



## **The necessary, eternal and unfinished judicial reform in Spain. Marked by cosmetic changes, political urgency, lack of consensus on its objectives, inadequate public communication and widespread social distrust.**

*Rosa M<sup>a</sup>. Fernández Riveira, Associate Professor of Constitutional Law - Complutense  
University*

Why are so many countries and societies in the modern world reforming, have recently reformed, or consider it essential to undertake judicial reform in the near future? The answer must, of course, take into account the increasing power and significance of our judges in today's society.<sup>1</sup>

If we want to take a close look at the Spanish judicial model in recent times, some key points stand out:

1. The importance of the political context and evolution of the judiciary along with its various legal frameworks

In Spain, the early years following the death of General Franco and during the so-called transition process were critical. This period was especially significant for the judiciary. Among other challenges, the Constituent Assembly faced the titanic task of designing a judicial power model that matched the profound transformation introduced by the 1978 Constitution.<sup>2</sup>

Freedoms, political pluralism, representative democracy, all of this would be the new context for a judiciary that was, in part, the heir to previous power structures and, in another small part, once silent and now increasingly larger, eager to carve out its own space and express new ways of administering justice and interpreting and applying the legal system.

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<sup>1</sup> "... **¿Los jueces son ciudadanos de a pie?** No, los jueces son los protagonistas de un poder del Estado, resuelven los conflictos ciudadanos, actúan sobre derechos fundamentales y son absolutamente necesarios..." MARTÍNEZ ARRIETA ANDRÉS, [Magistrate of the Spanish Supreme Court appointed on 23 July 2025 as president of the Criminal Chamber of the Spanish Supreme Court.], *Diario de León*, 22 de septiembre de 2009: "Los jueces somos unos incomprendidos." <https://www.diariodeleon.es/nacional/90222/111838/andres-martinez-arrieta-jueces-incomprendidos.html>.

<sup>2</sup> CAMPOS AMPAYO (2024): *Los jueces en la historia de España*, Marcial Pons. TOHARIA JJ. (2025): "La imagen social del juez español (y de la Justicia): 50 años después." En *Crónica del Estado Social y Democrático de Derecho* nº 117-118, páginas 6-15.



First, Organic Law 1/1980 of 10 January on the General Council of the Judiciary, which established a council whose twelve judicial members were directly elected by the judiciary. And secondly, Organic Law 6/1985 of 1 July, which was passed by a progressive government for the first time in democracy. This law also represented the regulatory development of Article 122 of the Constitution, filling the gap left open by the constitutional text with the model of parliamentary election of judicial members. The seeds of confrontation and discontent were sown from that moment onwards. Parliamentary election versus election by peers? This question remains unresolved and is not trivial if we consider the powers that the Constitution granted to the Council in the aforementioned provision: appointments, promotions, inspection and disciplinary rules. A conflict of jurisdiction and an appeal of unconstitutionality were brought before the Constitutional Court, and its respective rulings (STC 45/1986, of 17 April, and 108/1986, of 29 July) did not resolve the problem, which remains unresolved today, but they did suggest that the asset of pluralism in the judiciary could also lead to disproportionate political strife.

## 2. The creation and legal development of the governing body of judges, our General Council of the Judiciary

The LOPJ of 1985, which has been in force for forty years, has undergone many reforms, several of which have had a significant impact on the model of the General Council of the Judiciary. In 1986, Spain joined the European Union, which also had and continues to have a permanent and necessary impact on our model and development of judicial power. Two reforms of the LOPJ sought to bring the judiciary closer to the election of the 12 judicial members and to assess (by readjusting the disproportionate initial weight of the judicial associations) the participation of the judicial career: Organic Law 2/2001 of 28 June and Organic Law 4/2013 of 28 June.<sup>3</sup>

For many years, and still today, who elects the members of the Council is of vital importance. Why? We cannot forget that the Council has a monopoly on the power of all discretionary appointments in the judicial career, of Supreme Court judges, of

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<sup>3</sup> FERNÁNDEZ RIVEIRA R.M. (2014): ¿Regeneración democrática? Algunas reflexiones sobre la nueva Ley orgánica 4/2013, e 28 de junio, de reforma del Consejo General del Poder Judicial, en Revista de Derecho Político n. 91, UNED, pp. 137-184.



