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COMMISSION STAFF WORKING DOCUMENT

**2021 Rule of Law Report
Country Chapter on the rule of law situation in Spain**

Accompanying the

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

**2021 Rule of Law Report
The rule of law situation in the European Union**

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ABSTRACT

The Spanish justice system continues to face some challenges. In particular, the lack of renewal of the Council for the Judiciary persists in the absence of an agreement in Parliament to renew a number of constitutional bodies. A welcome development was the withdrawal of a proposed reform of the system for the selection of its judges-members that would have increased the perception of the Council as vulnerable to politicisation. In this context, calls were made for establishing a system of election of the judges-members of the Council by their peers in line with European standards. It is important that European standards are taken into account and that all relevant stakeholders are consulted. Concerns have also been raised regarding the competence of the Supreme Court for criminal liability of high-level positions, as well as the incompatibilities regime for judges and prosecutors. Several measures to improve the quality of justice have been adopted or are envisaged, such as the revisions of the legal aid system and of the Code of Criminal Procedure, as well as three draft laws on procedural, organisational and digital efficiency. The digitalisation of justice is progressing. There have been efforts to address backlogs such as the creation of new courts, but the low number of judges per inhabitant is a challenge. Concerns in relation to the autonomy of the prosecution service from the Government have been reiterated.

Spain continues improving the institutional and legal framework to prevent and combat corruption. Anti-corruption measures follow a strategic line of action but there is not a dedicated anti-corruption strategy that would guide preventive and repressive measures to fight corruption in a comprehensive manner. As regards the repression of corruption, corruption is criminalised under the Criminal Code and a number of dedicated institutions are in place. Prosecution authorities note that the lack of adequate resources affects the speed of the investigation and prosecution of corruption cases, including high-level corruption cases. As regards the prevention of corruption, Spain continues to improve its integrity framework and has committed to develop legislation on key areas including lobbying transparency, a Code of Ethics for civil servants, and the protection of whistleblowers. The new code of conduct for all members of Congress and Senate was adopted in October 2020, and a new Parliamentary Office for Conflicts of Interest monitors the parliamentarians' compliance.

As regards media freedom and pluralism, the Government is taking steps to address issues on access to information. Challenges remain in relation to transparency of media ownership. Concerns about the functional independence and resources of the audio-visual regulator were raised during the transposition of the revised Audio-Visual Media Services Directive. The Government has taken some measures to support media financially in the context of the COVID-19 pandemic. Journalists have continued to face challenges in their professional activities, but initiatives have been adopted to facilitate their work.

As regards checks and balances, the new Fourth Open Government Plan sets renewed commitments in relation to public participation, transparency, accountability and public integrity. The Autonomous Regions were designated as competent authorities for the implementation of the emergency measures related to the COVID-19 pandemic. The Ombudsperson, in function *ad interim* since 2017, has received an exponential increase of the number of complaints on measures taken to fight against the COVID-19 pandemic. Challenges remain for the civil society space, and a revision of the Citizen Security Law is ongoing, in light of the concerns raised. Several initiatives aimed at developing a rule of law culture, such as education programmes on justice for students, have taken place.

I. JUSTICE SYSTEM

The Spanish judicial system is composed of courts of general jurisdiction¹ and specialised courts², 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 Constitutional Court has jurisdiction over constitutional matters, as well as individual applications concerning due respect for fundamental rights. 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 judges³. As such, it does not form part of the judiciary itself. It exercises disciplinary action and is competent to appoint, transfer and promote judges, as well as responsible for the training and recruitment of judges. The public prosecution service is integrated in the judiciary with functional autonomy, and pursues the mission of promoting justice in defence 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 Judiciary⁴. Spain participates in the European Public Prosecutor's Office. 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 is low amongst both the general public and companies. Overall, 38% of the general population and 39% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2021⁵. Both figures have decreased in comparison to 2020 (44% for the general public and 42% for companies), but they have increased in comparison to 2016 (30% for the general public and 33%), showing no clear trend during the last five years.

Concerns over the lack of renewal of the Council for the Judiciary persist, while some recent developments triggered calls for election of its judges-members by their peers. The Council for the Judiciary has been exercising its functions *ad interim* since December 2018, thus prolonging the concerns that it might be perceived as vulnerable to politicisation, as already referred in the 2020 Rule of Law Report⁶. The Parliament is responsible for the appointment of all its members⁷; that is subject to a qualified majority of three fifths. Since

¹ Covering the fields of civil, criminal, administrative and social law. In total, there are 2269 first instance courts of general jurisdiction.

² 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 1465 first instance courts of specialised jurisdiction.

³ Art. 117 of the Spanish Constitution enshrines the independence of magistrates and judges.

⁴ Art. 124(4) of the Spanish Constitution.

⁵ Figures 48 and 50, 2021 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%).

⁶ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 2.

⁷ According to Art. 122(3) of the Spanish Constitution, the Council consists of the President of the Supreme Court (who chairs) 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. While the Constitution requires

2018, negotiations between the main political parties are in a stalemate⁸ and there has not been significant progress to reach an agreement, despite numerous calls to proceed with the appointments⁹. On 13 October 2020, two parliament groups tabled a draft law¹⁰ aimed at changing the election system of the judges-members of the Council to an absolute majority in the event of a second vote¹¹. Following criticism by stakeholders¹², the legislative process of the law was suspended and in May 2021 the parliamentary groups sponsoring the draft law withdrew it formally. This was welcomed¹³, as the draft law would have increased the perception of the Council as vulnerable to politicisation. On 25 March 2021 the Parliament passed a law establishing an *ad interim* regime for the General Council for the Judiciary that adapts its functions when acting with an expired term of office¹⁴. This law entered into force on 30 March 2021¹⁵. The new law prevents, among others, the acting Council from making appointments for top judicial positions¹⁶. The Constitutional Court has been seized to ascertain the constitutionality of the reform¹⁷. In the context of the withdrawn reform amending the system of election, calls were made for establishing a system of election of judges-members by peers. Some associations of judges called for the 12 judges-members of

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.

⁸ 2020 Rule of Law Report, country chapter on the rule of law situation in Spain, p. 2; El Mundo, *Más de 2.500 jueces se dirigen a la Comisión Europea para alertar del "riesgo grave de violación del Estado de Derecho" en España*, 12 April 2021.

⁹ 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 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.

¹⁰ Proposal of an Organic Law to modify Organic Law 6/1985, from 23 October 2020.

¹¹ According to the proposal, judges-members would continue to be elected by Parliament, but the necessary majority of 3/5 would only be required in a first vote - if this majority could not be reached, the election would be made in a second vote with the absolute majority.

¹² European Association of Judges, statement of 13 October 2020; GRECO, Letter to the Head of Delegation of Spain in GRECO, 14 October 2020; High Court of Justice of Madrid, Press Release, 19 October 2020; High Court of Justice of Castilla y León, Press Release, 19 October 2020; High Court of Justice of Extremadura, Press Release, 19 October 2020; High Court of Justice of Andalucía, Ceuta and Melilla, Press Release, 20 October 2020.

¹³ For example: Judges and Magistrates’ Association “Francisco de Vitoria”; Judges for Democracy and the Professional Association of the Magistracy. EuropaPress (2021) *Los jueces achacan el giro de Moncloa de retirar la reforma del CGPJ a la "presión" ejercida y el "toque" de Europa*, 21 April 2021; or Comment from Judges for Democracy on 20 April 2021.

¹⁴ Organic Law No. 4/2021, of 29 March.

