

## SUMMARY OF THE COMPLAINT

Spanish justice is in danger. During this current year 2021 the political class has launched an assault, by way of a series of legislative reforms of structural character with the aim of subverting judicial independence. Taking advantage of the health crisis stemmed from the coronavirus epidemic, there have been debates in Parliament prone to limiting the functions of the General Council of the Judiciary (CGPJ), supreme ruling body of the judiciary, as well as reducing the majority needed for the election of its members. Furthermore, there is a deep transformation of criminal procedure in the making which would put an end to the independence of criminal investigation, thus favouring the impunity of the delinquency that is inherent in the financial and political oligarchy.

The assault on justice is developed in a pre-existent state that, in itself, was already highly worrying. Thus, Spain is the only country in the European Union where each and every one of the members of the supreme ruling body of the judiciary are elected by Parliament.

Furthermore, the appointment of the highest judicial positions, despite theoretically abiding by merit and capabilities, in practice lack the necessary guarantees to assure that they do not fall under discrimination for ideological reasons or simple favouritism.

This offence is committed as inspired by an ideology that is incompatible with the separation of powers, understanding that judges must be sensitive to political influence, seeing as justice emanates from the people. It is a vision long overcome that brings us back to archaic forms of social organization, more characteristic of the Middle Ages than of an advanced democracy.

An outcome of such manipulation is legal corruption. There is a perceived risk of perverting the mentality of Spanish judges, which is up to now a body of flawless integrity and trustworthiness. They are conveyed the idea that, in order to advance professionally, there is no choice but to find ideological godparents. In this way, there is the creation of a minority of magistrates who thrive in the shade of the judiciary, the so-called “gowned politicians”. Given that there is a prevalence of a regulation that favours revolving doors, collaborationist judges have an assurance of a round trip between politics and judicature that favours a symbiosis of

unutterable interests. Meanwhile, the virtual entirety of the judiciary career faces a glass ceiling, an insurmountable line in its promotion, unless they decide to stoop down to a game of negotiation in hallways known as “horse trading” or “trading cards” in Spanish. Proof of this is the scarce presence of women in higher positions of judicial hierarchy, despite representing a bigger and bigger proportion at the bottom. All this pushes society away from their judges, extending a climate of distrust which questions the normal operation of democratic institutions.

This landscape would be incomplete without a reference to the scarcity of financial resources that the Spanish State assigns to justice, whose ratio of judges per inhabitant is one of the lowest in Europe. From this hardship, commercial and social jurisdiction are predicted to be the most stricken, hence the contraction of economic activity stemming from the global epidemic will entail an avalanche of lawsuits related to companies in difficulty which threatens to collapse the courts.

Attending to what is exposed, a firm intervention of the European Commission is urgent, seeing as Spanish justice has fallen to levels of degradation making us wonder if our near future will approach to Poland.

## FULL TEXT OF THE COMPLAINT

### COMPLAINT BY THE CIVIC PLATFORM FOR JUDICIAL INDEPENDENCE ADRESSED TO THE INSTITUTIONS OF THE EUROPEAN UNION

About us. Civic Platform for Judicial Independence (Twitter: @PCIndepJudicial) is an association composed of judges, lawyers, jurists, and other professionals of civil society concerned about the spiral of politicization and loss of independence of Spanish justice. Our only aim is the defence of the rule of law and the independence of the judiciary, according to European and international standards.

– Our association is a benchmark in the fight for the depoliticising of Spanish justice since the time of the “Manifesto for the depoliticising and judicial independence” backed by over 1400 judges in 2010 and whose defence provides us with a purpose. Since then, it has created an Observatory of Appointments within which there have been prestigious reports about

appointments of high judicial instances elaborated, which have brought to light their arbitrary and politicised assignment.

-We have been pioneers in denouncing the non-compliance of international and European regulation in terms of the Judiciary before the European and international institutions:

Complaint before the Consultative Council of European Judges in 2012

<https://plataformaindependenciajudicial.es/2012/11/04/queja-ante-europa/>

Complaint presented to the United Nations in 2014.

<https://plataformaindependenciajudicial.es/2014/06/06/spanish-justice-under-siege/#more-1151>

-Our association has carried out important work on raising awareness, managing to bring to the heart of the debate of public opinion and the media, the grave issue of the politicization of justice, intentionally silenced by part of the political groups and the public media or similar groups.

