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Setting Standards on Judicial
Councils: The Spanish Case
before the Venice
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With Opinion [CDL-AD\(2025\)038-e](#), adopted at its 144th session on 9–10 October 2025, the Venice Commission was called upon to apply international standards on the composition of judicial councils to a consolidated Western European democracy, Spain, following a request submitted by the President of the General Council of the Judiciary (hereinafter GCJ). In doing so, the Opinion ultimately reaffirms that the composition of judicial councils is no longer a matter of exclusive domestic concern grounded solely in State sovereignty, but rather constitutes an integral element of a European legal order founded on the rule of law and, as such, falls within the scrutiny of European institutions.

Previously, the Commission had dealt with this type of body mainly in country-specific opinions concerning ‘new democracies’, or in reports and studies of a general nature (such as the [Report on the Independence of the Judicial System Part I: The Independence of Judges](#), adopted in 2010).

[Judicial councils](#) originated in the Italian and French experience of the immediate post-Second World War period. [Later they were introduced](#) in the processes of constitutional transition in Greece, Portugal and Spain, and subsequently, after 1989, [in many countries of Central and Eastern Europe](#). They have been described as ‘a [global phenomenon](#)’ and have recently been framed by [scholarship](#) within the Fourth Branch, that is, institutions that are a standalone body deriving their legitimacy independently of all three classical branches of power.

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This is the **fourth opinion requested by Spain**, and one of the rare opinions, excluding requests for *amici curiae* by constitutional courts, to be requested by non-political bodies.

Article 3.2 of the Statute of the Commission does not specify which State bodies may submit requests for opinions. Nevertheless, most opinions are requested by political authorities. Only in a handful of cases have supreme or constitutional courts or independent authorities, including judicial councils, turned to the Commission (e.g. the **Chair of the Judicial Council of the Republic Tajikistan**, the **President of the Supreme Court of the Republic of Kazakhstan**, the **President of the Constitutional Court of the Armenia**, the **Secretary of the Council for Judicial Reform of the Kyrgyz Republic**, the **People's Advocate of the Republic of Moldova**, the **Human Rights Defender of the Republic of Armenia**, and the **Federal Electoral Institute of Mexico**).

Most of these requests concern draft amendments to the legal framework governing such institutions. The same occurred with the request submitted by the Spanish GCJ, which referred to the Commission **two alternative proposals** to amend the method for electing the Council itself, at the **culmination of a complex and highly conflictual political process** that severely tested Spanish institutions within an extremely polarised context.

Background: The Controversial Method for Electing the Judicial Members of the GCJ in Spain

The GCJ had been involved by the legislature in the preparation of a reform proposal pursuant to an additional provision of Organic Law 3/2024. This provision was adopted as part of the **political agreement reached in 2024** between Spain's two main political parties – at the urging of, and with the contribution of, the European Commission – in order to put an end to the prolonged deadlock in the renewal of the Council, whose mandate had expired in 2018.

The additional provision, rather unusually, tasked the GCJ to prepare, within six months, “*a report examining the European election systems for members of Judicial Councils similar to the Spanish Council*”, and a “*reform proposal for the election system for judicial members*”, “which guarantees the independence thereof

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and which, with the direct participation of judges to be determined, *can be positively assessed by the European Commission's Rule of Law Report*, establishing a General Council of the Judiciary *in line with the highest European standards*" (emphasis in italics added).

For instance, under the current legislation, the Council's twenty members are elected by the two Chambers of Parliament by a three-fifths majority, a threshold that proved impossible to achieve for several years due to mutual vetoes among political forces. This situation was repeatedly criticised in the European Commission's Rule of Law Reports (e.g., 2021 and 2022), as well as by GRECO (Group of States against Corruption) of the Council of Europe, which not only highlighted the institutional deadlock but also underscored the anomaly in the procedure for electing the Council's judicial members.

Article 122 (3) of the Spanish Constitution merely provides that "The General Council of the Judiciary shall consist of the President of the Supreme Court, who shall preside it, and of twenty members appointed by the King for a five-year period, of which twelve shall be judges and magistrates of all judicial categories, under the terms provided for by the organic act; four nominated by the Congress and four by the Senate, elected in both cases by three-fifths of their members amongst lawyers and other jurists of acknowledged competence with more than fifteen years of professional practice". The method of election of the judicial members is not specified. After an initial phase in which the judicial members were elected by judges themselves, the Organic Law 6/1985 introduced parliamentary election by a three-fifths majority, aligning the procedure for judicial members with that applicable to the so-called 'political' (or 'lay') members.

