



**Democracy, Rule of Law, and Fundamental Rights
Monitoring Group
(DRFMG)**

drawn-up in view of the DRFMG meeting on the situation in Spain¹

Questions for the Minister of Justice (ECR):

1. How is the Government going to address the lack of renewal of the Council for the Judiciary? Is the Government going to finally accept the calls for election of its judges-members by their peers and propose a reform accordingly? (ECR)
2. There are growing concerns on the autonomy of the prosecution due to the fact that the Prosecutor General was a MP in the Spanish Congress and Minister of Justice with the ruling Socialist Party. Is the Government intending to solve this in order to improve the autonomy of this important figure? (ECR)
3. The Spanish Government granted pardons to the criminals convicted for sedition and embezzlement of public funds in the case against some crooked Catalan politicians after an attempted Coup in 2017. The pardons were granted with the firm opposition of the Supreme Court due to the lack of repentance and the fact that some of the convicted individuals promised to repeat the criminal acts for which they were convicted. What is the Spanish Government opinion on the contribution of this pardons to the Rule of Law in Spain? Does the Spanish Government think that repentance is an important factor to grant a pardon to a convicted criminal? (ECR)

Questions to the Prime Minister (ECR):

1. What political consequences were derived from the fact that the states of alarm, which limited many fundamental freedoms including the freedom of movement, were declared unconstitutional by the Constitutional Court? (ECR)

Taking into account the importance of the protection of Fundamental Freedoms and the values enshrined in the Treaties, is the Government planning to make legislative reforms in order to foresee consequences when Fundamental Rights are violated, as it was the case with the states of alarm? Or will these acts continue to go unpunished. (ECR)

Questions to the Minister of the Presidency (ECR):

¹ Initially planned for 14 July 2022, eventually held on 8 September 2022 with the participation of the European Commission and the Venice Commission

1. The new security law raised concerns among the public opinion and the Council of State, in particular for the fact that the new law in its draft gives the Government the power to recruit Spanish citizens in their age of majority without the right for any compensation. Does the Spanish Government intend to continue pushing to pass this provision in the new security law? Is this a new step towards totalitarianism? (ECR)
2. When is the Spanish Government going to propose an amendment to the so-called Law on Gender Violence in order to guarantee the principle of presumption of innocence on men? Is the Spanish Government of the opinion that safeguarding the principle of presumption of innocence of every citizen regardless of their gender is an essential part of the Rule of Law? (ECR)

Vacancies in the Supreme Court (EPP)

Last year the majority that supports the Government supported the adoption of a law (Organic Law 4/2021) that prevents the Council of Judiciary from exercising its functions and powers until the renewal of its members takes place.

Because of the approval of this law, currently, according to data provided by the CGPJ, there are 59 vacancies unfilled in different Spanish courts: the Supreme Court, High Courts of Justice, Provincial High Courts and the National High Court.

In the Supreme Court, there are 13 vacancies out of the total number of magistrates (16.5%). In October, there may be 16 (20.3% of the vacancies). In October 2021, a Supreme Court report predicted that unfilled vacancies imply 1.000 fewer rulings per year.

Questions to the Government (EPP)

1. Is the Government aware of the damage that the non-filling of these vacancies represents for the Spanish justice system and for the image of Justice among the citizens? (EPP)
2. Does the Government consider the approval of the law that freezes the functions of the CGPJ until its members have been renewed a success? Does the Government consider the revocation of the Organic Law 4/2021 with the aim of filling the vacancies? (EPP)
3. Do the Government consider it sustainable that almost 1 out of every 5 magistrate positions in the Supreme Court is vacant? Have the Government foreseen any measures to avoid collapse in the Supreme Court if these vacancies are not filled? What measures does the Government plan to ensure that these vacancies are filled and thus restore the proper functioning of the judicial system in Spain? (EPP)

Reform of the judicial system; blockage of appointments to the Council of the Judiciary (Greens)

1. The level of perceived judicial independence in Spain is low amongst both the general public and companies, mainly due to perceived political interference. At the same time, the lack of renewal of the Council for the Judiciary persists in the absence of an agreement in Parliament to renew a number of constitutional bodies. The leadership of the Partido Popular has recently stated that right now this is not a priority. Furthermore, on June 12, the mandate of 4 of the 12 magistrates of the Constitutional will expire. The Spanish Government must appoint two and the Council of the Judiciary the other two. Now this renewal of the Constitutional Court will be block as well because, as stated before, the reform of the Council of the Judiciary is still on hold. Numerous recommendations have been made to establish a system of election of the judges-members of the Council by their peers in line with European standards. What is the Spanish Government doing in order to unblock the renewal of the Council of the Judiciary? Which proposals are on the table? (Greens)