¹⁵ Although the Council had formally requested the Congress to consult, in the context of the legislative procedure, relevant stakeholders such as the Council itself and the Venice Commission, this request was not followed up by the Parliament.

¹⁶ 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.

¹⁷ By the main opposition party.

the Council to be directly elected by their peers according to Council of Europe's standards¹⁸, and the Council of Europe recalled that the European standards provide that at least half of the Council's members should be judges elected by their peers from all levels of the judiciary¹⁹. It is important that these European standards²⁰ are taken into account and that all relevant stakeholders are consulted²¹.

There are concerns related to the competence of the Supreme Court for criminal liability of high-level positions, and the incompatibilities regime for judges and prosecutors. There are competence rules *ratione personae* in Spain on privileged jurisdiction in matters of criminal responsibility of members of the Government and the legislative and judicial branches²² (the so-called '*aforamiento*'). The Group of States against Corruption (GRECO) recognises the independence and impartiality of individual judges and prosecutors²³; it has also underscored the very broad terms of the regime of the *aforamiento* in Spain and recommended the need for revision of the system²⁴. Moreover, stakeholders have criticised the fact that the incompatibilities regime for judges²⁵ or prosecutors²⁶ does not provide for 'cooling-off periods' for judges or prosecutors having been members of the executive or legislative powers²⁷. According to GRECO this situation raises questions from the point of view of the separation of powers and regarding the necessary independence and impartiality of judges in reality and in appearance²⁸.

The autonomy of the prosecution service continues to raise questions and be discussed²⁹. The Prosecutor General has publicly called on the need to reform the statute of the

¹⁸ Letter of 6 April 2021 from three associations of judges (Asociación Profesional de la Magistratura, Asociación Judicial Francisco de Vitoria and Foro Judicial Independiente) addressed to the European Commission, para. 14. Moreover, according to a survey by the Council for the Judiciary published in October 2020 (Council for the Judiciary (2020), *La justicia vista por los jueces*. Survey carried out by Metroscopia, October 2020), 90% of the interviewed judges supported returning to the system of election of judges-members of the Council by their peers.

¹⁹ GRECO, Letter to the Head of Delegation of Spain in GRECO, 14 October 2020.

²⁰ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe.

²¹ Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, of 23 November 2007, para 87; CCJE Opinion No. 23 (2020) The role of associations of judges in supporting judicial independence, para. 47.

²² 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. Similar provisions are established by the Statutes of Autonomy of the respective Autonomous Communities with regard to members of the regional governments and parliaments.

²³ GRECO Fourth Evaluation Round – Evaluation Report, para. 3.

²⁴ GRECO Fifth Evaluation Round – Evaluation Report, paras 118-123.

²⁵ Arts. 389-398 of the Organic Law No. 6/1985, of 1 July.

²⁶ Arts. 57-59 of the Organic Law No. 50/1981, of 30 December.

²⁷ See for instance, Contribution from the Independent Judicial Forum for the 2021 Rule of Law Report p. 5; Contribution from the Association of Prosecutors for the 2021 Rule of Law Report, p. 8.

²⁸ GRECO Fourth Evaluation Round – Evaluation Report, para. 102-103.

²⁹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 3.

prosecution service³⁰ to provide it with greater autonomy in terms of organisation, budget, internal regulation and training. According to the Prosecutor General, a new professional statute should also look into the relations between the Government and the Prosecutor General, as well as its method for appointment, as also expressed by multiple stakeholders³¹. As mentioned in the 2020 Rule of Law Report, the coincidence in the term of office of the Prosecutor General and the Government may affect the perception of independence. In October 2020, the Code of Ethics for the Prosecutorial Career was approved³². The Code sets principles and ethical obligations for prosecutors in relation to, among others, the use of social media and interventions in the media, training, conflicts of interest and assets declarations, and internal relations. Stakeholders have welcomed the adoption of the Code, but continue pointing to the need to update the disciplinary regime for prosecutors and judges³³.

A new statute for lawyers highlighting their independence has been approved. The new statute was adopted on 2 March 2021. The General Council of Spanish Lawyers was involved in the legislative process. The statute highlights the independence of lawyers and it sets new provisions regarding professional secrecy. The statute provides that chambers of lawyers shall be democratic, autonomous, and transparent. Under the new statute, chambers are obliged to publicise their services online. It also sets provisions in relation to the right to training and the promotion of gender equality in the legal profession. The provisions of the new statute appear to be consistent with Council of Europe recommendations³⁴.

Quality

The Parliament adopted a new law strengthening the legal aid system. Spain is among those Member States having a higher number of legal aid cases per 100 000 habitants, although it has one of the lowest budgets allocated per case³⁵. On 9 March 2021, a royal decree on free legal aid was approved³⁶, strengthening the pre-existing system. The royal decree reinforces provisions in relation to data protection, sets the frequency of payment in certain Autonomous Regions that have not taken over powers in the management of the Justice system³⁷, and establishes the creation of the National Council for Free Legal Aid, with the objective of promoting the coordination of the implementation of legal aid among public authorities with justice competences. The law seems to be consistent with Council of Europe

³⁰ Prosecution Council (2020). *La Fiscal General del Estado impulsa ante las asociaciones un plan para afrontar el reto de la reforma procesal*, 3 December 2020. The Prosecutor General has insisted that such reform should be done in parallel to the ongoing revision of the Code of Criminal Procedure.

³¹ Contribution from the Association of Prosecutors for the 2021 Rule of Law Report, p. 9; Contribution from the Judges and Magistrates' Association "Francisco de Vitoria" for the 2021 Rule of Law Report, p. 12; Contribution from the Independent Judicial Forum for the 2021 Rule of Law Report, p. 12; Contribution from the Association Impulso Ciudadano for the 2021 Rule of Law Report, p. 7; Contribution from Civic Platform for the Judicial Independence for the 2021 Rule of Law Report, p. 11.

³² Prosecution Council (2020), *Código Etico del Ministerio Fiscal*.

³³ Contribution from the Association of Prosecutors for the 2021 Rule of Law Report, pp. 8-9.

³⁴ Council of Europe. Recommendation No. R(2000)21 on the freedom of exercise of the profession of lawyer.

³⁵ Council of Europe (2020). European judicial systems CEPEJ Evaluation Report (2020 Evaluation cycle).

³⁶ Royal Decree 141/2021, of 9 March, approving a regulation on free legal aid.

³⁷ The management of the Justice system is managed by Ministry of Justice in the Autonomous Regions of Castilla and León, Castilla-La Mancha, Murcia, Baleares, Extremadura and the Autonomous Cities of Ceuta and Melilla.

guidelines³⁸ in relation to quality assurance mechanisms, organisation of legal aid schemes and availability of legal aid providers and data collection.

A proposal for the revision of the Code of Criminal Procedure allocating the lead of judicial investigations to prosecutors has been tabled. On 24 November 2020, the Government tabled a law reforming the Code of Criminal Procedure³⁹. The draft law changes the system for judicial investigation, which would be led by prosecutors instead of investigative judges, as it is now the case⁴⁰. The draft law envisages the creation of the investigative prosecutor and judges responsible for procedural guarantees. The victim is given a specific statute and provisions on protection to minor and disabled people are foreseen to be put in place. Stakeholders have welcomed the proposal, although it has been raised that additional autonomy and resources would be needed for prosecutors to take charge of the judicial investigation tasks⁴¹.