This reform was largely motivated by the composition of the first Council, which, also as a consequence of its electoral system, had been dominated by conservative Supreme Court judges. Upon coming to power, by winning the 1982 parliamentary elections, the PSOE (Spanish Socialist Workers' Party, in Spanish: *Partido Socialista Obrero Español*) sought to remedy this imbalance by exploiting the constitutional silence on the matter and introducing parliamentary election.

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The Constitutional Court upheld the reform in a decision (STC 108/1986) often described in the literature as *pilatesque*, as it held that the allocation of the power to elect judicial members to Parliament was not per se contrary to the Constitution. At the same time, however, it warned that if parliamentary appointments were made through the distribution of political quotas among the political forces represented in the Chambers, such a practice could entail a risk of politicisation of the process.

Subsequent reforms attempted to involve the judiciary in the pre-selection phase, while leaving the final decision in the hands of Parliament.

The Proposals Submitted by the GCJ

The GCJ submitted two proposals, which were radically different. According to what the Opinion refers to as “Option 1”, (i) judicial candidates are nominated by 25 judges or by a judicial association; and (ii) the candidates are directly elected by judges. Under “Option 2”, (i) each candidate must be endorsed by either 30 judges or a judicial association; (ii) the judicial community conducts a pre-election to create a pool of candidates three times larger than the number of vacancies; and (iii) the final election is held by Parliament, which selects members from the pre-elected pool.

In short, while Option 1 aimed to introduce peer election, Option 2 maintained parliamentary election.

The two proposals reflect a division within Spanish scholarship, both regarding the notion of the Council’s representativeness and the applicable international standards.

Regarding representativeness, proponents of Option 2 emphasise that the Council should represent the pluralism of society, not of the judiciary, and that only a “political” election by representatives of the people can achieve this. Proponents of Option 1, in contrast, argue that the composition of the Council should be mixed: it should also reflect the different orientations and legal views of the judges themselves, while above all protecting the Council from excessive politicisation.

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The divergence is also clear with respect to international standards. This was a key issue, as the GCJ was explicitly tasked by the legislator to prepare a draft “in line with the highest European standards”. Supporters of Option 1 rely, as regards international standards, on the large body of soft law, including opinions and reports of the Venice Commission, which states: “Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary” (CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe).

In contrast, supporters of Option 2 argue that “recommendations, guides to good practice, cooperation tools, etc., cannot be considered standards from a legal perspective.”

The Venice Commission Opinion: Looking for a Balance in the Composition of the Judicial Councils

Against this backdrop, the Commission reaffirmed the standards regarding the necessary peer election of the judicial component of Councils, referring to the Committee of Ministers’ *Recommendation*, its own previous opinions, the recommendations of the Consultative Council of European Judges (CCJE) and the *European Network of Councils for the Judiciary*, all emphasising that, once a judicial council is established, at least half of its members should be judges elected by their peers, and that the election of judicial members by Parliament or their selection by the executive must be avoided [para. 30]. In doing so, the Commission does not attempt to base its position on the hard law of the European Union Court of Justice of the EU (CJEU) or the European Court of Human Rights (ECtHR), although that case law is widely cited.

In determining the standards, the Commission gives particular attention to two aspects. First, it considers the role of the non-judicial component, the lay members. In this regard, it emphasises : “A large majority of the judges may give rise to concerns about the risk of corporatist management or self-government. The inclusion of lay members is therefore broadly- justified by the principle that the supervision of the quality and impartiality of justice extends beyond the interests of the judiciary itself. By exercising such oversight, the judicial council can enhance public confidence in the administration

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of justice. In many systems, legislative bodies elect part of the membership of judicial councils from qualified legal professionals, ensuring a measure of pluralism and democratic legitimacy in the council's composition. In general, members, including both judicial and lay members, must be selected in a transparent procedure that supports the independent and effective functioning of the judicial council and the judiciary and avoids any perception of political influence, self-interest or cronyism" [para. 31].

However, the Commission rejects the argument of democratic legitimacy, presented to support Opinion 2. Stressing that the legitimacy of the Council emanates from the Constitution, the principle of legality and the public trust, the Commission underlines that judicial councils must be independent from legislative and executive powers [para. 50].

