

**Question for written answer E-012232/2013
to the Commission**

Rule 117

Raül Romeva i Rueda (Verts/ALE), Iñaki Irazabalbeitia Fernández (Verts/ALE), Ramon Tremosa i Balcells (ALDE), Maria Badia i Cutchet (S&D), Raimon Obiols (S&D), Willy Meyer (GUE/NGL) and Izaskun Bilbao Barandica (ALDE)

Subject: Possible contravention by the Spanish state of Clause 4 of Council Directive 1999/70/EC and of the Fundamental Rights of the European Union

In Spain there are two types of judge: 'incumbent' judges and 'replacement' judges (Article 298.2, Framework Law on the Judiciary (LOPJ)¹ and Article 91, Judicial Career Regulations (RCJ)²). Replacement or acting judges are appointed every year by means of a competition organised by the General Council of the Judiciary and are placed on a list of acting officials³. Both types of judge carry out identical judicial duties with the same incompatibilities and prohibitions (Articles 201.4, 389 to 397 of the LOPJ and 101 of the RC and the Supreme Court Judgment of 8 November 2012)⁴. Incumbent judges, including those who have been regionally appointed and are awaiting assignment to a post, are paid every month and make continuous contributions to social security. Replacement judges draw a salary and contribute to social security only when they are called. In contrast to incumbent judges, they receive no regular salary, make no contribution to social security, have no health-care cover and cannot undertake any other job or profession except for teaching due to the incompatibility rules that demand total availability and dedication, thereby contravening their fundamental right to choose an occupation and engage in work enshrined in Article 15 of the Charter of Fundamental Rights of the European Union and Articles 6 of the TEU and 67 of the TFEU. This situation has worsened since the budget, for the Ministry of Justice was drastically reduced from EUR 25 million in 2012⁵ to EUR 8 million in 2013⁶, turning replacement judges into impoverished citizens who have no real chance of working and no social protection whatsoever after 25 years of continuous work on a fraudulently temporary basis.

- Does the Commission believe that Spain is correctly and effectively enforcing the regulations on equal treatment and non-discrimination set down in Clause 4 of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP?
- Does it believe that the fundamental right of replacement judges to choose an occupation and engage in work is being fully respected?

¹ <http://www.boe.es/buscar/pdf/1985/BOE-A-1985-12666-consolidado.pdf>

² <http://www.boe.es/boe/dias/2011/05/09/pdfs/BOE-A-2011-8049.pdf>

³ <http://www.boe.es/buscar/doc.php?id=BOE-A-2012-11230>

⁴ <http://www.boe.es/buscar/doc.php?id=BOE-A-2012-15022>

⁵ Presupuestos 2012

http://www.mjusticia.gob.es/cs/Satellite/1292354512239?blobheader=application%2Fpdf&blobheaderna me1=Content-Disposition&blobheadervalue1=attachment%3B+filename%3DPresupuestos_2012.PDF (Doc: Presupuestos 2012) - pagina 11- partida 112 A -125 25.668,08 M€.

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http://www.mjusticia.gob.es/cs/Satellite/1292365864317?blobheader=application%2Fpdf&blobheaderna me1=Content-Disposition&blobheadervalue1=attachment%3B+filename%3DPresupuestos_Generales_del_Estado_-_Secci%C3%B3n_13_ (Doc: Presupuestos 2013) - pagina 10 partida 112ª 125. 8.540,39 M€.