government positions in the National Court, in the High Courts of Justice of the Autonomous Communities, and in the Provincial Courts.<sup>4</sup>

Likewise, the composition and manner of election of the members of the Council permeates and has affected all its functions. The tortuous political relationship with the Council has been present from the outset. Its effects have been decisive for the exercise of its powers, its organisational structure (with changing committees<sup>5</sup>), the exclusive or partial dedication of its members, the mechanisms for electing judicial members, the imaginative formulas for renewing the Council to avoid deadlock, the changing regime for adopting agreements, the figure of the Vice-President of the Supreme Court, the sui generis regime for appearances by the President and members, etc.

3. Chronicle of a controversial institution and its institutional and political decline, triggered by a long political deadlock

The Spanish Constitution of 1978 stipulates a five-year term for the Council (Art. 122). The history of the eight terms served reflects certain difficulties in renewing it on time. However, in recent times, renewing the seventh Council and achieving its current composition (eighth term) has been so difficult that the institutional erosion has been enormous and the social discredit superlative.

From 4 December 2018 (the end of its term) to 25 July 2024, the CGPJ has been blocked. In November 2018, the Spanish press reported on a worrying leak from WhatsApp about

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<sup>4</sup> Acuerdo de 25 de febrero de 2010, del Pleno del Consejo General del Poder judicial, por el que se aprueba el Reglamento 1/2010, que regula la provisión de plazas de nombramiento discrecional en los órganos judiciales. <https://www.boe.es/buscar/act.php?id=BOE-A-2010-3608>.

<sup>5</sup> DONAIRE VILLA F. (2016): “La renovada configuración de la Comisión permanente del Consejo General del Poder Judicial tras la ley orgánica 4/2013” en *Independencia judicial y Estado Constitucional. El Gobierno judicial*. AGUIAR DE LUQUE L. (2016), Tirant lo Blanch 988, Valencia, pp. 51-67. FERNÁNDEZ RIVEIRA R.M. (2016): “Nuevos enfoques de la independencia judicial. Dos puntas de iceberg: la Comisión permanente del CGPJ y el Gabinete Técnico del Tribunal Supremo.” en *Teoría y Realidad Constitucional* núm. 38, UNED pp. 375-408.

FERNÁNDEZ RIVEIRA R.M. (2014): “Democratic regeneration? Some reflections on the new Organic Law 4/2013, of 28 June, on the reform of the General Council of the Judiciary”, in *Revista de Derecho Político* n. 91, UNED, pp. 137-184. Agreement of 25 February 2010, of the Plenary Session of the General Council of the Judiciary, approving Regulation 1/2010, which regulates the provision of discretionary appointment positions in judicial bodies. <https://www.boe.es/buscar/act.php?id=BOE-A-2010-3608>; DONAIRE VILLA F. (2016): ‘The renewed configuration of the Permanent Commission of the General Council of the Judiciary following Organic Law 4/2013’ in *Judicial Independence and the Constitutional State. Judicial Government*. AGUIAR DE LUQUE L. (2016), Tirant lo Blanch 988, Valencia, pp. 51-67. FERNÁNDEZ RIVEIRA R.M. (2016): ‘New approaches to judicial independence. Two tips of the iceberg: the Permanent Commission of the CGPJ and the Technical Cabinet of the Supreme Court’ in *Constitutional Theory and Reality* no. 38, UNED pp. 375-408.



the rigged appointment (by the political parties) of the candidate for future president of the Supreme Court, Manuel Marchena (who is also president of the Council by constitutional prescription) <sup>6</sup>. The leaked message boasted of being able to control the second chamber of the Supreme Court ‘from behind’ and preside over the special chamber of Article 61 LOPJ, an unprecedented achievement. Following the ensuing scandals, candidate Marchena had to withdraw his candidacy, which had been completely tainted and discredited, but the damage done to the institution at that time has not been repaired and has not been remedied even today. It is true that on 24 July 2024, the 20 new members of the current Council were appointed, and it is also true that on 3 September 2024, in a plenary session of the Council, with 16 votes in favour and 4 against, Isabel Perelló was appointed as the new president of the CGPJ and of the Spanish Supreme Court; However, these appointments still do not convey an image of fluidity, cohesive work, and evolution within the body.