2. Concerns have also been raised regarding the competence of the Spanish Supreme Court for criminal liability of high-level positions, as well as the incompatibilities regime for judges and prosecutors. What proposals have been put forward to address this? (Greens)
3. Can you explain under which grounds was the use of Pegasus against political opposition in Spain authorised by the Spanish Courts? Can you provide a copy of the request issued by the Spanish Government and the reply issued by the competent tribunal authorising the use of this type of malware? (Greens)
4. The Audiencia Nacional (National High Court) is a jurisdictional body responsible for dealing with the most serious crimes that have social relevance. For example, illegal acts against the crown, terrorism, organized crime, economic crimes. In no European country is there a court of exception similar to the National High Court. Has the Spanish Government considered dismantling an exceptional court that represents a democratic anomaly throughout Europe? (Greens)
5. What is the Spanish Government's position in relation to the proposal submitted to the Parliament to modify the Penal Code in order to eliminate the insults to the Crown and the burning of official symbols from the list of crimes? The President of the European Court of Human Rights, Robert Spano, issued a warning that the Strasbourg doctrine on crimes of insulting the Crown is clear and that public office holders must accept wider ranges of criticism. Does the Spanish Government consider these provisions contained in the Penal Code are a severe limitation of the freedom of expression? (Greens)

Freedom of expression and assembly; Security Law (Greens)

1. The reform of the Security Law is currently under discussion in the Spanish Parliament. However, its parliamentary procedure has been delayed several times, despite the existing broad majority for its reform since 2019. Can the Spanish Government confirm the timeline of the procedure? (Greens)
2. According to the letter from the CoE Commissioner on Human Rights, Dunja Mijatovic, addressed to the Spanish authorities, the fact that the organisers of demonstrations can be sanctioned if a disturbance of public order occurs during demonstrations seems to be contrary to the case-law of the ECtHR and the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, which stipulate that the organisers of an assembly cannot be held responsible for the actions of other participants if they did not participate explicitly or implicitly in such acts. What are the views and the assessment of the Spanish Government on this specific matter? (Greens)
3. Apart from the letter from the Spanish authorities in reply to the letter from the CoE Commissioner on Human Rights, Dunja Mijatovic, concerning the review of the Law, has there been any other official answer, reactions or follow-up from the Spanish Authorities to the letter from the CoE Commissioner? (Greens)
4. In her letter, the CoE Commissioner emphasised that the reform should address the concerns she already expressed about this Law in November 2018, notably about the wide margin of discretion that the wording of the Law gives to law enforcement in interpreting it. She also noted that the implementation of the Law continued to lead to the imposition of sanctions on unclear grounds, and underlined the difficulty of appealing on the grounds of the Law as well as the need to strengthen the accountability framework for law enforcement officials. Does the Spanish Government consider that once the reform is concluded all the concerns raised by the CoE Commissioner will be addressed? Could you provide details about the solutions proposed to these specific concerns under the reform? (Greens)
5. Has the Spanish Government conducted an independent assessment on the Citizens Security Law concerning the impact and chilling effect on the exercise of the freedoms of expression and assembly?

in Spain that it causes? Or has an in-depth impact assessment on fundamental rights been carried out? If so, who conducted them and which were the conclusions? (Greens)