-The report of the activities carried out by the Platform (hereafter referred to as PCIJ) for the last two years reveals a relentless body of work.

file:///C:/Users/73563302X/Downloads/Informe.octubre.2018-octubre.2020%20(4).pdf

## WHAT WE ARE DENOUNCING

1.- Spain does not comply with the European regulation in terms of judicial independence. Spain is currently in a serious and anomalous situation regarding the other member states of the European Union in terms of judicial independence. As it is, Poland and Spain are the two only countries in all the Union in which the appointment of entirety of the members of their Justice Councils (which subsequently are in charge of the appointment of the higher judicial instances) are assigned wholly by politicians through Parliament.

\*Data of the Table of Indicators of #Justicia in the UE 2020

It is necessary to guarantee an effective compliance of the foundational values of the European Union in the whole territorial domain of the Union and in each of the member

states. The separation of powers and judicial independence are necessary requirements for the setting of the rule of law, seeing as it is an instrument needed to guarantee respect for human rights and values of human dignity, freedom, democracy and equality, collected in Article 2 of the Treaty on European Union.

The existence of unbiased and independent judges must be guaranteed throughout the Union, hence only then can the right to proper legal protection acknowledged in Article 19 TEU and the effect compliance of the Charter Of Fundamental Rights Of The European Union be respected.

In this sense, we state the numerous recommendations given by the Council of Europe, specifically the Group of States against Corruption (GRECO), which urge the Spanish State to modify the system of electing 12 of the 20 members of the General Council of the Judiciary, so as to prevent political authorities from intervening in any stage of their appointment. In his latest public statements and in his meetings with the Spanish Ministers of Justice and Foreign Affairs, Didier Reynders, European Commissioner for Justice, points out that the appointment of members in the judicial field must be done directly by their equals.

- 1.- Recommendation CM/Rec(2010) 12 of the Committee of Ministers to member states about judges: independence, efficiency and responsibilities of 17 November 2010, section 27.
- 2.- The reports from the year 2014 onwards of the Group of States against Corruption of the Council of Europe (GRECO).
- 3.- The Carta Magna of European judges of 2010, section 13.
- 4.- Guide to the European Network of Councils for the Judiciary, section 3, of the European Network of Councils for the Judiciary (RECJ).
- 5.- Report on the independence of the judicial system of the Commission of Venice (created in 1990, it played a great role in the creation of the constitutions of emerging democracies of central and eastern Europe), especially part I: The independence of judges, point 32.

The flagrant non-compliance by Spain of the European regulation in terms of judicial independence becomes even more evident in light of the latest statements of the TJUE in the different infringement proceedings against Poland. The reasoning that is conceived regarding Poland is the following:

1) Within the essential content of the right to effective legal protection is included the need for independence of the courts [ruling of 24th June 2019, Commission/Poland C-619/18, EU:C:2019:531, section 58].

2) Independence comprises two aspects, one of external order, related to the autonomy of judges and magistrates, and a second one of internal order, related to impartiality, demanding through the TJUE the absence of any interest in the resolution of litigation.

3) The way of designation of the courts underscores their impartiality, and is indicated by the TJUE that there is a lack of impartiality when the appointment of high judicial positions depends on the organisms whose composition is at the same time conditioned by the legislative and executive powers.

There is a clear parallelism between the appointment of the members of the National Council of the Judiciary in Poland (CNPJ) and the General Council of the Judiciary in Spain (CGPJ), seeing as the entirety of their members in both cases are assigned by Parliament and the Government (Ruling of the TJUE of 19th November 2019, C-585-18).

2.- The institutions of the European Union are being alerted of the application of a series of structural legislative reforms in Spain that imply a serious assault to the independence of the Judiciary by the executive branch.

The severity of the health crisis stemmed from the pandemic made the Spanish government issue the Royal Decree 956/2020, on 3rd November, which extends the alarm state declared on 25th October 2020 until 9th May 2021, therefore extraordinarily and exceptionally limiting the exercise of the Spanish people's fundamental rights, as well parliamentary activity itself. In this respect, the accountability of the President is reduced to his appearance in front of the parliamentary chamber every two months.

Due to the concurrence of extraordinary circumstances in all member states of the European Union, the European Commission has recommended national governments not to perform structural reforms during this time period.

