

Report on the state of the rule of law in Spain (2018-2021)

Executive summary



INTRODUCTION



The timeframe covered by this report involves a **particularly turbulent political environment**. The first successful **motion of no-confidence** in the history of Spanish democracy took place in 2018, giving rise to an extraordinarily weak government supported by a fragile parliamentary majority. **Two general elections** were held in 2019, culminating in the formation at the end of the year of a coalition government of two parties (the Spanish Socialist Workers' Party - PSOE - and Unidas Podemos) which was twenty seats short of an absolute majority. And in 2020 and 2021, the country had to deal with a very demanding **pandemic**, during which exceptional measures were adopted which placed enormous restrictions on individual civil liberties in many countries, including Spain. In addition, during the same period, the country had to deal with the consequences of the **illegal secessionist referendum** held in Catalonia on 1 October 2017, including the trial of some of the main figures involved, followed by the publication of the Supreme Court's ruling that sentenced most of them to prison terms, as well as the subsequent reprieves of the main leaders who had been imprisoned.

A large proportion **of these exceptional circumstances are putting the rule of law in Spain to the test**, as well as the country's institutions, which had already been experiencing a gradual deterioration as a result of the previous lack of structural reforms, primarily during the government of the People's Party (PP) which was elected with an absolute majority in 2011. In just a few years, Spain has experienced increasingly shorter electoral cycles, a highly fragmented parliament, a very unstable coalition government, states of alert that were subsequently declared unconstitutional, the freezing of the membership of some of its constitutional bodies, continuous attacks on the principle of the separation of powers, government by means of executive decrees, extensions of budget terms, and even the consequences of an attempt at secession by the elected representatives of one of the country's regions.

This situation puts pressure on the rule of law in the country, i.e. the constitutional legal framework that enables the **oversight of power** through submission to the law, the guarantee of

citizens' rights and freedoms, the prohibition of the arbitrary exercise and abuse of power, the proper functioning of institutions, accountability and the separation of powers. The decline in Spain's position in various international rankings of democratic quality in recent years highlights this problem.

The situation of the rule of law in European countries will be more important than ever in the coming years, since the European Commission has stipulated that the distribution of Next Generation EU funds will be subject to compliance with the TFEU, which includes respect for the rule of law among its core values. Taking our inspiration from the study on the Rule of Law of the European Union, **Hay Derecho presents a report on the rule of law in Spain**, setting out the tools and indicators needed to perform an ongoing assessment of the situation in the country. This document contains a summary of the full text, in which we have selected some of **the most important indicators** presented by the **problems** that we believe are **most important**.

We have divided its contents into seven sections: 2) The Judiciary; 3) The State Prosecutor General's Office; 4) The Legislature; 5) The protection of human rights in Spain. Judgements by the ECHR; 6) Institutional checks, independent authorities and accountability; and 7) Transparency and the fight against corruption. Other checks: the public service media and organised civil society



A NOTE ON METHODOLOGY

Aside from their considerable value, most international reports and indicators suffer from a twofold problem. On the one hand, they are based on surveys of perception of either citizens or experts, or both. On the other, they aim to provide an appropriate comparison between different countries, which means that they are of necessity very general and basic. In view of these problems, this report seeks to provide an assessment of the state of the rule of law in Spain, based on quantitative indicators and a specific analysis of the regulatory framework that affects the country's institutions.

To that end, we have developed a series of indicators based on information obtained from four sources: data published by official bodies, requests for transparency, analysis of public documents using data mining, and where necessary, data published in secondary bibliographic sources (reports and academic articles).

We have sometimes decided to use specific cases in order to use concrete examples to illustrate some of the problems highlighted by the quantitative data, or even aspects that are difficult to appreciate simply with numerical data.



THE JUDICIARY



Source image: <https://www.elmundo.es/>
La sede del Tribunal Supremo, en
MadridEFE

2.1. The politicisation of the Judiciary and the freezing of the membership of the General Council of the Judiciary: a story of deterioration.

The prime example of the worrying situation of the Judiciary in Spain is **the freezing of the membership of the governing body of the judges, the General Council of the Judiciary**, which is a problem that has placed the lack of independence of this body (and by extension, of the Judiciary) at the forefront of public debate. The source of the problem lies in the change to the system for choosing its members that was introduced in Law 6/1985. Until then, twelve of the twenty justices that make up the body were elected by judges and justices and among

judges and justices, and eight were elected by the Congress and Senate from among jurists of recognised competence, according to the provisions of Organic Law 1/1980. Since 1985, **the justices have been elected by the Congress and the Senate, which elect ten members each, by a 3/5 majority**. In short, this is a **system that always promotes people with close ties to the majority**, who are normally members of the two associations aligned with either the PP (Professional Association of the Judiciary) or the PSOE (Judges for democracy).

2.1.1. The freezing of the membership of the GCJ since 2018 and attempts to renew its membership through the party quota system.

The current General Council of the Judiciary (GCJ) was constituted on 4 December 2013, i.e. under the absolute majority of President Rajoy's PP, and **its mandate ended on the same date in 2018**, after the procedure for the renewal of its membership by agreement of its President began on 3 August of that year. However, at the time of writing, **the membership had not been renewed for almost four years**. The main reason lies in the refusal of the main opposition party, the Popular Party, to agree with the Government on the renewal of membership

based on the traditional system of distribution of party quotas, which would currently be contrary to its interests. The PP has justified its refusal by calling for a return to the original system for electing the members from the judiciary, by and among the judges. However, it has on occasions also come very close to accepting a renewal without any changes to the current parliamentary system of designation, highlighting the main opposition party's lack of credibility on this point, and the constant changes in its position.

