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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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## **COMMISSION STAFF WORKING DOCUMENT**

### **2023 Rule of Law Report Country Chapter on the rule of law situation in Spain**

*Accompanying the document*

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

### **2023 Rule of Law Report**

#### **The rule of law situation in the European Union**

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## ABSTRACT

The Spanish justice system is still undergoing some important developments. The situation of the Council for the Judiciary raises serious concerns as, firstly, the Council has not been renewed in spite of the urgency and, secondly, no steps have been taken to adapt the appointment procedure for its judges-members. The lack of renewal is having an impact on the work of the Supreme Court and the justice system as a whole, raising concerns in relation to the number of cases adjudicated by the Supreme Court and its length of proceedings. No measures have been taken to further strengthen the statute of the Prosecutor General. An Ethics Commission for prosecutors was established. The Council for the Judiciary appointed two members of the Constitutional Court after some delay. The incompatibilities regime for judges with other professions such as political appointments continues to raise concerns. Measures were taken to further enhance the quality of justice, including legal aid, digitalisation and a draft law on the right of defence. The number of judges increased, and measures are being taken to address challenges regarding the resources of the justice system. The efficiency of justice generally improved and laws are under preparation aiming to further enhance it.

A reform on criminal procedure to address the length of investigations and prosecutions, and a draft law on lobbying are pending. The reform of corruption-related offences introduced the offence of illicit enrichment and revised the offence of misappropriation, including by lowering penalties in some instances, which was criticised by stakeholders. The Government received a mandate to adopt an anti-corruption strategy, which will have to be finalised by summer 2024. The efficiency of the Council of Transparency and Good Governance has improved. Rules on conflicts of interest of top executive officials are not sufficiently implemented. The Integrity System of the General Administration to improve the integrity of the public sector has been approved and the systems of incompatibilities of the National Police and Civil Guard are still under revision. Despite a formal request by the Court of Auditors, the Law governing financing of political parties remains unchanged. Parliament approved legislation aimed at transposing the Whistleblower Directive.

The National Commission for Markets and Competition, appointed as media regulator, has been allocated additional resources. Further to the adoption of the audiovisual law in 2022, the national registry of providers of audiovisual services has still to include providers of video sharing platforms and providers of services of special relevance. The Government has worked on a draft law on access to classified information that has not been submitted to the Parliament yet. There have been no new developments regarding the legal framework for institutional advertising and demands for increased transparency in the distribution of institutional advertising remain. Journalists continue to face challenges in the performance of their professional activities.

Concerns have been raised regarding certain procedural practices in Parliament. The Government continued to implement initiatives to increase public participation in policy making, and Parliament passed a Public Policy Evaluation Act. The Parliament adopted a new law establishing an Equality Body. The appointment of members of certain independent authorities continues to suffer delays. The Constitutional Court published an action plan to accelerate proceedings. Negotiations in the Parliament on a reform on the Citizen Security Law, aiming to address the concerns from civil society, did not succeed.



## RECOMMENDATIONS

Overall, concerning the recommendations in the 2022 Rule of Law Report, Spain has (made):

- No further progress on strengthening the statute of the Prosecutor General, in particular regarding the separation of the terms of office of the Prosecutor General from that of the Government, taking into account European standards on independence and autonomy of the prosecution.
- No progress on proceeding with the renewal of the Council for the Judiciary as a matter of priority and initiating, immediately after the renewal, a process in view of adapting the appointment of its judges-members, taking into account European standards.
- Significant progress on continuing efforts to table legislation on lobbying, including the establishment of a mandatory public register of lobbyists.
- No progress on addressing the challenges related to the length of investigations and prosecutions to increase the efficiency in handling high-level corruption cases.
- Fully implemented the recommendation on ensuring adequate resources for the national audiovisual media regulatory authority to strengthen its operations, taking into account the European standards on the independence of media regulators in particular as regards resource adequacy.
- Some progress on pursuing work to strengthen access to information, in particular via revision of the Law on Official Secrets.

On this basis, and considering other developments that took place in the period of reference, and in addition to recalling the commitments made under the national Recovery and Resilience Plan relating to certain aspects of the justice system, it is recommended to Spain to:

- Strengthen the statute of the Prosecutor General, in particular regarding the separation of the terms of office of the Prosecutor General from that of the Government, taking into account European standards on independence and autonomy of the prosecution.
- Proceed with the renewal of the Council for the Judiciary as a matter of priority and initiate, immediately after the renewal, a process in view of adapting the appointment of its judges-members, taking into account European standards on Councils for the Judiciary.
- Proceed to adopt legislation on lobbying, including the establishment of a mandatory public register of lobbyists.
- Step up efforts to address the challenges related to the length of investigations and prosecutions to increase the efficiency in handling high-level corruption cases, including by finalising the reform of the Code of Criminal Procedure.
- Strengthen the rules on conflicts of interest and asset declarations of persons with top executive functions by reinforcing the sanctioning power of the Office for Conflicts of Interest.
- Advance with strengthening access to information, in particular via revision of the Law on Official Secrets, taking into account European standards on access to official documents.

## I. JUSTICE SYSTEM

The Spanish judicial system is composed of courts of general jurisdiction<sup>1</sup> and specialised courts<sup>2</sup>, and is structured in accordance with the territorial organisation of the country. The Supreme Court is the highest judicial body in all areas of law. The General Council for the Judiciary, established by the Spanish Constitution, is the body of judicial self-governance, and ensures the independence of courts and judges<sup>3</sup>. As such, it does not itself form part of the judiciary. It exercises disciplinary action and is competent to appoint, transfer and promote judges, as well as being responsible for the training and recruitment of judges. The Constitution<sup>4</sup> and an organic law<sup>5</sup> regulate the Constitutional Court, which is not formally part of the judiciary. The public prosecution service is integrated in the judiciary with functional autonomy, and pursues the mission of promoting justice in defense of the law, the rights of the citizens and the general interest. The Prosecutor General is appointed by the Head of State, upon proposal of the Government, following the consultation of the General Council for the Judiciary<sup>6</sup>. Spain participates in the European Public Prosecutor's Office (EPPO). The Solicitor General of the State is a senior official of the Ministry of Justice in charge of directing the Legal Service of the National State Administration. The Local Bars are public law organisations of professionals, independent from the public administration and do not depend on the budgets of the public authorities, nor are their assets public. They have competences for the organisation of the profession and professional deontology, and approve their own code of ethics.

### Independence

**The level of perceived judicial independence in Spain continues to be low among the general public and is now low among companies.** Overall, 34% of the general population and 34% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023<sup>7</sup>. According to data in the 2023 EU Justice Scoreboard, no clear trend can be identified in the evolution of the perceived level of independence since 2016. The perceived judicial independence among the general public has decreased in comparison with 2022 (38%), but it is higher than in 2016 (30%). Similarly, the perceived judicial independence among companies has decreased in comparison with 2022 (41%), but it is slightly higher than in 2016 (33%).

**The situation of the Council for the Judiciary raises serious concerns as, firstly, there has been no progress on its renewal in spite of the urgency and, secondly, no steps have been taken to adapt the appointment procedure of its judges-members taking into account European standards.** The 2022 Rule of Law Report recommended to Spain to

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<sup>1</sup> Covering the fields of civil, criminal, administrative and social law. In total, there are 2298 first instance courts of general jurisdiction.

<sup>2</sup> Commercial courts, EU trademark courts, courts with special duties in the matter of criminal sentencing, juvenile courts, courts dealing with violence against women, and other specialised courts that can be created by resolution of the General Council for the Judiciary. In total, there are 1588 first instance courts of specialised jurisdiction.

<sup>3</sup> Art. 117 of the Spanish Constitution enshrines the independence of magistrates and judges.

<sup>4</sup> Art. 159 of the Spanish Constitution.

<sup>5</sup> Organic Law 2/1979, of 3 of October.

<sup>6</sup> Art. 124(4) of the Spanish Constitution.

<sup>7</sup> Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

“proceed with the renewal of the Council for the Judiciary as a matter of priority and initiate, immediately after the renewal, a process in view of adapting the appointment of its judges-members, taking into account European standards”<sup>8</sup>. The Council for the Judiciary continues exercising its functions *ad interim* since December 2018, increasing the concerns referred to in previous Rule of Law Reports<sup>9</sup>. In its report on Spain of December 2022, the Group of States against corruption (GRECO) has considered the deadlock of the renewal to be a critical concern<sup>10</sup>. On 10 October 2022, the President of the Council for the Judiciary (who also held the position of President of the Supreme Court) resigned<sup>11</sup>, arguing that the absence of renewal was weakening and eroding the rule of law in Spain, and was leading to a clear deterioration of the situation of the Supreme Court and of the Council for the Judiciary<sup>12</sup>. Following his resignation, the two main political parties in Parliament relaunched negotiations to appoint the new members of the Council<sup>13</sup>, which were halted on 27 October 2022<sup>14</sup> with no further progress since then<sup>15</sup>. According to the law<sup>16</sup>, the Presidents of the Congress and of the Senate must take the necessary measures to ensure that the Council is renewed in due time. Stakeholders have criticised the fact that both Presidents have not yet

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<sup>8</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 2

<sup>9</sup> 2022, 2021 and 2020 Rule of Law Reports, Country Chapter on the rule of law situation in Spain, pp 3-5, pp. 2-4, and pp. 2-3 respectively.

<sup>10</sup> GRECO, Fourth Evaluation Round – Addendum to the Second Compliance Report, December 2022, para. 16.

<sup>11</sup> In March 2023 another member of the Council resigned, resulting in the Council having 17 members out of the 21 established by the Constitution.

<sup>12</sup> Speech of the President of the Supreme Court and the Council for the Judiciary regarding his resignation, 9 October 2022.

<sup>13</sup> According to Art. 122(3) of the Spanish Constitution, the Council consists of the President of the Supreme Court (chairing) and of 20 individuals – 12 judges or magistrates, and 8 lawyers or other jurists of recognised competence with more than fifteen years of professional practice. The Parliament is responsible for the appointment of all its members which is subject to a qualified majority of three fifths. While the Constitution requires the eight lawyers and other jurists to be appointed by a three-fifths majority in each chamber of the Parliament (four by the Congress and four by the Senate), it does not specify how the members representing judges are to be appointed.

<sup>14</sup> On that day the main opposition party decided to suspend negotiations. See Partido Popular (2022), Press release of 27 October 2022.

<sup>15</sup> In this regard, the Venice Commission has stressed the importance of providing for qualified majorities but warned about the risk of stalemates and recommended to devise effective and solid anti-deadlock mechanisms. Venice Commission 2010, Report on the Role of the Opposition in a democratic Parliament, CDL-AD(2010)025 and Venice Commission 2019, Report on the relationship between the parliamentary majority and the opposition in a democracy: a checklist, CDL-AD(2019)015. In particular, the Commission of Venice has pointed that the “blocking power” of the opposition is not absolute and that a qualified majority rule in the matters of appointment should not prevent for a very long time the appointment of members of a collective body, since without them the State cannot function adequately. While each State has to devise its own system, in its Opinion to Montenegro on the draft law on amendments to the law on the Judicial Council and judges (CDL-AD(2018)015-f), the Venice Commission has pointed that a possible alternative solution would be the partial appointment of members of the Council for the Judiciary that have already the support of a qualified majority, such as the lay members.

<sup>16</sup> Art. 568, Organic Law 6/1985 of the Judicial Power. The Presidents of the Congress and the Senate must take the necessary measures to ensure that the Council [for the Judiciary] is renewed in due time. In the wider context of the consequences of the prolonged non-renewal of the Council, the European Court of Human Rights, in its judgment of 22 June 2023 (Lorenzo Bragado and Others v. Spain, 53193/21 and 5 others), found that there had been a violation of Article 6 of the European Convention of Human Rights in the way the Constitutional Court rejected as “out of time” the amparo appeal lodged by the applicant judges complaining about Parliament’s failure to follow through with the process for renewing the composition of the Council.

taken any action<sup>17</sup>. In this context, stakeholders<sup>18</sup> have also continued calling for a change of the system of appointment of the members of the Council for the Judiciary<sup>19</sup> in line with European standards<sup>20</sup>. In its report on Spain of December 2022, GRECO referred to the European standards on judicial councils<sup>21</sup>. A new legal proposal tabled by a parliamentary group to reform the system of appointment of the Council for the Judiciary<sup>22</sup>, proposing that its judges-members are directly elected by their peers, did not get enough support in Parliament to start proceedings. As the Council for the Judiciary continues in *ad interim* functions and as a process to adapt the appointment of its judges-members has not been launched, there has been no progress in the implementation of the recommendation made in the 2022 Rule of Law Report.

**The lack of renewal of the Council for the Judiciary is negatively affecting the work of the Supreme Court and the justice system as a whole.** As referred to in previous Rule of Law Reports<sup>23</sup>, following the reform in March 2021 introducing the *ad interim* regime for the Council for the Judiciary<sup>24</sup>, an acting Council can no longer proceed with appointments for top judicial positions, including to the Supreme Court<sup>25</sup>. Due to the continued lack of renewal, over 30% of the judicial positions of the Supreme Court that are required by law<sup>26</sup>

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<sup>17</sup> Contribution from the Judges and Magistrates' Association 'Francisco de Vitoria' for the 2023 Rule of Law Report, p. 13; Contribution from Judges for Democracy for the 2023 Rule of Law Report, p. 14; Contribution from the Civic Platform for the Judicial Independence for the 2023 Rule of Law Report, p. 9; Contribution from the Independent Judicial Forum for the 2023 Rule of Law Report, p. 9; information provided by the Foundation "Hay Derecho" in the context of the country visit to Spain.