Additional courts have been created in response to the consequences of the COVID-19 pandemic, but the low number of judges per inhabitant is a challenge. During the state of alarm declared on 14 March 2020, the activity of courts was limited for three months and procedural deadlines were suspended. To deal with the consequent increased backlog and the foreseeable increase of litigation, 19 new courts have been established since December 2020 and 14 more will be set up by the end of 2021⁴². The new courts will mostly deal with social, commercial and administrative cases. However, in general, the number of judges per inhabitant remains one of the lowest in the EU⁴³, which could also affect the efficiency of the Spanish justice system⁴⁴. The budget per capita for the justice system and the budget as a percentage of GDP have not changed since 2017 and both figures are around EU average⁴⁵.

Further investments and projects on the digitalisation of justice are ongoing⁴⁶. The use of ICT tools is well established in the justice system, and the digitalisation process has been further accelerated due to the COVID-19 pandemic. Electronic communication tools in courts are fully in place⁴⁷, with examples of different tools, such as an IT tool that automatically transforms recording of trials and hearings into text, data oriented justice projects, legal certainty in videoconferencing, electronic and automatic proceedings such as notifications⁴⁸. However, stakeholders have continued to point at shortcomings in relation to interoperability

³⁸ Council of Europe (2021). *Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law*. CM(2021)36.

³⁹ *Anteproyecto de Ley Orgánica de Enjuiciamiento Criminal, aprobado por el Consejo de Ministros el 24 de noviembre de 2020*.

⁴⁰ Currently, the system confers on the investigative judge the power to lead the investigation, while prosecutors can only demand the adoption of precautionary or investigative measures to be taken by the judge (Art. 5, Law No. 50/1981 of 30 December).

⁴¹ Association of Prosecutors (2021), *Alegaciones que presenta la Asociación de Fiscales al Anteproyecto de la Ley de Enjuiciamiento Criminal (LECRIM)*; Prosecution Council (2021), *Comunicado del Consejo Fiscal al Anteproyecto de Ley Orgánica de Enjuiciamiento Criminal*.

⁴² Royal Decree 1050/2020, of 1 December, on the creation of thirty-three COVID-19 judicial courts corresponding to 2020 programme.

⁴³ Ranking 23rd out 27 Member States.

⁴⁴ Figure 32, 2021 EU Justice Scoreboard.

⁴⁵ Figures 29 and 30, 2021 EU Justice Scoreboard.

⁴⁶ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, pp. 4-5.

⁴⁷ Figure 42, 2021 EU Justice Scoreboard.

⁴⁸ Input from Spain for the 2021 Rule of Law Report, p. 12.

issues between the management systems used in the different Autonomous Regions⁴⁹. Spain is receiving support from the EU in the context of the project *Promotion of cyber justice in Spain, current phase II and phase III*: that will include a component exclusively focused on quality and a feasibility study for a quality management software.

Efficiency

The efficiency of justice in Spain has continued experiencing challenges⁵⁰. The clearance rate for litigious civil and commercial cases increased in 2019, and it is getting closer to 100%. However, the disposition time in civil, commercial, and administrative cases in first instance did not consolidate a positive trend and remains high⁵¹; for civil and commercial cases in the Supreme Court it noticeably increased since 2018, reaching 681 days⁵². The rate of resolving administrative cases decreased⁵³. The number of pending litigious civil, commercial, and administrative cases is high and it has steadily increased since 2016⁵⁴.

The Government has continued taking a number of legal initiatives aimed to increase the efficiency of the justice system⁵⁵. On 15 December 2020, the Government tabled a law on the procedural efficiency of the public service of justice⁵⁶. The law includes measures to shorten the length of procedures in all four jurisdictions while preserving the procedural guarantees of citizens as well as the establishment of appropriate alternative means of dispute settlement. In addition, on 20 April 2021, a law on the organisational efficiency of the justice system was tabled⁵⁷. The draft law envisages the transformation of the unipersonal courts into 431 Instance Tribunals (*Tribunales de Instancia*), the implementation of the Judicial Office⁵⁸ throughout the State, and the creation of Justice Offices within the municipalities that will replace the former Peace Courts (*Juzgados de Paz*). The Government is also working on a draft law on the digital efficiency of the justice system, planned for summer 2021, which would enhance the legal provisions in relation to data management and allow for interoperability of applications within the justice system⁵⁹.

⁴⁹ Contribution from the General Council of Spanish Lawyers for the 2021 Rule of Law Report, p. 9; Contribution from the Judges and Magistrates' Association "Francisco de Vitoria" for the 2021 Rule of Law Report, p. 16; Contribution from the Independent Judicial Forum for the 2021 Rule of Law Report, p. 17; Contribution from the Association of Prosecutors for the 2021 Rule of Law Report, p. 12.

⁵⁰ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, pp. 5-6.

⁵¹ Figure 6, 2021 EU Justice Scoreboard.

⁵² Figure 8, 2021 EU Justice Scoreboard.

⁵³ Figures 9, 10 and 11, 2021 EU Justice Scoreboard.

⁵⁴ Figure 14, 2021 EU Justice Scoreboard.

⁵⁵ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 6.

⁵⁶ Draft law on measures for procedural efficiency of the public justice system.

⁵⁷ Draft law on measures for organisational efficiency of the public justice system.

⁵⁸ The organization of the Judicial office is implemented by two different types of Units: Procedural Units of Direct Support, responsible of assisting judges in their own tasks; and Common Procedural Services, responsible of the management and implementation of procedural laws.

⁵⁹ These three reforms have been tabled as part of Component 11 of the Recovery and Resilience Plan of Spain submitted to the European Commission on 30 April 2021.

II. ANTI-CORRUPTION FRAMEWORK

In Spain, the Anti-Corruption Prosecutor's Office (ACPO)⁶⁰ performs the investigation, detection and prosecution of corruption with the assistance of Law Enforcement Agencies (LEA) Attached Units – from the National Police⁶¹ and the Civil Guard⁶² - and Support Units of the State Tax Administration Agency (AEAT) and the General Intervention Board of the State Administration (IGAE), all of whom contribute with analytical work⁶³. The National Anti-Fraud Coordination Service⁶⁴ oversees anti-fraud measures and conducts investigations at national level while several Autonomous Regions have their own offices to fight fraud in their territories⁶⁵. The Office of Conflicts of Interest oversees asset declarations for Government officials and political appointees⁶⁶. Meanwhile, rules on transparency, access to public information and good governance are monitored by the Council of Transparency and Good Governance.

The perception among experts and business executives is that the level of corruption in the public sector remains relatively low. In the 2020 Corruption Perceptions Index by Transparency International, Spain scores 62/100 and ranks 9th in the European Union and 32th globally⁶⁷. This perception has improved⁶⁸ over the past five years⁶⁹.

The Government is currently discussing possible reinforcement of the system of access to and use of criminal information⁷⁰. Several Ministries have agreed on a preliminary draft organic law laying down rules facilitating the use of financial and other information to prevent, detect, investigate and prosecute criminal offences, including corruption⁷¹. In Spain,

⁶⁰ 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.

⁶¹ Law 10/1995, of 24 April 1995.

⁶² Central Operative Unit of the Civil Guard, Royal Decree 769/1987.

⁶³ Anti-Corruption prosecutor's Office (2019), Annual Report 2019, p. 698.

⁶⁴ Governed by the Additional Provision 25 of General Subsidies Law 38/2003, of 17 November.

⁶⁵ 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).

⁶⁶ These are political appointments made by Government decree and include secretaries of State, senior officials in ministries, ambassadors and chefs of public companies, among others.

⁶⁷ Transparency International, Corruption Perceptions Index 2020 (2021), pp. 2-3. 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).

⁶⁸ In 2015 the score was 58, while, in 2020, the score is 62. 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.

⁶⁹ The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

⁷⁰ Input from Spain for the 2021 Rule of Law Report, p. 26.

