

2023 Rule of Law Report

Targeted stakeholder consultation

(Answers in English)

I. Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

As we will develop in the following sections, Spain still has not renewed yet the General Council of the Judiciary (hereinafter, CGPJ), so there is no progress on this point. In the current regulatory context, this affects the appointment and promotions of judges and even the slowness of justice. In 2022, it has also led to a crisis in the renewal of the Constitutional Court.

Regarding the situation of the Prosecutor General's Office, it is important to note that no progress has been made in relation to the recommendations received in the 2022 Report. The Prosecutor General continues to be appointed by the government in a procedure that does not guarantee due impartiality and independence. On the other hand, and despite the modification of the [Estatuto Orgánico del Ministerio Fiscal](#) (hereinafter EOMF), there are also insufficient guarantees in relation to the irremovability of General Prosecutors. The structure of the Prosecutor's Office does not guarantee a system of promotions within the prosecutorial career based on merit and ability.

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)

In relation to the system for appointing judges it should be noted that the main problem stems from the blocking of the General Council of the Judiciary, the governing body of the Judiciary, which we will analyse in following sections. For the moment, let us recall that the CGPJ is competent to make appointments and promotions in the judicial career. In addition, the CGPJ is responsible for appointing two of the twelve judges that constitute our Constitutional Court, called Tribunal Constitucional (hereinafter Tribunal Constitucional or TC).

In this regard, it is important to take into account that the [Ley Orgánica 4/2021](#) was approved by the Congress as a pressure mechanism to force the unblocking of the CGPJ. This law prevents the CGPJ in office -that is, until the renewal of its members- from making appointments of discretionary positions, such as the presidents of different courts that include Audiencias Provinciales, Tribunales Superiores de Justicia, Audiencia Nacional or the judges of the Tribunal Supremo, our Supreme Court. As we pointed out in our [Report on the State of the Rule of Law in Spain](#), this situation has led to a reduction in the number of discretionary appointments. In 2019, 62 appointments were made. In 2020 34 appointments were made and in 2021 only 3. In 2022 no appointments were made according to data from the CGPJ itself.

Regarding the Prosecutor's Office, it is worth remembering that in Spain this institution is endowed with functional autonomy and independence, so it is placed within the Judiciary in order to ensure greater

independence from the Executive Branch. In spite of this, the Prosecutor General (in Spanish, Fiscal General del Estado) is appointed by the Government, and in turn this Prosecutor General proposes the top positions in the Prosecutor's Office with total discretion, a fact that has historically resulted in appointments very close to the Executive.

To illustrate this situation with two of the most recent appointments, the current coalition Government that emerged from the last elections proposed its former Minister of Justice, Dolores Delgado, as Prosecutor General. At that time, Dolores Delgado was also an elected deputy (i.e. member of the Parliament) of the Socialist Group and she had taken part in the electoral campaign as a candidate of the Partido Socialista Obrero Español (hereinafter PSOE) until her resignation on the following January 15. After Dolores Delgado's resignation on July 19, 2022, she was replaced by Álvaro García Ortiz. This substitution placed in charge of the Prosecutor General a person who was Dolores Delgado's right-hand man and who played an important role in the so-called "Stampa case" (to which we will come back in the following sections), something that does not bode favourably for an institution whose independence had already been called into question.

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)

We do not notice any relevant problems in relation to dismissals from the judicial career, which only occur in very specific cases. With regard to the prosecutorial career, it is noteworthy that despite the fact that the amendment introduced in 2007 to the art. 31 of the [Estatuto Orgánico del Ministerio Fiscal](#) (hereinafter EOMF) introduced a term of office for the Prosecutor General with specific grounds for dismissal, practically no Prosecutor General in recent years has completed the whole term for various reasons (resignation, non-renewal, death, etc.), so it seems clear that this guarantee has not been sufficient.

On the other hand, it is important to note that there are significant procedural obstacles to obtaining a judicial review of both appointments and dismissals. Spanish courts usually deny legal standing for cases in which someone who is not directly affected by the appointment or dismissal brings a judicial appeal for review, as is the case with civil society organizations such as the Fundación Hay Derecho. Without this possibility, judicial review is much less likely to take place, given that many of the candidates directly affected do not dare to appeal for fear of reprisals or simply because of the time and resources involved. At the same time, the defense of the appointments is carried out with public resources. Furthermore, sometimes these judicial appeals are useless since the same appointments are made again even after the appeal has been upheld. This is what happened when Dolores Delgado appointed Eduardo [Esteban Rincón as prosecutor of the Sala de Menores](#) even though the Tribunal Supremo had annulled such appointment for not being the candidate with the most appropriate merits for the position. The reason for this is that many Courts carry out a purely formal review of the selection processes, which allows some institutions to avoid the substantive issue raised by simply making a greater formal effort to motivate but without changing the person appointed.

Promotion of judges and prosecutors (incl. judicial review)

Regarding promotions in the Prosecutor's Office, it is important to note that in Spain there is no objective promotion system, with minimum evaluation rules, an objective merit scale, a system for ranking candidates and sufficient publicity of vacancies with the requirements for filling them, making it difficult to respect the constitutional principles of merit and ability.

The so-called Stampa case and Moix case serve as two of the most striking examples of this situation, where not only there was a lack of discretion but also there were interferences of all kinds in the policy of appointments (and dismissals) of prosecutors working on sensitive cases. In the case of Ignacio Stampa, the delay in archiving the investigation against him hindered his access to the Anti-Corruption Prosecutor's Office. Although this situation mainly developed at the end of 2021, in 2022 new data appeared that point to the fact that Dolores Delgado did request information from the chief prosecutor of Madrid about Stampa's situation before deciding on his appointment. This is particularly serious if we consider that Stampa was at that time working on the Villarejo Case, in which Baltasar Garzón, Dolores Delgado's partner, participates as defense lawyer. Thus, there were enough reasons for Dolores Delgado to abstain from participating in Stampa's appointment decision.

As for the case of Manuel Moix, his appointment [as Promoter of the Disciplinary Action of the State Attorney General's Office](#) on October 4, 2022 places him at the head of the disciplinary system of the Public Ministry even though he had only [two of the twelve members of the Fiscal Council in his favour](#) and he resigned as Chief Fiscal of the Anti-Corruption Prosecutor's Office after it was discovered that he had an off-shore company in Panama.