However, other stakeholders have stressed that, unless there is a three fifths majority, starting a voting procedure would not serve any purpose as the political parties that could reach this majority have already set their positions on the negotiation. Information provided by the Government in the context of the country visit to Spain.

<sup>18</sup> Contribution from the Judges and Magistrates' Association 'Francisco de Vitoria' for the 2023 Rule of Law Report, pp. 11-13; Contribution from the Professional Association of the Magistracy for the 2023 Rule of Law Report, p. 6; Contribution from the Civic Platform for the Judicial Independence for the 2023 Rule of Law Report, p. 16; Contribution from the Independent Judicial Forum for the 2023 Rule of Law Report, pp. 9-10; Contribution from Madrid's Bar Association for the 2023 Rule of Law Report, p. 15.

<sup>19</sup> See footnote 10.

<sup>20</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 26 and 27.

<sup>21</sup> GRECO, Fourth Evaluation Round – Addendum to the Second Compliance Report, December 2022, para. 16. GRECO refers to the standards of the Council of Europe regarding the election of the judicial shift in judicial councils: when there is a mixed composition of judicial councils, for the selection of judge members, judges should be elected by their peers (following methods guaranteeing the widest representation of the judiciary at all levels) and political authorities, such as Parliament or the executive, should not be involved at any stage of the selection process. See Opinion No. 10 (2007) of the Consultative Council of European Judges (CCJE) on Council for the Judiciary in the Service of Society, paras 27 and 31, as well as Opinion No. 24 (2021) of the Consultative Council of European Judges (CCJE) on Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, p. 4.

<sup>22</sup> Proposal of an Organic Law to modify Organic Law 6/1985 tabled on 30 December 2022.

<sup>23</sup> 2022 and 2021 Rule of Law Reports, Country Chapter on the rule of law situation in Spain, pp 3-5 and pp. 2-4 respectively.

<sup>24</sup> Organic Law No. 4/2021, of 29 March.

<sup>25</sup> The law prevents the acting Council to appoint the president of the Supreme Court, presidents of Provincial Courts and High Courts of Justice, president of the National High Court, and presidents of Chambers and Supreme Court judges.

<sup>26</sup> Law 38/98 of 28 December 1998. The law establishes a total of 79 magistrates for all the Chambers of the Supreme Court.



are now vacant<sup>27</sup>. As underscored in a report from the Technical Cabinet of the Supreme Court from January 2023, only considering the Third and Fourth Chamber of the Court (where the number of vacancies is the highest), the Court is issuing 1 230 fewer decisions per year<sup>28</sup>. This also leads to a decrease of the number of rulings by the Supreme Court which, given its role in ensuring consistency in the interpretation of national law, has an impact on legal certainty since first instance and other courts continue dealing with cases that would benefit from the Supreme Court's guidance<sup>29</sup>. The situation has been described by the Supreme Court as untenable<sup>30</sup>, as it undermines the efficiency of justice and has a negative impact on the length of proceedings before the Supreme Court<sup>31</sup>. In addition, there are also seven vacant posts of presidents of High Courts of Justice (out of 17), 20 vacant posts of presidents of Provincial Courts and one vacant post at the National High Court. As a separate issue, long delays by the Council in the preparation of mandatory reports<sup>32</sup> on draft legislation have been reported<sup>33</sup>.

**There has been no further progress on strengthening the statute of the Prosecutor General.** The 2022 Rule of Law Report recommended to Spain to “strengthen the statute of the Prosecutor General, in particular regarding the separation of the terms of office of the Prosecutor General from that of the Government, taking into account European standards on independence and autonomy of the prosecution”<sup>34</sup>. In May 2022, the Government had approved new rules of procedure for the prosecution service<sup>35</sup>. On 5 September 2022, a law was adopted by Parliament<sup>36</sup> providing that, six months after its entry into force<sup>37</sup>, the Ministry of Justice would regulate the communications between the Prosecution Service and the Government. However, no progress has yet been reported regarding this regulation. As referred to in the 2022 Rule of Law Report<sup>38</sup>, such a regulation could address concerns previously raised by the European Commission<sup>39</sup> and by GRECO<sup>40</sup>. Moreover, no measures have been taken to address the separation of the term of office of the Prosecutor General from that of the Government, which has also been raised as a concern by stakeholders<sup>41</sup>. There is

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<sup>27</sup> Contribution from the Supreme Court for the 2023 Rule of Law Report, p. 10; Technical Cabinet of the Supreme Court 2023, Report on the impact in the Supreme Court on the non-possibility to cover vacant posts, p. 3.

<sup>28</sup> Technical Cabinet of the Supreme Court 2023, Report on the impact in the Supreme Court on the non-possibility to cover vacant posts, p. 28.

<sup>29</sup> Technical Cabinet of the Supreme Court 2023, Report on the impact in the Supreme Court on the non-possibility to cover vacant posts, p. 20 and 22.

<sup>30</sup> Contribution from the Supreme Court for the 2023 Rule of Law Report, p. 10.

<sup>31</sup> Technical Cabinet of the Supreme Court 2023, Report on the impact in the Supreme Court on the non-possibility to cover vacant posts, p. 2.

<sup>32</sup> The law specifies the cases in which draft legislation must be consulted with the Council for the Judiciary, which is then obliged to prepare a non-binding report.

<sup>33</sup> Contribution from Judges for Democracy for the 2023 Rule of Law Report, p. 24; information provided by the Ministry of Justice and the Prosecution Service in the context of the country visit to Spain.

<sup>34</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 2.

<sup>35</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 5.

<sup>36</sup> Law 16/2022 of 5 September, 15<sup>th</sup> Final provision.

<sup>37</sup> The law entered into force on 26 September 2022.

<sup>38</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 5.

<sup>39</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 4.

<sup>40</sup> GRECO Fourth Evaluation Round (2014), Evaluation Report, recommendation ix.

<sup>41</sup> Contribution from the Judges and Magistrates' Association 'Francisco de Vitoria' for the 2023 Rule of Law Report, p. 14; Contribution from the Professional Association of the Magistracy for the 2023 Rule of Law Report, p. 6; Contribution from the Foundation "Hay Derecho" for the 2023 Rule of Law Report, p. 6; Contribution from the Association of Prosecutors for the 2023 Rule of Law Report, p. 5; Contribution from

some discussion<sup>42</sup> as to whether the separation of these terms of office would require a reform of the Constitution<sup>43</sup>. In its report of December 2022, GRECO has also noted that no measures have been taken to increase the budgetary, normative, and training autonomy of the Prosecution Service<sup>44</sup>. As no measures have been taken at this stage to strengthen the statute of the Prosecutor General, there has been no progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**An Ethics Commission for prosecutors has been established.** On 26 September 2022, the Prosecution Service established an Ethics Commission for prosecutors<sup>45</sup>. The purpose of this Commission is to implement the ethics code of the Prosecution Service through the preparation of reports and opinions. It does not deal with disciplinary or civil proceedings nor with criminal responsibility of prosecutors. The functioning of the Ethics Commission is independent of the Prosecutor General, but the Prosecution Service is responsible for allocating the resources and means necessary for the Commission's effective functioning. The Prosecution Service approved the rules of procedure of the Commission on 20 November 2022<sup>46</sup>. The Ethics Commission is composed of seven prosecutors directly elected by their peers for a period of four years<sup>47</sup>.

**The Council for the Judiciary appointed two members of the Constitutional Court after some delays.** In June 2022, the term of office of four members of the Constitutional Court ended<sup>48</sup>. According to the Constitution, the next step is the appointment of two members by the Government and two members appointed by the Council for the Judiciary<sup>49</sup>. The acting Council could not appoint the two members of the Constitutional Court, as a consequence of the reform in March 2021 introducing its *ad interim* regime<sup>50</sup>. The Parliament approved in July 2022 a reform that reinstated the Council's power to appoint those members<sup>51</sup> and provided for a deadline of three months after the mandate of the former members ended to do so. The Council of the Judiciary failed to appoint the two members within that deadline. On 12 December 2022, the parliamentary groups of the Government's coalition parties tabled draft legal amendments aiming to modify the system of appointments to the Constitutional Court<sup>52</sup>. On 14 December 2022, a group of parliamentarians submitted to the Constitutional

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the Civic Platform for the Judicial Independence for the 2023 Rule of Law Report, p. 16; Contribution from the Independent Judicial Forum for the 2023 Rule of Law Report, p. 11.

<sup>42</sup> Information provided by the Government, Association of Prosecutors and Professional and Independent Association of Prosecutors in the context of the country visit to Spain.

<sup>43</sup> Art. 124.4 of the Spanish Constitution provides that the Prosecutor General shall be appointed by the Government, but it does not establish the length of the mandate.

<sup>44</sup> GRECO, Fourth Evaluation Round – Addendum to the Second Compliance Report, December 2022, para. 29-30.

<sup>45</sup> Input from Spain for the 2023 Rule of Law Report, pp. 7-8.

<sup>46</sup> Ibid.

<sup>47</sup> An association of prosecutors has criticised the system of appointment of the members of the Commission, as according to the association, it does not sufficiently represent the pluralism within the Prosecution Service. Progressive Union of Prosecutors, Press Release of 20 December 2021, as confirmed by the information provided by the Progressive Union of Prosecutors in the context of the country visit to Spain.

<sup>48</sup> The Constitutional Court is formed by 12 members, four to be appointed by the Congress, four by the Senate, two by the Government and two by the Council for the Judiciary.

<sup>49</sup> Art. 159 of the Spanish Constitution.

<sup>50</sup> Organic Law No. 4/2021, of 29 March.

<sup>51</sup> Organic Law No. 8/2022, of 27 July. The reform did not modify the *ad interim* regime preventing the Council to make appointments for other top judicial positions.

<sup>52</sup> Reference number: 122-000271, amendments 61 and 62. In particular, those amendments had the objective to reduce the majorities required within the Council to appoint the correspondent members of the

Court an *amparo* appeal<sup>53</sup>, arguing that such amendments were unrelated to the topic of the main law being debated and had been introduced as an emergency procedure, undermining the guarantees of transparency and debate of the legislative process. On 19 December 2022, the Constitutional Court took an unprecedented interim decision suspending the vote in Senate of the amendments<sup>54</sup>. On 27 December 2022, the Council for the Judiciary then appointed two members of the Constitutional Court<sup>55</sup>.

**The Council for the Judiciary and other stakeholders raised concerns regarding public statements in relation to the judiciary made by politicians.** In the course of 2022 public statements by politicians, including members of the Government, criticising the judiciary have continued<sup>56</sup>. After these public statements, the Council for the Judiciary<sup>57</sup> and the four main associations of judges<sup>58</sup> published press releases condemning those statements. In particular, stakeholders pointed out that these critical statements by politicians do not relate to individual judicial decisions, but are addressed to the judiciary as a whole, thus undermining public trust in the judiciary<sup>59</sup>. As reflected in the 2022 Rule of Law Report<sup>60</sup>, according to European standards, while courts are not immune to criticism and scrutiny, the judiciary must enjoy public confidence to be successful in view of its special role in society<sup>61</sup>. This is particularly important in relation to statements by members of the legislative and the

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Constitutional Court, regulated in Article 599 of the Organic Law 6/1985 on the Judiciary, in the sense that the required three-fifths majority would be replaced with a simple majority during any second vote. The amendments would also eliminate the verification mechanism by the Constitutional Court of the adequacy of the candidates with the requirements established in law and would separate the appointment of the members by the Council from the members by the Government. Moreover, according to the amendments, if members of the Council failed to proceed with the appointments, they would incur criminal responsibilities. According to information provided by the Government in the context of the country visit to Spain, those amendments were needed to ensure that the appointments could be made.

<sup>53</sup> Amparo appeal No. 8263-2022.

The object of amparo appeals is the protection against breaches of the rights and freedoms enshrined in the Constitution by any action or omission of the Government of the State, the Autonomous Communities or other public bodies of territorial, corporate or institutional nature.

Moreover, a request was also filed, requesting that two members of the Constitutional Court recuse themselves due to a possible conflict of interest. Said request was not granted.

<sup>54</sup> Decision 177/2022 of 19 December. The decision was taken by six votes in favour and five against. The final decision by the Constitutional Court is still pending, although according to the information provided by the Government and the Parliament in the context of the country visit to Spain, the final decision of the Constitutional Court will only have a declaratory effect, as the law has meanwhile been approved without the challenged amendments.

<sup>55</sup> Royal Decrees 1092/2022, 1093/2022, 1094/2022 and 1095/2022, of 30 December.

<sup>56</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 6.

<sup>57</sup> Council for the Judiciary 2023, Press Release of 16 November 2022.

<sup>58</sup> Professional Association of the Magistracy, Press Release of 17 November 2022; Judges and Magistrates' Association "Francisco de Vitoria", Press Release of 17 November 2022; Judges for Democracy, Press Release of 16 November 2022; Independent Judicial Forum, Press Release of 17 November 2022. See also contribution from other stakeholders, Contribution from the Foundation "Hay Derecho" for the 2023 Rule of Law Report, p. 12.