In addition, the Commission highlights what can be described as a "non-regression principle," stating (by quoting [one of its previous opinions on Poland](#)): "Moreover, the Venice Commission has warned against the politicisation of the process of electing the judicial members of the judicial councils. Where judicial reforms shifted the power to elect judicial members from the judiciary to the Parliament, the Commission considered that this change carried the risk of politicisation and recommended reverting to the election of judicial members by their peers" [para. 32]

As a consequence, the Commission concludes that Option 1 "reflects the European standard of peer election by permitting the judicial community to directly elect the judicial members of the Council. To the extent that these elections are free, direct, pluralistic and fair, they could eliminate the risk of politicisation. The Commission considers, however, that the election process should be protected not only from external political influence but also from internal politicisation" [para 36].

In particular, the Commission observes that "direct elections by the judicial community alone may be insufficient to address entirely the risk of politicisation. Where such elections are envisaged, judicial associations – which as such play an important role for the judicial community – may, in practice, act as proxies for political actors. Further safeguards may therefore be necessary to prevent internal

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politicisation adequately. In particular, measures should be taken to encourage non-associated judges to stand as candidates and to ensure that they are not placed at a significant disadvantage compared to those supported by associations. This consideration is significant given the substantive proportion of non-associated judges in Spain. In this context, the electoral framework would require further elaboration to ensure that independent candidates have adequate opportunities to be elected” [para 40].

In line with this reasoning, the Commission introduces recommendations regarding the nomination process and the electoral system.

As for Option 2, the Commission considers that mere nomination and pre-election by the judiciary would not be sufficient to make this model compatible with the European standard of peer election. It does not entirely rule out the possibility that the standard of “peer election of the judicial members of the judicial council” could be met if the peer election is followed by an additional selection phase. Nevertheless, the purpose and rationale of the European standards, namely, to prevent influence by Parliament or the executive on the judicial council, make it clear that any such subsequent selection phase cannot be a political election, even if conducted with a qualified majority [para 47].

The Internationalisation of Standards on Judicial Councils

In the context of the rule of law crisis affecting many European States, both new and long-established democracies, the Opinion demonstrates that the Venice Commission is committed to reinforcing international standards on the composition of judicial councils, including in the case of a consolidated Western European democracy. A few months later, at its 145th session, on December 2025, the Commission reaffirmed those standards in the **Updated Rule of Law Checklist**, which includes the following question: “Is there an independent Judicial Council or other equivalent body with a balanced composition, with at least half being judges elected by their peers, which is responsible for questions of appointment, promotion, discipline and removal or other equivalent body? Are there sufficient safeguards for the independence of any such body, particularly protecting it against political influence?”

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In doing so, the Commission appears to be fully aligned with the European courts, positioning itself within a broader trend characterised by an increasingly close **dialogue** and **convergence** between soft law and hard law in the shaping of domestic judicial design. This is the case with regard to the composition of judicial councils, as illustrated, for example, by the case *Gredza v. Poland* of the ECtHR, which, by referring to the Council of Europe recommendations, considers that “it is recommended that no less than half of the members of judicial councils should be judges chosen by their peers” [para. 305].

This is also true with respect to the **principle of non-regression**, which was articulated with particular clarity by the CJEU in the 2021 *Repubblika* judgment (Case C-896/19). In that judgment, the Court held, in essence, that the second subparagraph of Article 19(1) TEU precludes national provisions concerning the organisation of the administration of justice that may entail, in the Member State concerned, a reduction in the protection of the value of the rule of law, in particular as regards guarantees of judicial independence. Accordingly, where a Judicial Council or a similar body is entrusted with functions relating to the status and appointment of judges, the conditions applicable to that body at the time of a State’s accession to the Union, in so far as they guarantee judicial independence as an essential element of the rule of law, may not be reduced or undermined (para. 60-65).

In conclusion, the Opinion reaffirms that **the composition of judicial councils is no longer a matter of exclusive domestic concern**, subject solely to State sovereignty, but has become an integral component of a European order founded on the rule of law, and, as such, falls within the scrutiny of European institutions. While most recommendations and judgments have so far concerned ‘new democracies’, the Opinion reminds that, in the era of democratic backsliding, **there is no longer any room for double standards** and that no State is exempt.

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