



Today the European Association of Judges (EAJ) took notice that the political formations that compose the present Government in Spain presented a legislative proposal to amend the existing system of election of members of the High Judicial Council, altering the system of reinforced majority in the Parliament to one that allows a simple majority.

The members of the Judicial Council, in particular the judges, will continue to be elected by the Parliament and not by their peers.

Regarding this legislative reform, the EAJ wants to highlight, once again, the European standards on the composition of the councils of the judiciary and on the election of their members.

The European Commission Recommendation stated in its section 3.3 that “in the Member States in which a Council of the Judiciary has been established, its independence is especially important to avoid influence Government or Parliament on the independence of judges. (...) For the same reason, entrenched European standards, in particular the 2010 Recommendation of the Committee of Ministers of the Council of Europe, determines that “no less than half of the members of the councils of the judiciary must be judges selected by their counterparts from all levels of the judicial system and with respect for the internal pluralism of the judicial system ”.

The recommendation that envisaged the Polish judiciary added: "The new rules on the appointment of judges/members of the National Council of the Judiciary significantly increase the influence of Parliament over the Council and negatively affect its independence in contradiction with European standards."

Similarly, in Opinion No. 10 (2007) of the Consultative Council of European Judges (CCJE), for the attention of the Committee of Ministers of the Council of Europe, it is clearly established:

"16. The Council of Justice can be composed either exclusively of judges, or judges and non-judges. In both situations, any corporatism should be avoided.

17. When the Council of Justice is composed exclusively of judges, the CCJE considers that such judges must be elected by their peers.

18. When its composition is mixed (judges and non-judges), the CCJE considers that to avoid any manipulation or undue pressure, the Council of Justice must have a substantial majority of judges elected by their peers.”

Likewise, in the report of the Group of States against Corruption (GRECO) on Spain of December 8, 2017, it is emphasized: "One of the key changes in this point is that the twelve members of the Council of judicial origin are directly elected by their peers". And it adds: "This is necessary not only to remedy the criticisms currently levelled within the judicial career but also to strengthen the confidence of citizens in the judicial system as a whole."

Along the same lines, the Universal Charter of the Judge approved by the International Association of Judges, states in its art. 2.3 that "the Council of the Judiciary must be completely independent of the other powers of the State. It must be made up of a majority of judges elected by their colleagues, following procedures that ensure their greater representation."

According with the above recommendations:

The European Association of Judges expresses its great concern that Spain is taking a step back in fundamental requisites for the independence of judiciary. Instead of taking advantage of this legislative opportunity to reform the system of appointment of judges to the Judicial Council by reinforcing the guarantees of independence of the judiciary, as an essential pillar of the rule of law, returning to the previous system where judges members of Judicial Council where elected by their peers, alternative which was timely proposed,

the present option will increase the risk of undue political influence in the appointment of the members of the Judicial Council, damaging the perception of the society on an effective judicial independence.