2.1.2. The questionable legislative response to the freezing of the membership

Within the framework of the freezing of the GCJ's membership, it is worth highlighting **the two main legislative responses** that have attempted to resolve this situation, although neither of them has attempted to solve the underlying structural problem. The first of these initiatives, contained in [the Organic Law Proposal](#) to amend Organic Law 6/1985, involved a **reduction in the majority needed** to elect the members of the GCJ, and was rejected after receiving numerous criticisms from the [European Commission](#), [the Group of States against Corruption \(GRECO\)](#), [Higher](#)

[Courts of Justice and judicial associations](#). The second initiative consisted **of a limitation of the powers that the GCJ** is able to exercise when it is an interim body, if its membership has not been renewed within the legally established period. This change was approved by Organic Law 4/2021. However, **the reform did not achieve its intended aim** - the renewal of its membership - but has instead had **serious implications for the functioning of courts and tribunals**, as a result of the law prohibiting the Council from making appointments to discretionary positions.

Indeed, the GCJ's inability to make discretionary appointments while it holds interim status is disrupting the ordinary workings of the Supreme Court. On 21 October 2021, the Governing Chamber of the Supreme Court approved a [report](#) which pointed out that the impossibility of making appointments, together with the uncertainty about when the next GCJ will be constituted, will hinder the workings of the court, since on that date **the membership of the Supreme Court was 14% less than the legally established figure**. The report predicts that if the freezing of the membership

continues, it will undergo a reduction of **20%** by the end of October 2022. As stated in the report, this has led to a reduction in its capacity to pass sentences ("1,000 fewer sentences per year across all the courts") and in an increase in the duration of judicial proceedings.

The politicisation of the Judiciary and the interim GCJ's inability to make discretionary appointments therefore ends up having a direct impact not only on **the image of the Judiciary, but also on the ordinary workings of the Courts of Justice**.

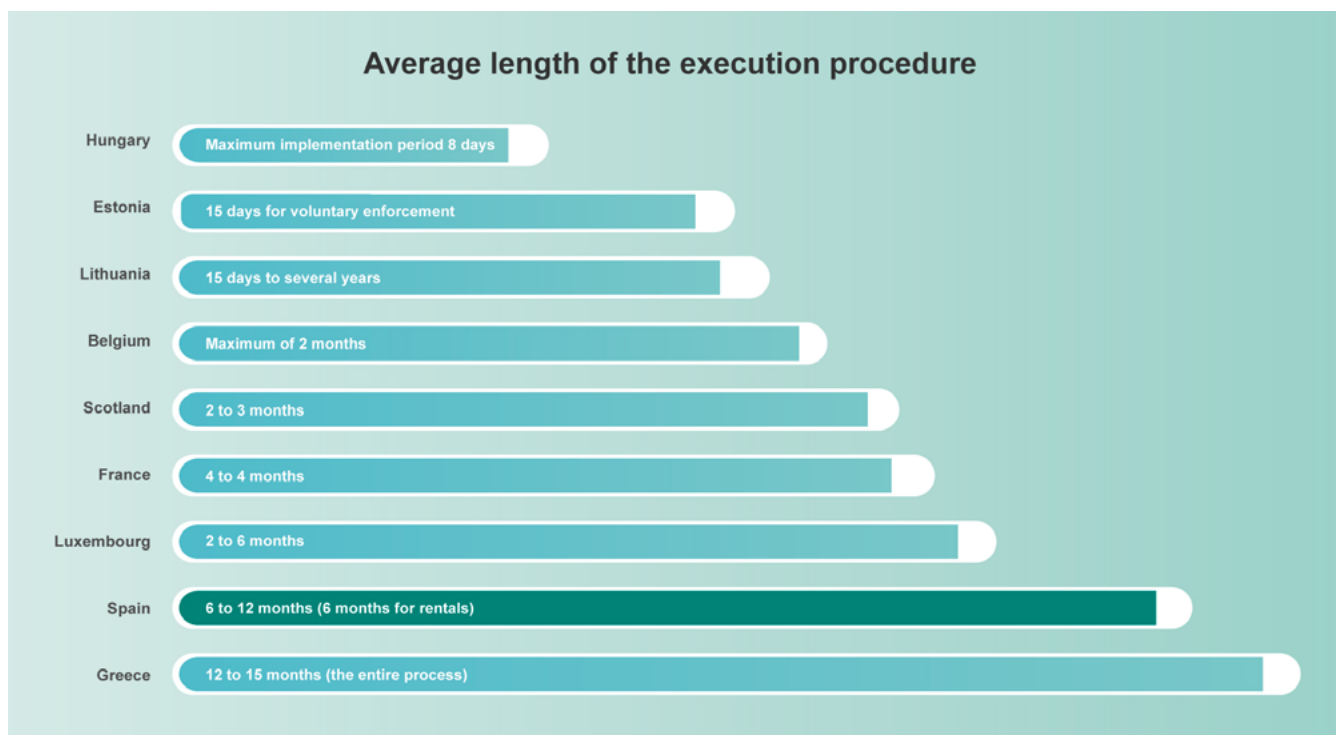
2.2. Problems with the execution of final judgements

Another particularly significant issue when determining the state of the rule of law in a country is the extent to which the work of judges is effective, i.e. the extent to which final judgements are executed, particularly in cases when Government bodies have to comply with them. **The figures for the execution of judgements in Spain are worrying**, not only because of the lack of executions, but also because of the long

delays when they are executed.