As for promotions in the judicial career, those made by merit-based competition do not pose any problems. However, for the discretionary appointments to which we have already referred, the situation is very problematic, given that they have been paralysed since June 2021 as a consequence of the Ley Orgánica 4/2021 to which we have already referred in the first section. Otherwise, and given the way in which the CGPJ is elected, its politicization and the intervention of the judicial Associations aligned with the two main parties (APM with Partido Popular and JJxD with PSOE), the discretionary appointments in the judicial career present similar problems to those of the Prosecutor's Office. Very often appointments to the highest positions in the judicial career are decided on the grounds of ideological affinity, friendship or simply membership to one of the associations aligned with the political parties, which in that sense function as authentic placement agencies for their members.

Allocation of cases in courts

We are not aware of any progress on this point. It is something we are currently investigating through transparency requests.

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)

The main problem that has been affecting the CGPJ since 2018 is its lack of renewal. The current CGPJ, constituted under absolute majority of the Partido Popular (hereinafter PP) on December 4, 2013, should have been renewed in 2018. Therefore, its renewal has been pending for 4 years. The main reason for this situation is that the PP, which is now in the opposition, has not wanted so far to agree with the Government on the renewal, given that in the new CGPJ would have a smaller proportion of members aligned with its political positions. This way of proceeding shows that, contrary to what the Tribunal Constitucional established in its STC 108/1986, the majority political parties have been distributing the members of the CGPJ according to party quotas. This distribution of members damages both the technical quality and the independence of a body such as the CGPJ. In practice, the main parties give up the right to veto the candidates of the other party in exchange for being able to appoint their own, even if this means accepting candidates of dubious impartiality and perpetuating an election system that rewards affinity over merit. In this way, the need for major agreements for appointments is also circumvented (a majority of $\frac{3}{5}$ parties is required).

The blockage also has other effects that we comment on in this form, such as its influence on the recent crisis of the Tribunal Constitucional or the damage it causes in terms of appointments and promotions. This translates into a lower number of court proceedings handled and fewer judgments handed down, contributing significantly to the backlog of court cases.

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)

In Spain, all judges and magistrates are protected by a particular privileged jurisdictional regime called *aforamiento* in order to guarantee independence in the prosecution of the proceedings in which they are involved. Therefore, in those cases where a judge commits a crime in the exercise of their office, they are prosecuted by the Tribunal Superior de Justicia of the region where they hold office. In the event of a final criminal conviction, they may lose the status of judge.

Having said this, it is relevant to point out that the Promoter of the Disciplinary Action both among judges and prosecutors is a freely appointed position chosen by the Prosecutor General or by the President of the CGPJ, something that does not guarantee their independence at all and that, in fact, has led to the opening of some disciplinary proceedings against wayward judges or prosecutors.

Regarding the Prosecutor's Office, it is also worth noting that the position of Promoter of Disciplinary Action, introduced by the new [Reglamento del Ministerio Fiscal](#) (hereinafter RMF), is held by Manuel Moix. We have already seen that Moix had to resign as Chief Prosecutor of the Anti-Corruption Prosecutor's Office after it was discovered that he had an off-shore company in Panama.

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

We are not aware of any positive developments in the area of transparency or access to public information. As in other areas of Spanish Public Administration, there is considerable resistance to providing information about performance incentives in Spain.

Independence/autonomy of the prosecution service

Although the Public Prosecutor's Office in Spain has historically been considered as the executing arm of the government's criminal policy, our Constitution represented a step forward in guaranteeing the autonomy of this institution, placing it within the Judiciary and providing it with functional autonomy through the [EOMF](#). In this line, it is worth highlighting as a recent positive milestone the approval of the [RMF](#), which finally repeals the still partially in force Reglamento Orgánico del Estatuto del Ministerio Fiscal, which was pre-constitutional in nature and, as the Explanatory Memorandum of the RMF itself points out, was a clear anomaly that did not benefit the institution. Among other things, this is because it maintained a conception of the institution that was strongly dependent on the Executive Power, to the point that it was defined as "an organ of communication between the government and the courts".

Having said this, the fact is that, as we have seen, in Spain it is common to appoint Attorneys General who are very close to the Government in office. This affects the independence of the Public Prosecutor's Office in general, given that in the body of prosecutors there exists a model of governance that concentrates enormous powers in the General Prosecutor not only from the technical-legal point of view but also from the point of view of internal organization and career management. Thus, although the

RMF has introduced some limits to discretionary appointments, we cannot speak of the existence of real co-decision bodies or effective counterweights in the Public Prosecutor's Office.

In addition to the concentration of power in the General Prosecutor, there is another problem linked to the role of prosecutors' associations. Despite the fact that the two majority associations do not together account for even 30% of the members of the profession, the reality is that their members end up holding the main positions of free appointment and the majority of positions in consultative bodies such as the Prosecutorial Council. In this regard, it is worth noting as an exception the presence since October 2022 in the Prosecutorial Council of Salvador Viada, president of APIF, an independent association of prosecutors.

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

It is worth noting that Pablo Zapatero Miguel, who became Secretary of State for Justice in January 2020, returned to his original position as Technical Secretary General at the General Council of the Spanish Bar in June 2022. This represents an example of revolving doors that calls into question the independence of the institution from the Ministry of Justice, highlighting a recurring problem in Spain regarding the lack of awareness in many institutions about conflicts of interest.

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

In recent years, there have been statements on social networks or in other media by members of the government which have been particularly noteworthy because of how they spoke against the content of certain court rulings and the jurisdictional work carried out by the courts of justice. This criticism does not only come from the government and the parties that support it, but, logically, it has a greater impact when it comes from the Executive Branch. Furthermore, on numerous occasions not only is the text or content of the rulings criticised, which is legitimate, but also "ad hominem" criticisms are made of the judges and magistrates who hand them down, even making reference to their personal circumstances.