<sup>59</sup> Information provided by associations of judges, the Foundation "Hay Derecho" and the Civic Platform for the Judicial Independence in the context of the country visit to Spain.

<sup>60</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 6.

<sup>61</sup> Venice Commission (CDL-AD(2013)038), Opinion on the legislation on defamation of Italy, para. 21-22.

executive branches, as all powers of the State must foster and protect the trust of the general public in constitutional institutions including the judiciary<sup>62</sup>.

**The incompatibilities regime for judges has continued to raise concerns.** Stakeholders have continued to raise concerns regarding the incompatibilities regime for judges and prosecutors in Spain<sup>63</sup>. In particular, they have highlighted the lack of ‘cooling-off periods’ for judges or prosecutors having been members of the executive or legislative powers, as well as the fact that judges continue to acquire seniority in service while they are in political office. During the negotiations on the renewal of the Council held in October 2022 between the two main political parties in Parliament, both parties agreed on the need to regulate the incompatibilities regime for judges and prosecutors<sup>64</sup>. However, no further action was taken after the negotiations were broken off.

**Concerns continue regarding the competence of the Supreme Court for criminal liability of high-level positions.** As referred in previous Rule of Law Report, concerns remain<sup>65</sup> regarding the so-called ‘*aforamientos*’ (where members of the executive, legislative and judicial branches are not tried before ordinary criminal courts in the cases of crimes committed in the course of their official duties and also as individuals<sup>66</sup>). Stakeholders have continued criticising these rules<sup>67</sup>. The Coalition’s Agreement included a commitment to reform the Constitution to limit these situations<sup>68</sup>. While several statutes of autonomy that contemplated rules of privilege have been amended<sup>69</sup>, no action has been taken so far at national level to address these concerns.

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<sup>62</sup> See also CCJE, Opinion No. 18 (2015), ‘The position of the judiciary and its relation with the other powers of state in a modern democracy’, para. 54: ‘Any analyses and criticisms by one power of state of the other powers should be undertaken in a climate of mutual respect’.

<sup>63</sup> Contribution from the Judges and Magistrates’ Association ‘Francisco de Vitoria’ for the 2023 Rule of Law Report, p. 25; Contribution from the Foundation “Hay Derecho” for the 2023 Rule of Law Report, p. 11; Contribution from the Independent Judicial Forum for the 2023 Rule of Law Report, p. 25; Contribution from the Civic Platform for the Judicial Independence for the 2023 Rule of Law Report, p. 6. See also 2022 and 2021 Rule of Law Reports, Country Chapter on the rule of law situation in Spain, pp. 5-6 and p. 4 respectively.

<sup>64</sup> Information provided by the Government in the context of the country visit to Spain.

<sup>65</sup> GRECO Fourth Evaluation Round – Evaluation Report, para. 3; GRECO Fifth Evaluation Round – Evaluation Report, paras 118-123. See also, 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 4.

<sup>66</sup> According to Art. 57 of the Organic Law No. 6/1985, of 1 July, the Supreme Court is responsible for the examination and trying of proceedings brought against the members of Government, the Presidents of the Congress of Deputies and the Senate, the President of the Supreme Court and the General Council of the Judiciary, magistrates of the Constitutional Court and the Supreme Court, the President of the National High Court and of any of its Chambers and the Presidents of the High Courts of Justice, magistrates of the National High Court or of a High Court of Justice, the State Prosecutor General, state prosecutors attached to the Chambers of the Supreme Court, the President and Counsellors of the Court of Auditors, the President and Counsellors of the Council of State and the Ombudsperson.

<sup>67</sup> Contribution from the Judges and Magistrates’ Association ‘Francisco de Vitoria’ for the 2023 Rule of Law Report, p. 12; Contribution from the Foundation “Hay Derecho” for the 2023 Rule of Law Report, p. 10; Contribution from the Civic Platform for the Judicial Independence for the 2023 Rule of Law Report, p. 12.

<sup>68</sup> A progressive coalition, December 2019, Commitment 2.11.7.

<sup>69</sup> Statutes of Autonomy of Murcia, Cantabria, Baleares, and Aragón. Organic Law 1/2021, of 15 February, of the Statute of Autonomy of Murcia; Organic Law 2/2021, of 23 March, of the Statute of Autonomy of Cantabria; Organic Law 1/2022, of 8 February, of the Statute of Autonomy of Baleares; Organic Law 15/2022, of 20 April, of the Statute of Autonomy of Aragón.

## Quality

**A number of aspects of the legal aid framework have been further reinforced.** Spain has an accessible judicial system which provides protection for people at risk of discrimination and victims of violence against women. Measures for child-friendly justice are also in place. Moreover, according to data in the 2023 EU Justice Scoreboard, Spain is one of the countries with the widest coverage of legal aid in the EU<sup>70</sup>. A law was approved on 5 September 2022<sup>71</sup> to further improve the legal aid framework. In particular, the law has been extended to cover insolvency proceedings under the special procedure for debtors who are natural persons, run a ‘micro-enterprise’ and would have insufficient resources to start proceedings<sup>72</sup>. Moreover, trade unions can now also benefit from legal aid when representing the interests of workers and beneficiaries of the Social Security system<sup>73</sup>.

**The total number of judges has increased and measures are being taken to address challenges regarding the resources of the justice system.** As referred to in the 2022 Rule of Law Report<sup>74</sup>, the number of judges per inhabitant remains one of the lowest in the EU<sup>75</sup>. On 15 November 2022, the Government approved the establishment of 70 new posts for judges<sup>76</sup>. Vacancies continue<sup>77</sup> to be covered by substitute-judges<sup>78</sup>. Stakeholders have highlighted that in the coming years, a significant number of judges is expected to retire<sup>79</sup>. To address the future needs, the Council for the Judiciary is preparing a Strategic Plan for the period 2023-2033, which will assess the resources and needs of the justice system and will make recommendations on how to proceed<sup>80</sup>. Moreover, the Ministry of Justice signed in May 2023 an agreement with associations of judges and prosecutors regarding their working conditions<sup>81</sup>. Another agreement was also signed with the judicial clerks’ unions<sup>82</sup> and civil servants providing auxiliary services to the justice system have called for a strike in May 2023 also regarding their working conditions<sup>83</sup>. Furthermore, associations of judges<sup>84</sup> have

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<sup>70</sup> Figure 24, 2023 EU Justice Scoreboard. The figure relates to a specific scenario related to a consumer case.

<sup>71</sup> Law 16/2022, of 5 September.

<sup>72</sup> Input from Spain for the 2023 Rule of Law Report, p. 8.

<sup>73</sup> Ibid.

<sup>74</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 7.

<sup>75</sup> Figure 35, 2023 EU Justice Scoreboard. This category consists of judges working full-time, in accordance with the CEPEJ methodology. It does not include the Rechtspfleger/court clerks/letrados that exist in some Member States such as Spain.

<sup>76</sup> Input from Spain for the 2023 Rule of Law Report, p. 9.

<sup>77</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 8.

<sup>78</sup> Art. 200, Organic Law 6/1985 of the Judicial Power. These substitute-judges, appointed by the Council for the Judiciary on the proposal of High Regional Courts, although not subject to the same recruitment procedure and training programme as career judges, may exercise judicial functions in courts of the different jurisdictions.

<sup>79</sup> Contribution from the Judges and Magistrates’ Association ‘Francisco de Vitoria’ for the 2023 Rule of Law Report, p. 17; information provided by the Council for the Judiciary in the context of the country visit to Spain.

<sup>80</sup> Information provided by the Council for the Judiciary in the context of the country visit to Spain.

<sup>81</sup> Ministry of Justice, Press release of 23 May 2023. The agreement was signed after associations of judges and prosecutors have called for a possible strike; see also communication of all association of judges and prosecutors of 3 May 2023.

<sup>82</sup> Ministry of Justice, Press release of 28 March 2023. The agreement was signed following a strike of the judicial clerks’ union from 24 January 2023 to 28 March 2023.

<sup>83</sup> CSIF, Press release of 22 May 2023.

<sup>84</sup> Contribution from the Judges and Magistrates’ Association ‘Francisco de Vitoria’ for the 2023 Rule of Law Report, p. 12; Contribution from the Independent Judicial Forum for the 2023 Rule of Law Report, p. 8.

signalled that while women represent the majority of the judiciary<sup>85</sup>, they are underrepresented in the top judicial positions<sup>86</sup>.

**Work has continued to further enhance the digitalisation of justice.** Digitalisation of justice is well advanced, and the use of ICT tools in the justice system is widespread<sup>87</sup>. The Ministry of Justice has undertaken a number of projects enhancing the digitalisation of justice, such as the automation projects for the deletion of criminal records or a digital document classifier enabling the processing of documents making up a file<sup>88</sup>. Parliament has continued discussions on a law on digital efficiency. The law would provide a legal framework for the digitalisation of justice, establishing a catalogue of digital services to be provided to citizens and legal professionals in all regions of Spain<sup>89</sup>. The law would also promote the use in all regions of electronic case records, electronic processing of legal procedures, and the use of digital solutions to conduct and follow court proceedings<sup>90</sup>.

**The Government has tabled a draft law on the right of defence.** On 4 April 2023 The Government tabled a draft law on the right of defence. The draft law compiles in one legal document the different aspects of the right of defence, which are currently spread over a number of pieces of specialised legislation. The General Council of Spanish Lawyers has welcomed this legislative proposal, all the while noting possible room for improvement, notably in relation to professional secrecy<sup>91</sup>.

## Efficiency

**Most indicators of the efficiency of justice have improved, though the length of proceedings in the Supreme Court remains a challenge.** The disposition time in civil, commercial, and administrative cases in first instance decreased from 349 days in 2020 to 265 in 2021<sup>92</sup>. The clearance rate for litigious civil and commercial cases<sup>93</sup> increased and was above 100%, meaning that more cases are resolved than come in, which is a positive development. However, the disposition time for civil and commercial cases in the Supreme Court remains very high (826 days in 2021)<sup>94</sup>, which has been raised as a concern by stakeholders<sup>95</sup>. In a decision of 10 October 2022, the Constitutional Court concluded that an

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<sup>85</sup> 52% of the total number of judges are women. Information from the website of the Association of Women Judges of Spain.

<sup>86</sup> Figure 36, 2023 EU Justice Scoreboard. The proportion of female professional Supreme Court judges is 22%. On 23 May 2023, the Government tabled a draft law providing that constitutional bodies such as the Council for the Judiciary and the Constitutional Court should have at least 40% of women among their members.

<sup>87</sup> Figures 40-48, 2023 EU Justice Scoreboard.

<sup>88</sup> Input from Spain for the 2023 Rule of Law Report, p. 12. Other projects under implementation are dashboards, advanced analytical studies, the Data Office, and Data Portals. The Ministry of Justice has also committed to carry out other initiatives in the judicial field, such as the Virtual Desktop that allows the digital identification of participants in a videoconference.

<sup>89</sup> Input from Spain for the 2023 Rule of Law Report, p. 15.

<sup>90</sup> Ibid.

<sup>91</sup> Contribution from the General Council of Spanish Lawyers for the 2023 Rule of Law Report, p. 12.

<sup>92</sup> Figure 5, 2023 EU Justice Scoreboard.

<sup>93</sup> Figure 11, 2023 EU Justice Scoreboard.

<sup>94</sup> Figure 7, 2023 EU Justice Scoreboard.

<sup>95</sup> Contribution from the Supreme Court for the 2023 Rule of Law Report, p. 10; Contribution from the Judges and Magistrates' Association 'Francisco de Vitoria' for the 2023 Rule of Law Report, p. 17; Contribution from the Professional Association of the Magistracy for the 2023 Rule of Law Report, p. 17; Contribution

administrative court had breached a citizen's right to an effective remedy and fair trial due to disproportionate and unjustified delays of more than three years before a hearing was to be held<sup>96</sup>.

**The Parliament has continued discussions on several laws aimed at enhancing the efficiency of the justice system.** The Parliament continued the discussions on the laws on the organisational and procedural efficiency of the justice system. These draft laws aim to shorten the length of procedures in all four jurisdictions while preserving the procedural guarantees of citizens. The adoption of these legislative proposals are milestones covered within the Spanish Recovery and Resilience Plan<sup>97</sup>.

## **II. ANTI-CORRUPTION FRAMEWORK**

In Spain, the Anti-Corruption Prosecutor's Office<sup>98</sup> is responsible for the investigation, detection and prosecution of corruption with the assistance of law enforcement agencies. Attached Units – from the National Police<sup>99</sup> and the Civil Guard<sup>100</sup> - and Support Units of the State Tax Administration Agency and the General Intervention Board of the State Administration, all of whom contribute with analytical work<sup>101</sup>. Additionally, the State Security Forces and Corps - FCSE (National Police and Civil Guard) have Judicial Police Units, both at central and territorial level, highly specialised in economic crime and corruption. The National Anti-Fraud Coordination Service<sup>102</sup> oversees anti-fraud measures and conducts investigations at national level while several Autonomous Regions have their own offices to fight fraud in their territories<sup>103</sup>. The Office of Conflicts of Interest oversees asset declarations for Government officials and political appointees<sup>104</sup>. Rules on transparency, access to public information and good governance are monitored by the Council of

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from the Foundation “Hay Derecho” for the 2023 Rule of Law Report, p. 15. See also Independence session above.

