ANSWERS TO THE 1st STUDY COMMISSION.

1) Provide at least one example, which can be used as a case study, of an occasion in your jurisdiction where a judge, the judiciary or the courts have been unfairly criticized by:

a) a politician or politicians;

b) The main means;

c) Social networks.

Please attach the actual examples to your response.

Recently, on the occasion of the conflict of those who were politically responsible for Catalonia, over whom there is an accusation of rebellion, embezzlement, disobedience and other crimes, most of them being held in provisional prison. An event was held in February 2018 at the Bar Association of Barcelona in which the current President of the Parliament of Catalonia assured the attendees, that in Spain there were "political prisoners" and that "human rights were not respected". The ceremony was attended by the highest judicial authorities in the region, who left their seats, feeling offended by the speech of who held the maximum political representation in Catalonia.

These accusations are common in the media that are financed with Catalan budgets, such as Catalan television (TV3), radio, and digital and written media.

Amnesty International has declared that it does not consider incarcerated "political prisoners or prisoners of conscience". However, such expressions are used repeatedly and aired in international media to discredit Spanish justice and question its independence.

Also, in relation to the conflict and with respect to social networks, there have been threats against the family of the Supreme Court Magistrate, Hon. Mr. Don Pablo Llarena, who instructed the case against the people who organized the movement that claimed the segregation of Catalonia outside the constitutional channels. Specifically, the following message was disseminated through Twitter, among others equally disqualifying: “The wife of the son of a bitch Llarena is GE, director of the Judicial School in Vallvidrera (next to the Fabra Observatory.) Lives in Sant Cugat (where comes the hdp on weekends.) You have to spread it because you have to know that you can not go down the street from now on !!!!” In it identifies the name and workplace of the wife of the magistrate, and its dissemination is requested in order to intimidate the judge and his family.

2) What effect, if any, do these critics have:

a) On the independence of the judicial power;

b) On the separation of powers;

c) On the trust of the public in the judicial power.

These criticisms have given rise to reactions, both institutional, through the disapproval of the demonstrations carried out by the General Council of the Judiciary and the State Prosecutor General’s Office, as well as criminal, having conducted proceedings for threats to the author of the
message disseminated by the networks social. Despite its extraordinary seriousness, the reaction of the institutions has been proportionate and has not affected the social credibility on the performance of judges and the perception of judicial independence.

The manifestations of political leaders as indicated, are an interference with the quiet exercise of the jurisdictional function, free of interference, and undoubtedly represent an unfortunate failure of independence and the division of powers, which is to repair with the mechanisms that establish the laws.

3)  

a) What steps, if any, were taken to deal with the criticism?  

b) How effective were those steps?

The Organic Law of Judicial Power 6/1985, of July 1 establishes the means of guaranteeing judicial independence in the following precepts:

"Article 13  
All are obliged to respect the independence of Judges and Magistrates.

Article 14  
1. Judges and Magistrates who consider themselves disturbed or disturbed in their independence shall inform the General Council of the Judicial Power, reporting the facts to the competent Judge or Court to follow the appropriate procedure, without prejudice to practicing for themselves the diligences strictly indispensable to ensure the action of justice and restore the legal order.

2. The Public Prosecutor's Office, by itself or at the request of those, shall promote the pertinent actions in defense of judicial independence."

This power is understood without prejudice to the fact that, in the case of excesses that come to integrate a crime, it is prosecuted before the courts of justice, as in relation to any other citizen.

In the examples that have been considered, the General Council of the Judiciary and the General Prosecutor of the State, sent two communiqués disapproving the unfortunate demonstrations of the President of the Catalan Parliament, considering as serious the assertions that in Spain there are political prisoners and that respect human rights.

For its part, in relation to the message disseminated in the Twitter account, the Prosecutor's Office of Tarragona, made a complaint for the crime of threats against its author, on the understanding that it could "cause unrest, anxiety and anxiety in people who in it they are designated or that of preventing or hindering their freedom to act."

4) What is considered the limit between legitimate and unjust criticism?