Nevertheless, the Spanish government, going against the recommendations of the European Commission, has put into motion a series of structural legislative reforms of the Justice Administration and the Judiciary during the alarm state. This is a reform of great significance,

set within the so-called “Justice Agenda 2030”, which implies a serious assault on the independence of the Judiciary and the separation of the powers, under the guise of modernising justice and tackling the consequences of the pandemic.

These new legislative reforms put forward by the Spanish government which are currently in process are the following:

1.- Proposal of the Organic Law that modifies the Organic Law 6/1985, of 1st July, of the Judiciary, for the establishment of the legal regime concerning the acting General Council of the Judiciary.

The reform will prevent the appointment of higher judicial instances by the CGPJ, among those the vacancies of magistrates of the Supreme Court, when they are acting by extended term (as long as 3 out of 5 parliamentary votes are not obtained for the renewal of all 20 members). It implies the cessation of a constitutional body and that the judicial vacancies of the higher instances are left unassigned.

It is argued that the Parliament and the acting executive power have their decision capabilities limited until they are renewed, and therefore the same must happen to the CGPJ; however, while the Executive and Legislative powers are only legitimised if they represent the new majorities resulting from the ballots, the Judiciary is legitimised by its subjection to the rule of law when the case is resolved. This equivalency is inaccurate and but a mere excuse for each new resulting elected government to guarantee itself that they will select the judges of the Supreme Court and of other high courts.

[https://www.congreso.es/web/guest/proposiciones-de-ley?p\\_p\\_id=iniciativas&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&\\_iniciativas\\_mode=mostrarDetalle&\\_iniciativas\\_legislatura=XIV&\\_iniciativas\\_id=122%2F000109](https://www.congreso.es/web/guest/proposiciones-de-ley?p_p_id=iniciativas&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&_iniciativas_mode=mostrarDetalle&_iniciativas_legislatura=XIV&_iniciativas_id=122%2F000109)

2.- Proposal of the Organic Law that modifies the Organic Law 6/1985, of 1st July, of the Judiciary for the reform of the electoral procedure of the members of the General Council of the Judiciary corresponding to the judicial shift and for the establishment of the legal regime applicable to the acting CGPJ.

The reform modifies the assignment of the twelve members of legal origin of the CGPJ (12 out of 20), reducing the qualified majority of three fifths (3/5) of legislative chambers to the

simple demand of an absolute majority. If 8 of the 20 members are currently elected by Parliament, the result obtained is that all 20 members would be elected by the political power resulting from the ballots. The stated purpose of the reform is to guarantee a quick renewal of the CGPJ every time its 5 year term finalises, but the unspoken aim is for the political power arisen from circumstantial majorities to elect the CGPJ and thus also the judges of the highest judicial instances of the country.

The underlying ideology is incompatible with the separation of powers, seeing as judges must be sensitive to political influence, as justice emanates from the people. It is a vision long overcome that brings us back to archaic forms of social organization, more characteristic of the Middle Ages than of an advanced democracy. This premise is a sophism because the Judiciary, unlike the other two powers, does not represent majorities, but instead is legitimised by the application of the law to each specific case.

The intended reform is a source of legal corruption, as the reports of GRECO have repeatedly claimed.

[https://www.congreso.es/web/guest/proposiciones-de-ley?p\\_p\\_id=iniciativas&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&\\_iniciativas\\_mode=mostrarDetalle&\\_iniciativas\\_legislatura=XIV&\\_iniciativas\\_id=122%2F000090](https://www.congreso.es/web/guest/proposiciones-de-ley?p_p_id=iniciativas&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&_iniciativas_mode=mostrarDetalle&_iniciativas_legislatura=XIV&_iniciativas_id=122%2F000090)

[https://www.congreso.es/public\\_oficiales/L14/CONG/BOCG/B/BOCG-14-B-120-1.PDF#page=1](https://www.congreso.es/public_oficiales/L14/CONG/BOCG/B/BOCG-14-B-120-1.PDF#page=1)  
3.- Draft Law of Criminal Prosecution, passed by the The Council of Ministers on 24th November 2020.

It implies the complete structural modification of Spanish criminal procedure, by which criminal procedure is assigned to prosecutors, maintaining its pyramid structure within the orbit of the Attorney General appointed by the government, and with the sole guarantee of autonomy of decision, but not of independence. Their performance would be ruled by the criterion of legality, but also by that of opportunity. Likewise, the scope of practice of popular accusation is reduced.

## Anteproyecto de Ley de Enjuiciamiento Criminal

Regarding said reform in criminal procedural law which assigns procedure to the Public Prosecutor, which has a history of legislative projects in 2011 and 2013, the Platform has elaborated a multitude of legal reports and studies, such as the Green Book on Criminal Investigation. From it we can highlight the following considerations:

- What matters is not who investigates but how it is investigated. It is indifferent that who investigates are judges or prosecutors. What matters is that the governing body is independent, unbiased and immovable. Criminal instruction subjected only to legality is a necessary condition to guarantee equality under the law and legal certainty; only then can fundamental rights be guaranteed.
- These procedural reforms cannot be justified under the pretext of granting criminal instruction of greater efficiency and efficacy, because there are very useful reforms that can be made in criminal procedure to provide it with greater efficacy and celerity that wouldn't

imply such strong politicization; such as, assuring the unnecessary reiteration of police action under judicial authority, restricting the possibility of appealing reform in actions of mere formality during the instruction, streamlining the elaboration of expert reports through an increase in staff of forensic doctors, psychological experts, psychosocial staff or accounting experts.

<https://www.dykinson.com/libros/libro-verde-sobre-la-investigacion-criminal/9788413770994/>

Currently, Spanish Prosecution has a unitary and strongly hierarchical structure. Thus, at the top of the pyramid, we can find the Attorney General and each and every one of the prosecutors under their orders. Senior prosecutors can issue orders to hierarchically subordinate prosecutors; can summon a prosecutor to their presence and can give specific instructions and remove them from their positions and replace them with other prosecutors in the management of affairs. Prosecutors depend on their superiors not only for the endorsement of their reports and procedural positions in the specific procedure, but also for their work conditions (time off, vacations). Superior prosecutors also hold disciplinary powers with regard to their subordinates.

Spanish Prosecution does not have the minimum guarantees of independence and impartiality: the appointment of the Attorney General is done by the government. The appointment of the Fiscal Council and of the high positions of the Prosecution are done discretionally, but without objective and regulated criteria and in a much more opaque way than that of the magistrates of the Supreme Court. All this entails a strong politicization of the institution, which has been exacerbated in recent times with the appointment of current Attorney General, Dolores Delgado, who came into this position directly from her previous position as Minister of Justice and member of government overnight.

Public opinion and the citizenship in no way see the Prosecution as an institution independent of the political power. The expressions of president Mr. Pedro Sánchez were very unfortunate in an interview on Radio Nacional in Spain that went around the country for days:

“—Who does the Prosecution depend on? —Sánchez asked.

—On the government—replied the journalist, hesitantly.

—So that’s it— said Sánchez”

[https://www.telecinco.es/informativos/nacional/fiscalia-arremete-contra-sanchez-dudar-independencia-justicia-detener-puigdemont\\_18\\_2846820176.html](https://www.telecinco.es/informativos/nacional/fiscalia-arremete-contra-sanchez-dudar-independencia-justicia-detener-puigdemont_18_2846820176.html)

Therefore, granting the instruction of legal causes to prosecutors would entail an unacceptable politicization in criminal justice, unbecoming advanced democracies; we would be subjected to chief prosecutors that are either conservative or progressive which would give orders according to the government's criminal policy. The presence of impartiality in criminal justice would be destroyed.

4.- Draft of Organic Law of Measures of Organisational Efficiency of the public justice system, with imminent approval of the Council of Ministers after passing the formality of public consultation.

In parallel to the attribution of criminal instruction to prosecutors, this law also creates Trial Courts, so the 3718 currently existing uni-personal courts in Spain would be transformed at the end of 2021 into 431 courts whose presidents would be chosen discretionally by the CGPJ (hand-picked, as perceived by the judicial career when the CGPJ uses discretionary powers). The risk of those elected being the closest or most loyal to the political power represented in the Council instead of the best, is evident.

The problem lies in that the presidents of the Trial Courts would have the power to request plenums to unify jurisdictional criteria, remove judges from the affairs they are familiar with, hand out issues, inform about authorisations or plan vacations of the judges of the court, which gives rise to a source of dependency or hierarchy of the judge toward their superior hitherto unknown among judges.

<https://confilegal.com/wp-content/uploads/2020/11/Consulta-publica-APLO-Eficiencia-Organizativa-FORMATO.pdf>

3.- The urgent, necessary and indispensable intervention of European institutions. All these legislative reforms are being processed urgently, with parliamentary activity exceptionally leaning on the month of January 2021 to guarantee at least the reform of the LOPJ in order for the CGPJ with extended term not be able to continue assigning Supreme Court magistrates, presidents of Supreme Courts of Justice and presidents of Provincial Courts.

In order to streamline the process, they are foregoing the prescriptive hearing procedures

which must be granted to all sectors involved (CGPJ, European Commission for Democracy through Law [Venice Commission-European Council] , judicial and fiscal associations, unions of the Justice Administration, autonomous communities). Said hearing procedure is prescriptive, according to what is expressly indicated in the jurisprudence of the TJUE and in the recommendations of the European Commission 2017/1520 and 2018/103.

The CGPJ issued an agreement on 17th December 2020 condemning the realisation of these procedures without the prescriptive reports and hearings.

<https://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/El-Pleno-del-CGPJ-acuerda-pedir-al-Congreso-que-le-solicite-informe-sobre-la-proposicion-de-ley-del-PSOE-y-Unidas-Podemos-para-la-reforma-de-la-LOPJ>

Throughout the months of December 2020 and January 2021 there have been several inquiries by the Commissioner for Justice, Mr. Didier Reynders, in several encounters with the Spanish ministers of Justice and External Affairs, as well as by the spokesperson of Justice of the European Commission, in which they have expressed not just the need to gather previous favourable reports of the Venice Commission to carry out the reforms currently in progress, but also the need to comply with European standards of judicial independence which state that judicial members must be elected by the judges and that there must be no intervention of political authorities in their appointment.

[https://www.abc.es/espana/abci-bruselas-advierte-politizacion-amenaza-cgpj-202012100215\\_noticia.html](https://www.abc.es/espana/abci-bruselas-advierte-politizacion-amenaza-cgpj-202012100215_noticia.html)

Despite all this, the Board of Congress has issued an agreement on 13th January 2021, [https://www.congreso.es/public\\_oficiales/L14/CONG/BOCG/B/BOCG-14-B-137-3.PDF#page=1](https://www.congreso.es/public_oficiales/L14/CONG/BOCG/B/BOCG-14-B-137-3.PDF#page=1) in which, ignoring such indications, it rules out asking the Venice Commission for a report regarding the draft law of reform of the CGPJ with expired term to take away their functions of discretionary appointment of judges.

The Platform, in light of this flagrant violation of communitarian legality, forwarded this complaint to the European Commission and Parliament

<https://plataformaindependenciaindicial.es/2021/01/14/la-plataforma-acude-a-europa/>

On 21st January 2021, in an urgent meeting convened explicitly to study the negative

response of Congress and to formulate an institutional response as the highest body of the government of the Judiciary, CGPJ gave in to its strongly politicised extraction and has once again issued an agreement in which, after an apparent claim of separation of powers, it simply urges political parties PP and PSOE to unblock the renewal. It neither calls out the European Commission or the Parliament, despite being the highest guarantor of judicial independence.

<https://confilegal.com/20210121-el-cgpj-advierte-que-la-tramitacion-urgente-y-sin-audiencia-de-la-reforma-de-psoe-y-podemos-no-respeta-las-exigencias-del-principio-de-separacion-de-poderes/>

The Platform, in light of this lack of leadership of the CGPJ and the severity of the attack on the separation of the powers and the fundamental rights regime and freedoms of which judges are guarantors, presents this complaint to the European Commission and the European Parliament.

In any case, regarding the fact that the CGPJ seems to insist on its legitimacy despite being a strongly politicised body and is asking political parties to unblock the renewal, we must say that currently, the negotiations supposedly happening between the political parties for the renewal of 3/5 of the Parliament of the members of the CGPJ are being done outside any kind of control, with no documentation whatsoever and outside the parliamentary field.

The Platform has written a report that accentuates the expiry of the renewal process of the CGPJ, currently in process and started in the year 2018, in accordance with Article 207 of the regulation of the CGPJ, therefore any appointment made by virtue of said expired procedure would be void. The renewal process should be started from the beginning and there should be new nominations presented, at least to comply with current legislation.

**Comunicado sobre la nulidad de la renovación del Consejo General del Poder Judicial**

4.- Warn that political control of the appointments of the members of the CGPJ in Spain has important implications, affecting the independence of the Judiciary, the rule of law and democracy itself.

I.- The CGPJ carries out the appointment of the high instances of Spanish magistrates, not only of the presidents of the autonomous higher courts and their chambers, of the presidents of Provincial Courts and the National High Court and its chambers, but also that of the magistrates of the Supreme Court and other high positions in the different services of the CGPJ, such as the services of Inspection, Training, Staff, MUGEJU (judicial mutuality), International Relations, Judicial Academy and Disciplinary Action.

It is of special importance the appointment of the magistrates of the Second Chamber of the Supreme Court, seeing as this is the one competent to investigate and judge criminal cases against members of the government and Parliament, on grounds of the special assessments that occur in them.

It's also important to consider the assignment of the magistrates that compose the Third Chamber of the Supreme Court, of the contentious-administrative jurisdiction, since it is the

one competent to judge management acts of the government both central and regional, and definitely, the legality of the activity performed by Public Administrations.

The problem lies in the fact that there is a growing number of positions designated discretionally by the CGPJ and the discretionary decision has become a way to reward and punish the track record of judges. An additional tool, used in recent years by the CGPJ to repay favours, is the discretion in granting service commissions, in other words, the coverage of vacant positions in high courts by judges with other destinations.

The “discretion”, understood in terms that make it synonymous with “arbitrariness”, is in itself a source of institutional corruption, in the way it is applied by the CGPJ. In this sense, the Group of States against Corruption of the Council of Europe (GRECO), after the reform by Organic Law 4/2018 of article 326.2. LOPJ and its following regulatory development, continues to claim that Spain does not comply with the requirement of avoiding the appearance of bias in appointments, since there isn't an establishment of previous and public rules for the appointment of judges concerning each kind of court, but instead there are a set of previous generic rules in a regulation and in every call the requirements for appointment are established ad hoc, which favours the CGPJ to ensure itself the appointment of the pre-selected or preferred candidate.

The Platform has elaborated reports on these discretionary appointments, reaching devastating conclusions.

**Nombramiento Sala 3ª TS: informe del acuerdo del CGPJ de 12/09/19**

Likewise, the Platform has elaborated a set of foundations for the reform of the current regulation of discretionary appointments with aim to objectify the appointments and has elaborated a report on the relevance of introducing the horizontal career of the judges, not only to encourage a very hopeless career in foundation facing the reality that only few thrive (the “gowned politicians”), but also to boost the improvement and acquisition of new professional competences through assessment of performance. The judges wouldn’t have to thrive up to the high judicial powers to achieve adequate retribution and recognition of their professional competence and their merits.

**PROPUESTA AL CGPJ: bases nombramientos discrecionales**

<https://confilegal.com/20190420-la-carrera-horizontal-la-solucion-para-el-futuro-de-la-judicatura-espanola/>

CARRERA HORIZONTAL JUDICIAL II

Sometimes, the LOPJ itself favours the CGPJ into making a deviated use of its discretion. The access to a judicial career by the so-called autonomic shift, presented in article 330.4 LOPJ, allows for one out of three magistrate vacancies of the civil and criminal chambers of the Supreme Court to be covered by the CGPJ with appointments made among highly regarded jurists with over ten years of practice in the profession from a list presented by the Autonomous Assemblies. These judges in many scenarios are in charge of knowing the procedure and possible prosecution of the same autonomous deputies that have proposed them for the position, and in any case, compose an important body of jurists within the judicial career in which the ideological component is defining and key to their assignment.

II.- The appointment of the high judicial positions in the technical organs of the CGPJ or in other constitutional areas seem to respond to the will to reward or to return favours, apart from being a form of “horse trading” within the two existing factions in the CGPJ (conservative and progressive members). These appointments set apart from merit and capabilities generate a series of interests and dependencies toward the political power. As such, we can currently see news reports where it is suggested, for example, to nominate the

current president of the Constitutional Court for president of the CGPJ and Supreme Court, or the new appointment of the current CGPJ president as a new spokesperson for the Constitutional Court, both cases to compensate for services given supposedly through specific decisions or rulings issued in interest of the political power.

[https://www.cope.es/actualidad/espana/noticias/estos-son-los-candidatos-presidir-cgpj-llega-a-cuerdo-para-renovacion-20201026\\_963588](https://www.cope.es/actualidad/espana/noticias/estos-son-los-candidatos-presidir-cgpj-llega-a-cuerdo-para-renovacion-20201026_963588)

III.- The system is also prone to the establishment of the so-called revolving doors in the judicial field, and favours the appearance of “gowned politicians”, giving judges the possibility of going directly from politics to jurisdictional practice and vice-versa by virtue of a reform introduced in 2011 by LO 12 /11 on 22nd September.

This reform allows judges to hold any political office or government trusted position either central or autonomic, or a representative public position of choice at any level, by way of the special service agreement, which sums up in terms of seniority within the hierarchy. The reform retro-actively benefited all the judges who had previously occupied political positions. This agreement allows said judges to return to their position and apply for any other, aside from maintaining their seniority in the judicial career, so that while they develop their political career without any time limit, they simultaneously develop their judicial career, and then, by virtue of acquired contacts, they can be hoisted to the highest points of the judicial career through discretionary appointments made by the CGPJ. For example, the current Minister of Justice, who has not issued a single ruling since 2000 due to being in special services, could be appointed magistrate of the Supreme Court when he returns to the judicial career.

GRECO has stated that this revolving door system is problematic from the perspective of the separation of powers and the necessary independence of judges in the form and the content, by providing a return ticket to the judicial career.

Additionally all this leads to the division of the judicial career by an invisible but very real horizontal line, between the judges in the foundation, who have entered mostly by open shifts, unbiased and independent, and the judicial peak of the high courts, who, by being in charge of the resolution of high profile cases, corruption cases and judicial matters that

involve high political charges, their rulings are perceived by citizens as media-influenced with spurious interests. Further proof of that glass ceiling is the scarce presence of women in the higher positions of the judicial hierarchy, despite being represented more and more at the bottom. The second Plan For Equality of the judicial career passed by the CGPJ recognises the non-compliance of the 60/40 ratio in maximum responsibility positions, which constitutes a “democratic anomaly” as expressed in the United Nations report of 17th June 2015 (page 70). All this pushes society away from their judges, extending a climate of distrust which questions the normal operation of democratic institutions.

IV.- The independence of Spanish judges is also seriously threatened via the system established for the demand of disciplinary responsibility, since the disciplinary proceedings of Spanish judges and magistrates are processed by the position of the Advocate for Disciplinary Action, assigned by the CGPJ also in a totally discretionary manner, whose term coincides with that of the CGPJ that has assigned them, which can order the initiation or continuation of proceedings against their criteria. The proceeding is resolved by the Disciplinary Commission of the CGPJ, composed by members who are mostly of judicial extraction, but without forgetting that even those are chosen by the politicians, thus putting Spain in the same line of non-compliance pointed out by the ruling of the TEDH on 21st June 2016 in the case of Nunes Carvalho vs Portugal. Furthermore, the Advocate for Disciplinary Action can use information proceedings without an expiry date to intimidate judges who are belligerent to the political servitude of the CGPJ.

The European Commission has decided for the first time to intervene the Judiciary of a country of the Union due to the lack of independence from the legislative and executive powers. Therefore, by the resolution of 8th April 2020 the TJUE provisionally suspends an entire chamber of the Supreme Court of Poland, one which had been attributed the competences for the knowledge of disciplinary procedures against Polish judges, considering that the entirety of the members of the CNPJ (National Council of the Judiciary) in Poland and the magistrates that compose the disciplinary chamber of the Polish Supreme Court were not independent and unbiased, since their appointment depended on the legislative and executive powers (first by assigning the members of the CNPJ and afterwards, those

assigning the magistrates of the chamber of the Supreme Court). The parallelism with the Spanish system is flagrant, since the CGPJ members in Spain are also chosen by the legislative power and the CGPJ also, discretionally, assigns the entirety of the magistrates that compose the 6th section of the Chamber of the contentious-administrative jurisdiction of the SC, in charge of revising disciplinary sanctions given to Spanish judges and magistrates. We find ourselves in the same situation as Poland. And with the reality that is more than a mere threat of the urgent application of a series of legislative reforms that directly attack the already deficient independence of the Spanish Judiciary. When will the Commission intervene?