⁷¹ This preliminary organic law aims to implement the Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information

corruption is broadly criminalised under the 1995 Criminal Code⁷², which was further amended in 2019 in this respect to introduce new corruption offences⁷³. The Code includes offences, such as influence peddling⁷⁴, embezzlement of public funds⁷⁵, corruption by foreign officials and commercial bribery⁷⁶. The 2019 reform revised the criminalisation of economic offences related to corruption, implementing GRECO recommendations in the process⁷⁷.

The fight against corruption in Spain follows a strategic line of action without a dedicated Anti-Corruption Strategy⁷⁸. Although the Government has developed several initiatives to strengthen integrity in public sector⁷⁹, there is no holistic policy to prevent and reduce corruption. GRECO has recommended to develop a strategy that puts together preventive measures to detect and mitigate risk areas of conflicts of interest, with a plan of action for implementation⁸⁰. Spain is receiving technical support from the EU in the context of the project for the elaboration of a National Anti-Fraud Strategy aimed at ensuring effective protection of EU financial interests⁸¹.

The implementation of the Strategy against Organised Crime is ongoing and is expected to be fully implemented within its 4-year timeframe (2019-2023). As reported in the 2020 Rule of Law report⁸², the 2019 Strategy against Organised Crime highlights the importance to fight corruption⁸³. Within the framework of the strategy, the 2020-2021 Special Security Plan for Campo de Gibraltar has been approved⁸⁴. The Plan aims at improving specialisation, capacity and coordination of judges, prosecutors and police in the most affected sectors including security, customs and revenue⁸⁵. This Plan has been extended to particularly

for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA. The text was submitted to public consultation until 17 December 2019.

⁷² Organic Law 10/1995, of November 23, of the Penal Code (L1/2015). The latest revision of the Criminal Code dates of 2021 but it is not related to corruption.

⁷³ Organic Law 1/2019, of 20 February, amending Organic Law 10/1995 of 23 November on the Penal Code to transpose European Union Directives into the financial and terrorism fields and to address international issues (L 1/2019).

⁷⁴ Arts. 428, 429 and 430, Law 1/2015.

⁷⁵ Art. 435, Law 1/2019.

⁷⁶ Art. 286 bis, Law 1/2019.

⁷⁷ GRECO Third Evaluation Round – Second Addendum to the Second Compliance Report, para. 64.

⁷⁸ The Spanish Government has adopted a range of measures to fight against forms of corruption including the National Strategy against Organised Crime or the specialisation of Law enforcement authorities such as the judicial police units treating matters of economic crimes and corruption. More information in the 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 7.

⁷⁹ The Spanish Government is a member of the Alliance for Open Government, a multilateral organisation made up of public administration and civil society reformers, whose objective is to ensure that public administrations act transparently, promote public integrity, partnership and citizen participation, are accountable and inclusive. This has resulted in the Fourth Open Government Action Plan for Spain, approved on 29 October 2020.

⁸⁰ GRECO Fifth Evaluation Round – Evaluation report, para. 50.

⁸¹ Technical Support Instrument, Commission implementing decision on the financing of the Technical Support Instrument and adoption of the work programme for 2021.

⁸² 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 7.

⁸³ 2019-2023 Strategy against Organised Crime and Serious Crime.

⁸⁴ National Security Annual Report (2020), pp. 75-76.

⁸⁵ The Plan updates the 2018 Security Plan in order to guarantee the security conditions needed in Campo de Gibraltar and its surrounding areas, and respond to changes in the modus operandi and activities of organized crime organizations due to the transnational environment in which they operate and their capacity to adapt.

affected territories near Campo de Gibraltar, including Malaga and Huelva⁸⁶. Despite these developments, the implementation of the strategy has suffered some delays due to the COVID-19 pandemic, and it is expected to be fully implemented within the existing timeframe and until 2023⁸⁷.

Inadequate resources continue to be an obstacle to handle effectively high-level cases of corruption. High-level political corruption, fraud involving public officials, as well as economic crimes constitute the main risks of serious corruption in Spain⁸⁸. Many of these cases have been pending in the investigation phase for several years, which generates concern, including among stakeholders⁸⁹. Stakeholders have reiterated that shortage of adequate funding continues to be an obstacle to the effective handling of high-level corruption cases⁹⁰. Moreover, as reported by the Anti-Corruption Prosecutor's Office, a shortage of specialised staff is the main obstacle in the proper management of complex cases (the so-called macro-cases), which often involve corruption and other economic crimes⁹¹. The Anti-Corruption Prosecutor's Office's 2019 annual report acknowledged the need to increase the number of prosecutors, currently approved in nine new places⁹², which should alleviate the understaffed situation reported in previous years⁹³. Currently, the Anti-Corruption Prosecutor's Office consists of 29 prosecutors and 145 personnel in total⁹⁴. According to the data published by the General Council for the Judiciary, of all adjudicated cases of corruption crimes in 2020, 53 cases were convictions while 21 were acquittals⁹⁵.

The workload of the Council of Transparency and Good Governance has increased in the last year⁹⁶, while resources remain insufficient to carry out all its activities⁹⁷. The Council's work to ensure transparency, public access to information and good governance has been challenged by the COVID-19 pandemic in addition to the persistent lack of human and financial resources⁹⁸. With the appointment of a new President on 20 October 2020, the

⁸⁶ The scope of the Plan has been extended to the provinces of Malaga and Huelva since they are affected territories close to Campo de Gibraltar. The Plan strengthens the capacity of law enforcement authorities for these affected territories, including training and specialization of agents.

⁸⁷ National Security Annual Report (2020), pp. 75-76.

⁸⁸ Anti-Corruption Prosecutor's Office (2020), Annual Report 2019, p. 704.

⁸⁹ Contribution from the Association of Prosecutors for the 2021 Rule of Law Report, p. 13.

⁹⁰ Information received by the Association of Prosecutors in the context of the country visit to Spain.

⁹¹ Anti-Corruption Prosecutor's Office (2020), Annual Report 2019, p. 706-710. Only in 2019, the Anti-Corruption Prosecutor's Office processed a total of 72 investigation proceedings, intervened in 746 judicial procedures and issued 40 indictments.

⁹² In April 2019, the Government strengthened the capacity of the Prosecutor's Office with nine new places.

⁹³ Anti-Corruption Prosecutor's Office (2020), Annual Report 2019, p. 698.

⁹⁴ Anti-Corruption Prosecutor's Office (2020), Annual Report 2019, p. 701.

⁹⁵ Information obtained from the web-database of the Council for the Judiciary.

⁹⁶ The Council received 1338 claims in 2018, 1780 in 2019 and 1704 claims in 2020 (the decrease of claims is due to during the months of April and May, the system did not received claims due to the state of alarm). Information obtained from the web-database of the Council of Transparency and Good Governance.

⁹⁷ The Council has 24 staff and its initial budget for 2020 was EUR 2,28 million, the same as it was in 2019. The President of the Council stated that human resources are "clearly insufficient for the Council to manage efficiently the current workload". Information available in the audio-visual archive of the Commission on Territorial Policy and Public Function: Appearance of Mr. José Luis Rodríguez Álvarez, current President of the Council of Transparency and Good Governance, Presentation in Parliament of 2019 and 2020 Annual Reports (10 June 2021).

⁹⁸ Annual Report 2020, Council of Transparency and Good Governance, May 2021, p.25.

Council expects to overcome difficulties encountered in its governance and address the issue of resources⁹⁹.