During these years, the CGPJ went through another paradoxical episode<sup>7</sup>. Its prolonged ‘acting’ status prompted the Government to amend the Organic Law on the Judiciary in 2021 (LO 4/2021, of 29 March), introducing Article 570 bis, which restricted the Council's powers while it was acting, depriving it of its powers over discretionary appointments, including the power to propose the two magistrates of the Constitutional Court to which it was entitled. This limitation created a significant institutional deadlock. However, this restriction had to be partially corrected with the entry into force of Organic Law 8/2022, of 27 July, which restored to the CGPJ the power to propose the appointment of the two magistrates to the Constitutional Court (Article 599.1 LOPJ), in view of the imminent renewal of the Court. The Government considered that, if it did not do so, it would lose its ability to propose and appoint these magistrates, in a singular and contradictory event — powers are now being taken away and, urgently, returned — which highlighted the complex political and legal dynamics surrounding judicial governance in Spain.

Since January 2025, the new General Council of the Judiciary (CGPJ) has made more than 36 discretionary judicial appointments, facing the call for some 56 pending positions, some of which are highly controversial. These appointments have attempted to break the historical deadlock that the judiciary has been suffering due to the prolonged political

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<sup>6</sup> REYES RINCÓN, *El País*, 14 diciembre de 2018, “El Supremo considera “inaceptable” el “WhatsApp” de Cosidó sobre la elección de Marchena para el Poder Judicial.” [https://elpais.com/politica/2018/12/14/actualidad/1544793963\\_694764.html](https://elpais.com/politica/2018/12/14/actualidad/1544793963_694764.html)

<sup>7</sup> FERNÁNDEZ RIVEIRA R.M. (2024): “El órgano de gobierno de los jueces atrapado en el tiempo. El CGPJ hiper reformado, hiper prorrogado y, ahora en funciones, perdiendo y recuperando competencias.” En *Teoría y Realidad constitucional*, n. 5º UNED, pp. 351-397. <https://revistas.uned.es/index.php/TRC/issue/view/1707>.



stalemate. However, the structural problem persists, evidenced by the palpable division of the Council into two equal blocs, with 10 progressive members and 10 conservative members, a situation that hinders consensus-based decision-making and reinforces the clamour for profound reforms.

Faced with this reality, Organic Law 3/2024 of 2 August, which reforms the Organic Law on the Judiciary (LOPJ), not only establishes new criteria and requirements for certain high-level discretionary appointments, including guidelines to prevent revolving doors and incompatibilities, but also adds Provision that instructs the CGPJ to prepare, within a maximum period of six months, a comparative study on European systems for electing members and to present a reform proposal that must be approved by at least three-fifths of its members and passed in Parliament. In this context of fragmentation and demand for change, on 21 April 2025, the president of the CGPJ formally requested a report from the Venice Commission on the two official proposals for reform of the body presented by the progressive and conservative blocs, respectively, seeking international technical support to overcome internal division and move towards a structural reform of the governing body of judges.

#### 4. The current situation is grappling with various proposals for reforming the CGPJ

Implementing the above-mentioned Additional Disposition of the Organic Law 2025, what are the basic tenets of the two proposals for reforming the Council (focusing on the manner of appointing the twelve members from the judicial framework)?<sup>8</sup>

The proposal from the progressive bloc advocates a mixed model for electing judicial members (12 out of 20), which guarantees the direct, but not exclusive, participation of all active judges and magistrates. This model is structured in two phases: in the first phase, all members of the judiciary can vote freely through open list or limited vote systems, with candidates able to stand either individually, requiring the endorsement of at least 30 voters, or in groups through legally constituted judicial associations. In the second phase, the Spanish Parliament must endorse the candidate who received the most support in the first instance. In its report, the progressive bloc stresses the importance of the body reflecting social and judicial plurality, maintaining parliamentary participation to ensure democratic legitimacy and gender and territorial diversity, as well as to avoid judicial