<sup>96</sup> Decision of the Constitutional Court 125/2022 of 10 October.

<sup>97</sup> Recovery and Resilience Plan 2021, Component 11, pp. 26-28.

<sup>98</sup> Law 10/1995, of 24 April, amending Law 50/1981, of 30 December, which regulates the Organic Statute of the Public Prosecutor's Office and creates the Special Prosecutor's Office for the Repression of Economic Crimes Related to Corruption. Official State Bulletin, 25 April 1995, n. 98, pp. 12102-2103.

<sup>99</sup> Royal Decree 769/1987, of June 19, on regulation of the Judicial Police.

<sup>100</sup> Royal Decree 769/1987, of June 19, on regulation of the Judicial Police.

<sup>101</sup> Anti-Corruption Prosecutor's Office (2020), Annual Report 2019, p. 698 and Input from Spain for the 2023 Rule of Law Report pp. 18-19. A new legal instrument aimed at formalizing the relation between IGAE and the Dirección General de Policía is ready to be adopted. The agreement – which is expected to be finalised in the upcoming months – is similar to the existing agreement signed with the Guardia Civil in 2020 to reinforce the exchange of information, enhance cooperation and collaboration in organising trainings.

<sup>102</sup> Governed by the Additional Provision 25 of General Subsidies Law 38/2003, of 17 November.

<sup>103</sup> Catalonia Anti-Fraud Office, which is regulated by Law 14/2008, of 5 November 2015 of the Autonomous Region of Catalonia; Valencia Agency for the Prevention and Fight against Fraud and Corruption, which is regulated by Law 11/2016 of 28 November 2015 of the Autonomous Region of Valencia; Office for Prevention and Fight against Corruption of the Balearic Islands, regulated by Law 16/2016 of 9 December 2016 on the Balearic Islands; Municipal Anti-Fraud and Corruption Office of the Madrid City Council, which is governed by its Organic Regulation approved by agreement of the Madrid City Council of 23 December 2016; Office for Transparency and Good Practice of the City of Barcelona (Directorate of the Analysis Service), and the Office of Good Practices and Anti-Corruption of the Autonomous Community of Navarre, established by Regional Law 7/2018, of 17 May, on the creation of the Office of Good Practices and Anti-Corruption Office of the Autonomous Community of Navarre (the office is operational since 2022).

<sup>104</sup> These are political appointments made by Government decree and include secretaries of State, senior officials in ministries, ambassadors and chief executives of public companies, among others.

Transparency and Good Governance whereas a number of Autonomous Regions and municipalities have their own Council to perform the same role<sup>105</sup>. The Court of Auditors is in charge of the audit of the financial-economic activity and regular accounting of political parties, as well as of the contributions received by foundations and associations linked to the political parties represented in the Spanish Parliament<sup>106</sup>.

**The perception among experts and business executives is that the level of corruption in the public sector remains relatively low.** In the 2022 Corruption Perceptions Index by Transparency International, Spain scores 60/100 and ranks 14<sup>th</sup> in the European Union and 35<sup>th</sup> globally<sup>107</sup>. This perception has been relatively stable over the past five years<sup>108</sup>. The 2023 Special Eurobarometer on Corruption shows that 89% of respondents consider corruption widespread in their country (EU average 70%) and 41% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>109</sup>. As regards businesses, 89% of companies consider that corruption is widespread (EU average 65%) and 62% consider that that corruption is a problem when doing business (EU average 35%)<sup>110</sup>. Furthermore, 28% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)<sup>111</sup>, while 15% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)<sup>112</sup>.

**The reform of corruption-related offences introduced the offence of illicit enrichment and revised the offence of misappropriation, including by lowering penalties in some instances, which was criticised by stakeholders.** Organic Law 14/2022 of 22 December reformed the regulation of the offence of misappropriation and introduced the crime of illicit enrichment<sup>113</sup>. The offence of illicit enrichment<sup>114</sup> is introduced for public officials who do

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<sup>105</sup> Transparency Agency of the Barcelona Metropolitan Area's government, created on 14 December 2015, Anti-Fraud and Anti-Corruption Office of Andalucía, created by Law 2/2021, of 18 June.

<sup>106</sup> Law 2/1982, of 2 May 1982. To be noted that while the Court of Auditors is not an anti-corruption body per se, its work is still relevant in the topics covered under the Anti-Corruption Framework section of the report.

<sup>107</sup> Transparency International (2023), Corruption Perceptions Index 2022. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>108</sup> In 2018 the score was 58, while, in 2022, the score is 60. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>109</sup> Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 on Corruption (2022).

<sup>110</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

<sup>111</sup> Special Eurobarometer 534 on Corruption (2023).

<sup>112</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

<sup>113</sup> The text of the Criminal Code details three levels of misappropriation: the appropriation of public funds by the perpetrator or his consent to appropriation by third persons (Article 432, which contains various aggravating circumstances); the temporary use of public goods without *animus rem sibi habendi* [i.e. without the intention to acquire possession of such goods], followed by their reimbursement or restitution (Article 432bis); and budget diversion or expenditure (Article 433). The appropriation of public funds is punished as before the reform, while budgetary slippages will have a lighter penalty, including the possibility of imprisonment, unless the service - to which the diverted funds were assigned - is not compromised or hindered (Article 433bis). On the other hand, technical changes are made to Article 433ter, which contains a definition, for criminal purposes, of public property, and Article 434, which provides for a



not justify any increase in their assets of more than EUR 250 000 during the exercise of their office or in the following five years, when requested to do so by the Administration<sup>115</sup>. According to the Government, the objective of the reform is to come back to the model that existed before the reform of the Criminal Code in 2015<sup>116</sup>. Civil society expressed criticisms on the reform of the offence of misappropriation, in particular as regards the reduction of associated penalties and the overall catalogue of offences deemed relevant<sup>117</sup>. In addition, they cast doubts over the introduction of the condition of the “profit aim”<sup>118</sup>, whose presence or absence would entail the application of a different set of penalties for an authority or civil servant who misappropriates public assets for itself or for a third party. In the absence of said aim, the applicable penalties are lower under the new regime<sup>119</sup>.

**The legal framework concerning foreign bribery investigations has been consolidated, while the enforcement of the rules needs to be further strengthened.** The 2022 OECD Report welcomed the increase in the number of foreign bribery investigations, the consolidation of the foreign bribery offence and clarification of corporate criminal liability<sup>120</sup>. At the same time, it pointed out a lack of clarity as regards adequate funding of enforcement bodies as a potential weakness, recommending taking necessary steps to more proactively detect and enforce anti-bribery legislation<sup>121</sup>.

**The Government received a mandate to adopt a dedicated national anti-corruption strategy.** As referred in the 2022 Rule of Law Report<sup>122</sup> and underlined by GRECO as a priority<sup>123</sup>, the intention of the Government was to adopt a national anti-corruption plan. In February 2023, the Government received a mandate to adopt an anti-corruption strategy,

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mitigating clause in case of reparation of damage. The remaining provisions of the chapter (Articles 435 and 435bis) remain unchanged.

<sup>114</sup> In order to be held liable for illicit enrichment, it is not sufficient to hold assets whose origin cannot be explained by the declared income, but there must also be a refusal to specify the origin of such assets, or a false declaration, in response to a prior request from the competent administrative or judicial bodies Article 438bis of the Criminal Code provides for imprisonment of between six months to three years, a fine up to three times the obtained benefit, and disqualification from exercising the right to stand as a candidate for a period of two to seven years.

<sup>115</sup> Input from Spain for the 2023 Rule of Law Report, pp. 31-32.

<sup>116</sup> Input from Spain for the 2023 Rule of Law Report, p. 31.

<sup>117</sup> Hay Derecho Foundation (2023), The reform of the crime of embezzlement of public funds and the new crime of illicit enrichment; Contribution from Association of Judges and Magistrates Francisco de Victoria for the 2023 Rule of Law Report, p. 20; Contribution from Asociación Impulso Ciudadano for the 2023 Rule of Law Report, p. 18; Contribution from Ilustre Colegio de la Abogacía for the 2023 Rule of Law Report, p. 19. Article 2 of the Criminal Code establishes the principle of the “more favorable criminal provision” and states that a criminal law may exceptionally be applied to an act committed before its entry into force when that law is more favourable to the offender than the one in force at the time of commission of the offence.

<sup>118</sup> A profit aim is understood as the aim of achieving a benefit or gain. The provision regarding the profit aim was not included in the former regulation.

<sup>119</sup> Contribution from Foro Judicial Independiente for the 2023 Rule of Law Report, p. 18.

<sup>120</sup> OECD Working Group on Bribery (2022), Spain needs to step up its foreign bribery enforcement without delay, says the OECD Working Group on Bribery.

<sup>121</sup> According to Transparency International, in the period 2018-2021, Spain opened seven investigations, commenced four cases and concluded no cases with sanctions. Transparency International (2022), Exporting Corruption 2022 - Assessing enforcement of the OECD Anti-Bribery Convention. Additionally, according to OECD, in the years 2013-2022, 46 investigations into foreign bribery were opened. OECD (2022), Implementing the OECD anti-bribery convention in Spain: Phase 4 Report (pp. 97-102).

<sup>122</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, pp. 10-11.

<sup>123</sup> GRECO Fifth Evaluation Round - Compliance Report, para. 20. GRECO welcomed the intention of the authorities to develop a coordinated anti-corruption plan, which should constitute a priority action.

which will have to be finalised by summer 2024<sup>124</sup>. Currently, while no comprehensive anti-corruption strategy to specifically prevent and fight corruption has been developed yet, anti-corruption priorities are spread in multiple plans and strategies, such as the National Security Strategy 2021, which identifies corruption as a tangible threat to national security<sup>125</sup>, and the Strategy against Organised Crime 2019-2023 which expressly includes corruption-related crimes<sup>126</sup>. One of the specific objectives of the Strategic Plan for the National Police 2022-2025 is to protect the functioning of the institutions by fighting corruption. In order to do so, the National Police commits to increase the effectiveness of investigations on corruption<sup>127</sup>. Similarly, the Strategic Plan for the Civil Guard 2021-2024, includes as a specific objective for the fight against organised crime the prosecution of different forms of corruption affecting public institutions<sup>128</sup>. As reported last year<sup>129</sup>, the drafting of the National Anti-Fraud Strategy by the National Anti-Fraud Coordination Service, in close cooperation with the National Police and Civil Guard is still ongoing. Cooperation between the European Public Prosecutor's Office and Civil Guard is positive and investigations coordinated by the EPPO are already being carried out<sup>130</sup>. Regarding the cooperation with prosecution authorities, a clear provision stating the need to report any fraud related to the Recovery and Resilience Facility to the EPPO is currently missing<sup>131</sup>.

**As a reform of the Criminal Procedure Code is still pending, no progress has been made to address the length of investigations and prosecutions.** The 2022 Rule of Law Report recommended to Spain to “address the challenges related to the length of investigations and prosecutions to increase the efficiency in handling high-level corruption cases”<sup>132</sup>. The number of procedures opened on corruption charges amounted to 38 in 2022. In addition, of all adjudicated cases of corruption crimes in the course of 2022, a total of 45 cases were

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<sup>124</sup> The fifth additional provision of Law 2/2023, of 20 February, which regulates the protection of people who report breaches of regulations and the fight against corruption, mandates the Government to approve a “Strategy against Corruption” within 18 months starting in February 2023. The mandate requires the strategy to have a wider scope and not only to focus on whistleblowers protection. Written input from the Government following the country visit to Spain.

<sup>125</sup> Input from Spain for the 2023 Rule of Law Report, p. 21.

<sup>126</sup> 2019-2023 Strategy against Organised Crime and Serious Crime.

<sup>127</sup> Such aim is to be achieved by using indicators, such as the percentage of prosecuted investigations in relation to the total amount of public corruption investigations, and the evaluation of seized assets resulting from the commission of corruption-related crimes, with a particular focus on international trade transactions. Input from Spain for the 2023 Rule of Law Report, pp. 31-32.

<sup>128</sup> Input from Spain for the 2023 Rule of Law Report, pp. 31-32. To increase cooperation and communication with the European Public Prosecutor's Office, a technical procedural guide for the Civil Guard was signed with the Directorate General of the Guardia Civil.

<sup>129</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 11.

<sup>130</sup> To increase cooperation and communication with the European Public Prosecutor's Office, a technical procedural guide for the Civil Guard was adopted by the Directorate General of the Guardia Civil (Guardia Civil, European Public Prosecutor's Office: Procedure for investigating fraud affecting the financial interests of the European Union). In November 2022, the Civil Guard carried out two actions: an investigation into VAT fraud related to the sale of luxury vehicles and an investigation carried out at European level against tax fraud related to the sale of electronic goods.

<sup>131</sup> EPPO contribution to the 2023 RoL Report. The Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (“the EPPO Regulation”), sets the basis for the functioning of the EPPO. Article 4 of the EPPO Regulation states that “The EPPO shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union [...]”.