By way of example, during the last months of 2022, in the context of the crisis of renewal of the Constitutional Court, pronouncements were heard and read by deputies of the two governing parties ([PSOE](#) and [Podemos](#)) defending the unrestricted sovereignty of the Parliament and the subordination of the rest of the powers to it. This occurred in the face of the possibility that the Tribunal Constitucional would paralyze a parliamentary process with serious formal defects. While it is important to notice that the Tribunal Constitucional in Spain does not belong to the Judiciary, such statements affect the public's perception of constitutional principles such as the separation of powers, given that the Constitutional Court is called a court and its members have the status of magistrates. Furthermore, this type of statements forget the fundamental role of Constitutional Courts in liberal democracies, where all powers are limited so that the whole system works and is respectful of the democratic rules themselves and the fundamental rights of citizens. This logically includes the Parliament, whose work is subject to respect the Constitution (art. 9.1).

B. Quality of justice

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

In 2022 there have been no regulatory changes affecting access to justice in Spain for individuals. However, it is worth highlighting the problem already mentioned regarding the strict jurisprudential conception of legal standing in the contentious-administrative sphere (the jurisdiction that reviews the actions of the Government, the Public Administrations and the institutions) which, in practice, can result

in a certain impunity by depriving civil society organizations of the possibility of reviewing abuses of power through the courts. This is of particular importance because the persons directly affected are not always in a position to appeal administrative or governmental decisions.

Resources of the judiciary (human/financial/material)

(Material resources refer e.g. to court buildings and other facilities)

According to the CEPEJ's 2022 [evaluation report](#), elaborated with 2020 data, in Spain there are:

- 11.2 judges per 100,000 inhabitants (the median in Europe is 17.6 judges per 100,000 inhabitants).
- 5.37 prosecutors per 100,000 inhabitants (the median in Europe is 11.1 prosecutors per 100,000 inhabitants)
- 303.55 lawyers per 100,000 inhabitants (the median in Europe is 134.51 lawyers per 100,000 inhabitants).

The justice budget is equivalent to 87.9 euros per inhabitant, which is equivalent to 0.37% of GDP. In Europe, the median is 64.5 euros per inhabitant, 0.30% of GDP.

Therefore, Spain has an expenditure in Justice that is above the European median. And yet, it has fewer judges and prosecutors. As we point out in our [Report on the State of the Rule of Law in Spain](#), this is mainly due to a problem of efficiency in spending and a scarce implementation of alternative dispute resolution systems.

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

In 2022, we are not aware of any relevant changes affecting the training of judges in Spain.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

It is worth noting that in July 2022 the [Proyecto de Ley de Medidas de Eficiencia Digital del Servicio Público de Justicia](#) was approved by the Council of Ministers transposing Directive 2019/1151. It is currently in the Justice Committee of the Parliament.

Otherwise, in terms of digitization, Spain continues the positive trend that began after the pandemic, although at a slow pace compared to other European countries. Among the most noteworthy changes is the development of telematic hearings, the use of which is intended to be generalized with the aforementioned draft law.

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

Although the CGPJ continues to be the main body that produces studies, statistics and data in relation to the judiciary, it is important to highlight that these studies still suffer from some problems related both to their scope and to the ease with which they can be downloaded and viewed.

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

The development of specialised judicial courts for corruption offences remains desirable, as they were once created for gender-based violence.

C. Efficiency of the justice system

Length of proceedings

Although in Spain citizens are equal before the law, in practice the administration of justice depends on where they reside. The data for 2022 have not yet been published by the CGPJ. However, the 2021 data are useful to get a general idea of the duration of proceedings.

Thus, if we compare the first instance and instruction of civil proceedings:

In Navarra it takes on average 4.5 months in 2021.

In Aragón it takes on average 4.8 months in 2021.

In Castilla y León it takes on average 10.3 months in 2021.

In Murcia it takes on average 11.3 months in 2021

In Madrid it takes on average 8.5 months in 2021.

On the other hand, if we compare the first instance and instruction of criminal proceedings:

In Navarra it takes on average 1.9 months in 2021.

In Aragon it takes on average 1.7 months in 2021.

In Castilla y León it takes on average 5.2 months in 2021.

In Murcia it takes on average 3.8 months in 2021

In Madrid it takes on average 2.3 months in 2021.

Therefore, and even though justice is a central power of the State, there are regional disparities in the administration of justice. These disparities in performance have economic implications, detracting opportunities for local development.

In this regard, it is interesting to highlight the precedent that represents the STC 125/2022, which upheld the appeal filed by the Sevillian lawyer Daniel Sánchez Bernal, who denounced the violation of the fundamental right to a trial without undue delay.

To this situation it is worth adding that, due to the blocking of the CGPJ, the duration of proceedings in the Tribunal Supremo is also negatively affected, a trend that has been developing since 2018, as we illustrate in Graph 21 of our [Report on the State of the Rule of Law in Spain](#).

In this regard, the Tribunal Supremo's Governing Chamber published a [report](#) on October 21, 2021, stating that the impossibility of making appointments, coupled with the uncertainty as to when the CGPJ will be renewed, erodes the court's capacity. With a staff 14% less than legally foreseen, this report foresees that by the end of 2022 approximately 1000 less judgments will be issued per year in all chambers, which will also see an increase in the length of their proceedings. This report has been updated as of 18 January 2023 through a [press release](#) which states that the vacancies in the Tribunal Supremo amount to 24%, a percentage that in the coming months will reach 30.37% due to upcoming retirements. According to the press release, this will mean 1230 fewer rulings in 2023.

Other - please specify

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 2022 Report regarding the anti-corruption framework (if applicable)

In 2022, a series of regulations relating to the fight against fraud and corruption have been adopted. Example of this are the [Real Decreto-Ley 9/2022, de 26 de abril, por el que se adoptan medidas hipotecarias y de gestión de pagos en el exterior en el marco de la aplicación de las medidas restrictivas aprobadas por la Unión Europea en respuesta a la invasión de Ucrania](#); or the [Ley Orgánica 9/2022, de 28 de julio, por la que se establecen normas que faciliten el uso de información financiera y de otro tipo para la prevención, detección, investigación o enjuiciamiento de infracciones penales](#). Among them, it is particularly worth mentioning the transposition of the Whistleblowers Directive 2019/1937 into the [Proyecto de Ley reguladora de la protección de personas que informen sobre infracciones normativas y de luchas contra la corrupción](#). Although it represents a step forward, it was approved after the deadline and with important shortcomings, such as time limitations in the protection of whistleblowers or the lack of independence of the Independent Authority for the Protection of Whistleblowers, as will be discussed below.

