

**Draft**

**EUROPEAN ASSOCIATION OF JUDGES**

**STATEMENT**

**on matters currently affecting**

**THE INDEPENDENCE OF THE JUDICIARY**

**in**

**SPAIN**

At its meeting in Warsaw on 26 April 2024 the European Association of Judges (EAJ) was informed by its member association from Spain, namely the Asociación Profesional de la Magistratura, of matters which seriously impinge upon the working of the system of justice and the independence of judges in Spain. The concerns fall under two heads -

**First**

Since 2018 the functioning of the Spanish Council of the Judiciary (*Consejo General del Poder Judicial*) has been impaired by political disagreements in the Spanish parliament, which have prevented the appointment of new members of the Council. This resulted in a situation in which the Council is run by previously elected members, whose mandates have long expired. This already unsatisfactory situation was greatly exacerbated in 2021 when the Parliament disabled the Council from performing its function of appointing senior judges, including in particular judges of the Supreme Court and certain presidents of courts. This is particularly detrimental in the Supreme Court, where there are currently a significant number of vacancies which cannot be filled and which hinders and delays the Court in carrying out its judicial work. Although the European Commission in its Rule of Law Reports in 2022 and 2023 drew attention to the problem and urged the Spanish authorities to remedy the situation, no steps have been taken to do so.

The EAJ further stresses that the appointment of judicial members of a General Council of the Judiciary must be made by the judges themselves, as has been repeatedly stated by various

European bodies as well as by the International Association of Judges (Article 2-3 of the Universal Charter of the Judge)<sup>1</sup>.

A statement issued on 2 April 2024 by the European Network of Judicial Councils and the President of the EAJ called for efforts to be made to enable the Judicial Council to resume full functioning and for the appointment of its members to be made in accordance with European standards. But the situation remains unchanged.

Therefore, in further support of those calls, the EAJ in general meeting in Warsaw –

**Urges all political parties in Spain to increase their efforts to resolve the parliamentary impasse and to ensure the restoration of a fully functional Council of the Judiciary with its judge members elected by their fellow judges**

## **Secondly**

Following the last general election in Spain agreement was reached among the governing parties for the promulgation of legislation (a) granting amnesty to those whose efforts to bring about the independence of Catalonia resulted, or might result, in criminal conviction and (b) providing powers to conduct inquiries into judicial decisions relating to investigations and criminal convictions of those engaged in advancing the attempted secession of Catalonia. Such inquiries would involve summoning judges to appear before parliamentary committees of inquiry to explain their decisions and, in particular, to answer allegations of taken judicial decisions for political motivations (colloquially referred to as "lawfare"). The proposal has been accompanied by public accusations of "lawfare" made by some politicians against certain judges.

The EAJ considers it wholly incompatible with judicial independence that judges be required to account for their judicial actions before other branches of government. Erroneous judicial decisions should be corrected through the appellate structures and any alleged misconduct by a judge may be subject only to disciplinary procedures (for example before a council for the judiciary, where the council has that role) or, in the case where a judge is accused of having committed a criminal offence, by criminal prosecution. Under no circumstances can

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<sup>1</sup> «The Council for the Judiciary must be completely independent of other State powers. It must be composed of a majority of judges elected by their peers, according to procedures ensuring their largest representation» (Art. 2-3, para 2, IAJ, The Universal Charter of the Judge).

the summoning of a judge before a parliamentary investigation committee to defend his or her judicial decision be acceptable since such a course of action constitutes a clear attack on judicial Independence<sup>2</sup>.

The EAJ observes moreover that proper respect for the separation of powers and judicial independence requires that public criticism by politicians of judicial decisions must be made within the sphere of moderation and institutional respect.

The EAJ therefore –

**Calls upon the parliamentary and governmental authorities in Spain immediately to refrain from proceeding further with these proposals for calling into question before parliamentary commissions the decisions taken by judicial office holders, and to stop campaigning against judges accusing them of "lawfare".**

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<sup>2</sup> A proposal clearly rejected by the Venice Commission in its recent Opinion CDL-AD(2014)003 para 126.