<sup>132</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 2.

convictions or partial convictions, while 16 were acquittals<sup>133</sup>. The long duration of the investigation and prosecution of high-level corruption raises concerns<sup>134</sup>. The staff of the Special Prosecutor's Office against Corruption and Organised Crime is composed of 29 prosecutors (one Chief Prosecutor, one Lieutenant Fiscal and 27 Prosecutors); it also has 25 delegated prosecutors at regional level<sup>135</sup>. While no disaggregated data on specific high-level corruption cases is available, the Government acknowledged that corruption cases take more time due to their highly complex nature<sup>136</sup>. Specific corruption-focused training sessions were carried out in order to improve investigation of economic crime and corruption. The lack of specialised teams to carry out accounting reports and economic analysis is reported to contribute to delays in investigating and prosecuting complex economic crime<sup>137</sup>. The current criminal procedural system is also insufficient to address complex criminal offences<sup>138</sup>. As referred to in previous Rule of Law Reports<sup>139</sup>, a reform of the Code of Criminal Procedure was ongoing. The draft law has been awaiting a compulsory opinion from the Council for the Judiciary since July 2021. According to the Government<sup>140</sup> and stakeholders, this reform would have a positive impact on reducing the length of procedures<sup>141</sup>. In view of no concrete measure finalised so far, no progress has been made on the implementation made in the 2022 Rule of Law Report.

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<sup>133</sup> As reported last year (p. 12), the number of procedures opened on corruption charges amounted to 53 in 2021. In addition, of all adjudicated cases of corruption crimes in the course of 2021, a total of 44 cases were convictions or partial convictions, while 21 were acquittals. Information obtained from the database of the Council for the Judiciary.

<sup>134</sup> 2022 and 2021 Rule of Law Reports, Country Chapter on the rule of law situation in Spain, p. 12 and p. 10 respectively.

<sup>135</sup> Written contribution from Prosecution Service in the context of the country visit in Spain. 2022 Rule of Law Report (p. 12) referred 30 delegated prosecutors at regional level.

<sup>136</sup> Input from Spain for the 2023 Rule of Law Report, p. 17. In their input, reference is made to the Council of Europe European Commission for the efficiency of justice (CEPEJ), according to which criminal justice response times in Spain are standard for first instance, and are better than the Council of Europe average, in second instance. However, such data refers to criminal cases as a whole and does not present in a disaggregated matter the data on high-level corruption cases, which are not available.

<sup>137</sup> Contribution from Association of Judges and Magistrates Francisco de Victoria for the 2023 Rule of Law Report, p. 21. Moreover, in its 2022 report, the Anti-Corruption Prosecutor's Office underlined the need to establish new support units in several fields, notably on accounting and finance, as these sectors have been increasing in terms of relevance.

<sup>138</sup> Information received in the context of the country visit to Spain from the Association of Prosecutors and from the Prosecution service. The maximum time limit for criminal investigations is 12 months, with the possible extension to six months: civil society underlines that such constraints often lead to dismissal of cases due to lack of time, especially in corruption-related cases which are complex to investigate (Contribution from Foundation 'Hay Derecho' for the 2023 Rule of Law Report, p. 19).

<sup>139</sup> 2022, 2021 and 2020 Rule of Law Reports, Country Chapter on the rule of law situation in Spain, p. 7, p. 6 and p. 4 respectively.

<sup>140</sup> 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Spain, p. 12. The Government expected that the revision of the Code of Criminal Procedure would contribute to tackling these issues. In fact, one of the main novelties of the reform are the new powers of the investigating prosecutor and the judge responsible for guarantees, as well as the alignment of the reform with other ongoing projects such as the procedural rules on efficiency, which seek to modernise judicial proceedings.

<sup>141</sup> Information provided by the Prosecution Service and associations of prosecutors in the context of the country visit to Spain. The draft reform affects procedures, as well regulates investigative tools, such as scientific evidence and automated data processing. In its 2021 report, the Fiscal Council welcomed the initiative, and pointed out potential issues in meeting the need to speed up procedures and investigations, including too limited provisions on digitalisation of files (Fiscal Council (2021) of the Fiscal Council to the Preliminary Draft of the Organic Law of Criminal Prosecution).

**The efficiency of the Council of Transparency and Good Governance has improved following the establishment of a new document management system.** A new document management system was introduced in the public sector to improve transparency and access to information with all parties involved (including citizens and regional and local transparency entities) and reduce formalities<sup>142</sup>. GRECO issued a recommendation to ensure “proper independence, authority and resources” to effectively perform the monitoring functions of the Council<sup>143</sup>. The Council is moderately satisfied with the current staff provision<sup>144</sup>. The authority of the Council is expressed through the issuing of resolutions, however, it has no competence nor a tool to ensure their implementation<sup>145</sup>. The Council is to issue a report to be published by June 2023 to assess the implementation of its 2022-2025 Strategic Plan<sup>146</sup>. Since the Parliament was dissolved in May 2023, the process aiming to adopt a new Statute for the Council to reflect its developed tasks, as well as its renovated structure, has stopped<sup>147</sup>.

**Amendments to improve rules on conflicts of interest for civil servants have yet to be adopted despite ongoing work since 2021.** Efforts are in place to amend the law on incompatibilities of staff employed by public administrations, in order to extend the regime of incompatibilities and prevention of conflicts of interest to advisers and thus define the system for the prevention of conflicts of interest and incompatibilities of public employees within all different administrations<sup>148</sup>. In the framework of the Fourth Open Government Plan<sup>149</sup>, a draft of the Integrity System of the General Administration was published (see below)<sup>150</sup>. Nevertheless, the Integrity System is not directly linked to the reform to improve rules on conflicts of interest for civil servants<sup>151</sup>. The Plan also includes a specific axis on strengthening ethical values and integrity mechanisms of public institutions.

**Rules on conflicts of interest of top executive officials are not sufficiently implemented.** Although both GRECO and the 2022 Rule of Law Report referred to the need to reinforce the

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<sup>142</sup> Although the establishment of the system was delayed due to technical difficulties, the system is now operational and benefits are reported, in particular regarding time-saving and communication. Staff is currently being trained, while a few months are needed to assess the results of the implementation on the daily work of the Council. Information received in the context of the country visit to Spain from the Council of Transparency and Good Governance. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 12.

<sup>143</sup> GRECO Fifth Evaluation Round - Compliance Report, recommendation v, p. 8.

<sup>144</sup> Information received in the context of the country visit to Spain from the Council of Transparency and Good Governance.

<sup>145</sup> Information received in the context of the country visit to Spain from the Council of Transparency and Good Governance.

<sup>146</sup> Some of the originally planned actions were not implemented due to the fact that the staff reinforcement was finalised only at the end of 2022.

<sup>147</sup> Input from Spain for the 2023 Rule of Law Report.

<sup>148</sup> The draft law to amend Law 53/1984, of 26 December 1984 was envisaged to be adopted in the first semester of 2022. High-level officials and members of Government are covered under Law 3/2015 of 30 March 2015.

<sup>149</sup> Fourth Open Government Action Plan for Spain (2020-2024).

<sup>150</sup> In the framework of the Fourth Open Government Plan (point 5.3, p. 54), the timeline originally foreseen to amend the system of incompatibilities for civil servants was delayed.

<sup>151</sup> Once the amendments to Law 53/1984 are approved, the Integrity System will have to be adapted to the reform. The Government is working on the reform of the Law 53/1984 without a clear timeline on its finalisation. Written input from the Government following the country visit of Spain.

independence and autonomy of the Office for Conflicts of Interest (OCI)<sup>152</sup>, rules governing its independence and autonomy remain unchanged. The OCI – charged with supervising conflicts of interest rules and the system for asset declaration of senior officials and members of Government – has not yet developed a manual of procedures to better approach potential breaches<sup>153</sup>. Additionally, the Office for Conflicts of Interest of the Spanish Parliament<sup>154</sup> – a separate administrative body – has stressed the importance for members of Parliament to comply with the obligation to make public their institutional agenda, especially on meetings with representatives of interest groups<sup>155</sup>. In its report published in October 2022<sup>156</sup>, the Parliament OCI reported that declarations of conflicts of interest are not sufficiently detailed, and furthermore, that no complaints of non-compliance were submitted<sup>157</sup>. Moreover, in its report, published in April 2023, the Parliament OCI reported that a relevant number of deputies failed to comply with the obligation of publishing their institutional agenda through the Chamber’s Transparency Portal<sup>158</sup>. The Parliament OCI also recommended parliamentarians to include meetings with groups of interest when disclosing their agendas<sup>159</sup>. Publication of asset declarations by top executive officials is done annually through an online dedicated portal: the forms are then gathered in a single document and published in the Official Journal<sup>160</sup>. As noted by GRECO<sup>161</sup>, when comparing the applicable disclosure requirements for parliamentarians and those for top executive officials, the former still have a higher level of detail in disclosure forms<sup>162</sup>. However, a similar level of requirements might be achieved through the implementation of the Fourth Open Government Plan<sup>163</sup>.

**The Integrity System of the General Administration has been approved, while the review of the systems of incompatibilities of the National Police and Civil Guard is still to be finalised.** In July 2022, the first draft of the Integrity System of the General Administration was presented by the Secretary of State for Civil Service<sup>164</sup>. The initiative

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<sup>152</sup> GRECO Fifth Evaluation Round - Compliance Report, para. 60; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 13.

<sup>153</sup> Court of Auditors (2021), ‘The Court of Auditors approves the audit report on compliance with the regulations on compensation received for dismissal of senior positions and the remuneration regime of senior managers of certain entities of the state public sector, financial year 2019’.

<sup>154</sup> The Office of Conflicts of Interest of the Spanish Parliament was established in February 2021.

<sup>155</sup> Provisions of Article 6.2 of the Code of Ethics. Office for Conflicts of Interest of the Spanish Parliament (2023). 2022 Annual Report of the Office for Conflicts of Interest of the Spanish Parliament.

<sup>156</sup> Office for Conflicts of Interest of the Spanish Parliament (2022). 2022 Annual Report of the Office for Conflicts of Interest of the Spanish Parliament.

<sup>157</sup> Declarations in accordance with the provisions of Article 3.2 of the Code of Ethics.

<sup>158</sup> Office for Conflicts of Interest of the Spanish Parliament (2023), 2022 Annual Report of the Office for Conflicts of Interest of the Spanish Parliament. The Office noticed that there are very few parliamentarians who disclose the meetings, notably with groups of interest.

<sup>159</sup> Office for Conflicts of Interest (2023), 2022 Annual Report of the Office for Conflicts of Interest (p. 5).

<sup>160</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 13.

<sup>161</sup> GRECO Fifth Evaluation Round - Compliance Report, para. 51-54.

<sup>162</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 10.

<sup>163</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 10.

<sup>164</sup> The draft was presented in front of the coordinating Committee for General Inspections of Services. The integrity system aims to establish a holistic approach in line with the OECD 2017 recommendation on Public Integrity. The first draft was developed by a working group composed of 55 experts, coordinated by the Directorate-General for Public Governance. The initiative is expressly addressed to the General Administration, while public entities are invited to join through agreements. The participants to the working group joined from different services, namely National Anti-fraud Service, Office for Conflicts of Interest, Directorate-General for Civil Service, Office of the Secretary of State for the Civil Service, General Counsel, Inspectorate-General for Finance, and Audit Division of the Tax Agency.

comprises several measures<sup>165</sup> and aims at improving the integrity of the public sector<sup>166</sup>. The first two measures of the integrity system are the Code on Good Administration for civil servants and the Code on Good Government – aimed at members of the government and high-level officials. Both Codes are complemented by a section on conflicts of interest, including a specific provision on gifts<sup>167</sup>. Establishing an ethical mailbox<sup>168</sup> is another element of the package, aimed at supporting the coordinators and integrity committees when carrying out their tasks. The draft document was made public for consultation in January 2023<sup>169</sup>, and it was approved on 7 March 2023 by the Coordinating Commission: the document is expected to be published on the Transparency Portal shortly<sup>170</sup>. As reported last year<sup>171</sup>, the draft Royal Decree implementing the review of the system of incompatibilities for civil servants in the National Police<sup>172</sup> is still pending<sup>173</sup>. Equally still in the process is the draft law on the review of the system of incompatibilities for the Civil Guard<sup>174</sup>. Both drafts aim to address GRECO recommendations<sup>175</sup>.

**Significant progress has been made on a draft law on lobbying.** The 2022 Rule of Law Report recommended to Spain to “continue efforts to table legislation on lobbying, including the establishment of a mandatory public register of lobbyists”<sup>176</sup>. After the approval in November 2022 by the Council of Ministers, a draft law underwent public consultation in December 2022<sup>177</sup>. Before the Parliament was dissolved in May 2023, the draft was pending its second reading at the Council of Ministers level<sup>178</sup>. The draft law establishes a register of lobbyists and defines what is meant by lobbying activities<sup>179</sup>. As the register would be

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<sup>165</sup> Such measures include a Code on Good Administration and a Code on Good Government, plans to develop a system for risk management and whistleblowers’ protection, an ethical mailbox, as well as training and education activities on integrity.

<sup>166</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 13.

<sup>167</sup> Input from Spain for the 2023 Rule of Law Report, p. 23. The provision covers those gifts and special attentions that, regardless of their value, might influence the objectivity and impartiality of public employees and high level officials. A model to notify these gifts is included in the Annex.