However, in other aspects no progress has been made or there have even been setbacks.

Thus, we find ourselves with the reform of the crime of embezzlement. The controversial [Ley Orgánica 14/2022](#), which reforms [the Ley Orgánica 10/1995](#) (our Criminal Code), modifies the different types of embezzlement, ostensibly reducing the penalties in cases where public funds are diverted not for personal gain, but as disloyal administration of public assets. This is a frontal attack against the rule of law and it is conducive to the emergence of corruption cases around the financing of political parties, in addition to having been a modification introduced to benefit certain specific individuals (former senior officials of the Catalan Government with pending trials for embezzlement for various actions related to the unilateral secession attempt of autumn 2017 in Catalonia).

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 authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

We are not aware of any progress in this area.

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

The transposition of the Whistleblower Directive into the Spanish legal system has involved the proposed creation of an Independent Whistleblower Protection Authority. Although this is a step forward, given that currently there is no state agency, the truth is that current design poses several doubts about its real independence. Indeed, this Authority is linked to the Ministry of Justice, whose head appoints its President, and no open and transparent competition procedure for its management, effective accountability mechanisms, the ability to appeal its decisions, and the participation of civil society in its governance, are specified.

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

The aforementioned [Proyecto de Ley reguladora de la protección de personas que informen sobre infracciones normativas y de lucha contra la corrupción](#), transposing the Whistleblowers Directive, in its fifth additional provision, establishes that the Government "within a maximum period of eighteen months from the entry into force of this law, shall approve an Anti-Corruption Strategy which shall at least include an evaluation of compliance with the objectives established in this law as well as the measures deemed necessary to alleviate the deficiencies found during that period of time".

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). Please provide figures on their application

We are not aware of any progress in terms of incompatibility rules, codes of conduct or ethics training in Public Administration.

In terms of revolving doors, it is important to point out the recent approval by the Council of Ministers of the [Anteproyecto de Ley de Transparencia e Integridad en las Actividades de los Grupos de Interés](#) (Draft Bill on Transparency and Integrity and Interest in the Stakeholders' activities). This regulation aims to establish a two-year term for outgoing senior officials, during which they will not be able to carry out lobbying activities related to the department or body they were in charge of. This regulatory advance is described in more detail in the following section.

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

As part of Spain's commitments to the Recovery, Transformation and Resilience Plan, in November 2022 the [Council of Ministers approved](#) the [Anteproyecto de Ley de Transparencia e Integridad en las Actividades de los Grupos de Interés](#) (Draft Bill on Transparency and Integrity and Interest in the Stakeholders' activities). It represents an advance that was already highlighted and recommended in the Spanish Chapter of the previous EU Rule of Law Report. This progress was also highlighted in the GRECO Report of the Fourth Evaluation Round of Spain (recommendation number 2), published in December 2022, although it laments the slowness of the process and the consequent lack of transparency in the relations between Members of the Parliament and lobbyists.

The creation of a public, electronic Register of Interest Groups of mandatory registration is expected. It defines the activities considered as "lobbying" and the relationship of these groups with the various officials of the Administración General del Estado. In addition, it is proposed to establish a system of regulatory footprint to record the changes produced by the lobbies' own activity. Moreover, a limitation of two years is proposed for outgoing senior officials, during which they will not be able to carry out lobbying activities related to the department or organization they were in charge of.

This regulation would be in line with recommendation number 13 of the OECD Council on Public Integrity, which called for the establishment of a regulatory framework for relations between officials and interest groups aiming to influence public policies.

Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

We are not aware of any improvement or progress relating to prevention and regulation of conflicts of interests.

Measures in place to ensure whistleblower protection and encourage reporting of corruption.

It is important to point out the aforementioned transposition of the Whistleblowers Directive 2019/1937 into the [Proyecto de Ley reguladora de la protección de personas que informen sobre infracciones normativas y de luchas contra la corrupción](#). The adoption of the Directive is a step forward, finally recognizing a framework for protecting corruption whistleblowers, creating a culture of whistleblowing and deterring corrupt practices.

However, the approval comes out of time, as has already been explained, and with numerous shortcomings that may potentially conflict with the Directive.

It establishes an Independent Authority for the Protection of Whistleblowers, in charge of processing corruption complaints, but whose link to the Ministry of Justice raises doubts as to its formal and material independence, as we have already commented.

It also sets a regime of inadmissibility that exceeds the provisions of the Directive. Thus, Article 18.2 indicates that, when a communication is manifestly unfounded or there are reasonable grounds to believe that it has been obtained through the commission of a crime, the Independent Whistleblower Protection Authority is allowed to refuse it, which is totally contrary to the provisions of Article 21 of the Directive.

In that sense, it establishes a regime of exclusion from protection that goes against the Directive (Article 35.2). Thus, protection is excluded in cases that exceed the content of the Directive, such as the case of procurement files containing classified information or which have been declared secret or reserved.

Furthermore, Article 36.2 sets a two-year term for protection, which is also contrary to the Directive.

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, 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)

As explained in the previous section, with the transposition of the Whistleblowers Directive to the Spanish legal system, whistleblowers are excluded from protection in cases of procurement files that contain classified information or have been declared secret or reserved. The areas that are prone to fall under the denomination of classified information can be sectors where corruption cases may occur.

Thus, public procurement is a high-risk sector of corruption, such as defense procurement (in relation to what has already been mentioned about classified information), infrastructure procurement (an aspect with a long history in Spain, with the latest example being the [lawsuit](#) by the Spanish National Markets and Competition Commission (CNMC) against the country's main construction companies for altering the competitive bidding process for infrastructure construction for more than 25 years), or the flexibility introduced in emergency procurement during the pandemic in order to obtain medical material.

Another highly vulnerable area is political party financing. Recently, the alleged illegal financing of the Partido Socialista de la Comunidad Valenciana has become known, together with other highly publicized corruption cases such as the ERE or the Gürtel plot. The reform of the crime of embezzlement that was approved at the end of December 2022 implies, as already mentioned, the reduction of sentences in cases in which public funds are diverted not for private enrichment, but for other purposes (potentially, party financing).