6. What are the specific measures that the Spanish Government has put in place to ensure compliance with the Commission's Recommendation on the protection, safety and empowerment of journalists, in particular, with regard to the specific recommendations on the protection and safety of journalists during protests and demonstrations that the recommendation includes? Does the Government consider that Spain complies with the recommendations from the Commission? If no, which measures do you consider that should be implemented to achieve full compliance? (Greens)
7. As also mentioned in the 2021 Rule of Law Report on Spain, in November 2020 and January 2021, the Constitutional Court of Spain issued two judgements on the Citizens Security Law, concluding that most of its provisions are constitutional, if interpreted in good faith and with due regard to the principles enumerated in the law, in particular as regards the principles of proportionality, non-discrimination, efficiency, and respect for rights and freedoms. Nonetheless, one provision of the Citizens Security Law was declared unconstitutional in relation to the prohibition of the "unauthorised" use of photo and video images of police officers at duty or in a private setting. Linked to this, in March 2021, the Venice Commission issued an opinion on the law, highlighting that even in cases when a norm is considered to be constitutionally acceptable, if in practice it has led to abuses it should be changed, circumscribed, or accompanied by additional safeguards. Acknowledging that the Law is in the process of being reformed, what are the additional safeguards considered? (Greens)
8. In its 2021 Opinion, the Venice Commission also recommended ensuring that judicial review of individual complaints about potential police abuses is accessible and effective. What are the channels that citizens have to issue a complaint and what are the specific mechanisms in place to ensure accountability? (Greens)
9. Joint Recommendations from civil society organizations concerning the reform of the Law. What are the proposals foreseen to ensure that these recommendations are addressed? (Greens)
10. How were civil society organisations consulted and involved in the reform process of the Law? (Greens)
11. In October 2020, the Venice Commission adopted its report on criminal liability for peaceful calls for radical constitutional change where it concluded that, as to calls for unlawful but non-violent acts, criminal sanctions in these cases are not ruled out as such but are more problematic. Has there been any discussions on the need to clarify the Spanish criminal law in that regard, both in terms of legislative amendments and case-law? (Greens)
12. In March 2021, the Commissioner for Human Rights called to amend the Criminal Code to strengthen existing safeguards of the right to freedom of expression. What is the current state of play regarding the implementation of the Commissioner's recommendations? (Greens)
13. Spain is part of the member states which haven't implemented the 2019 EU Whistle-blower Directive by the transposition deadline of 21 December 2021. Civil society organisations have raised concerns over the content of the draft Whistleblowing bill, whose adoption has been delayed. Concerns include the weak protection scope, as well as lack of guarantees for surroundings and journalists. How will you ensure that the Whistleblowing bill ensures an adequate level of protection of whistle-blowers, their surroundings, as well as facilitators and journalists, as required by EU law? (Greens)

Questions to the CGPJ

1. How has the entry into force of Organic Law 4/2021 affected the functioning of the CGPJ? What impact does it have on the Spanish judicial system? (EPP)

Reform of the CGPJ (EPP)

The General Council of the Judiciary is established by article 122 of the Spanish Constitution of 1978, and developed by the Organic Law 6/1985 of the Judicial Power (LOPJ). It is made up of 20 members and a President. All of them are elected by the Parliament.

The doctrine of the EU institutions, as well as of the Council of Europe, establishes that, in order to guarantee the independence of the judicial councils at least half of the Council's members should be judges elected by their peers from all levels of the judiciary

1. Is the Government aware that the doctrine of both the European institutions and the Council of Europe states that, in order to guarantee the independence of judicial councils, at least half of the Council's members should be judges elected by their peers from all levels of the judiciary? (EPP)
2. Is the Government planning a reform of the system of election of the members of the CGPJ to bring it in line with European standards? Why does the Government not implement a reform in this direction? (EPP)

The prosecution service (EPP)

The second report of the European Commission on the Rule of Law (2021) criticized that in Spain "the autonomy of the prosecution service continues "to raise questions and be discussed". It points out that "the coincidence in the term of office of the Prosecutor General and the Government may affect the perception of independence". The report approved by the European Parliament last April 20 on the Rule of Law in 2021, stressed the need to "establish safeguards to preserve the independence of prosecutors against political pressures, in particular from the Government".

1. What is the opinion of the Government on the fact that the European Commission has pointed out that in Spain "the autonomy of the prosecution service continues to raise questions and be discussed"? Has the Government assessed that the appointment of former Minister of Justice, Dolores Delgado, as Prosecutor General may be causing damage to the autonomy and independence of the Public Prosecutor's Office? (EPP)
2. What do the Government think about the fact that the European Commission points out that "the coincidence in the mandate of the Attorney General and the Government may affect the perception of independence" of this body of constitutional significance? (EPP)
3. What is the Government's opinion on the fact that the Prosecutor General has ignored the Supreme Court's decision declaring the discretionary proposal of the appointment of the prosecutor Eduardo Esteban as prosecutor of the Juvenile Chamber against the already top prosecutor and specialist in the matter José Miguel de la Rosa as contrary to law? (EPP)
4. What is the Government's opinion on the fact that the Prosecutor General has decided to paralyze sine die the deadline for the constitution of the Prosecuting Ethics Commission? What impact does the Government consider that this paralyzation may have? (EPP)
5. The proposal put forward by the Socialist Group in the Spanish Congress to reform the Organic Statute of the Public Prosecutor's Office by means of an amendment to the Insolvency Law has generated an important debate. One of the amendments establishes the obligation for the Prosecutor General to report to the Government, even on his own initiative, on matters that, due to their nature and relevance, should