<sup>168</sup> The mailbox aims to serve as a channel to facilitate an open debate on integrity, as well as to assist on the application of the code of good administration, to provide advice and to build knowledge.

<sup>169</sup> Ministry of Finance and Public Administration (2023), Integrity System of the General Administration – document for consultation.

<sup>170</sup> Input from Spain for the 2023 Rule of Law Report.

<sup>171</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 13.

<sup>172</sup> This is based on the legal framework established by Organic Law 9/2015 of 28 July 1992 on the Staff Regulations of the National Police, Article 15 of which provides that, by regulation, the rules for implementing and applying the general rules on incompatibilities of staff serving the Public Administrations shall be adopted in order to adapt it to the specific structure and functions of the National Police.

<sup>173</sup> Input from Spain for the 2023 Rule of Law Report, p. 26.

<sup>174</sup> This relates to the provisions of Law 29/2014 of 28 November 1992 on the Conditions of Employment of Civil Guard Staff and Article 22 of Organic Law 11/2007 of 22 October 2003 regulating the rights and duties of members of the Civil Guard.

<sup>175</sup> GRECO Fifth Evaluation Round - Compliance Report, recommendation xvii, p. 16. As reported last year (p. 13), the draft legislation in relation to the regime of incompatibilities for civil servants of the Civil Guard was planned for adoption in 2023.

<sup>176</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 2.

<sup>177</sup> A total of 367 responses were sent in the framework of the public consultation: 18 of which were submitted by individuals, 311 by associations and private entities, while 38 by public entities.

<sup>178</sup> Input from Spain for the 2023 Rule of Law Report, p. 17.

<sup>179</sup> Input from Spain for the 2023 Rule of Law Report, p. 17. The draft law covers the following issues: framework regulation under which lobbyists and officials can maintain relations; definition of lobby activities; clarification of those who are not considered lobbyists under the regulation, naming political parties, trade unions, business organisations, while entities or foundations funded or created by the mentioned entities are covered (professional associations are excluded).

implemented at the national level, coordination with the already existing registers at regional level<sup>180</sup> would need to be enhanced<sup>181</sup>. The Office for Conflicts of Interest – in charge of managing the register<sup>182</sup> – has been working on an IT tool to operationalise the register, which is expected to enter into force in 2024<sup>183</sup>. However, since the Parliament was dissolved in May, the process of the Law on Transparency and Integrity and the creation of the Register have been postponed until the next legislature<sup>184</sup>. Civil society welcomed the legislation as in line with GRECO recommendation and pending for a long time<sup>185</sup>. Civil society recognises harmonisation with international standards and a broad definition of lobbying activities. However, civil society also call for a more holistic approach to include political parties, trade unions and business organisations in the scope of the legislation<sup>186</sup>. In view of the pending submission of the draft law to Parliament, significant progress has been made on the recommendation made in the 2022 Rule of Law Report.

**The law governing financing of political parties remains unchanged, despite a request from the Court of Auditors.** In January 2022, the Court of Auditors formally requested the Parliament to reform the law governing the financing of political parties<sup>187</sup>, in particular the aspects related to the thresholds for sanctions and the disproportionate impact on small political parties mostly operating at local level. The Government is open to a reform, and it underscored the need for a wider discussion between political parties in Parliament before proposing a draft law<sup>188</sup>. On the contrary, on the judicial level some improvements have been experienced<sup>189</sup>.

**Parliament approved legislation aiming at transposing the Whistleblower Directive.** On 16 February 2023, the law aimed at aligning national legislation with EU law requirements

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<sup>180</sup> Law 19/2014 on Transparency, Access of Public Information and Good Governance provides a definition of interest groups; Law Decree 1/2017 of 14 February established a register on groups of interest register in Catalonia.

<sup>181</sup> Information received in the context of the country visit in Spain from the Ministry.

<sup>182</sup> Contribution from Ilustre Colegio de la Abogacía for the 2023 Rule of Law Report, p. 19. The Register will be available on the Transparency Portal of the State Administration and on the webpage of the Office for Conflict of Interest.

<sup>183</sup> Information received in the context of the country visit in Spain from the Office for Conflicts of Interest.

<sup>184</sup> Input from Spain for the 2023 Rule of Law Report.

<sup>185</sup> Information received in the context of the country visit in Spain from Transparency International; Contribution from Foundation ‘Hay Derecho’ for the 2023 Rule of Law Report, p. 18; GRECO (2022), Fourth Evaluation Round - Addendum to the Second Compliance Report, recommendation ii, paras 9-12.

<sup>186</sup> The Asociación De Profesionales de las relaciones institucionales (APRI) calls in particular for the introduction of business organisations and trade unions. In addition, the draft law provides for a regulatory footprint to track record of the changes introduced as a result of the influence 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 organisation they were in charge of. Contribution from Hay Derecho Foundation for the 2023 Rule of Law Report, p. 18.

<sup>187</sup> Organic Law 8/2007.

<sup>188</sup> Written contribution from Ministry in the context of the country visit in Spain. Since the request was sent to the Parliament, the Government considers it reasonable to leave the matter to the qualified majority of the Parliament. However, the Government conveys its willingness to push for reform in this regard, but it also recognises the need for a prior consensus on its content, as all political parties are directly concerned. The main risk sectors remain private donations and new ways of party financing (crowdfunding and microloans), as well as the issue represented by financing of intermediaries. The issues were already highlighted in an opinion regarding funding and financial-economic activities of political parties published in July 2021 (Court of Auditors (2021), Opinion 1445 regarding funding, financial-economic activities and control of political parties and foundations and other entities linked to political parties).

<sup>189</sup> Information received in the context of the country visit in Spain from the Court of Auditors.

on whistleblower protection was adopted by Parliament<sup>190</sup>. The law includes the establishment of an authority to protect whistleblowers and a regime of sanctions to address actions that might hinder or delay the reports<sup>191</sup>. The law establishes that within a maximum period of 18 months from its entry into force, the Government shall approve an Anti-Corruption Strategy to evaluate the objectives established in the law as well as to address the necessary measures to fill potential loopholes<sup>192</sup>. Criticism was raised for not going further to include in the national law whistleblower reports containing classified information (or declared secret or confidential as provided by national law)<sup>193</sup>, while civil society has underlined the need to ensure the independence of the new authority<sup>194</sup>.

**Public procurement, infrastructure and party financing are reported as potential corruption-risk sectors.** Following an evaluation process, the Ministry of Interior informs that the highest potential risks in terms of corruption stem from public procurement<sup>195</sup>, healthcare<sup>196</sup>, construction and extractive industries<sup>197</sup>. The Independent Office for Regulation and Supervision of Procurement approved the National Public Procurement Strategy, at the proposal of the Cooperation Committee on Public Procurement<sup>198</sup>. The Committee involves representatives of Spain's territorial administrations (at national, regional and local level) and aims at – among its key objectives – "combating corruption and irregularities in the application of public procurement legislation"<sup>199</sup>. Also, financing of

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<sup>190</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. Spain – together with seven Member States - was referred to the Court of Justice for failure to transpose the Whistleblower Directive on 15 February 2023, as the deadline to transpose the necessary measures to comply with the Directive's provisions was 17 December 2021. The national law amends four dispositions, and covers not only breaches of European Union Law, but also breaches of serious national criminal and administrative law, thereby going beyond the material scope of the EU Directive. The amended dispositions include: Law 29/1988, of 13 July, on administrative law; Law 10/2010, of 28 April, on the prevention of money laundering and the financing of terrorism; Law 9/2017, of 8 November, on public sector contracts; and Organic Law 3/2018, of 5 December, on the protection of personal data and guarantee of digital rights.

<sup>191</sup> Input from Spain for the 2023 Rule of Law Report, p. 28.

<sup>192</sup> Contribution from Foundation 'Hay Derecho' for the 2023 Rule of Law Report, p. 17. As shared by the Ministry of Home Affairs, the Strategy will have a wider scope and will not solely focus on whistleblowers protection.

<sup>193</sup> Contribution from Anti-Fraud Office of Catalonia for the 2023 Rule of Law Report, p. 14; contribution from Foundation 'Hay Derecho' for the 2023 Rule of Law Report, p. 18. These aspects are not covered by the scope of the Whistleblowing Directive.

<sup>194</sup> Contribution from Foundation 'Hay Derecho' for the 2023 Rule of Law Report, p. 17; Asociación De Profesionales de las relaciones institucionales (APRI) (2022), Observations to the Draft law on Lobbying. Doubts on the level of independence focus on the appointment of the President of the authority by the Ministry of Justice, as well as lack of accountability mechanisms and participation of civil society in its governance. The Anti-Fraud Office of Catalonia highlighted the need to coordinate the national regulation with the regional ones, as well as the need for new resources to sustain the newly established tasks (Contribution from the Anti-Fraud Office of Catalonia for the 2023 Rule of Law Report, p. 14).

<sup>195</sup> Despite agreeing in classifying public procurement as a high-risk sector of corruption, civil society also highlight potential risks in the excluded protection of whistleblowers with regard to procurement files that contain classified information or have been declared secret or reserved, thus leaving space to corruption cases (input from the Hay Derecho Foundation for the 2023 Rule of Law Report, p. 19).

<sup>196</sup> According to the Government, the risk in the health sector ceased to exist in the meantime: the specific references to corruption in the field of health (procurement of health products) were made on the basis of an assessment carried out during the COVID-19 pandemic. Input from Spain for the 2023 Rule of Law Report.

<sup>197</sup> Input from Spain for the 2023 Rule of Law Report, pp. 29-30.

<sup>198</sup> Input from Spain for the 2023 Rule of Law Report.

<sup>199</sup> Ibid. The Flash Eurobarometer on Businesses' attitudes towards corruption in the EU shows that 39% of companies in Spain (EU average 26%) think that corruption has prevented them from winning a public



political parties represents a corruption risk sector according to judges' associations and civil society<sup>200</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

The Constitution enshrines the rights to freedom of expression and media freedom<sup>201</sup>. The General Law on Audiovisual Communication<sup>202</sup> regulates the provision of audiovisual services while the law on Law on State Owned Radio and Television<sup>203</sup> ensures the independence, neutrality and objectivity of the national public service media. An independent multi-regulatory body, the National Commission for Markets and Competition (CNMC), assumes the role of audiovisual regulator at national level, while regional audiovisual authorities are responsible for audiovisual communication service providers at the regional level. The Ministry of Economic Affairs and Digital Transformation is responsible for secondary legislation and has several competences, including authorisations at national level and the national registry of audiovisual service providers. Access to information is regulated by the Law on Transparency, Access to Public Information and Good Governance<sup>204</sup> and by the Law<sup>205</sup> on Official Secrets<sup>206</sup>.

**The audiovisual regulatory authority has been allocated additional resources.** The 2022 Rule of Law Report recommended to Spain to “ensure adequate resources for the national audiovisual media regulatory authority to strengthen its operations, taking into account the European standards on the independence of media regulators in particular as regards resource adequacy”<sup>207</sup>. At the end of 2022, the CNMC launched a selection procedure to expand its technical staff with 37 new positions, of which four were reserved for audiovisual tasks. The CNMC allocated those positions on 26 May 2023. Work on secondary legislation<sup>208</sup> is still needed in order for the CNMC to be able to fulfil its functions. Regarding the cooperation between the CNMC and the regional audiovisual authorities, the group of Audiovisual Regulatory Authorities set up by the law<sup>209</sup> to foster the exchange of expertise and best practices on the application of the legislation is currently drafting its rules of procedure and the first meeting should take place in the second quarter of 2023<sup>210</sup>. Coordination within this group is necessary on important aspects of the law such as the promotion and shares of European works, media literacy initiatives and the supervision of online services, platforms and providers of special relevance<sup>211</sup>. The resources of the national audiovisual media

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tender or a public procurement contract in practice in the last three years. This is 13 percentage points above the EU average

<sup>200</sup> Contribution from Professional Association of the Magistracy for the 2023 Rule of Law Report, p. 20; contribution from Foundation “Hay Derecho” for the 2023 Rule of Law Report, p.19.

<sup>201</sup> Art. 20 of the Spanish Constitution.

<sup>202</sup> Law 13/2022 of 7 July 2022.

<sup>203</sup> Law 17/2006 of 5 June 2006.

<sup>204</sup> Law 19/2013 of 9 December 2013.

<sup>205</sup> Law 9/1968 of 5 April 1968.

<sup>206</sup> Spain ranks 36<sup>th</sup> in the 2023 Reporters without Borders World Press Freedom Index compared to 32<sup>nd</sup> in the previous year.

<sup>207</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 2.

<sup>208</sup> E.g. Royal Decrees on commercial communications, promotion of European works or on users of special relevance.

<sup>209</sup> Second additional provision, General Law on Audiovisual Communication 13/2022 of 7 July 2022.

<sup>210</sup> Information received in the context of the country visit to Spain from CNMC.

<sup>211</sup> Ibidem.

regulatory authority have been increased in the organisational chart of the CNMC. Therefore, the recommendation made in the 2022 Rule of Law Report has been fully implemented.