It is striking that although Spain is one of the countries that make the heaviest investments in its justice system, it obtains these poor results. Resources must be used appropriately to reinforce the execution of judicial decisions, and the system must undergo digitization. See Figure 1 below:

Figure 1. Average length of the execution procedure.



Source: [Study conducted by Sigma Dos](#) for the General Council of Solicitors of Spain on "The Execution of Legal Sentences".

2.3. Other problems of the Judiciary

As well as these issues, there are other problems affecting the judiciary that are worthy of consideration.

First, Spain is among the EU countries in which the judicial systems have the fewest judges per inhabitant. This is a statistic that is nevertheless at odds with the fact that according to [European Commission](#) figures, Spain is one of the countries that invests most heavily in its justice system. The country therefore has a problem of budget efficiency, and as such **the answer must be to increase not so much the quantity of spending on justice but rather the quality. In short, the issue is not so much one of spending more, but of spending the available resources more wisely.**

In addition to this issue, another problem highlighted in our report is the **Executive's interference with the Judiciary by means of politicians' criticism of unfavourable rulings.** This undermining of the legitimacy of one national authority by the members of another contributes to the rule of law falling into disrepute and deterioration, as well as the principle of institutional loyalty that must govern relationships between the authorities, and is a violation of the principle of the separation of powers.

A second type of interference involves the **“revolving doors” between the political sphere and the judiciary.** Despite the fact that since Organic Law 4/2018, judges such as Juan Carlos Campo have declined to hear cases related to proceedings involving a political party, **the comings and goings between the political world and the judiciary endanger its members' independence and impartiality, or at least the appearance thereof.**

Finally, a third type of interference is related to the way in which **pardons** have been granted during the years covered by the report. Although the figures show a [clear decline in the number of pardons granted since the turn of the century](#), there has been a slight upturn in recent years. Furthermore, the pardons granted during these years are not subject to the political

consensus behind other political pardons granted in the past, such as the pardons received by the leaders of the GAL paramilitary group and General Armada, who participated in the failed coup d'état in Spain in 1982.

Indeed, **the problem of the possible arbitrariness of pardons arises precisely in cases where pardons are granted by the Government against the opinion of the trial court or the Public Prosecutor**, or both, particularly when they affect other politicians. Although these reports are compulsory but not binding, respect for their judgement is clearly a safeguard in the exercise of a prerogative that in addition to being exceptional, implies interference by the Executive Branch in the work of the Judiciary, as it means that execution of final judgements can be annulled.



THE STATE PROSECUTOR GENERAL'S OFFICE



Source image: Sede de la Fiscalía General del
Estado. De Triplecaña - Trabajo propio, CC BY-SA
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3.1. The functional autonomy and impartiality of the State Prosecutor General's Office called into question: the case of Dolores Delgado

Problems related to the lack of autonomy of the State Prosecutor General's Office are also common in Spain, with appointments of State Prosecutor Generals who always have very close ties to the government of the day. However, a particular problem stands out in the period between 2018 and 2021 which highlights the institution's deterioration after many years of a lack of autonomy and dependence on the Executive Branch.

Despite functional autonomy and impartiality being consubstantial with the role of the Public Prosecutor, the new Government that emerged from the elections held on 10 November 2019 **proposed its former Minister of Justice**, Dolores Delgado, as the Director of Public Prosecutions. When she was proposed for the office, she was also an elected deputy of the Socialist Group after having taken part in various events in the electoral campaign as a candidate on that party's lists, until her resignation on 15 January.

It is also striking that the reasons for defending a non-independent position for the State Prosecutor General's Office given by the Director of Public Prosecutions and by the Government in general to justify its arguments are essentially incorrect from a technical and legal point of view. These arguments are based on **the idea that the Director of Public Prosecutions has to implement the government's criminal policy**, and should be able to choose their team with complete freedom. This conception of the State Prosecutor General's Office is not only a throwback to bygone eras, but also appear to confuse the role of the State Prosecutor General's Office with that of the Ministry of Justice. Furthermore, it involves a very significant reduction in the guarantees for the prosecutors themselves, in that prosecutors must ensure compliance with all laws, acting as their Statute states, "under all circumstances in accordance with the principles of legality and impartiality" set forth in its articles 6 and 7.

3.2. Appointments to the Office of the Prosecutor. The Stampa and Moix cases

Spain has no objective promotion system, with minimum rules for evaluation, an objective scale of merit, a ranking system for candidates and sufficient publicity for vacancies and the requirements to fill them, and as such it is difficult to respect the constitutional principles of merit and ability.

The Stampa case and Moix case are two of the most striking examples where both a limited scope for discretion and all kinds of interference in the policy surrounding

appointments (and dismissal) of prosecutors working on sensitive cases are apparent. In the case of Ignacio Stampa, the delay in dismissing the investigation that was hanging over him hindered his appointment to the Office of the Anti-Corruption Prosecutor. In the case of Manuel Moix, his appointment as Head of Disciplinary Action of the State Prosecutor General's Office placed him at the head of the Public Ministry's disciplinary system, even though his appointment was supported by only two members of the Council of Prosecutors.