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

The maximum time limit for criminal investigation, approved in a [reform of the Ley de Enjuiciamiento Criminal of 2015](#), in article 324, has not been repealed. Thus, the maximum time limit for investigation stands at 12 months, with extensions of 6 months. Given that corruption cases are complex to investigate, setting such meagre maximum time limits may lead to the filing of cases due to lack of time.

Addressing the challenges related to the length of investigations to improve the efficiency of handling high-level corruption cases was precisely one of the specific recommendations for Spain in the previous EU Rule of Law Report. Therefore, there hasn't been any progress in this regard.

C. Repressive measures

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

There is a step backwards in terms of retaliation for fraud, corruption, and embezzlement, based on what has already been explained in a previous section on the reform of the crime of embezzlement contained in the Ley Orgánica 14/2022, de 22 de diciembre, de transposición de directivas europeas y otras disposiciones para la adaptación de la legislación penal al ordenamiento de la Unión Europea, y reforma de los delitos contra la integridad moral, desórdenes públicos y contrabando de armas de doble uso (transposing European Directives and other provisions for the adaptation of criminal legislation to

the European Union system and reform of crimes against moral integrity, public disorder and smuggling of dual-use weapons).

With this reform of the crime of embezzlement, the penalties are reduced when public funds are diverted for purposes other than those legally determined, i.e., when there is no appropriation of public assets. This implies that corruption is potentially being favoured since, although there is no particular appropriation of funds, if these are diverted to a purpose other than that which was legally established, it still damages public finances but offenders face more reduced penalties.

It is worth mentioning here that another section of the reform refers to the introduction of the crime of illicit enrichment, which establishes the penalty for those who do not justify having increased their assets by 250,000 euros during the exercise of their position or in the following 5 years before a requirement of the Administration. This new section was introduced as a "compensation" for the aforementioned reduction of embezzlement offenses, and may potentially violate the principle of presumption of innocence.

Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds

(Please include, if available the number of (data since 2019): indictments; first instance convictions; first instance acquittals; final convictions; final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year)

We are not aware of any progress in this area.

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)

There are some problems and obstacles relating to the investigation of high-level corruption cases in Spain.

First of all, it is worth mentioning the existence of a large number of officials who are protected by the figure of "aforamiento". This legal provision modifies the order of criminal jurisdiction to investigate crimes of certain individuals, who are entitled to be tried by certain courts. This implies that the investigating judges must refer a corruption case to the competent court if one of the persons charged enjoys this aforamiento. In some of these courts there is a certain political influence, which is not generally the case in an ordinary investigating court. For example, it is the case of regional deputies of Autonomous Communities, who must be judged by Tribunales Superiores de Justicia, whose Civil and Criminal Chambers usually include a magistrate appointed directly by the regional Parliament. In the case of privileges before the Tribunal Supremo (our Supreme Court, competent for judging high-ranking state officials) we have already pointed out that the influence is exercised through the appointments of the CGPJ, which is a highly politicized body. This means that, indirectly, politicians influence the choice of the specific judges who will judge them.

On the other hand, we have already mentioned the problem of time limits on the investigation of corruption cases based on Article 324 of the [Ley de Enjuiciamiento Criminal](#). Given the lack of judges, with Spain being one of the countries with the lowest number of judges per inhabitant, as we pointed out in our [Report on the State of the Rule of Law in Spain](#), this can potentially be an obstacle in the investigation of various cases.

Finally, we must mention the problem of pardons. Spain is governed by a law dating from 1870 that no government has been willing to repeal, which allows governments a broad discretion in granting pardons. Even though the number of pardons has been decreasing as public opinion has focused on this issue, it is important to highlight the political importance of some of them. Thus, in the year 2022, pardons were granted to the leaders of the Catalan "procés", convicted by final judgment, and against the criteria of Prosecutor's Office and the report of the Tribunal Supremo (Supreme Court), without the convicted repenting and without appreciating reasons of equity, justice or public utility that must support these decisions. This represents a major obstacle to judicial action and a government interference in the decisions of the judges. On the other hand, the collection of signatures to ask for the pardon of José Antonio Griñán, former president of the Junta de Andalucía, sentenced to prison for his relationship with the ERE corruption case, is striking.

As aforementioned, the problems of lack of independence of the CGPJ, the Prosecutor General and the Anti-Corruption Prosecutor's Office also pose obstacles to the investigation of major corruption cases linked above all to political parties.

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

We are not aware of any progress in this area.

III. Media Freedom and Pluralism

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

As it will be detailed in their respective sections, some aspects represent progress relating to the previous EU Report on the Rule of Law, while others suffer from setbacks.

Thus, there is still a high degree of politicization in the Board of Directors of Radio Televisión Española. There is no progress in relation to institutional advertising, nor in safeguards against political interference in the media. Furthermore, although there has been progress with the presentation of a Preliminary Draft Law on Classified Information, we consider that it has a series of shortcomings that will be explained in the corresponding section.

In terms of progress made, the [Ley General de Comunicación Audiovisual](#) was approved, which establishes a registry for audiovisual providers and their property. A Preliminary Organic Law Draft for the protection of the professional secrecy of journalism was also recently approved.

A. Media authorities and bodies

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

We are not aware of any progress in this area.

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

In 2022 there have been a series of events that indicate the degree of politicization of Radio Televisión Española and its Board of Directors.

In 2021, journalist José Manuel Pérez Tornero took over the direction of Radio Televisión Española. However, he had to resign in 2022 due to pressure from the Government and was replaced by journalist Elena Sánchez as interim president of the Board of Directors. In October 2022, an extraordinary meeting of the Board of Directors was called for approving a series of agreements, which were finally rejected due to the refusal of a number of board members who argued that the acting chairwoman did not have the authority to lead RTVE. In view of this situation of deadlock, the Government modified the regulation of Corporación RTVE, increasing Elena Sánchez's powers as Chairwoman.

Nowadays, Elena Sánchez occupies the position of Director of RTVE, without having passed the selection process required to ensure her professionalism and independence.