**Further to the adoption of the audiovisual law transposing the AVMS Directive<sup>212</sup>, the national registry of providers of audiovisual services has yet to include providers of video sharing platforms and providers of services of special relevance.** The General Law on Audiovisual Communication obliges providers of video sharing platforms and providers of services of special relevance using video sharing platforms to register, under the supervision of the CNMC, in the registry of providers of audiovisual services<sup>213</sup>. The Government is currently preparing a draft law<sup>214</sup> that would define the organisation and functioning of the national registry, which remains under the responsibility of the Ministry of Economic Affairs and Digital Transformation. The public consultation of the text closed in January 2023. Currently, ministries are drafting their internal reports on the draft text<sup>215</sup>. According to the Government, the objective was to adopt the law in the last quarter of 2023<sup>216</sup>. The call for general elections, which will take place on 23 July 2023, could delay the process. Ownership information on video sharing platforms would then be added to the existing data on ownership, currently limited to national radio and television providers. The Audiovisual Law also promotes the interconnection of regional registries, with ownership information on regional providers of audiovisual services, with the national registry. The audiovisual law includes provisions on pluralism for the television services market and the radiophonic services market. In the free-air digital television (DTT) market, the provisions prevent that an investor owns a significant number of shares in more than one provider when the joint share is over 27%, or when he controls more than 2 multiplex in national geographical scope or more than 1 multiplex in autonomous communities. On the other hand, in radiophonic market the provisions prevent an owner from controlling more than five broadcasting licenses in the same area of coverage, as well as from controlling directly or indirectly more than one-third of the broadcasting licenses at the national level and more than 40% of the licenses at the level of the autonomous communities. Spain has a market plurality review procedure that has not changed in the reporting period<sup>217</sup>. According to the Media Pluralism Monitor, plurality of media providers scores 88%, thus remaining at high risk level<sup>218</sup>.

**There have been no changes to the legal framework for institutional advertising, while calls for increased transparency in the distribution of institutional advertising remain.** There have been studies and press articles on institutional advertising that demand more transparency in the area of institutional advertising campaigns<sup>219</sup>. The annual reports on institutional advertising and communications include details on contracts awarded by

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<sup>212</sup> Directive (EU) 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

<sup>213</sup> Transparency obligations under the current legal regime are limited to the audiovisual sector.

<sup>214</sup> Draft Royal Decree regulating the State Registry of Audiovisual Service Providers, the procedure for prior notification of commencement of activity and the registration procedure.

<sup>215</sup> As requested by Art. 26.6 of Law 50/1997 of 27 November.

<sup>216</sup> Information received in the context of the country visit to Spain from the Spanish authorities.

<sup>217</sup> European Media Freedom Act Impact Assessment, Part 2, section 7.3.2 Measures providing a system of ministerial override of media mergers and acquisitions on the basis of media pluralism, general national interests, strategic economic importance and preventing the creation of influential positions.

<sup>218</sup> 2023 Media Pluralism Monitor, country report for Spain, page 13.

<sup>219</sup> Contribution from Foundation “Hay Derecho” for the 2023 Rule of Law Report, p.15; Grupodanieljones.org (2022), Political power’s media capture strategies in Spain (2016-2021).

ministries and public bodies at the state level<sup>220</sup>. However, the information contained in these reports mainly refers to the contract beneficiaries, mostly advertising and media agencies. Thus, it does not allow to determine what amount of advertising money actually goes to specific media. The national law coexists with regional regulations<sup>221</sup>. Journalists' associations requested more transparency, in particular regarding public administrations, and supported the proposals of the European Media Freedom Act<sup>222</sup>.

**The chair of the management board of the public service media exercises her functions *ad interim* since September 2022 and does so with executive powers further to the modification of the public service media's statute.** The national public service media, RTVE, is regulated by the Law on State Owned Radio and Television<sup>223</sup>, which defines the public service remit and its organisation<sup>224</sup>. In March 2021, the Parliament elected the ten members<sup>225</sup> of the Management Board of RTVE, which should have been renewed in 2018, for a six-year non-renewable mandate. The members of the Board cannot act upon instructions from the Government or other institutions<sup>226</sup>. In September 2022, the chair of the Board resigned, and the Board appointed one of its members as “acting chair” with limited executive powers<sup>227</sup>. According to the law, a new member and chair should have been appointed by the Congress. In view of this interim situation, in October 2022 the Government changed the statute of RTVE – implementing the July 2011 advice of the Solicitor General, giving executive powers to the acting chair of the Board to ensure the functioning of RTVE. Some RTVE trade unions contested this change<sup>228</sup>. The Supreme Court endorsed the appointment *ad interim* of the acting chair in January 2023<sup>229</sup>. The national Public Service Media co-exists with regional and local public service media providers which are regulated by the relevant regional legislation. The Media Pluralism Monitor 2023, as well as the journalists' associations<sup>230</sup>, refer to some instances of political influence in the practice of public service media at state, regional and local levels and assess it as high risk.

**Some progress has been made to strengthen access to information.** The 2022 Rule of Law Report recommended to Spain to “pursue work to strengthen access to information, in particular via revision of the Law on Official Secrets”<sup>231</sup>. The Government is working<sup>232</sup> on a draft law on classified information that would replace the current law on official secrets of 1968<sup>233</sup>. The text has not been approved by the Council of Ministers yet. The initial draft law,

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<sup>220</sup> In accordance with the State law 29/2005 on institutional advertising and communication of 29 December 2005, which in its Article 4 sets basic common rules applying to all administrations.

<sup>221</sup> The Government indicated that it is following the negotiations on the European Media Freedom Act which addresses could cover the issue of state advertising amongst other topics. Information received by the Government in the context of the country visit to Spain.

<sup>222</sup> Information received in the context of the country visit to Spain from journalists' associations (FAPE, APE).

<sup>223</sup> Law on State owned radio and television 17/2006 of 5 June 2006.

<sup>224</sup> According to European Parliament's Flash Eurobarometer: News & Media Survey 2022, 45% of respondents in Spain stated that they trust public TV and radio stations, below the EU average of 49%.

<sup>225</sup> Six by the Congress and four by the Senate.

<sup>226</sup> Article 15 of Law on State owned radio and television 17/2006 of 5 June 2006.

<sup>227</sup> RTVE, Press release of 27/09/2022.

<sup>228</sup> UGT, SI and USO. [https://ugtrtve.net/images/descargas/20221201\\_primerademanda.pdf](https://ugtrtve.net/images/descargas/20221201_primerademanda.pdf)

<sup>229</sup> Supreme Court. Procedure 953/2022.

<sup>230</sup> Information received in the context of the country visit to Spain from journalists' associations (APE, PLD); 2023 Media Pluralism Monitor, country report for Spain, p.p. 17 & 18.

<sup>231</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 2.

<sup>232</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 17.

<sup>233</sup> Law on Official Secrets 9/1968 of 5 April 1968.

presented in August 2022, raised criticism from public bodies, namely the Council of Transparency and Good Governance<sup>234</sup>, Prosecutors Council<sup>235</sup>, the Council for the Judiciary<sup>236</sup>, as well as from journalists' and media users' associations<sup>237</sup>. The authorities<sup>238</sup> have revised the draft law to accommodate many of the comments received. Further to these revisions, the areas that could be classified and the number of authorities that could classify information have been reduced, compared to the initial draft, as well as the duration of the maximum deadlines for classification and the amount of the sanctions. Journalists have a special role<sup>239</sup> in requesting the declassification of secret information, and sanctions are modulated when classified information is disseminated in the exercise of the fundamental right to freedom of information. Changes to the text would also ensure coordination with other laws, such as the law on Transparency, Access to Public Information and Good Government<sup>240</sup>. In light of the above, there has been some progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

### **Journalists continue facing challenges in the performance of their professional activities.**

There have been several cases of attacks or threats to the physical and online safety of journalists in Spain during 2022<sup>241</sup>, some of which were reported by the Mapping Media Freedom project<sup>242</sup>, including threats and verbal and physical aggressions during demonstrations. The targeting or infection of mobile phones with the Pegasus spyware referred to in the 2022 Rule of Law Report<sup>243</sup> also affected several Spanish journalists<sup>244</sup>. Since the publication of the 2022 Rule of Law Report, three new alerts have been activated for Spain in the Council of Europe's Platform to Promote the Protection of Journalism and Safety of Journalists<sup>245</sup>, relating to detention and charges over protest coverage<sup>246</sup>, attacks on physical safety and integrity of journalists<sup>247</sup> and harassment and intimidation of journalists<sup>248</sup>. The platform registers 17 active alerts. Journalists and users' associations severely criticised the barring of specific journalists or media outlets from attending press conferences and events organised by some political parties, or the signalling of specific journalists in their social accounts or public statements, which can lead to self-censorship<sup>249</sup>. The reform of the Citizen Security Law, if approved, could address concerns from journalists<sup>250</sup>. A draft organic law on the professional secrecy of journalism<sup>251</sup> has been discussed at the Justice Committee

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<sup>234</sup> Council of Transparency and Good Governance: Report on the draft preliminary law on classified information.

<sup>235</sup> Report of the Prosecutors Council on the draft preliminary law on classified information.

<sup>236</sup> Council of the Judiciary: Report on the draft preliminary law on classified information.

<sup>237</sup> Information received in the context of the country visit to Spain from media users.

<sup>238</sup> Written information from the Spanish authorities in the context of the country visit in Spain.

<sup>239</sup> Information received from the Spanish authorities

<sup>240</sup> Law on Transparency, Access to Public Information and Good Governance 19/2013 of 9 December 2013.

<sup>241</sup> 2023 Media Pluralism Monitor, country report for Spain, page 11.

<sup>242</sup> <https://www.mappingmediafreedom.org/>

<sup>243</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 20.

<sup>244</sup> Several Journalists Targeted with Pegasus Spyware.  
<https://fom.coe.int/en/alerte/detail/107637474;globalSearch=false>

<sup>245</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, Spain

<sup>246</sup> <https://fom.coe.int/en/alerte/detail/107638174;globalSearch=true>

<sup>247</sup> <https://fom.coe.int/en/alerte/detail/107637995;globalSearch=true>

<sup>248</sup> <https://fom.coe.int/en/alerte/detail/107639300;globalSearch=false>

<sup>249</sup> Information received in the context of the country visit to Spain from journalists' associations (FAPE, PLI, APM).

<sup>250</sup> See Pillar IV. Other institutional issues related to checks and balances: Negotiations in Parliament have not succeeded on a reform of the Citizen Security Law.

<sup>251</sup> Draft organic law for the protection of the professional secrecy of journalism121/000135.

of the Congress. The draft text explicitly states that “no journalist will be prosecuted for protecting the identity of his sources”<sup>252</sup> and that the professional secrecy right includes the right not to reveal the identity of the source, the channel to transmit the information, its content or any other information that could be used to identify the source.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Spain is a parliamentary monarchy, with a bicameral Parliament<sup>253</sup>. It is also a decentralised unitary state where the State and the Autonomous Regions have both exclusive and shared competences<sup>254</sup>. The Constitutional Court<sup>255</sup> is exclusively competent to review the constitutionality of laws, as well as appeals for constitutional protection of fundamental rights and to decide on potential conflicts between constitutional bodies of the State<sup>256</sup>. Both chambers of Parliament – the Congress and the Senate – have legislative competence, which they can delegate to the Government, subject to certain limitations<sup>257</sup>. The Government, the two Chambers of Parliament, the assemblies of the autonomous regions, and a group of at least 500 000 citizens have the right of legislative initiative.

**There are safeguards ensuring public consultation of legal proposals prepared by the Government, but there are concerns on some procedural practices in Parliament.** The framework for draft legislation prepared by the Government guarantees transparency and the involvement of stakeholders<sup>258</sup>. The law also provides the areas on which constitutional bodies<sup>259</sup> should be consulted when the Government submits legislation. However, these requirements are not compulsory for draft legislation submitted by parliamentary groups. Instances have been reported of using the transitional provisions of one legal act to introduce major amendments in another unrelated act<sup>260</sup>, a practice which the Constitutional Court has been criticising since 2011<sup>261</sup>, reiterating it recently in an interim decision of December 2022<sup>262</sup>. Stakeholders have also raised concerns regarding the excessive use of emergency procedures<sup>263</sup> for the approval of legislation<sup>264</sup>. All these practices raise concerns, as they by-

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<sup>252</sup> Art.1 of draft Organic Law 121/000135.

<sup>253</sup> It consists of the Congress of Deputies (the lower house), and the Senate (the upper house). Both are directly elected.

<sup>254</sup> Autonomous Regions have political and financial autonomy, having an institutional organisation based on a Legislative Assembly, a Governing Council with executive and administrative functions and a President, elected by the Assembly from among its members. Autonomous Regions hold the power to pass laws on a wide range of areas over which they have exclusive competence, but also secondary legislation in certain matters that are competence of the State, as well as the execution of State regulations.

<sup>255</sup> The Constitutional Court does not form part of the judiciary.

<sup>256</sup> Title IX of the Spanish Constitution.

<sup>257</sup> Art. 82 of the Spanish Constitution.

<sup>258</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, pp. 11-12. The law foresees the obligation to conduct public consultations, for which a minimum period of 15 days is foreseen and draft legislation should be accompanied by a regulatory impact analysis report. This period can be reduced to seven days, when justified by special circumstances, or when an urgent legislative procedure applies.

<sup>259</sup> That includes the Council of State, the Council for the Judiciary and the Prosecution Council.

