

The The Civic Platform for Judicial Independence have just reported the United Nation a complaint on judicial appointments in Spain whose full text is the following:

Dear Ms:

The Civic Platform for Judicial Independence (*Plataforma Cívica por la Independencia Judicial* -PCIJ) is an organisation, composed of judges, prosecutors, lawyers, university professors and other Spanish citizens from all walks, concerned about the politicisation of Justice in Spain. During 2014 we have sent the previous Special Rapporteur of the United Nations on the independence of judges and lawyers two complaints: the first one, about the threats against the separation of constitutional powers in the Kingdom of Spain; the second, about the situation of judges in practical training. Now, we submit you a third one related to the appointment of judicial offices.

Our present request deals with the proceedings for the appointment of higher ranks among Spanish judges, as far as their actual requirements do not meet the minimum standards against discrimination on political grounds.

The body entitled to the selection (*Consejo General del Poder Judicial*, "General Council of Judicial Power") is entirely dependent on political parties; and the regulation in that matter (*Reglamento 1/2010*), decreed by the same Council, is too vague to prevent an arbitrary decision. The Platform has issued several reports where appointments of high judicial positions are analyzed and whose conclusions are the lack of enough legal guarantees and the need for an urgent reform of the current statutes on that subject.

This situation violates both the Spanish domestic law and the international law. As for the former, the Constitution, in its section 103, regulates the statute of the public officials in accordance with the principles of merit and ability; likewise, the Organic Act on the Judiciary (LOPJ) foresees that the professional promotion of judges shall be based on merit and capacity. As for the latter, there are several rules affected, namely:

At the level of the United Nations, the General Assembly (A/RES/40/32, 1985) calls for a method of judicial promotion provided with safeguards against judicial appointments due to improper motives (article 10). Likewise, its Human Rights Committee (General Comment No. 32, Article 14, 2007) requires for clear procedures and objective criteria in the judicial promotion, free from political interference by executive or legislative branches. Furthermore, the special Rapporteur on the independence of judges and lawyers emphasized that, if the decisions of judicial promotion depend on the discretion of administrative authorities, judges may be exposed to political pressure and be jeopardized their independence and impartiality; and that the final decisions on promotions should be preferably taken by an independent body composed of at least of a majority of judges (A/RES/40/32, 1985).

In the field of the Council of Europe, the Consultative Council of European Judges, in its 21-23 November 2001 report to the Committee of Ministers, recommends that "the authorities responsible in member States for making and advising on appointments and promotions should now introduce, publish and give effect to objective criteria, with the aim of ensuring that the selection and career of judges are based on merit, having regard to qualifications, integrity, ability and efficiency" (paragraph 25). Moreover, according to the Committee of Ministers, decisions concerning the selection and career of judges should be based on objective and pre-established criteria (paragraph 44); equally, the authority taking decisions on the career of judges should be independent of the executive and legislative powers, and at least half of its members should be judges chosen by their peers (paragraph 46) - Recommendation CM/Rec(2010)12. And finally, *inter alia*, the Magna Carta of Judges (officially adopted by the CCJE in November 2010) states that judicial selection, nomination and career shall be based on objective criteria (article 5).

On the other hand, the GRECO (Group of States against Corruption in the Council of Europe),

in its 2013 evaluation report (devoted to Spain) detects an impression among Spanish judges that the judiciary is politicised in its top, to such an extent that “it was sometimes known beforehand who would be appointed to the senior position in question” (paragraph 88). Consequently, it recommends that objective criteria be laid down in the appointment of the higher ranks of the judiciary (paragraph 89) and that be carried out an evaluation on the independence of the General Council of Judicial Power (paragraph 80).

This last report is especially useful to perceive the degree of demoralisation in some circles of the Spanish Judiciary and the risk against the judicial impartiality and independence, since there is the suspicion that the political power, in many cases, exerts an improper influence on deciding the key positions in jurisdiction and judicial government. The Platform is preparing a blueprint of regulation concerning judicial appointments that, as soon is finished, will let you know.

We look forward to your prompt response, given the imminent threat to civil rights in Spain.

Yours sincerely,

January, 2016

Jesús Manuel Villegas Fernández (General Secretary of PCIJ)

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Post-scriptum: This is the link to the executive summary of the aforementioned series of reports: <http://pcij.es/falta-de-rigor-y-seriedad-en-los-nombramientos-judiciales/#more-1396>