THE LEGISLATURE



Source image: Sesión Plenaria. Fuente: Congreso de los Diputados

The **Parliament** is the central institution in a representative liberal democracy like Spain's. It is the representative body par excellence, which undertakes its tasks based on the application of the **deliberative principle**. Those tasks include **oversight of the executive branch**, so that it is accountable,

accepts responsibilities and answers for its actions politically before Parliament. However, there has been a **growing decline in the role of the legislative branch** which has benefited the Executive in recent years. This situation is particularly evident in the use of **executive decrees** as an ordinary means of legislating.

4.1. The executive decree as an "ordinary" means of legislating

4.1.1. The impairment of Parliament's legislative role due to the normalisation of the executive decree.

The executive decree has an **exceptional** status within Spain's legal system, according to the country's Constitution, which deems it an instrument to be used in cases of "extraordinary and urgent need" (Spanish Constitution, article 86.1). As a consequence of its exceptional nature, the executive decree **is not subject to such a thorough process of parliamentary debate** as laws, but they instead merely require authorisation from Congress to remain in force 30 days after their entry into force. In this authorisation procedure, Congress is only able to ratify or reject the executive decree by means of a vote which applies to the decree in its entirety. **Amendments** to the text are therefore impossible. **The process involved in drafting executive decrees also does not include the same procedures** that apply to Draft Laws, especially with regard to the issuance of reports as provided for in article 26 of Law 50/1997, concerning the Government. The executive decree also has **material limitations**. For example, it cannot regulate the rights, duties and freedoms of citizens included under Chapter I of the Constitution, or regulate

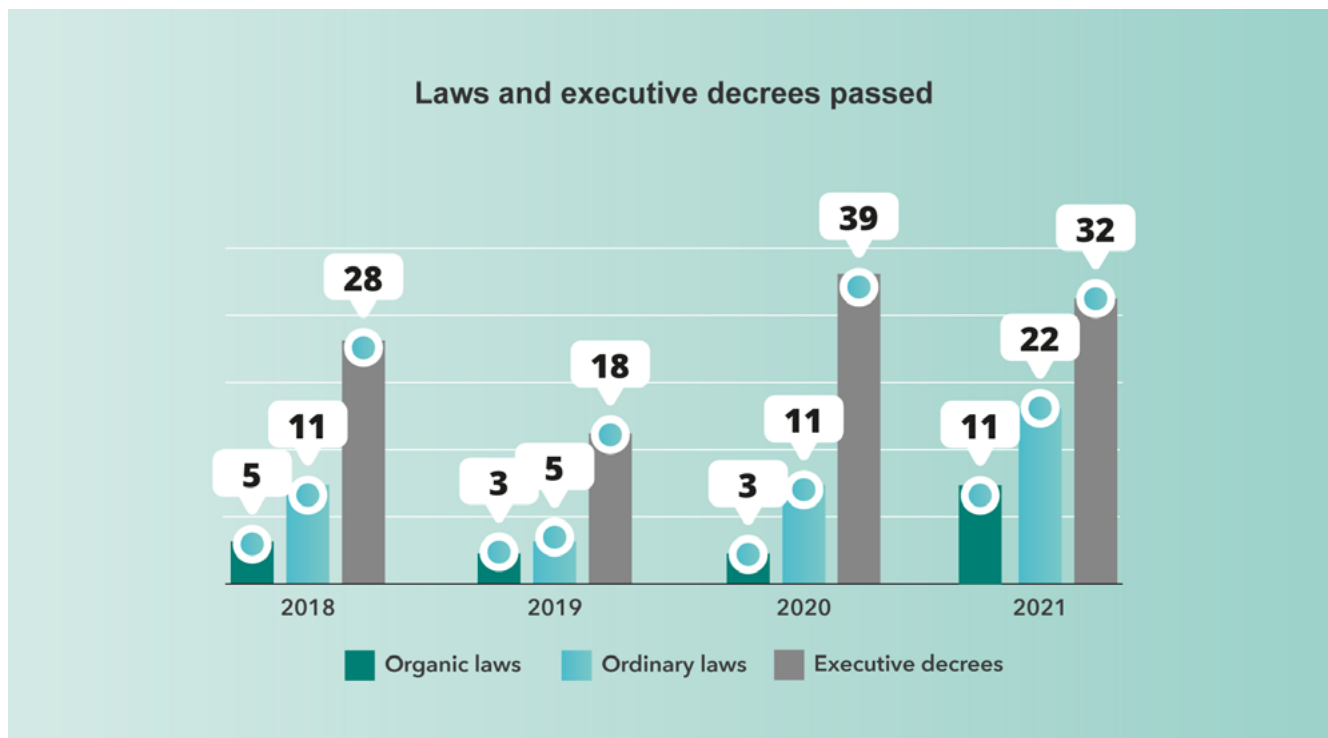
the basic institutions of the State or matters reserved for Organic Law.

An abusive use of the executive decree which fails to respect the limits established by the Constitution (limits that can only be subject to oversight by the Constitutional Court, sometimes with years of delay and provided that someone files the relevant appeal) **leads to an evident deterioration in the deliberative and decision-making parliamentary process**.

In the light of these circumstances, the **Government's increasing use of this power**, which had already been used very generously beforehand, is a concern. This period has also seen two situations that have aggravated this trend: the lack of a robust Governmental parliamentary majority and the emergence of the COVID-19 crisis, with the consequent declaration of the state of alert and the situation of extraordinary and urgent need (which was genuine on this occasion). Figure 2 shows the imbalance between decree laws and the other legislation passed in parliament.



Figure 2. Laws and executive decrees passed.



Source: Own elaboration based on information contained on the website of the Spanish Congress of Deputies.

More executive decrees than parliamentary laws were passed in three of the four years shown in this Figure. This means that in these years, the executive decree has become an ordinary means of legislation, to the extent that the Executive Branch appears to have superseded the Legislative Branch in its primary

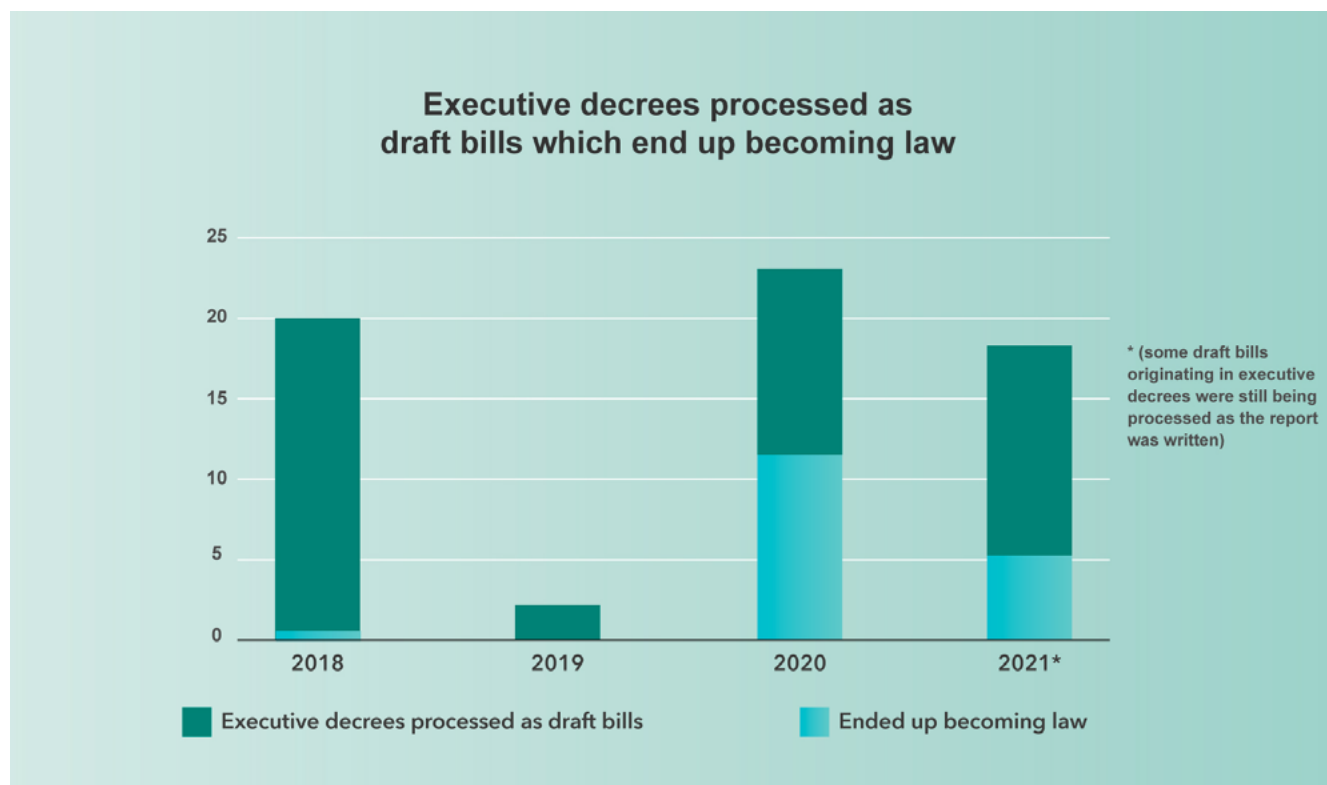
task: that of producing legislation. Parliamentary laws rather than executive decrees are now the exception rather than the norm. In addition to the legislation experiencing a **loss of legitimacy**, this situation has also accelerated the decline in its **technical quality**.

4.1.2. Deficient parliamentary oversight of executive decrees.

The second and third paragraphs of article 86 of the Spanish Constitution which regulate executive decrees, provide for a number of checks and balances on the exercise of the Government's exceptional legislative powers in order to safeguard the role of the legislative branch. Parliamentary oversight takes place by means of their **ratification** or **repeal**. They may also undergo the same procedure as bills, thereby enabling parliamentary groups to introduce amendments to the law initially passed by the Government.

Under these circumstances, the usual practice is for executive decrees to be ratified: In Spain's entire democratic era, **only five executive decrees have been repealed** - one in 1979, one in 2006, one in 2017, one in 2018 and one in 2020. On the contrary, relatively more executive decrees have been passed as bills, which theoretically enables the Congress and Senate to intervene in the process. However, this is only the case in theory: most of the bills that originated in ratified executive decrees **failed to complete the legislative procedure they started**, and expired at the end of the legislature, as shown in the figure below.

Figure 3. Executive decrees processed as draft bills which end up becoming law.



Source: Own elaboration based on information contained on the website of the Spanish [Congress of Deputies](#).

4.1.3 The contents of executive decrees.

Another additional problem related to these decrees is related not only to their quantity but also their quality, measured in terms of the heterogeneity of the provisions they contain. **It is common for executive decrees to regulate entirely different and heterogeneous issues that are completely unrelated to each other.** This situation, which may be justified if the circumstances (of extraordinary and urgent need) apply, is not justified when it is used as a regulatory instrument which replaces ordinary law. Ordinary laws - at least theoretically - must regulate a specific issue (housing, energy, sexual freedom, the labour market, etc.) which is referred to in their title. This means of legislating enables a better legislative technique and contributes to legal certainty, as legal practitioners can reasonably identify the legislative instrument that contains the provisions that affect a single subject.

By failing to respect this means of legislating, **Congress therefore frequently finds itself having to ratify some provisions of an executive decree that bear no relation to the circumstances creating the extraordinary and urgent need for it, or the subject of the legislation.** This is especially true in the case of executive decrees, which have recently been very common, which contain support measures for citizens and companies in order to alleviate the effects of the pandemic, or the crisis arising from the war in Ukraine, where adopting a position against them has obvious political costs.

These problems have been highlighted by Spain's Constitutional Court on many occasions (Constitutional Court Rulings 14/2020, 110/2021, 111/2021, etc.), which have declared some of the regulations included in executive decrees as unconstitutional, for precisely the reasons set out above.

4.2. Delays in complying with European legislative obligations

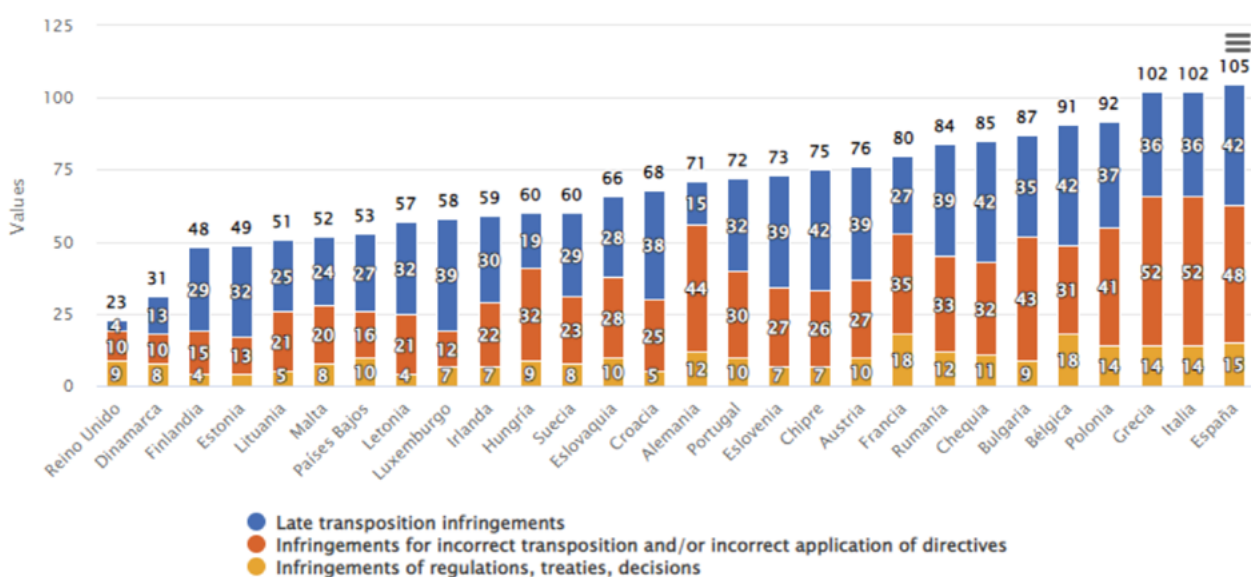
As is well known, the Member States of the European Union undertake to take “any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union” (article 4 of the TFEU), including the transposition of European Union Directives, which is subject to a two-year grace period.

If a State fails to comply with EU regulations or does not provide notification of the measures it has taken to fully transpose the provisions of directives, the European Commission is empowered to begin a **formal infringement procedure**. The final step in this procedure is **the imposition of economic sanctions**, which are adopted after a ruling by the ECJ recognising the existence of the infringement. On the other hand, a delay in the transposition of directives is not only a breach of Union law, but also directly affects **the interests of Spanish citizens**. Citizens wishing to exercise the rights arising from a directive whose transposition

period has expired therefore find themselves trapped by their own State’s non-compliance. An example is Directive EU 2019/1937 on the protection of persons who report breaches of Union law, which is still pending transposition into the Spanish legal system.

Spain heads the ranking of countries with infringements in the transposition of directives (not only in terms of failures of transposition within the established deadline but also in terms of uneven transpositions), and has been subject to rulings in that respect by the ECJ. This is illustrated in Figure 4, which shows the number of infringements in transpositions for 2021 according to the annual report on monitoring the application of Union Law produced by the European Commission. However, Spain’s position as the leading Member State for infringements goes much further. If this report is taken as a benchmark, Spain has continuously led the ranking of countries subject to infringement procedures related to Community law since 2016.

Figure 4. Infringement proceedings ongoing in 2021 by Member State.



Source: [Annual report on monitoring the application of Union Law. 2021 annual report. Part 1: statistical overview.](#)

The reason for these systematic breaches lies not only in the **parliamentary fragmentation** that Spain has experienced in recent years, but also in the internal transposition procedure itself. In principle, one might think that the density and wide range of legislation in the Spanish legal system does not contribute to a flexible transposition. However, we have also seen how the **executive decree** is used to accelerate the approval of the laws that the Executive Branch considers a priority, which do not appear to include community directives. On the other hand, there is no doubt that the complex nature of **the distribution of powers between the Spanish Government and Spain's autonomous regions** also requires a process of transposition at the regional level that is not specifically set out in Spain's regulatory framework. However, there is no

doubt that the autonomous regions are the competent authorities when a directive affects areas in which powers have been transferred, regardless of the sole and exclusive responsibility assumed by the Spanish Government towards the European Union for the failure to transpose its legislation, or the irregular transposition thereof.

We can therefore conclude that **there are several determining factors** in the Spanish case that may explain the high level of infringements in the transposition of directives. However, we must also bear in mind that there are other countries with similar difficulties in the EU, and as such **perhaps we should also highlight a lack of capacity on the part of our Public Administrations.**

4.3. Other problems related to the Legislative Branch

In addition to the above, the Legislative Branch in Spain is experiencing other particularly significant problems.

The first problem arises from what has been dubbed “photo opportunity legislation”, which is linked both to a massive output of legislation that means the laws in Spain are constantly changing. **This lack of consistency in the laws is not only an enormous inconvenience for legal experts**

and a source of legal uncertainty for citizens, but also leads to great difficulty in establishing jurisprudence.

A factor related to this is the failure by the Government's legislative Annual Plans to comply with the forecasts it makes for the approval of legislation in a given year. As we highlight in greater depth in our report, **while there are many regulatory initiatives, only about half of them come to fruition.**



THE PROTECTION OF HUMAN RIGHTS IN SPAIN. JUDGEMENTS BY THE ECHR



Source image: Fachada de la sede del Tribunal Europeo de Derechos Humanos (TEDH), con sede en Estrasburgo (Francia). /EFE/MICHEL CHRISTEN

Spain is by no means one of the countries in the Council of Europe that has received the most negative judgements. **In 2021, the country received ten negative rulings from the ECHR for violations of at least one of the rights recognised in the Convention. However, since Spain joined the Council of Europe, violations of Article 6, which covers the right to a [fair trial](#) have been found to have taken place in almost half of the cases (63 of the 134**

judgements), which is a source of concern. This situation may deteriorate given the recent jurisprudence of the ECHR concerning the Systemic dysfunction in the judicial appointments procedure in Poland (where judges are chosen by the Sejm or Polish Parliament), in which the Court highlighted the compromised legitimacy of courts elected as a result of influence from the executive and legislative branches.



INSTITUTIONAL CHECKS, INDEPENDENT AUTHORITIES AND ACCOUNTABILITY



6. 1 The quota system in the renewal of constitutional bodies: the example of the Data Protection Agency

In November 2021, the memberships of a number of constitutional bodies (although not the GCJ, as we have seen above) were renewed by the Government and the main opposition party, according to the recurring model of party-based quotas. The bodies for which the agreement was reached were the Court of Auditors, the Constitutional Court, the Ombudsman and the Data Protection Agency. They all fit the definition of what might be called “**counterbalancing agencies**”, or to use another well-known expression, “checks and balances”. The party-based quota distribution system poses a serious problem for the rule of law in Spain, which has deteriorated due to the parliamentary fragmentation and the extreme polarisation of the country’s democracy.

The case of the Data Protection Agency illustrates the problem very well. According to article 44 of the [Organic Law on Personal Data Protection](#) and guarantee of digital rights, “the Spanish Data Protection Agency is an independent administrative authority at the state level (...), which acts with full independence from the authorities in the exercise of its tasks.” Likewise, article 48 stipulates that both the Presidency and the Deputy will “perform their tasks with full independence and objectivity, and will not be subject to any instructions in their work.”

Nevertheless, as a result of ignorance or haste (or both), in October 2021 **the PSOE and the PP announced the names of the President and the Vice-President of the Spanish Data Protection Agency**: Belén Cardona and Borja Aduara, respectively. The call for these same two positions was published a month and four days later, on 17 December. In other words, the distribution of positions in the Spanish Data Protection Agency was agreed upon first (as part of a broader package that included the Constitutional Court, the Ombudsman and the Court of Auditors) and the conditions that sought to confer legitimacy on this election were approved afterwards. However, and in addition, the procedure designed did not comply with the Law. The conditions of the call were

contrary to [article 48.3](#) of the Organic Law on data protection. First, the legal procedure that requires the selection of a candidacy in a public and free contest was ignored. Second, the possibility of sending a shortlist to the Council of Ministers was introduced, when the law only calls for the sending of a candidature. The Council of Ministers thereby agreed to send a list of candidates for each position to the Congress of Deputies so that it could choose, when the law states that the Government’s proposal “must be ratified by the Justice Commission”. In other words, Congress is not entitled to select the candidates, but instead must confirm or reject the decision made by the Government.

Faced with this critical situation, the Supreme Court provisionally halted the process with its Order of 21 March 2021, after a challenge by one of the candidates, which revealed the existence of basic shortcomings in the selection process. This situation led to acquiescence by the State Legal Service, which defended the Government’s position. Two months later, on 25 May, the [Supreme Court](#) finally confirmed the irregularities that had taken place in the selection process for the President and Vice-President of the Spanish Data Protection Agency (AEPD).



6.2. Workings of the Constitutional Court

Within this situation, there are also problems associated with one of the most important bodies providing a counterweight in a parliamentary democracy, which is the Constitutional Court. There are two aspects that are particularly noteworthy: the growing politicisation of the Constitutional Court, in a trend that has been identified for other constitutional checks such as the Court of Auditors, and aspects related to its workings.

As regards its politicisation, **the larger political parties have traditionally “distributed” appointments for the judges of the Constitutional Court among themselves.** At the time of writing, a third of the judges were due to be replaced, with two to be replaced by the Government and two by the General Council of the Judiciary, the situation of which has been discussed above. The explicit desire of the Government is to form a “progressive”

majority against “conservatives”, thereby undermining the idea that the role of an institution like the Constitutional Court is to act as a counterweight.

The Constitutional Court’s discretion when delaying the study and resolution of some particularly controversial and sensitive appeals for legal protection is noteworthy. Even taking into account the complexity of the issue, these delays highlight **the weakness for the rule of law that the Constitutional Court’s ability to decide to avoid ruling on a case** for an indefinite period of time entails, thereby circumventing its role as the foremost interpreter of the Constitution. At this point it is worth recalling the problems arising from the delay (of four years) in issuing the ruling on the Statute of Autonomy of Catalonia, and from declaring the pandemic-related states of alert unconstitutional after they had expired.



TRANSPARENCY AND THE FIGHT AGAINST CORRUPTION. OTHER CHECKS: THE PUBLIC SERVICE MEDIA AND ORGANISED CIVIL SOCIETY



7.1. Transparency and accountability. The fight against corruption

The [data collected by Spain's Centre for Sociological Research \(CIS\)](#) highlight a **decline in public concern over the issue of corruption in recent years**. Likewise, there has also been a clear decline in the use of the term in press conferences after meetings of the Councils of Ministers, as is also the case with the term “transparency”.

However, it should be noted that the **public interest in putting into effect the right of access to public information** by means of requests for access to public information at the national level (figures from the Council for Transparency and Good Governance) **is on the increase** every year, and particularly at

the beginning of the pandemic in 2020, when 11,453 applications were made, compared to 7,449 in the previous year.

Likewise, there is also a **certain degree of reluctance to comply with the rulings of the Council for Transparency and Good Governance** by the bodies affected when it rules in favour of access to public information for citizens. This reluctance is also evident in the judicial appeals filed against those rulings, and in the cases in which the final decisions of the Council for Transparency and Good Governance are ignored by the government body that has to comply with them.

7.2 Other checks: the public service media

The role of the media is crucial if a democracy is to be considered strong and dynamic, and it must be independent in order to ensure the right to information and freedom of expression. However, this is not always possible due to the various forms of politicisation to which they are subjected. Our report examines three particular cases in depth, in order to illustrate this politicisation of public service media: 1) The failed attempt

to depoliticise RTVE, the state-owned public media corporation; 2) The reversal of the depoliticisation of Madrid's public regional television (Telemadrid) after the coalition government between PP and Ciudadanos ended, and 3) The interference by the Catalan political parties in the region's public service media, especially during the failed push for independence.



CONCLUSIONS



An analysis of the indicators included in this Indicators Report shows a persistent deterioration in Spain's rule of law which affects several issues that are essential for its proper functioning. This deterioration leads to **less oversight of the executive branch**, due to the partisan occupation of counterweight institutions. The serious situation of the GCJ, about which even international bodies and the European Union itself have issued warnings, is the tip of the iceberg in this process of constant deterioration. Another striking issue is the **consequent and gradual decline in the importance of Parliament**, which is relegated to a very secondary and auxiliary role in terms of both legislative tasks, given the predominance of executive decrees, and the role of oversight and accountability concerning political representatives. The **separation of powers** also suffers not only from the lack of the judicial bodies' ability to enforce their rulings and final resolutions when they are contrary to the interests of the government or political party in power, but also from structural problems due to a lack of sufficient resources. The **revolving doors between politics and justice** also do

not contribute to improving the image of the judiciary. The situation of the State Prosecutor General's Office is not much better.

There are no strong checks against this situation, which is not exclusive to Spain, but which has its own specific characteristics in the country. The institutions are subject to a distribution of party-based quotas that undermines not only their **independence** but also their **professionalism**; it is no coincidence that the Court of Auditors has failed to detect Spain's major corruption scandals, particularly those linked to corruption of political parties, and that the Constitutional Court has postponed the preparation of rulings that are highly politically charged.

As we have attempted to highlight throughout the study, not only with specific examples that illustrate the situation but also with quantitative data, it is no coincidence that **Spain's position in the international rankings that compile relevant indicators on the functioning of states subject to the rule of law is in decline.**



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