A reform of the integrity framework aims to consolidate rules on conflict of interest and incompatibilities in the public administration. The Fourth Open Government Plan¹⁰⁰ (see also section IV) envisages amending the law on incompatibilities of staff employed by public administrations¹⁰¹ to extend the regime of incompatibilities and prevention of conflicts of interest to advisers and more effectively delimitate the system for the prevention of conflicts of interest and incompatibilities of public employees within all different administrations¹⁰². In addition, the Plan aims at reinforcing ethics and integrity attached to the use of artificial intelligence in the activities of the administration in order to maximise data management while minimizing integrity risks¹⁰³. The Office of Conflicts of Interest (OCI) continues overseeing the incompatibilities and conflicts of interest and monitors asset declarations for high-level officials and members of Government¹⁰⁴. The OCI has recently introduced an electronic communication system to enhance the efficient management of documents and information¹⁰⁵. This system entered into force on 20 October 2020 and requires high-level officials and members of Government to communicate exclusively by electronic means with the OCI¹⁰⁶.

A single and harmonised code of conduct is now applicable to all members of the Congress and Senate. In line with GRECO's recommendation¹⁰⁷, on 1 October 2020, the Parliament approved a code of conduct extending rules on ethics, transparency and accountability to members of the Senate¹⁰⁸. The code of conduct, which has already applied

⁹⁹ The President considered the lack of resources a main challenge to be addressed in his presidency. Information available in the Commission on Territorial Policy and Public Function, XIV Legislature, Session No 5: Appearance of Mr. José Luis Rodríguez Álvarez, current President of the Council of Transparency and Good Governance (14 October 2020). On 28 January 2020, the Council published a new Evaluation Plan for 2021 to provide account of its assessments and decided to publish them on a regular basis. On June 2021, the 2019 and 2020 Annual Reports were published.

¹⁰⁰ See also Section IV- Fourth Open Government Action Plan for Spain. (2020-2024).

¹⁰¹ The draft law will amend Law 53/1984, of 26 December 1984; and the adoption is expected for the first semester of 2022. High-level officials and members of Government are covered under Law 3/2015 of 30 March 2015.

¹⁰² This includes public employees at national, regional and local levels. High-level officials and members of Government, are covered under Law 3/2015 of 30 March 2015. The draft law was opened to public consultation from April 28 to 28 May 2021 and will address, among others, a new system for the prevention of conflicts of interest and incompatibilities of public sector employees; the performance of new forms of provision of professional activities not covered by the current legislation; new regulation of activities exempted from the incompatibilities regime; limitations on the performance of private activities in cases of administrative situations other than those of active service; and a new and more rigorous system for the prevention of conflicts of interest for non-permanent staff.

¹⁰³ Fourth Open Government Action Plan for Spain. (2020-2024), p. 82-83. This involves the preparation of a Guide for the use of artificial intelligence for the public sector that addresses ethical principles and proposes to establish the Center for data and ethics in innovation to offer recommendations, advise public administration and industry, and promote ethical responsibility.

¹⁰⁴ Input from Spain for the 2021 Rule of Law Report, p. 21.

¹⁰⁵ Approval of Order TFP/350/2020, of 16 April amending Order TFP/2/2020 of 8 January 2006.

¹⁰⁶ The entry into force of this obligation was planned for 20 April 2020. However, it was delayed due to the COVID-19 pandemic in order to ensure that the electronic communication with the OCI is not disrupted by potential technical obstacles.

¹⁰⁷ GRECO Fourth Evaluation Round- Evaluation Report, p. 35.

¹⁰⁸ Agreement between the Boards of the Congress and the Senate on a code of conduct (2020).

since 2019 to members of Congress, contains rules on declaration of activities and assets to prevent incompatibilities in the exercise of the duties as public representative¹⁰⁹. In addition, the new Code has introduced a system of declaration of financial interests, and requires members of Congress and Senators to publish their institutional agendas, including their meetings with lobbyists¹¹⁰. Since October 2020, there are control mechanisms in place to monitor the compliance with the Code, including the newly created Parliamentary Office for Conflicts of Interest headed by a legal counsellor from the Parliament¹¹¹. The Parliamentary Office is in charge of solving doubts on the application of this Code¹¹².

Discussions on lobbying legislation are ongoing and the creation of a transparency register is scheduled for 2022. To date, lobbying is not regulated in Spain at national level¹¹³. However, the definition of lobbyist is provided under the Parliament code of conduct¹¹⁴. Under the various commitments made in the Fourth Open Government Plan, the regulation of lobbying, including the creation of a mandatory registry of lobbyists, is among the priorities to boost public integrity¹¹⁵. The draft law was opened to public consultation from 28 April to 28 May 2021; and is expected to provide, among others, a definition of interest groups, a mandatory register for interest representatives and members, as well as a code of conduct governing the obligations of members and lobbyists. In addition, a system of penalties and revolving door limitations between senior officials and public employees is expected to be issued¹¹⁶. The Office of Conflicts of Interest is expected to be in charge of the management of the transparency register. The draft is expected to be finalised by October 2021 and approved by the Government in the spring of 2022 before being tabled in the Parliament¹¹⁷.

The preparation of a whistleblower protection framework is ongoing. As reported last year, Spain lacks a general whistleblower protection framework, despite some sectorial regulation¹¹⁸. In June 2020, a working group of the General Codification Commission for the Transposition of Directive (EU) 2019/1937 was established¹¹⁹. The public consultation opened until 27 January 2021 collected more than 40 views from civil society and individuals on several regulatory issues¹²⁰. These contributions are being taken into account in the preparation of the first draft law, which will also be subjected to a public hearing. The

¹⁰⁹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 8.

¹¹⁰ Art. 6(2) Code of Conduct of the Congress and Senate.

¹¹¹ Written contribution received by the Office of International Relations of the Congress in the context of the country visit to Spain.

¹¹² Art. 8 Code of Conduct of the Congress and Senate.

¹¹³ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 8.

¹¹⁴ Art. 6(2) code of conduct of the Congress and Senate.

¹¹⁵ Fourth Open Government Action Plan for Spain (2020-2024).

¹¹⁶ Prior public consultation on the “Draft Law on Transparency and Integrity in the Activities of Interest Groups”.

¹¹⁷ Information received by Ministry of Interior in the context of the country visit to Spain.

¹¹⁸ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 8.

¹¹⁹ Order of 2 June 2020, setting up a working group of the General Codification Commission for the Transposition of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, concerning the protection of persons reporting on breaches of the EU law.

¹²⁰ Public Consultation on the Transposition of Directive (EU) 2019/1937.

protection of whistle-blowers is also under the priorities of the Fourth Open Government Plan¹²¹.

The COVID-19 pandemic has affected the mechanisms in place to fight corruption. Following the declaration of the state of alarm¹²², the procedures in place to ensure access to public information were suspended, but internal actions were carried out to organize the procedure for resolving the requests for access to public information¹²³. The Council of Transparency and Good Governance has received an increased number of claims requesting access to information in the context of COVID-19 support measures¹²⁴, including on corruption and fraud. The Independent Office for Regulation and Supervision of Procurement (OIREscon), which verifies best practices on transparency and identifies irregularities, issued a report assessing the effects of COVID-19 in public procurement with particular regard to publicity and transparency¹²⁵. This report highlighted that COVID-19 has led to the urgent implementation of electronic channels to enable communication, including in the sector of procurement with the increased use of the system of electronic contracting¹²⁶. Spain improved online systems for the prevention and reporting of corruption, which is of great importance in this particular sector where the majority of corruption and fraud related complaints are reported via electronic platforms¹²⁷.

III. MEDIA PLURALISM AND MEDIA FREEDOM

The Constitution enshrines the rights to freedom of expression and media freedom¹²⁸. In addition, Spain has a comprehensive legal framework for ensuring media pluralism¹²⁹. An independent multi-regulatory body, the National Commission for Markets and Competition (CNMC), assumes the role of audio-visual regulator. The process to transpose the revised Audio-Visual Media Services Directive (AVMSD) into Spanish law was started by the Ministry for Economic Affairs and Digital Transformation (MAETD) with the publication of a Draft Law on Audiovisual Communication¹³⁰ that was subject to a public consultation until December 2020.

The Audiovisual Regulator has raised some concerns on its independence and resources in the context of the transposition of the AVMSD. While the CNMC will assume the new competences and tasks stemming from the revised AVMSD with the ensuing increased workload, the explanatory statement to the Draft Law on Audiovisual Communication does

¹²¹ Fourth Open Government Action Plan for Spain (2020-2024).

¹²² The first state of alarm was declared on 13 March 2020; the second state of alarm on 9 October 2020; and the third state of alarm on 25 October 2020.

¹²³ Council of Transparency and Good Governance, Annual Report 2020 (May 2021).

¹²⁴ Information obtained from the web-database of the Council of Transparency and Good Governance.

¹²⁵ -Independent Office for the Regulation and Supervision of procurement 2020, Annual report of monitoring of the public procurement in Spain (December 2020), p. 394.

¹²⁶ Emergency measures to support the sector cultural and tax nature to face the economic and social impact of the COVID-2019, have been extended also to area of public procurement matters.

¹²⁷ Electronic platforms include open mailbox applications and e-mail. In 2019, 63% of complaints of corruption in public procurement sector were lodged via open mailbox. -Independent Office for the Regulation and Supervision of procurement 2020, Annual report of monitoring of the public procurement in Spain (December 2020), p. 406.

¹²⁸ Art. 20 of the Spanish Constitution.

¹²⁹ Spain ranks 29th in the 2021 World Press Freedom Index compiled by Reporters Without Borders (RSF) thus remaining in the same position as in 2020. Spain comes 15th among the EU Member States.

¹³⁰ *Anteproyecto de Ley (APL) General de Comunicación Audiovisual*.

not consider a staff increase necessary. The Audiovisual Sub-Directorate of the CNMC is considered understaffed in comparison to the equivalent bodies in other EU Member States¹³¹. During the public consultation on the draft law, the CNMC presented an opinion¹³² that, while giving a positive assessment of the draft law, states that it lacks clarity on some key issues and raises a number of concerns. In particular, according to the CNMC, the draft law does not address the ‘adequacy of resources’ requirement established in the AVMSD¹³³. In addition, its operational independence appears to be restricted, as, according to the draft law, the Government will remain in charge of certain decisions regarding the internal organisation and functioning of the CNMC (e.g. on recruitment, salaries, staff numbers). The CNMC also considers that the draft law could establish additional provisions in relation to media pluralism¹³⁴.

The transparency of media ownership remains a challenge¹³⁵. As referred in the 2020 Rule of Law Report¹³⁶, ownership data is publicly accessible, but ownership information is not exhaustive (provided only for radio and television) and there are difficulties to assess who exactly is behind each company. There have been no new legal developments in this area. Spain has a National Registry of Audiovisual Communication Service Providers, which can be accessed freely by the public and contains information on owners with significant participation in the capital of service providers. Nevertheless, the Media Pluralism Monitor (MPM 2021) Report for Spain¹³⁷ considers there is a high risk for transparency of media ownership, pointing to the lack of rules for digital media. News media concentration is reported as high in Spain¹³⁸.

Shortcomings have been identified in relation to procurement contracts on institutional advertising. Legislative provisions regulate the contracting of state advertising and institutional campaigns¹³⁹. A recent study conducted on behalf of a professional association¹⁴⁰ analysed a sample of contracts representing about 12% of the total number of contracts and almost 50% in their value. The study pointed to a number of shortcomings in the drafting of terms of reference of a large majority of the analysed procurement contracts on institutional

¹³¹ Written contribution received by National Commission for Markets and Competition in the context of the country visit to Spain.

¹³² National Commission for Markets and Competition 2020, *Acuerdo por el que se emite informe relativo al Anteproyecto de Ley General de Comunicación Audiovisual IPN/CNMC/042/20*.

¹³³ Art. 30.4 AVMSD: “Member States shall ensure that national regulatory authorities or bodies have adequate financial and human resources and enforcement powers to carry out their functions effectively and to contribute to the work of ERGA. Member States shall ensure that national regulatory authorities or bodies are provided with their own annual budgets, which shall be made public”.

¹³⁴ National Commission for Markets and Competition 2020, *Acuerdo por el que se emite informe relativo al Anteproyecto de Ley General de Comunicación Audiovisual IPN/CNMC/042/20*.

¹³⁵ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, pp. 9-10.

¹³⁶ Ibid.

¹³⁷ 2021 Media Pluralism Monitor country report for Spain, p. 7.

¹³⁸ The Top 4 TV media have 79% of audience, and the two main TV companies account for 80.5% of advertising revenue. In radio, the Top 4 media have 75% of audience, and in newspapers, the Top 4 media have 91% of audience. In the digital sector the concentration is lower, with 53% of the audience for 4 Top media. However, the lack of available data of news media operating in the digital realm is an issue. See 2021 Media Pluralism Monitor country report for Spain, pp. 10 and 15.

¹³⁹ Law No. 29/2005 of 29 December, on Institutional Advertising and Communication, and Royal Decree No. 947/2006.

¹⁴⁰ FEDE (Federación de Empresas de Publicidad y Comunicación) 2021, *Más del 90% de los concursos públicos de publicidad presenta irregularidades en sus pliegos de licitación* 14 April 2021.

advertising. In a similar vein, the MPM 2021 reflects that complaints are common regarding the unfair distribution of public expenditures depending on the ideological alignment of digital news media¹⁴¹.

The media sector has been highly impacted by the COVID-19 pandemic and the Government has adopted some media-specific support measures. In 2020, the media income decreased more than the GDP, challenging media viability. The main reason of this decrease was the reduction in advertising income, which in overall terms fell 17.9%; print media was the most affected, with a drop in advertising turnover of 30.8%, while digital media had a decrease of 5.3%¹⁴². The pandemic has also had a negative impact on the journalistic profession, as numerous media companies began to present temporary employment regulation files or proposed salary reductions¹⁴³. Freelance journalists were the most affected¹⁴⁴. The Government has taken certain measures to support the media sector, such as the reduction in VAT on digital media (from 21% to 4%)¹⁴⁵ and a temporary financial support framework, where EUR 15 million were earmarked for state-wide digital terrestrial television channels¹⁴⁶.

The Government is taking steps to address concerns by stakeholders about access to information. While there were critics of the system put in place by the Secretary of State for Communication for press conferences at the start of the pandemic, the situation was rapidly addressed to allow journalists to ask questions in a hybrid (online and physical) mode. The Government has also set up a commission¹⁴⁷ formed by the Ministries of the Presidency, Defense, Home Affairs and Foreign Affairs to revise the Law on Official Secrets¹⁴⁸ (that dates from the pre-constitution times) in order to make access to official information easier for journalists and the general public¹⁴⁹.

Journalists have continued to face challenges in their professional activities¹⁵⁰. There have been no changes in the regulatory framework¹⁵¹ concerning journalists. Nevertheless, on 11 December 2020, an Agreement was signed between the Ministry of Home Affairs, the Federation of Associations of Journalists of Spain, and the National Association of Graphic Press and Television Informants, with the main purpose of facilitating the work of information professionals in places and events where situations of violence may occur¹⁵². Concerns remain about the negative impact for journalists of the Citizen Security Law¹⁵³, particularly on photojournalists¹⁵⁴ (see also section IV). Furthermore, the Council of Europe's

¹⁴¹ 2021 Media Pluralism Monitor country report for Spain, p.16.

¹⁴² Infoadex (2021). *Informe Infoadex de la inversión publicitaria en España 2021*.

¹⁴³ PRnoticias (2020) *EPA: El periodismo se desploma con 11.400 empleos menos en el último trimestre*.

¹⁴⁴ APM (2020) *Los periodistas autónomos, los más perjudicados del sector por el impacto de la COVID-19*.

¹⁴⁵ 2021 Media Pluralism Monitor country report for Spain, p.10.

¹⁴⁶ Art. 46 of Royal Decree 11/2020, adopting urgent social and economic measures to face COVID-19.

¹⁴⁷ Information received by Ministry of the Presidency in the context of the country visit to Spain.

¹⁴⁸ Law 9/1968, of 5 April, on official secrets.

¹⁴⁹ According to the Government, the new law will be based on the principles of transparency and publicity, efficiency of administrative action, security, information assurance and proportionality.

¹⁵⁰ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain p. 10.

¹⁵¹ Organic Law 1/2015, Organic Law 2/2015 and Organic Law 4/2015.

¹⁵² Ministry of Home Affairs 2021, *Interior, la FAPE y la ANIGP-TV mejoran la identificación de los informadores en eventos que requieran de la intervención policial*.

¹⁵³ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain p. 10.

¹⁵⁴ Contribution from ENNHRI for the 2021 Rule of Law Report, pp. 345-346.

Platform to Promote the Protection of Journalism and Safety of Journalists has registered four alerts for Spain in 2021, all related to violence towards journalists and/or their equipment¹⁵⁵. Since the 2020 Rule of Law Report, there have been several instances of political parties banning certain media/journalists from their press conferences, or publicly attacking media outlets that do not share their views¹⁵⁶. Harassment of journalists on social media is an increasing, worrying phenomenon¹⁵⁷.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Spain is a parliamentary monarchy, with a bicameral Parliament ('*Cortes Generales*')¹⁵⁸. It is also a decentralised unitary state where the State and the Autonomous Regions have both exclusive and shared competences¹⁵⁹. The Constitutional Court is competent to review the constitutionality of laws. Both chambers of the Parliament – the Congress and the Senate – have legislative competence, which they can delegate to the Government, subject to certain limitations¹⁶⁰. The Government, the two Chambers of the Parliament, the assemblies of the autonomous regions, and a group of at least 500 000 citizens have the right of legislative initiative.

The Government has approved a new Fourth Open Government Plan (2020-2024). The Plan¹⁶¹ was approved in October 2020 jointly by the national, regional and local governments and following a consultative process, including the organisation of workshops and other participatory activities. It aims to strengthen the links between citizens and public authorities, as well as increasing citizen involvement in the development of public policies. It sets ten new commitments in relation to transparency, accountability, public participation, public integrity and awareness on citizen participation in policy-making. These commitments include the transposition of the Directive on open data and the re-use of public sector information¹⁶². The Plan includes 110 initiatives and 529 activities; to date 17% have been finalised, 38% are ongoing and 43% are still pending¹⁶³. The 'Open Government Forum',

¹⁵⁵ Two of these cases concerned actions of riot police during demonstrations (Valencia and Girona), and two others related to physical violence against a journalist and destruction of equipment of a broadcaster. One of the alerts - regarding the actions of riot police in Valencia - has been addressed by Spanish authorities. See Council of Europe: Platform to promote the protection of journalism and safety of journalists (<https://www.coe.int/en/web/media-freedom/spain>).

¹⁵⁶ Information received by Associations of journalists in the context of the country visit.

¹⁵⁷ 2021 Media Pluralism Monitor country report for Spain, p.15.

¹⁵⁸ It consists of the Congress of Deputies (the lower house), and the Senate (the upper house). Both are directly elected.

¹⁵⁹ 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.

¹⁶⁰ Art. 82 of the Spanish Constitution.

¹⁶¹ Ministry of Territorial Policy and Public Administration (2020), *IV Plan abierto de gobierno (2020-2024)*, 29 October 2020.

¹⁶² Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information.

¹⁶³ Information available in the website of the Ministry of Territorial Policy and Public Administration.

composed of representatives of public administrations and civil society, has continued its operations and on 29 October 2020, it approved its rules of internal procedure¹⁶⁴.

The Autonomous Regions were designated as competent authorities for the implementation of the emergency measures adopted in the context of the COVID-19 pandemic. In 2020, the Government declared a state of alarm on three different occasions¹⁶⁵. The second state of alarm¹⁶⁶ was limited to a number of municipalities of the Autonomous Region of Madrid during 15 days. The third state of alarm¹⁶⁷ was approved by the Congress and extended to 9 May 2021. This was less restrictive in comparison to the first state of alarm and designated the Autonomous Governments as competent authorities for the implementation of the emergency measures. The Parliament has remained in session during the pandemic, and it has continued exercising its control of the emergency measures. The Minister of Health has provided information on adopted and implemented measures to the Parliamentary Commission on Health and Consumption every 15 days. On 14 July 2021, the Constitutional Court declared unconstitutional some provisions of the Royal Decree declaring the first state of alarm in relation to limitations to the freedom of movement¹⁶⁸. The Constitutional Court is also currently examining another complaint in relation to the second state of alarm¹⁶⁹, as well as several individual constitutional appeals in relation to the right of assembly in the context of the pandemic. Stakeholders¹⁷⁰ have claimed that the repeated use by the Government of the power granted by the Constitution to legislate via decree-laws in cases of extraordinary and urgent necessity¹⁷¹ would limit the involvement of stakeholders in the legislative procedure. Once the state of alarm ended on 9 May 2021, the law provides that measures taken by Autonomous Regions restricting fundamental rights would need to have a prior judicial authorisation in the form of a court order. On 4 May 2021, the Government

¹⁶⁴ Ministry of Territorial Policy and Public Administration (2020), *Acuerdo del Foro de Gobierno Abierto por el que se modifican sus normas complementarias de funcionamiento y se prorroga transitoriamente el mandato de los vocales de la comisión permanente y de la vicepresidencia segunda del foro*, 29 October 2020.

¹⁶⁵ Art. 116(2) of the Spanish Constitution and Arts. 6 and 8 of the Organic Law No. 4/1981, of 1 June 1981. The state of alarm is the least severe of the three possible states of emergency provided for in the Spanish Constitution. It does not suspend the general application of the fundamental rights set out in the Constitution, although some specific freedoms may be restricted. The first state of alarm was declared on 13 March 2020; the second state of alarm on 9 October 2020; and the third state of alarm on 25 October 2020. The Constitution also confers on the Government the right to legislate via decree-laws in cases of extraordinary and urgent need, and within a defined material scope. The Government is subject to the obligation to present such a decree-law to the Congress, the latter having the prerogative to derogate from it. For more information on the first state of alarm, see 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain.

¹⁶⁶ Royal Decree 900/2020, of 9 October, declaring the state of alarm to response to specific risk situations of the non-controlled transmission of infections caused by the SARS-CoV-2.

¹⁶⁷ Royal Decree 926/2020, of 25 October, declaring the state of alarm to contain the spread of infections caused by the SARS-CoV-2.

¹⁶⁸ Constitutional Court, Informative note No. 72/2021.

¹⁶⁹ Constitutional complaint No. 5342-2020.

¹⁷⁰ Information received in the context of the country visit to Spain. In this context, see also Ruling 110/2021, of 13 of May 2021 of the Constitutional Court, which declared unconstitutional a provision of the Royal Decree-Law 8/2020 of 17 March regulating measures to deal with the economic and social impact of the COVID-19 pandemic, as it considered that the requirements that allowed the Government to avoid the ordinary legislative procedure in Parliament and directly use the fast-track route of the Royal decree were not met.

¹⁷¹ Art. 86 of the Spanish Constitution.

adopted a Royal Decree Law¹⁷² setting out a procedure allowing the Administrative Chamber of the Supreme Court to review these court orders, in order to ensure uniform application of the caseload throughout the whole national territory.

The Ombudsperson reviewed a significantly greater volume of complaints since the beginning of the pandemic. The Ombudsperson (*‘Defensor del Pueblo’*), which is the High Commissioner of Parliament responsible for defending citizens’ fundamental rights and civil liberties by monitoring the activity of the public administration and public authorities¹⁷³, is also the National Human Rights Institution in Spain. The Ombudsperson is appointed by the Parliament¹⁷⁴. Negotiations between political parties for their appointment are still ongoing, thus the Ombudsperson has remained in function *ad interim* since 2017, when the previous term of office expired¹⁷⁵. The number of complaints received by the Ombudsperson increased significantly in 2020: it received 28 028 complaints (from 20 215 in 2019) and 909 requests to interpose constitutional reviews to the Constitutional Court (from 135 in 2019)¹⁷⁶. The most common complaints are related to the emergency measures taken in the context of COVID-19, delays in the administration of justice, employment, social security, and migration. In addition, the Ombudsperson has had an active role during the pandemic, as it has carried out 406 *ex officio actions*, including recommendations on the situation of jail prisoners, the arrival of migrants to the Canary Islands, and the closure of detentions centres for migrants while borders were temporarily closed¹⁷⁷.

The space for civil society organisations in Spain is facing challenges, and a revision of the Citizen Security Law is ongoing. Civil society space is considered to be narrowed¹⁷⁸. Civil society organisations faced several challenges in relation to access to funding. Stakeholders have reported funding cuts by several public authorities in 2020¹⁷⁹ despite the increased needs posed by the outbreak of the pandemic. In addition, the 2015 Law on Citizen Security¹⁸⁰, that according to its preamble aims to protect people and property and maintain the public peace through the regulation of police interventions and other matters, raised concerns from stakeholders¹⁸¹. In November 2020 and January 2021, the Constitutional Court issued two judgements on the law¹⁸², concluding that most of its provisions are constitutional, if interpreted in good faith and with due regard to the principles enumerated in the law, in particular as regards the principles of proportionality, non-discrimination, efficiency, and

¹⁷² Royal Decree Law 8/2021, of 4 May.

¹⁷³ Art. 54 of the Spanish Constitution.

¹⁷⁴ Art. 2 of the Organic Law No. 3/1981.

¹⁷⁵ Art. 11 of the Organic Law No. 3/1981 provides that the functions of the Ombudsperson shall not be interrupted due to the expiration of their mandate.

¹⁷⁶ Defensor del Pueblo (2021), *Informe anual 2020*.

¹⁷⁷ This recommendation was followed by the authorities.

¹⁷⁸ Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

¹⁷⁹ European Anti Poverty Network (EAPN) (2020), *Denuncian la decisión de recortar la financiación a las ONG estatales de Acción Social en plena pandemia*.

¹⁸⁰ Organic Law 4/2015.

¹⁸¹ Concerns were related to, among others, offences in the context of meetings and demonstrations, and the use of images or data by the police. Contribution from ENNHRII for the 2021 Rule of Law Report.

¹⁸² Decision of the Constitutional Court 172/2020, of 19 November related to constitutional complaint No 2896-2015; and Decision of the Constitutional Court 13/2021, of 28 January related to constitutional complaint No 3848-2015.

respect for rights and freedoms¹⁸³. Nonetheless, one provision of the law was declared unconstitutional in relation to the prohibition of the “unauthorised” use of photo and video images of police officers at duty or in a private setting¹⁸⁴. In March 2021, the Venice Commission issued an opinion on the law¹⁸⁵, highlighting that even in cases when a norm is considered to be constitutionally acceptable, if in practice it has led to abuses it should be changed, circumscribed, or accompanied by additional safeguards. The opinion encouraged the Spanish legislator to carry out an in-depth assessment of the practical operation of the law and its impact on fundamental rights and freedoms. The law is currently being revised by the Parliament, and it is important that this opinion is taken into account. Stakeholders have also reported that in April 2021, there were sporadic attacks by far-right extremists to the head offices of a number of NGOs in connection to LGTBI rights and migration¹⁸⁶.

There have been several initiatives aimed to foster a rule of law culture. The Council for the Judiciary develops and implements the "Educating in Justice" programme launched at the end of 2019, aimed at secondary school students, so that students acquire sufficient knowledge about the functioning of the justice system in Spain, with special emphasis on aspects such as gender violence and the criminal liability of minors¹⁸⁷. Within the programme, judges provide talks to students, school visits are organised to courts and other institutions, and mock trials are carried out with the support of their teachers.

¹⁸³ Art. 4 of the Organic Law 4/2015.

¹⁸⁴ The Constitutional Court held that the reference to “unauthorised” images implies the need for an authorisation, which is a form of censorship. The Court established that the taking of such pictures cannot be limited, while their use – which may endanger protected interests – may be lawfully restricted. Therefore, the Court ruled that the reference to the “unauthorised” use of the pictures should be excluded from the law.

¹⁸⁵ Venice Commission (CDL-AD(2021)004).

¹⁸⁶ Information received in the context of the country visit to Spain; and *El Mundo* *La sede de COGAM amanece vandalizada con mensajes transfobos* 3 April 2021; *El Diario* *Atacadas las sedes del colectivo Lambda y de una ONG africana en Valencia* 13 April 2021.

¹⁸⁷ Written contribution received by the Council for the Judiciary in the context of the country visit to Spain

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation>.

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Annex II: Country visit to Spain

The Commission services held virtual meetings in April and May 2021 with:

- Academic experts
- Association of ‘Abogados del Estado’
- Association of Prosecutors
- Civic Platform for the Judicial Independence
- College of Registrars
- Constitutional Court
- Court of Audits
- European Journalists’ Association
- FAPE
- Foundation ‘Hay Derecho’
- General Council of Notaries
- General Council of Spanish Lawyers
- General Council for the Judiciary
- INCIDE
- Independent Judicial Forum
- Judges and Magistrates’ Association “Francisco de Vitoria”
- Judges for Democracy
- Madrid Press Association
- Ministry of Foreign Affairs
- Ministry of Home Affairs
- Ministry of Justice
- Ministry of Finance
- Ministry of the Presidency
- Ministry of Territorial Policy and Public Administration
- National Anti-Fraud Coordination Service
- National Commission of Markets and Competition
- NGO’s Platform for Social Action
- Technical Office of the Prosecutor General
- The Independent Office for Procurement Regulation and Oversight (OIREscon)
- Ombudsperson’s Cabinet
- Platform in Defense of Freedom of Information
- Professional Association of the Magistracy
- Progressive Union of Prosecutors
- Rights International Spain
- Prosecutor's Office Against Corruption and Organised Crime
- State Secretary of Communication
- 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:

- Amnesty International
- Center for Reproductive Rights
- CIVICUS
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches

- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute
- Netherlands Helsinki Committee
- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International
- Reporters without Borders
- Transparency International EU