<sup>260</sup> Contribution from the Judges and Magistrates’ Association ‘Francisco de Vitoria’ for the 2023 Rule of Law Report, pp. 23-24; Contribution from the Professional Association of the Magistracy for the 2023 Rule of Law Report, p. 28; Contribution from the Foundation ‘Hay Derecho’ for the 2023 Rule of Law Report, p. 27; Contribution from the Independent Judicial Forum for the 2023 Rule of Law Report, p. 23.

<sup>261</sup> Decision 119/2011 of 5 July.

<sup>262</sup> Decision 177/2022 of 19 December.

<sup>263</sup> In 2020, 20 royal-decrees with urgent measures have been adopted. Input from Spain for the 2023 Rule of Law Report, p. 52.

pass the requirements for public consultation, impact assessment and consultation of the prescriptive bodies and may have an adverse impact on the quality of legislation. The quality of law-making is an important factor for investor confidence and a reason for concern about the effectiveness of investment protection for 46% companies in Spain<sup>265</sup>.

**The Government has continued implementing initiatives aimed at increasing public participation in policymaking.** The implementation of the Fourth Open Government Plan has continued<sup>266</sup>. In particular, in October 2022, the Government finalised an IT tool which allows citizens to publicly provide input or attach documents in relation to public plans or programmes in a participatory mode<sup>267</sup>. In addition, a new initiative of participation laboratories between civil society and public administrations called HazLab has been launched<sup>268</sup>. An Open Administration Week has also been organised to bring public administrations closer to the general public based on the principles of the Open Government, including more than 1 000 public events<sup>269</sup>. Additionally, a collaboration agreement was signed with a civil society umbrella organisation<sup>270</sup> in order to promote Open Government amongst the most vulnerable<sup>271</sup>. Further improvements have taken place in relation to the Open Government Forum, with the inclusion of representatives dealing with transparency matters from the Autonomous Regions, as well as from the Council for the Participation of Children and Teenagers<sup>272</sup>. Moreover, Parliament approved a Law on Evaluation of Public Policies in December 2022<sup>273</sup>, which regulates the establishment of a General Council for Evaluation, where entities, organisations and associations can contribute to the promotion of the evaluation culture<sup>274</sup>. In addition, that law authorises the creation of a State Agency that will supervise, coordinate and promote the public evaluation system, which is to contribute to transparency and accountability in decision-making<sup>275</sup>.

**Delays continue in the appointment of several independent authorities.** Following the resignation of one of the members of the Constitutional Court in July 2022, this appointment remains pending<sup>276</sup>. Moreover, there are other independent authorities where posts have remained vacant for a long period of time, such as in the Data Protection Authority (since

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<sup>264</sup> Contribution from the Judges and Magistrates' Association 'Francisco de Vitoria' for the 2023 Rule of Law Report, pp. 23-24; Contribution from the Professional Association of the Magistracy for the 2023 Rule of Law Report, p. 28; Contribution from the General Council of Spanish Lawyers for the 2023 Rule of Law Report, p. 20; Contribution from the Foundation 'Hay Derecho' for the 2023 Rule of Law Report, pp. 26-27; Contribution from Judges for Democracy for the 2023 Rule of Law Report, p. 24; Contribution from the Independent Judicial Forum for the 2023 Rule of Law Report, p. 23; Contribution from the Civic Platform for the Judicial Independence for the 2023 Rule of Law Report, p. 23.

<sup>265</sup> See figure 54, 2023 EU Justice Scoreboard.

<sup>266</sup> 2022 and 2021 Rule of Law Reports, Country Chapter on the rule of law situation in Spain, p. 21 and p. 16 respectively.

<sup>267</sup> Input from Spain for the 2023 Rule of Law Report, p. 51.

<sup>268</sup> Information provided by the Government.

<sup>269</sup> From 20 to 25 March 2023. Input from Spain for the 2023 Rule of Law Report, p. 61.

<sup>270</sup> Third Sector Platform.

<sup>271</sup> Information provided by the Government.

<sup>272</sup> Input from Spain for the 2023 Rule of Law Report, p. 57.

<sup>273</sup> Law 27/2022 of 20 December.

<sup>274</sup> The law also introduces *ex-ante*, mid-term and *ex-post* evaluation obligations.

<sup>275</sup> Among its competences, the Agency will be in charge of the management and maintenance of a thematic portal that aims to have a participative character of the Public Administrations and the Civil Society.

<sup>276</sup> The Senate appointed in 2017 the four members that it was entitled to, but one of them had to resign due to health problems in July 2022.

July 2019)<sup>277</sup>. In the past there have also been substantial delays in the appointment of members of other constitutional bodies<sup>278</sup>. These appointments require the agreement between the main political parties in Parliament, as a majority of two thirds is normally required. In this context, the Venice Commission has stressed the importance of providing for qualified majorities for appointments of members of constitutional institutions while warning about the risk of stalemates and recommending effective mechanisms to minimise the risk of deadlocks<sup>279</sup>.

**The Constitutional Court has prepared an action plan to speed up ‘amparo proceedings’.** On 15 March 2023, the Constitutional Court approved an action plan to accelerate the processing and resolution of so-called ‘*amparo cases*’<sup>280</sup>. The plan regulates the submission of claims via digital tools by filling a form enabling the amparo appellants to set out clearly and precisely the potential infringements of fundamental rights, the special constitutional significance of the appeal and the way the prior judicial remedy has been exhausted. It is expected that this form will make it easier for appellants to avoid flaws in the drafting of claims and facilitate the identification by the Court of the essential aspects of the appeal, contributing to speeding up the processing of amparo cases, which has been suffering serious delays<sup>281</sup>.

**Parliament approved a law establishing a new equality body.** In July 2022 Parliament approved a law establishing an Independent Authority on Equality and Non-discrimination<sup>282</sup>. The purpose of the Independent Authority will be to protect and promote the equality and non-discrimination of all citizens both in the public and private sectors. The President of the Authority will be nominated by the Government, and the Parliament, by absolute majority, will have the power to accept or reject the candidate proposed. Moreover, the Ombudsperson, which is the national human rights institution, accredited with A status by the UN Global Alliance of National Human Rights Institutions (GANHRI), published its annual report in March 2023<sup>283</sup>, including, among others, the results of their findings on the impact of the digital divide on citizens’ care services<sup>284</sup>.

**On 1 January 2023, Spain had 21 leading judgments from the European Court of Human Rights pending implementation, a decrease of two compared to the previous**

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<sup>277</sup> In November 2021, the Parliament proceeded with the appointment of the President and the Deputy-President of the Data Protection Agency. However, the appointment was suspended by the Supreme Court on 21 March 2022 (Decision of the Supreme Court 3787/2022).

<sup>278</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, pp. 18-19. Those delays related to bodies such as the Ombudsperson and the members of the Court of Auditors.

<sup>279</sup> Venice Commission (CDL-AD(2018)015-e), para. 14. The Venice Commission has found that the more formal rights and competences the parliamentary opposition is given within a constitutional and parliamentary system, the greater the responsibility of the same opposition not to misuse these powers, but to conduct their opposition in a way loyal to the basic system and the idea of legitimate and efficient democratic majority rule. The Venice Commission has also clarified that this is not an issue that can be legally regulated, or perceived as any form of formal “responsibility”, but is rather to be seen as a political and moral obligation.

<sup>280</sup> Constitutional Court, Press Release No. 21/2023 of 17 March 2023.

The object of amparo appeals is the protection against breaches of the rights and freedoms enshrined in the Constitution by any action or omission of the Government of the State, the Autonomous Communities or other public bodies of territorial, corporate or institutional nature.

<sup>281</sup> Constitutional Court, Press Release No. 4/2023 of 19 January 2023.

<sup>282</sup> Law 15/2022, of 12 July.

<sup>283</sup> Defensor del Pueblo (2023), Annual Report 2022.

<sup>284</sup> Information provided by the office of the Ombudsperson in the context of the country visit to Spain.

**year**<sup>285</sup>. At that time, Spain's rate of leading judgments from the past 10 years that remained pending was at 53% (as compared to 61% in 2022), the average time that the judgments had been pending implementation was 2 year and 9 months (compared to 3 years and 1 month in 2022)<sup>286</sup>. The oldest leading judgment, which became final 10 years ago, that is pending implementation, concerns the lack of an effective remedy with suspensive effect, against decisions to remove the applicants to their country of, notwithstanding the risk to their lives and risk of ill-treatment<sup>287</sup>. On 15 June 2023, the number of leading judgments pending implementation has increased to 23<sup>288</sup>.

**Negotiations in Parliament did not succeed on a reform of the Citizen Security Law, which could have addressed concerns regarding its impact on the civic space.** Civil society space continues to be considered narrowed<sup>289</sup>. On 14 March 2023, political parties failed to reach an agreement in the Internal Affairs Committee of the Congress over the reform of the Citizen Security Law<sup>290</sup>. Stakeholders<sup>291</sup> have considered this as a missed opportunity, as they consider that the current law has a negative impact on the right of assembly and the freedom of expression, and on the civic space in general<sup>292</sup>. Previous Rule of Law Reports referred to concerns from stakeholders, related to, among others, offences in the context of meetings and demonstrations, and the use of images or data by the police<sup>293</sup>. Moreover, in the context of her visit to Spain in November 2022, the Council of Europe Commissioner for Human Rights stated<sup>294</sup> that the reform could be used as an opportunity to bring the law fully in line with international human rights standards<sup>295</sup>. The reform, which

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<sup>285</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>286</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 7.

In 2022, the Committee of Ministers closed the execution process in 9 leading judges (compared to only 2 in 2021, only 1 in 2020 and only 4 in 2019). One of this was a leading case under the enhanced procedure concerning the right of appeal in criminal matters following a legislative reform in 2015 of the admissibility criteria for cassation appeals and the general guidance given by the Supreme Court in November 2021 on the Convention-compliant application of the new provisions.

<sup>287</sup> Judgment of the European Court of Human Rights of 24 April 2014, *A.C. and Others v. Spain*, 47159/08, pending implementation since 2014.

<sup>288</sup> Data according to the online database of the Council of Europe (HUDOC-EXEC).

<sup>289</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>290</sup> Congress, Minutes of the Internal Affairs Committee, No. 864 of 14 March 2023.

<sup>291</sup> Public statement made on 14 March 2023 by Amnistía Internacional, No Somos Delito, Greenpeace, IRIDIA, Defensor a quien Defiende, Rights International Spain, Novact and Legal Sol.

<sup>292</sup> Contribution from Rights International Spain for the 2023 Rule of Law Report, p. 13.

<sup>293</sup> 2022 and 2021 Rule of Law Reports, Country Chapter on the rule of law situation in Spain, pp. 21-22 and pp. 18-19 respectively.

<sup>294</sup> Council of Europe (2022), Press release of 29 November 2022.

<sup>295</sup> In particular, the Council of Europe Commissioner mentioned that the provisions of the law related to sanctions if a disturbance of public order occurs during demonstrations seem to be contrary to the case-law of the European Court of Human Rights and the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly.



had been pending in Parliament as referred in previous Rule of Law Reports<sup>296</sup> and is a commitment under the Coalition Agreement<sup>297</sup>, would need to be re-tabled in order to resume the legislative process.

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<sup>296</sup> 2022 and 2021 Rule of Law Reports, Country Chapter on the rule of law situation in Spain, pp. 21-22 and pp. 18-19 respectively.

<sup>297</sup> A progressive coalition, December 2019, Commitment 5.6.

## Annex I: List of sources in alphabetical order\*

\* *The list of contributions received in the context of the consultation for the 2023 Rule of Law report can be found at [https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation\\_en](https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation_en).*

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## **Annex II: Country visit to Spain**

The Commission services held virtual meetings in March 2023 with:

- Association of ‘Abogados del Estado’
- Association of Media Users
- Association of Prosecutors
- Association of Women Judges of Spain
- Civic Platform for the Judicial Independence
- Civil Guard
- Constitutional Court
- Coordinator of Non-Governmental Organisations for Development in Spain
- Court of Auditors
- European Journalists’ Association (APE)
- Federation of associations of journalists of Spain (FAPE)
- Foundation ‘Hay Derecho’
- General Council of Spanish Lawyers
- General Council for the Judiciary
- IGAE
- Independent Judicial Forum
- Independent Office for Regulation and Supervision Public Procurement (OIREscon)
- Judges and Magistrates’ Association “Francisco de Vitoria”
- Judges for Democracy
- Madrid Press Association (APM)
- Ministry of Foreign Affairs
- Ministry of Home Affairs
- Ministry of Justice
- Ministry of Finance
- Ministry of the Presidency
- National Commission of Markets and Competition
- National Council of Court Clerks
- National Police
- Office of Conflict of interests
- Ombudsperson’s Cabinet
- Platform in Defence of Freedom of Information (PLI)
- Platform “Tercer Sector”
- Professional Association of the Magistracy
- Progressive Union of Prosecutors
- Representatives of Congress and Senate
- Rights International Spain
- Professional and Independent Association of Prosecutors (APIF)
- Prosecutor’s Office Against Corruption and Organised Crime
- Supreme Court
- Technical Cabinet of the Prosecutor General’s Office
- Transparency Council
- Transparency International España

\* The Commission also met the following organisations in a number of horizontal meetings:

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU