



# PLATAFORMA CÍVICA POR LA INDEPENDENCIA JUDICIAL

Dear Ms. Johansson and Ms. Jourová:

We send you this letter on behalf of the “**Plataforma Cívica por la Independencia Judicial**” (PCIJ), a **non-profit, transversal citizen association, made up of jurists and other civil society professionals**, in relation to the letter sent by Mr. Carles Puigdemont and Mr. Antoni Comín, dated May 27, 2024, in which they refer to the “*Practical Guide on the possible raising of questions of unconstitutionality and/or European preliminary rulings regarding the amnesty law*”, a document elaborated by members of this Platform. This document can be examined at this link: <https://plataformaindependenciaindicial.es/2024/05/20/europa-frente-ley-aministia-guia-planteamiento-cues-prejudiciales-ante-tribunal-justicia-union-europea-200524/>

Predictably, the aforementioned law will be passed on Thursday, May 30, by the Congress of Deputies, after the veto in the Senate. As it has been pointed out by various media, and it is known by the senders of the mentioned letter, the law will probably generate the raising of multiple questions in the various criminal cases dealt with in different courts, mainly in Madrid and Catalonia. It is a legally complex issue. Many different questions will be probably raised regarding the multiple and different doubts about its constitutionality or adaptation to European regulations that the judges called upon to apply each of the articles of the law can harbour.

The Civic Platform for Judicial Independence -acting the same way as with other legislative reforms, and always from the perspective of the Rule of Law- **has been carrying out various actions in relation to the projected amnesty law**: legal reports, communications, debates with legal experts, intervention in the media, etc; all of them can be consulted at this link <https://plataformaindependenciaindicial.es/publicaciones/>. Coinciding with the presentation of the bill in the Congress of Deputies, we submitted a **petition to the Petitions Committee of the European Parliament**, which was declared admissible and is being processed under **number 1,230/2023**, pending now of preliminary investigation by the European Commission and evaluation by the Committees of the European Parliament on Civil Liberties, Justice and Home Affairs (LIBE) and by the Economic and Monetary Affairs (ECON), in order to ascertain whether the law to be approved respects the rules of the European Union and the Rule of law.

The Guide questioned by Mr. Puigdemont and Mr. Comín, as it indicates at the beginning of its text, is intended to provide information and models to those interested in the amnesty law, its effects and the viability of raising questions of constitutionality or European preliminary rulings on it. **The judges, in the exercise of their exclusive jurisdictional power, are free and independent to raise those questions, or not, as they consider and if they deem it appropriate, and, if they raise them, to use, or to use not, the Guide.**

That Guide **is just another tool, among others, that can be taken into account, or not taken, by any judge.** The website of the General Council of the Judiciary (at this link: <https://www.poderjudicial.es/cgpj/es/Servicios/Cuestiones-prejudiciales/Informacion-sobre-el-procedimiento>) provides information on the procedure of the preliminary question before the Court of Justice of the European Union, and is linked to the “Recommendations to national courts, relating to the submission of preliminary questions” (2019/C380/01) that the CJEU itself made and that have served as a basis to prepare some models of judicial resolutions that are disposable at that link; also attached there are the “Recommendations and practical advice in the formulation of preliminary questions to the CJEU” prepared by the Network of Specialists in Law of the European Union of the CGPJ (REDUE) in June 2023.

Likewise, there are various forms and procedural models in different databases with public or private access, and in books, on countless subjects. Using those models, reflectively applying an adapting them to the specific case, doesn't compromise the independence and full autonomy of the judge who uses them totally or partially at his or her own discretion.

In the specific case of the “Practical Guide” aforementioned, **strictly legal and technical arguments are presented.** Obviously, the law -it couldn't possibly be any other way, assuming its aim- arises strong political issues, as Mr. Puigdemont and Mr. Comín hope to benefit from its application demonstrates. That is the reason why they attack any legal tool that could suspend or slow down the achievement of their objective. But this fact doesn't affects to the contents of the Guide, that is not political, but legal, technical, and based solely on norms and precedents.