In addition to this situation, there are other regional cases which have been happening for years (and which are still in force today), such as the increasing politicization of Radio Televisión Madrid due to the reform of 2021, which limited the independence of its board of directors and of its director, or the political dependence of the management positions of the Consejo Audiovisual de Cataluña, the Catalan media regulator.

These are clear examples of the degree of politicization suffered by public television and media regulators and the interference of political parties in their operation.

If in the previous EU Rule of Law Report, in the Spanish chapter, a general framework of impartiality and independence of public media was recognized, the actions described here in 2022 mark a clear regressive line in this area.

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

In Spain, the Telecommunications and Audiovisual Directorate of the Spanish National Markets and Competition Commission (CNMC), Spain's audiovisual regulatory authority. This institution is responsible for market analysis, the development of regulations on obligations and penalties for media and market operators, and the resolution of disputes and queries raised by the various operators, among others.

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)

Firstly, we are not aware of any changes or progress in the area of safeguards against political interference.

Secondly, in May 2022, the [Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual](#), transposing the Directive 2018/1808, on Audiovisual Communication Services, was approved. This implies an advance already highlighted in the previous EU Rule of Law Report. In the field of transparency on media ownership, Chapter IV establishes a registry of audiovisual communication

service providers, whereby those providers and holders with significant shareholdings (3% of the share capital and "30% of the voting rights or lower percentage, if it serves to appoint, within twenty-four months of the acquisition, a number of directors representing more than half of the members of the company's administrative body") will be required to register. It will also be mandatory to describe the number and proportion of female members of the company's administrative body and the point of contact with the provider available to the viewer for direct communication with the editorial manager and to guarantee the right of complaint and reply.

Thirdly, in the area of media aid, the dispersion of types of aid and entities that can provide it (some of them public entities with lesser transparency obligations) makes it difficult to analyse the set of actions carried out in this regard.

Fourthly, there are many studies and articles on institutional advertising that denounce the [lack of transparency](#) in public procurement in this area and the biased planning of institutional advertising campaigns. This, which is a priority for the Commission in its proposal for a European Media Freedom Act, is included in our [Report on the Rule of Law in Spain](#). In the [Annual Reports on Institutional Advertising and Communications](#) there is no list of those awarded contracts, as required by Article 14 of the [Ley 29/2005 de 29 de diciembre, de Publicidad y Comunicación Institucional](#)

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**

Although we are not aware of any progress in this area, we can give illustrative examples of various actions of political parties in relation to vetoes and withdrawal of licenses to certain journalists and media outlets. Throughout 2019, the political party Vox denied access to journalists from several media outlets and platforms to its campaign events, facilities or acts, actions that were denounced by the Central Electoral Board, whose decision was ratified by the Tribunal Supremo (Supreme Court) through the judgments 357/2021, 400/2021 and 543/2021. Another noteworthy case is that of the withdrawal of permission to attend press conferences of the government of Catalonia to the journalist Xavier Rius, until the intervention of the Tribunal Superior de Justicia of Catalonia, which forced the Catalan government to reinstate him.

It is striking that in these cases the courts have had to intervene to ensure basic respect for freedom of information and the role of the media as a channel for public information.

Furthermore, beyond the cases already exposed about the corporation of Radio Televisión Española, in 2021 the [Ley 1/2021](#) of the Community of Madrid was approved, which reduced the independence of Radio Televisión Madrid. The participation of professional and social organizations and associations

in the election of the members of the board of directors was eliminated, and the independence of the director of the entity was also reduced. In addition, it was approved in a single reading, without the possibility of amendments or debate in committee.

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

We refer at this point to what was stated in a previous section on [Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual](#), transposing Directive 2018/1808, on Audiovisual Media Services Directive, in its Chapter IV.

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

Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications

At the end of 2022, an agreement was reached between journalists' associations and groups and the Government to present the [Proyecto de Ley Orgánica de protección del secreto profesional del periodismo](#), which would regulate the definition of professional secrecy and the scope of personal protection. The Spanish chapter of the previous Report on the Rule of Law in the European Union pointed out that journalists continued to face various challenges in the exercise of their profession. This Draft Law is therefore part of the progress made by the Government, which was already highlighted in the aforementioned Report on this matter.

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

We extend here what was stated in the previous section on legislative advances in the protection of journalists.

Access to information and public documents (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)

Several aspects in relation to access to public information should be highlighted.

Requests for public information submitted by citizens have experienced a gradual but steady growth over the years. These requests for transparency must be answered by the bodies to which they are addressed and, in the event that this does not occur, the Consejo de Transparencia y Buen Gobierno (CTBG), an independent administrative authority with its own legal personality and capacity to act in the defense of the right to public information and publicity, intervenes on a national level.

It should be noted that there is a certain resistance to compliance with CTBG resolutions when one of the affected bodies has to disclose public information that is uncomfortable for them. On the one hand, numerous judicial appeals are filed against the resolutions of the Council; on the other hand, these requests for public information may even not be complied with, an aspect that has increased in recent years. Given that the CTBG lacks the capacity to enforce its own resolutions or to impose sanctions in the event of non-execution, its final resolutions run the risk of becoming a "dead letter".

Special mention should be made of the regulation of classified information, whose reform is currently a Preliminary Draft Law. As established in this [Anteproyecto de Ley de Información Clasificada](#) (Draft Bill on Classified Information), the number of senior officials who can classify information and the wide variety of entire areas that can be classified even if they are not related to defense or national security is greatly expanded, in direct contravention of principles of international law on the subject, such as those contained in General Comment No. 34 of the United Nations Human Rights Committee, which considers it incompatible with the right to freedom of expression to suppress information that does not directly affect national security. Although the current regulations do not establish deadlines for declassification, the proposal of the Anteproyecto de Ley establishes excessively long deadlines. In short, it is a proposal that could represent a major setback for transparency and the right of access to public information.

On the other hand, no progress has been made in the reform of the current regulations to strengthen access to public information, which was a specific recommendation for Spain by the Commission in the previous EU Report. We believe that the current proposal does not meet the objective of ensuring and strengthening transparency.

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

We are not aware of any progress in terms of safeguard measures against manifestly abusive and unfounded lawsuits; however, there have been some recent cases of lawsuits against media and publishing groups for certain information published by them.

Some illustrative examples can be given in this regard. At the beginning of 2022, Iberdrola [sued](#) the newspaper El Confidencial for alleged damages to honour, when this newspaper published coverage of the alleged relations between this company and the commissioner José Manuel Villarejo, accused of criminal organization, bribery and money laundering.

In 2022, Vox's candidate for Andalusia, Judge Francisco Serrano, [filed a lawsuit against InfoLibre](#) for allegedly revealing secrets, when this media published a corruption case in which the candidate participated. Finally, the investigations resulted in the imputation of Serrano, and his resignation as deputy and president of the parliamentary group in Andalusia.

If the previous Report on the Rule of Law in the European Union found that journalists faced certain obstacles in the exercise of their work, these examples show little or no progress in this area.

Other - please specify

IV. Other institutional issues related to checks and balances

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)

In Spain there are major problems regarding the quality of its independent authorities and other checks and balances, especially with regard to how its members are elected. In addition to recurrent problems, such as those affecting the Court of Audit, in 2022 it is important to highlight the crisis in the renewal of the Constitutional Court, an event that is closely related to the blockage of the CGPJ.

As we illustrate in our report, the use of certain legislative techniques, including the abuse of decree-laws, is also worrying during the last legislature.

A. The process for preparing and enacting laws

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

[1] This includes also the consultation of social partners

The main instrument for evaluating legislative activity is the Regulatory Evaluation Report, which is prepared to evaluate the Annual Regulatory Plans prepared by the Government, which forecast the regulations to be approved in the corresponding fiscal year. The 2022 report has not yet been published, but it should be noted that the degree of compliance of previous years is low: 36% for 2020, and 36.8% for 2021.

As for public policies, there is currently no systematic *ex ante* or *ex post* public evaluation in Spain. Proof of this is [the report of a collaborator of the Foundation](#) we have published, where he evaluates the pilot experience in Castilla y León and points out the necessary steps to implement and strengthen this type of practices in the rest of Spain.

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)

During the last legislature (XIV) there has been a disproportionate use of the decree-law, a legal instrument with exceptional character, as stated in our Constitution, which considers this instrument for cases of "extraordinary and urgent necessity" (art. 86.1).

The decree-law is not subject to a process of parliamentary debate as complete as the ordinary laws, but only requires the authorization of the Congress to maintain its effects 30 days after its entry into force. In such authorization process, the Congress can only ratify or reject it by means of a vote on the whole of the law. Therefore, there is no room for amendments to the text. In the process of drafting decree-laws there are not the same procedures required as in the case of Preliminary Bills of Law, especially with regard to the issuance of reports. The decree-law also presents material limitations. It cannot regulate, for example, the rights, duties and freedoms of the citizens set forth in Title I of the Constitution or regulate the basic institutions of the State or matters reserved to an organic law. The abusive use of the decree-law entails an evident deterioration of the parliamentary deliberative and decision-making process. Moreover, it is common for decree-laws in Spain to regulate totally different and heterogeneous matters that are completely unrelated to each other. This circumstance, which may be justified if its enabling condition is respected (extraordinary and urgent necessity), is not justified when it is used as a normative instrument to replace the ordinary law. Ordinary laws must regulate a specific matter (housing, energy, sexual freedom, labor market, etc.) to which reference is made in the title of the law.

As we illustrate in our [Report on the State of the Rule of Law in Spain](#) with data from the Congress itself, this growing trend in the use of the decree law is particularly significant during the last legislature, where the number of decree laws per month (2.88) stands out as the highest in our democratic history.

Apart from the use of the decree law, the Government is also using problematic legislative strategies when implementing reforms in matters of great importance. An illustrative case is the way in which the Government's parliamentary groups tried to solve the crisis of the renewal of the Tribunal Constitucional, which we will develop in the following section. Both groups proposed two amendments modifying organic laws (LOPJ and LOTC) in the context of the parliamentary processing of the controversial [Proposición de ley de transposición de directivas europeas y otras disposiciones para la adaptación de la legislación penal al ordenamiento de la Unión Europea, y reforma de los delitos contra la integridad moral, desórdenes públicos y contrabando de armas de doble uso](#), a bill processed by way of urgency and whose subject matter has no relation with the Tribunal Constitucional at all (in fact, we already mentioned this law before, because it also modified the offense of embezzlement).

Furthermore, this bill was proposed by the parliamentary group rather than by the government, being a *proposición de ley* and not a *proyecto de ley*. This is of great importance because both the decree-law and the *proposición de ley* avoid the hearing procedures and the reports which are necessary to process a law in accordance with the [Ley del Gobierno](#), with the consequent damage both in terms of the quality of the legislative technique and in terms of democratic legitimacy.

Regime for constitutional review of laws

In the autumn of 2022, an institutional crisis arose due to the blockage in the renewal of the Tribunal Constitucional (hereinafter TC), our Constitutional Court. This crisis was in turn the consequence of the blockage of the CGPJ. As we explained in an [infographic](#) prepared for the general public, our Constitutional Court is composed of 12 magistrates who are renewed by thirds every 9 years. On June 13, 2022, the nine-year mandate of four magistrates, two of them elected by the government presided by Mariano Rajoy, and two of them elected by the CGPJ, came to an end. However, due to its own blockage, the General Council of the Judiciary (CGPJ) was unable to appoint the 2 magistrates that corresponded to it, preventing the renewal of the TC since September 13.

The coalition government, through its parliamentary groups, tried to unblock this situation by means of two amendments (61 and 62) in the context of the parliamentary debate on a bill which, as we have already pointed out, was processed as a matter of urgency and whose subject matter had nothing to do with the TC. The processing of these amendments, which sought to reduce the majorities necessary for the CGPJ to choose the two judges of the TC that correspond to it, was paralyzed by the TC itself. The reason for this is that the parliamentary group of the opposition filed an appeal before the TC, arguing that the deputies -and the citizens they represent- have the right to know on an equal footing and with due notice the matters regulated by a law, so that these matters cannot be altered later by means of partial amendments. After meeting in plenary session on December 19, the TC [agreed to admit the appeal and to suspend](#), as a precautionary measure, the parliamentary processing of the aforementioned amendments.

Despite the numerous problems caused in these months to try to proceed with the pending appointments, finally the CGPJ has finally reacted in extremis, unanimously electing on December 27, 2022 the two judges of the TC that it is responsible for proposing. Hay Derecho considers, however, that the crisis is still open, insofar as the ultimate cause of the blockage (the CGPJ) is still in force. Furthermore, Amendments 61 and 62, paralyzed by the precautionary measure, propose a solution to the deadlock that eliminates the requirement of qualified majorities, something that negatively affects the institutional design of the Tribunal Constitucional. Appointments to this body should respond to consensus criteria and not to party quota distributions. The natural assumption that the Constitutional Court has to reproduce the parliamentary majorities, turning it into a sort of third Chamber, denaturalizes its function as a counterweight body that controls abuses of power.

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic

- **judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic**
- **oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic**
- **processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances**

We are not aware of any relevant progress in this regard beyond the doctrinal discussion generated after the Tribunal Constitucional declared unconstitutional the state of alarm. No specific legislation has been introduced, unlike what has happened in other countries, so little has been learned from the situation from a legal point of view.

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#>)

The change of majorities in the Tribunal de Cuentas (our Court of Auditors) after its renewal in November 2021 has not contributed to depoliticize a body that presents problems of independence similar to other control institutions, such as the CGPJ or the TC. Proof of this is the change of criterion adopted by this institution in relation to the guarantees proposed by the Generalitat to meet the bails imposed on former senior officials of the Administration as a result of being investigated for the organization of the illegal referendum of 1-O and for the promotion of the *procès* abroad. Despite the fact that the investigating delegate initially decided to deny these guarantees, the resolution issued in March 2022 by the Prosecution Section of the Tribunal de Cuentas contradicted the criterion of the instruction and finally accepted it.

This type of situation also reveals problems in the governance model of the Tribunal de Cuentas, which continues to promote the fact that the technical staff is subject to the directives of the Councilors, who are ultimately the ones who submit to the Plenary the reports drawn up by the technicians and decide on them.

On the other hand, and despite the fact that his actions in relation to the Government's migration policy reveal independence in the exercise of his functions, the election of Ángel Gabilondo as Ombudsman at the end of 2021 is surprising, given that he was the PSOE's candidate in the Madrid regional elections.

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

We are not aware of any progress in this area.

C. Accessibility and judicial review of administrative decisions

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

In general, scarce publicity is given to judicial or administrative decisions in Spain that review or are contrary to the actions of a public entity.

Judicial review of administrative decisions:

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

In general, the system for judicial review of administrative decisions favours the Public Administrations. Their acts have presumption of legality, there are strong limitations to the legal standing to sue, the specialized courts have a bias very favourable to the Administration, it is complicated to obtain precautionary measures and the application regulations contemplate very favourable measures for the Public Administrations when they litigate.

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

In 2022, Spain continued to lead the ranking of countries investigated for infringement of EU law, according to data from the [European Commission](#) itself. Spain has 58 open infringement cases. The average duration of these cases is 19.1 months.

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)

We are not aware of any changes in this section.

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.

In their election campaign, the coalition government parties raised as a promise the modification of the [Ley de Protección de la Seguridad Ciudadana](#) in order to "guarantee the exercise of the right to freedom of expression and peaceful assembly". This law, colloquially known as the 'Gag Law', was passed in 2015 following the wave of social protests after the 2008 economic crisis.

It is important to recall that the law allows the State Security Forces and Corps (hereinafter FCSE) to impose economic sanctions through administrative channels on those who participate in social protests, granting them a type of sanctioning power that does not have the due guarantees that the criminal route possesses. The law also prohibits the recording of members of the FGSE in certain cases and provides a legal framework for the so-called "hot returns". For all these reasons the law has been denounced by NGOs such as Amnesty International and Human's Right Watch. The Commissioner for Human Rights of the Council of Europe also spoke out against it in 2022, urging Spain to modify some of its articles.

Despite all this, the promise to amend the law remains unfulfilled, as its proposal remains in parliamentary procedure since January 2020.

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)

According to data collected by our Foundation in 2021 for an analysis of civil society organizations that defend the rule of law in Spain, we identified 106 organizations dedicated to this issue, which in turn we classified by their level of annual funding into the following three brackets: large (more than 1,000,000 euros), medium (between 1,000,000 euros and 150,000 euros), small (less than 150,000 euros).

One problem we encountered in this analysis is that 52% of the 106 organizations studied did not publish financial information. This percentage generally corresponds to organizations of medium or small size and activity. On the other hand, foundations linked to political parties with larger funding do actively publish their financial information. Several of the foundations linked to law firms dedicated to the rule of law carry out pro bono activities. Judicial associations do not publish their financial information, although they receive funding from the General Council of the Judiciary. Despite these difficulties, the study of our sample highlights the large number of foundations that are linked to political parties and also to large estates, so the number of independent foundations working in the field of the rule of law (i.e., not linked either to political parties or to large estates) is not too high.

The conclusion of our analysis is that in Spain few public and private resources are allocated to organizations whose objective is the defense of the rule of law, democratic values, fundamental rights, transparency and the fight against corruption. As a result, civil society organizations in this area are few, small, dispersed and lack stable and sufficient funding, except precisely those linked to partisan or corporate interests.

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

As we have already mentioned in previous sections, there is a reiterated jurisprudence in Spain that denies the legal standing of civil society entities on the grounds that they are not directly interested actors.

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 etc.)

Hay Derecho is actively working to promote a rule of law culture. Proof of this is that in 2022 we have presented the first [Rule of Law Report in Spain](#), which analyses the period 2018-2021 using different objective indicators elaborated from official statistics. In the future we will continue with the publication of this report periodically, aiming to provide a deeper focus on our national context and capture tendencies over time. Thus, we aim to position our report as a complementary tool to the one produced by the European Commission.

In addition to that, the Foundation maintains different activities that contribute to reinforce this culture of the rule of law. These include our blog, the Hay Derecho Awards (which we give to independent individuals and organizations working for the defense of the rule of law), our debates and debate clubs, the numerous reports we have produced so far. We also share informative materials on social networks, such as the [legal dictionary for dummies](#) or the [infographics](#) and other materials that explain current issues linked to the Rule of Law.