The Constitutional Court Decision 65/2015, of 13 April, describes an assumption in which the limits of the legitimate exercise are transferred to the criticism of judicial proceedings, stating:
"The actions and judicial decisions may be publicly criticized by citizens and the freedom to do so has, without doubt, the firm guarantee of the provisions of art. 20.1 a) EC. Thus we have already had occasion to declare it (STC 46/1998, FFJJ 3 et seq.) And this has also been pointed out, with reiteration, by the Court of Strasbourg (by all, Judgments of September 18, 2012, Falter Zeitschriften GmbH case c. Austria, paragraph 38). This critic will not leave, in general, to be legitimate because of its possible harshness of tone or language, because the Constitution protects as freedom of expression, in accordance with the circumstances, also the manifestations that are unwelcome or that may bother, injure, disquiet or displease [for all, STC 41/2011, FJ 5 d]). Obviously, complacency is not pursued here as valuable by the fundamental norm, but the affirmation of individuals and groups, together with the formation of a free and jealous public opinion in defense of the rights and interests of all.

c) The freedom of speech for criticism and, where appropriate, public censorship of judicial decisions is not, of course, unrestricted, subject as it is to the limits and conditions that, in general, we have recalled in the legal basis that preceded it. In order to judge its legitimate exercise, the singular position of the Judicial Power in the constitutional State must be borne in mind, a position which, even without descending to the current case, may lead to the rejection of ex Constitutione manifestations and expressions that would be tolerable if they had been addressed to the holders of other public offices. Unlike, in the first place, other authorities and, of course, political actors in general, the Judge - who, as such, expresses himself only through his resolutions - lacks, for obvious reasons of reservation, prudence and containment, the same capacity of personal reply with which they count to go to the step of censures to the exercise of their function that considers unjust, false or assaulting their professional honor [STC 46/1998, FJ 5; and 162/1999, of September 27, FJ 9; on the obligation, in general, of judicial discretion in relation to the image of impartiality, STC 69/2001, of March 17, FJ 14 b); also, Sentences of the European Court of Human Rights of April 26, 1995, case of Prager and Oberschlick c. Austria, paragraph 34 and, inter alia, the aforementioned in the case Falter Zeitschriften GmbH, paragraph 39]. On the other hand, the censures of a certain judge whose performance is described as partial or deliberately unfair are perceived by the citizenry - as evidenced by the common experience - with a scope and intensity of reprobation far superior to that of the diatribes or invectives that, a sometimes to the very limit of excess, they may become untied or interchange in the wake of what we have sometimes described as a "living and burning political debate" (STC 148/2001, of June 27, FJ 7), because "the normal way in which such controversies run "(STC 39/2005, of February 28, FJ 5) can relativize, to some extent, the pejorative burden of possible dictums that would recover, however, all their semantic seriousness if they had as recipients to the holders of the Judicial Power. It should not be ignored in the end, and in relation to what has been said, that the excessive criticism and lack of any foundation to the Judge in the exercise of their functions may come to affect not only their professional integrity - as was raised in the process to quo- , but also, as already indicated above, to the same confidence in justice (for all, Judgment of the European Court of Human Rights, of July 11, 2013, Morice case c. France, paragraph 107), which is one of the existential pillars of the Rule of Law. All this does not deny, of course, the previously affirmed in order to full exposure to public criticism of judicial decisions, but it must be taken into account so as not to transfer without nuances to cases such as the current one, for the reasons stated, our general doctrine [exposed, for example, in STC 110/2000, of May 5, FJ 8 c]) on the broader or less restrictive limits - but existing, with everything - of freedom of expression when it is used with the result of questioning the honour of ordinary citizens, but with the question of putting
into question, in the heat of civic and political debate and with its own dialectic, the full honesty or probity of public figures or holders of public offices which they also are”.

As a summary, it can be affirmed that the criticism of judicial decisions is widely accepted, as a manifestation of the necessary freedom of citizen expression, even that which is carried out in a particularly disagreeable tone. However, such protection does not extend to personal or professional disqualification that has the purpose of undermining the Honesty of the Judge.

5) **What approaches have been taken in your jurisdiction to improve the accuracy of information on judicial decisions and the fair treatment of judges and the justice system?**

In the scope of some Superior Courts of Justice, press offices have been established to disseminate judicial resolutions, in order to provide the public with useful and adequately treated information in order to be accessible and understood by the public, avoiding defective understandings of resolutions that may generate an unfounded criticism.

When these criticisms are made personally by those affected by the court decision, it is assessed whether the limits have been crossed, and in that case, the channels that have been mentioned are used.

6) **What have been the benefits and problems caused by these procedures?**

The benefits result from the fact that the Judge, concerned about his independence, may feel supported by the General Council of the Judiciary, receiving an institutional support that reinforces his independence and prestige.

The problems result from the absence of an effective method that accompanies the declaration to avoid persistence or reiteration in the criticism or interference and that the reaction of the General Council of the Judicial Power is seldom mediated by political interests unrelated to preserving independence judicial.