The relevant legal value of the considerations contained in the Guide has been evident since the publication of its first version on January 18, 2024. It has been updated during the parliamentary processing of the bill (with another version published on March 18, and the final one on May) and **has served the very drafters of the pending law** to try to correct technical and substantive defects that could prevent or hinder its enforcement and the achievement of its desired effects.

This Guide **takes into account many of the reflections and considerations provided by legal doctrine and contained in various reports, and compiles precedents on the various aspects discussed.** As it is well known by the European institutions - because different petitions and complaints have been raised by various groups, associations and Spanish platforms- numerous jurists are questioning the projected amnesty law as being contrary to the Constitution and basic principles of the Rule of Law in the Union, such as equality, legal certainty, separation of powers and judicial independence, exclusivity of jurisdictional power, effective judicial protection and non-arbitrariness. Several reports question the legality of the bill, both due to its content and the irregular procedure followed, and highlight that the alleged purpose (reconciliation) is false since it does not correspond to the real goal (barter for parliamentary support). Thus, among others: the Opinion of the Venice Commission published on March 18, 2024 on the rule of law requirements of amnesties, with special reference to the parliamentary bill in Spain; the report of the Senate Lawyers published in March 2024 raising the same doubts about constitutionality and fit into European law as the report issued in January 2024 by the Lawyers of the Congressional Justice Commission; and the report of the Plenary Session of the CGPJ published on March 21, 2024. The legal arguments that would support the raising of questions of unconstitutionality before the Constitutional Court and preliminary questions before the CJEU

are devastating and are thus compiled in the Practical Guide prepared by members of this Platform.

This Guide has been disseminated through our website, to our partners and subscribers, through social networks, in various conferences and interviews in the media and, like other actions of the Platform and of Judicial Associations, through the official email account of the judiciary by one of our members, who is a magistrate. He has shared the document with their colleagues through that email platform, administrated by the General Council of the Judiciary. The magistrate acts in this point in **compliance with the Principles of Judicial Ethics No. 3, 5, 21 and 31** of the text approved by the CGPJ on December 20, 2016 and which can be accessed at this link: <https://www.poderjudicial.es/cgpj/es/Temas/Etica-Judicial/Etica-Judicial/Principios-de-Etica-Judicial/>

**The General Council of the Judiciary has nothing to do with this dissemination, neither the lack of renewal of its 20 members by the Congress and Senate mentioned by Mr Puigdemont and Mr Comín in their letter.** That lack of renewal is a serious problem but has no connection with the present issue. It is the result of a political deadlock caused by the traditional attempts of the Spanish political class to intervene in the judiciary.

In short, with this Guide, judges are not required to present European unconstitutionality or prejudicial questions, their judicial independence is not affected, the law or the legislative power are not attacked, and democracy is not put in danger, as alleged by Mr. Puigdemont and Mr. Comín. Quite the contrary, **the intention of Guide and the rest of the actions carried out by this Platform is to help the law prevail, specifically the Spanish Constitution and the European regulations, to which the Spanish judges and courts are subject.** Judges and courts that must be left to work freely and without interested media and political pressures. Questioning the Judiciary or trying to influence its operation is not the way to maintain the rule of law. The intention of the Platform is not to influence judges, but to give help and tools to those that, in the use of their independence, decide to raise questions about the amnesty law to higher courts.

Based on all the aforementioned, we once again urge the intervention of the European institutions to defend the basic principles of the Rule of Law in Spain. In these crucial moments, **the European authorities constitute the last guarantee for the preservation of the rule of law that is in clear and present danger in Spain.** Europe has also a lot at stake here.

The situation must be contained quickly. We are waiting for your news.

Yours sincerely,

Jaime Lozano Ibáñez

Vice President of Civic Platform for Judicial Independence

Elena Sáenz de Jubera Higuero  
Notary-Administrator of the Civic Platform for Judicial Independence