1/2000 to ensure that journalists and media outlets do not face unnecessary civil proceedings as a result of ill-founded or meritless claims brought with the sole aim of silencing or intimidating the exercise of freedom of expression – in particular freedom of information under the Spanish legal framework.

Esquerra Republicana de Catalunya also asks the Commission to take into account the recommendations from the CoE Commissioner on Human Rights in her report of 13 April 2023 following her visit to Spain in its

upcoming RoL report dedicated to Spain, including the recommendations related to the right to housing, to health and to seek international protection.

[https://www.ecoi.net/en/file/local/2092688/CommHR%282023%299\\_Report+on+Spain\\_EN.pdf](https://www.ecoi.net/en/file/local/2092688/CommHR%282023%299_Report+on+Spain_EN.pdf)

## IV. Other institutional issues related to checks and balances

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

*5000 character(s) maximum*

### A. The process for preparing and enacting laws

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

[1] This includes also the consultation of social partners

*5000 character(s) maximum*

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

Regime for constitutional review of laws

*5000 character(s) maximum*

### B. Independent authorities



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

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

5000 character(s) maximum

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

5000 character(s) maximum

## C. Accessibility and judicial review of administrative decisions

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

5000 character(s) maximum

Judicial review of administrative decisions:

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

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

## D. The enabling framework for civil society

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

*5000 character(s) maximum*

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or 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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

## E. Initiatives to foster a rule of law culture

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

*5000 character(s) maximum*

The Tribunal de Cuentas (Court of Auditors) is the highest body for auditing public money; it is a special and unique jurisdiction. But its members are not judges. In fact, the procedure of the Tribunal de Cuentas is different from that of other jurisdictions. In the preliminary proceedings, the parties are not given the possibility to intervene. Afterward, the lawsuit phase and the trial start. Only the Supreme Court can be appealed against the judgment, it is not possible to appeal to the ordinary courts.

The Court of Auditors is made up of 12 members elected by the Congress of Deputies and the Senate, clearly demonstrating the politicisation of the court.

There is a real danger of duplicity of sanctions (in the ordinary jurisdiction and in the Court of Auditors) as in cases we are currently seeing. Is the case of 17 government (or government-related) officials that were charged by the Barcelona First Instance Court no. 13 (BFIC-13) with misuse of public funds, with a joint responsibility compulsory deposit of 5.8 million Euros (or immediate forfeiture of their properties) in

connection with the Catalonia Referendum of 1 October 2017 (1-OR). As per the civil liability, parallel proceedings immediately followed against those leaders also charged with misuse of public funds before the Court of Auditors (Tribunal de Cuentas) as detailed by the Supreme Court decision. The Court of Auditors detailed and broke down the expenses, which are similar as the ones by the BFCI-13.

For more information: <https://octuvre.cat/tribunal-de-clavegueres/>

Other - please specify

*5000 character(s) maximum*

## Contact

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