7) **What suggestions could you make to:**

   a) **improve the accuracy of information on judicial decisions; and**

   b) **fair treatment of judges and the justice system i) by politicians ii) by the media; iii) On social networks?**

The response 5 was anticipated by the existence of press cabinets in some Superior Courts of Justice. Its generalization would be a good measure to promote understanding for the public of judicial decisions.

Another desirable mechanism, from the point of view of strengthening judicial independence, would be that the Universal Charter of the Judge had a direct normative effectiveness in the European Union and could be invoked in the case of any interference, since some of them come even from organs that are called to preserve the judicial independence in the national scope that, in certain political conjunctures, are contrary to procure it, and, instead of doing it, they undermine it.
The Chair's Committee also invites each national organization to provide details on any threats to judicial independence experienced in their country or region last year.

The cases indicated are real and are only a small sample of those that are taking place in relation to the conflict in Catalonia.

Another case that has motivated the intervention of the General Council of the Judicial Power has been the denunciations against judges formulated in a coordinated manner by certain "Observatories", who have understood that the behaviour of the judges was reprehensible. Specifically, the Council has dismissed two complaints presented by these observatories, preceded by a broad press campaign, criticizing that the magistrates in question did not behave with adequate empathy with women victims of gender violence, and that they did not attend the meetings and training courses that said observatories imparted. After the instruction of the files and with the reports of the Bar Associations, it has been established that such deficient attention was not such, since the members of the judiciary treated with correctness and deference both parties (complainant and denounced), respecting Similarly, the right to the possible victims with the presumption of innocence of the accused, lacking the basis of the complaints.

However, the very fact of the complaint and the publicity given to them has served to question the professionalism of those affected, especially in particularly sensitive matters such as the one considered, even though the unfounded nature of the same has finally been established.

In the same line, although with much more serious consequences, there has been a criticism of a ruling issued by the Provincial Court of Navarre that sentenced five youths to 9 years in prison for violating the sexual freedom of an 18-year-old victim old. Scarce minutes after making public the decision of the sentence (with an extension greater than five hundred folios, that is, before it was materially possible to know its content in detail) populist political leaders and feminist organizations launched a campaign through social networks, which gave rise to very popular demonstrations in different parts of Spain and even to an attempt to enter by force in the Pamplona Palace of Justice, where the Tribunal is based; attempt that was prevented by the police.

In this situation, the Minister of Justice, undoubtedly seeking the favour of the popular currents, hastened to criticize the members of the Tribunal, even insinuating personal details of one of the magistrates who were part of it (who had formulated a particular absolution vote), of whom he said "he had a singular problem", without specifying its nature, with doubts about his capacity to exercise the jurisdictional function.

What is puzzling about the situation is that public demonstrations (both in the streets and in the media) were headed with expressions such as "we do believe you", when the basis of the sentence rested precisely on the fact that the Court granted full credibility to the testimony of the victim, or expressions like "it is not no", aspect that founded the operative part, because the crime for which it was condemned presupposes the absence of consent of the victim.

He also complained that he had not been convicted of a more severe criminal offense, the Court having understood that the typical note of intimidation was not present, although there was an abuse of superiority; end whose establishment derived from the evaluation of the test, whose
development nobody knew except the Court itself and the parties, having agreed to hold the trial behind closed doors, to preserve the privacy of the victim.

The popular "acclamation" about what was described as a completely unreasonable sentence, immediately aroused the support - without too much meditation, it must be said - of most of the political parties, which did not hesitate to criticize the lack of sensitivity of all the judges to properly interpret "the social verdict" and the need for specific gender training for them.

The General Council of the Judicial Power, faced with such serious incidents, through its president, merely sent a brief statement requesting respect to the judges, although some members, in their private capacity, have held public demonstrations in support of the magistrates.

The judicial associations have been present in the media to clarify the concepts and provide truthful information that helps the public to form a well-founded knowledge about the matter, and, although the criticism has been sent, the truth is that the damage to the image of the judges has been important and has compromised the possibility that the superior instances that have to know about the appeals that have been filed against the sentence, act with freedom of judgment at the time of prosecution.

Proposal for the theme 2019.

You are asked to present your proposals for possible topics to be addressed in 2019 along with the answers to the questionnaire. The reason is that we would like to investigate before the meeting in Marrakech to know if a topic has been dealt with previously and if there are already standards, opinions and recommendations in relation to a topic. It also allows us to prepare possible topics for delegates to review in 2019. Please send your detailed answers, no later than June 30, 2018, to the Secretariat and to the Council of the First Study Group.

As a proposal to be considered, the strategies of the populist political parties in relation to the judiciary and to what extent they promote respect for judicial independence, or their attack as a means to abolish the separation of powers could be assessed.