be brought to his attention. The amendments of the Socialist Group also seek to promote the Prosecutor General to the highest category of the career when they leave office. Has the Government assessed these proposals? What is the government's opinion on these proposals? Does the Government support these measures? Has the Government assessed the possibility that these amendments may cause a significant breach of the autonomy and independence of the Prosecutor General with respect to the Government? Has the Government assessed that these new obligations may be perceived as a privilege for the Government, damaging the autonomy and independence of the prosecution service? (EPP)

Unconstitutionality of the States of Alarm (EPP)

The Constitutional Court has declared unconstitutional both the first and the second state of alarm decreed by the Government of Pedro Sánchez during the Covid-19 pandemic. In the first case, it considered that in order to declare the general confinement of the population announced by the President on March 14, 2020, the Government should have resorted to the state of exception, the only one that allows the suspension of fundamental rights, instead of the state of alarm. Secondly, the Constitutional Court criticized the fact that the Parliament could not exercise its "inalienable" power of control over the Government, which is enshrined in the Constitution.

1. How does the Government assess the fact that two of the three states of alarm decreed have been declared unconstitutional by the Constitutional Court? What legal consequences have been derived from these decisions? (EPP)

Pardons (EPP)

The Government approved on 22 June 2021, the granting of pardon to the nine imprisoned pro-independence leaders for the sentence of the "procés". They had been sentenced by the Supreme Court to between nine and thirteen years in prison and political disqualification for crimes of sedition and embezzlement.

1. Do the Government consider that the granting of pardons for reasons of political convenience is a way of attacking judicial independence and the separation of powers? (EPP)

Concerning the "Law of Citizens' Safety"

1. Various European bodies have voiced their concern over the reform of the 2015 Law on Citizens' Safety. In February 2022, the Council of Europe Commissioner for Human Rights raised her concerns, namely that the currently ongoing reform does not include a sufficiently precise scope, which leads to a "potential disproportionate and arbitrary application". Moreover, she raised various points regarding the "chilling effect on the exercise of the freedoms of expression and assembly". The issue of insufficient safeguards against *refoulement* was also mentioned as a point of concern. Previously, the Venice Commission Opinion of March 2021 also raised concerns. Can you update us on the state of affairs on the reform of this law? How will it be ensured that this law fully respects international and European (human rights) law? (Renew)

Concerning the judiciary

1. The European Commission, including Commissioner Jourova herself, as well as other international and European bodies, have voiced concern over the long-standing stalemate around the renewal of the Spanish Council of the Judiciary, as well as stressing that such renewal should take place from among the judges' peers. As it appears that the stalemate is not being unblocked, will the government give utmost priority to solving this issue with the utmost urgency? (Renew)
2. In various courts, including the Supreme Court, a growing number of vacancies is left open, causing a disruption to the Court system and its capacity to provide for judicial redress to citizens. What efforts are

being made to unblock this situation and how will the government ensure that the Court system is able to provide justice as a key element of the Rule of Law? (Renew)

Concerning the EPPO

1. In March 2022, it was reported that EPPO faced difficulty in cooperating with the Spanish Attorney General concerning corruption allegations in the case of the procurement of facemasks by the Madrid regional government. The Spanish Attorney General argued that this is not a case for the EPPO to get involved in and should be dealt with solely at national level. Can you inform us about the latest state of affairs in this case? Is the EPPO currently granted all necessary cooperation on this and other files in Spain? Can you commit to such cooperation in the future? (Renew)

Concerning the use of spyware

1. Following the revelation of the use of spyware on politicians, what actions has the Spanish government taken to clarify how this use was authorised through applicable procedures (or not) and what steps will be taken to avoid the illegitimate use of spyware in the future? (Renew)