V.- This fracture of the independence of the Spanish Judiciary, lastly, can affect the effective and necessary control of the legality of the electoral process by the Central Electoral Board, the highest body of the electoral Administration, which ensures the transparency and objectivity of the electoral process.

The independence of the Central Electoral Board is underpinned by the impartiality and independence of the eight magistrate members of the Supreme Court chosen by sortition by the CGPJ; seeing as the other five members are Law Professors chosen by the political parties (art. 9 LOREG). The problem lies in the fact that the entirety of the magistrates of the Supreme Court have already been chosen beforehand, discretionally by the CGPJ.

4.- This landscape would be incomplete without a reference to the scarcity of financial resources that the Spanish State assigns to justice, whose ratio of judges is below the average of the European Union (Report by the Commission for the Efficiency of Justice of the Council of Europe, pages 45 to 47). From this hardship, commercial and social jurisdiction are predicted to be the most stricken, hence the contraction of economic activity stemming from the global epidemic will entail an avalanche of lawsuits related to companies in difficulty which threatens to collapse the courts.

The severe and anomalous situation in which Spain is right now with regard to the other member states of the EU in terms of judicial independence also has serious consequences from the point of view of economic development. Spain has reinforced the drop of the Gross Domestic Product (GDP) of the Eurozone in the current pandemic situation, so it is necessary

to strengthen the rule of law and legal certainty, so as to ensure the recovery, economic development and the proper usage of the European Recovery Fund.

This drop in the GDP will imply at least an increase in the input of issues in the Social Courts of over 100% and in the Mercantile Courts of over 200% in the year 2021. Nevertheless, during the months elapsed since 14th March 2020 when the alarm state was declared, the executive power has not granted Justice the necessary means to face this serious situation, since not only was it paralysed for three months, but also, the basic measures to increase the judges per inhabitant ratio from 11/100.000 inhabitants to the European average of 20/100.000 have not been taken.

It is necessary to guarantee the proper functioning of the Mercantile Courts, with the aim of preventing many of the companies undergoing bankruptcy from disappearing definitely, and so, in the recommendation of the Council of 20th July 2020,

file:///C:/Users/73563302X/Downloads/Z00054-00061.pdf, its point 28 establishes the need to adopt measures to preserve the capacity of the judicial system to efficiently deal with the insolvency proceedings, but the government, neglecting these recommendations, only prompts legislative reforms that entail a serious assault on the independence of the judicial system. And seems to be concerned only with controlling the appointment of high judicial positions.

## 5.- Requests.

Spain is currently without a truly independent Judiciary. Our situation is now similar to countries like Poland in which there has been an intervention and complaint by the institutions of the European Union.

If the application and passing of the legislative reforms mentioned above continues, the fracture of the principle of the division of powers will materialise.

The European Commission must intervene with urgency and firmness, and before the final approval of said legislative reforms, demanding Spain to comply with the European standards in terms of judicial independence.

There must be a demand for the immediate halt of the legislative reforms in progress and the modification of the system of appointment of the twelve judicial members of the CGPJ so they

can be chosen by their equals, in conformity with what has been informed repeatedly in terms of the Council of Europe.

It is no longer enough to simply follow the developments closely, nor do the recommendations of the Commissioner for Justice Mr. Didier Reynders seem to be sufficient, since the Spanish government has ignored them.

The PCIJ will appeal to all institutions of the European Union to defend the independence of the Spanish Judiciary, presenting a formal request to the Committee on Petitions of the European Parliament (PETI) and the European Ombudsman.

For all that,

The PCIJ expects the written response that the Commission should give to the complaint already filed

<https://plataformaindependenciajudicial.es/2021/01/14/la-plataforma-acude-a-europa/> , awaiting the acknowledgement of receipt and processing, all this in accordance with the regulation in terms of transparency in the communitarian field.

And we formulate this complaint to demand the European Commission to put into motion their control mechanisms in light of the existence of a clear infraction and to activate the alert mechanisms expressed in article 7 TUE, in order to carry out judicial actions through the procedure of infraction (art 258-260 TFUE) against the member states that do not respect the Law of the Union, be it, in either case, through the initiation of a dialogue procedure with the Spanish government, similar to the one applied with Poland and that brought about the initiation of the so called Rule of Law Framework in January 2016.