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<https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Actividad-del-CGPJ/Estudios/Informe-del-Gabinete-Tecnico-y-Propuesta-de-los-Vocales-del-CGPJ-relativos-a-la-Disposicion-Adicional-de-la-Ley-Organica-3-2024>.

corporatism. Furthermore, after studying European systems, they conclude that it is essential to find a balance between judicial independence and democratic control. For its part, the conservative bloc's proposal argues that the election of the twelve judicial members should be completely direct and exclusive to active judges, without any intervention from Parliament or the Executive. They argue that judges should choose their own representatives to protect judicial independence and avoid politicisation. In this model, candidates can run individually if they have at least 25 endorsements or the backing of a professional judicial association. The conservatives maintain that this system better promotes the autonomy of the body and guarantees the purity of the judicial election process. They also assert that this direct election is compatible with European standards and reject parliamentary participation as a threat to the Council's independence. Taken together, both proposals reflect the internal tensions and diversity of opinion within the CGPJ on how to reconcile judicial independence and democratic legitimacy.

5. Another reform currently underway: access to the judicial and prosecutorial career, as well as its influence on the idiosyncrasies<sup>9</sup> of the judiciary

The latest major reform of the judiciary in Spain is being developed through the Government's draft Organic Law for the Expansion and Strengthening of the Judicial and Prosecutorial Profession<sup>10</sup>, presented in May 2025 and currently under debate in parliament. What are the main contributions of this project?<sup>11</sup>

Firstly, it endorses the urgent need to review and modernise the current system of access to the judiciary and the public prosecutor's career, guaranteeing equal opportunities and basing selection exclusively on merit and ability, avoiding economic, social or territorial discrimination. Not only does it offer an ambitious scholarship programme (SERE scholarship<sup>12</sup>) from the Ministry of Justice, but it also proposes changes such as anonymous exam corrections and the implementation of practical tests, rather than just memorisation tests, on a very broad syllabus. Secondly, it introduces substantial changes

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<sup>9</sup> URÍAS Joaquín (2024): *La Justicia en el banquillo*. ARPA 2024, pp. 66 y ss. “El coste de preparar unas oposiciones está, en 2024, en torno a los 300 euros mensuales. [...] El mundo de los preparadores es fundamentalmente turbio. De un lado, porque la mayoría de los magistrados que ejercen esta tarea lo hacen a escondidas de Hacienda, evitando declarar esos ingresos suplementarios de varios miles de euros al mes...”.

<sup>10</sup> [https://www.congreso.es/public\\_oficiales/L15/CONG/BOCG/A/BOCG-15-A-59-1.PDF](https://www.congreso.es/public_oficiales/L15/CONG/BOCG/A/BOCG-15-A-59-1.PDF).

<sup>11</sup> SANTAMARÍA PASTOR J.A. (2025): “Sobre un proyecto de reforma del sistema de acceso a la judicatura.” en *El Cronista del Estado Social y Democrático de Derecho*, n. 117-118, pp164-171.

<sup>12</sup> <https://www.cej-mjusticia.es/es/formacion/becas/becas2025>.



to the so-called ‘fourth round’ for lawyers with more than ten years of professional experience. The number of places available would increase substantially, and the call for applications would be simultaneous with the call for applications for the open shift. In addition, a preliminary written test is introduced before the assessment of merits, which seeks to guarantee a high level of technical and analytical skills to ensure professional suitability and competence.

Finally, an ambitious stabilisation programme is proposed for interim judges and prosecutors who, known as substitutes or alternates, have been working in the administration of justice on an interim basis in recent years. In line with European requirements, the aim is to reduce their instability, temporary status and lack of real opportunities for promotion in the judicial career.

Numerous reforms are currently underway, amid deep fragmentation within Spanish society and an ongoing pursuit of the elusive ideal of judicial independence—a concept that must redefine itself in this twenty-first century alongside greater accountability for the judiciary. Yet, this complex discussion opens up far-reaching questions that extend beyond the intended scope of this post.<sup>13</sup>

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<sup>13</sup> MALLESON K., GEE G., HAZELL R. and O'BRIEN P. (2015): *The Politics of Judicial Independence in the UK's Changing Constitution.*, Cambridge University Press, pp. 9 y ss.