MANIFESTO ABOUT CORRUPTION IN THE SPANISH JUDICIAL SYSTEM

Mario Conde (President of Banesto, one of the biggest Spanish banks during the 1980s) in his first book "The System: My experience in the power" (1994), described his experiences on illegal relationships between the financial system, the government, the media and the judicial system, creating a corrupted system, allegedly criminal. Along the history of Spanish democracy, the collusion between the ruling class and certain business sectors highly regulated is well known, mainly with the financial system and the telecommunications and electricity companies.

In 2015, Mr Bárcenas (ex-senator and PP's ex-treasurer) said: "Mafia and politics are the same thing". In Italy and in Spain, politicians are known as "La Casta" (The Breed), a name that evokes Mafia. In the Spanish parliament itself, at the State of the Nation debate session on February 24th, 2015, a member of the congress called the President, Mariano Rajoy, "Capo" (head of the Mafia). On March 11th, 2015, at a TV program, the congresswoman Irene Lozano said: "We are governed by a Mafia that doesn't care about the general interests of the Nation, but just about its own. The journalist Iñaki Gabilondo talked about "institutional Mafia" in a video on his blog http://blogs.elpais.com/la-voz-de-inaki/ on March 10th, 2015.

On March 13th, 2015 the democratic President of Venezuela described the Spanish Prime Minister as a dictator. It´s worth recalling King of Spain´s authoritarianism when, on November 10th, 2007 he blurted to the democratic Prime Minister: Why don't you shut up? This authoritarianism is usual among Spanish public authorities and it is the basis of their regular excesses and of the violation of citizens' human rights. The King had to abdicate dew to his excesses and Rajoy will be the first Spanish Prime Minister, in the last thirty years, who will not repeat mandate. The media hasn't stopped showing images of King Juan Carlos and the Spanish Prime Minister, emphasizing on the fact that they were surrounded by "mafiosi" and other delinquents who had been sentenced some years after.

At the beginning of January 2015, a TV program showed Cristina Fallarás (media writer and journalist) asserting: "We're inside a criminal system". This statement is in line with what Jean Ziegler (Swiss parliamentarian, sociology teacher and vice-president of the United Nations Human Rights Council Advisory Committee) said in June 2012: "We live in a criminal and cannibal world order". The journalist, Esteban Urreiztieta said in a TV program in 2015 said: "It's normal to assert that everything is rotten".

With other words, Elena Vicente (President of ACCORS, the Association for Social Regeneration and Against Corruption) made de same statement. She says that corruption in Spain "is systemic and affects every area" in the article titled "Spain is corruption sick". The first time that a magistrate was sentenced in Spain, was by the accusations of the funding chairman of Ajora Association. In his web site you can read: "Spanish institutions: Corrupt!", "A totalitarian power is exerted from its institutions".

On April 4th, 2016, Spanish university professor asserted, in an interview, that the Spanish crisis is due to institutional corruption and he stated: "If Spain had the institutions that the Swedish have, Spain would progress as Sweden has".

On April 7th, 2015, in a TV program which has a wide audience, an Army Commander asserted that, during the transition, there was an agreement to name a National Minister of Defense who did not belong to the Army, as it had been

during Franco's dictatorship, but provided that the Government did not interfere with the Amy's inner functioning, which has derived in a systematic corruption. Some years later, it seems that something similar happened with the judicial power. In 1985 the new organic Law of the Judicial Power, made it a political issue. Perhaps it was accorded that the government would give few resources to the judicial power provided that they did not interfere in its functioning, generating a corrupt judicial system, the Rule of Law's malfunction and a democracy which is described by the media as "low quality democracy" or were only a dictator is elected.

On April 9th, 2010, in one of the main Spanish newspapers, an article said: *"The old but still valid maxim of Alfonso Guerra: The one who moves doesn´t get in the photo"*; Mr. Guerra said this sentence as he was vice-president of the Spanish Government, during the first half of 1980s. In 1985 his Government removed the independence of the judiciary system by the Organic Law of the Judiciary. Since the alluded photographic warning, public authorities know that they have to cover up institutional corruption and crime if they want to thrive. Logically, this impunity context impels corruption which, without control, ends in a criminal and mafia-like system.

This situation has been described in a report from the GRECO (Group of States Against Corruption) that was published in 2014 (pages 12 to 57), where it is said: *"The GRECO evaluation team was told that courts have been swamped with about 800 corruption cases in the last five years and only a few have resulted in conviction or reached conclusion*", reflecting The Breed's systemic corruption. Previously, the GRECO evaluation team had described a corrupt political structure: *"This kind of system favors loyalty to the political party more than loyalty to the electorate and the result that parliamentary groups keep a firm control and make a strict internal discipline over individual members of Parliament".* It's also said: *"The Constitution specifies the core functions of the CGPJ: designation, promotion and discipline of judges"; "According to the Constitution, the CGPJ consists of the President of the Supreme Court, who presides over the CPGJ, plus twenty members, each of whom serves for five years (...). Since 1985, Parliament assumed that they were responsible for the designations among the list of candidates proposed by the associations of judges".*

Finally, the GRECO describes the functional and economic dependence of the Public Prosecutors Office with regard to the Government, emphasizing that: *"The General Prosecutor is chosen by the Government"*. It is remarkable that this report links political corruption with judicial corruption. Concluding, political parties control the three classical public powers: Legislative, executive and judiciary. This elimination of the powers' separation means, in fact, that the politicians control the three of them. It's important to point out that the report relates 800 politic corruption cases, thus, the three State powers are controlled by a corrupted political class.

Therefore, the chiefs of "The Breed" control the judicial power. Among the media it is said that the politization of the judicial power has corrupted its functioning. However, it is not true, because the judicial power was already a corrupted system during Franco's dictatorship, although it's true that it has thrown in new corruptions.

Politization destroys the Rule of Law, as the many sentences from the European Court of Human Rights (Strasbourg) to the Spanish Kingdom have proved. At the same time, the CIS surveys reflect that most Spaniards consider that Spanish institution are corrupt. It is worth stressing The New York Times cover page wondering about the origin of the Spanish King's sister's fortune, as well as the tax complaint that AJURA made him and his two sisters about their money in tax havens, which was published in one of the main Spanish newspapers.

In the EU bulletin (January 2016) it is said:

> About the adoption of a resolution concerning judicial corruption, based on a report written by Kimmo Sasi (Finland, EPP/CD), the European parliamentarians said that the Judicial Power is perceived as one of the most corrupt institutions in Albania, Armenia, Azerbaijan, Bulgaria, Croatia, Georgia, Lithuania, Moldova, Portugal, Russia, Serbia, Slovakia, Slovenia, Spain and Ucrania.

"The parliamentarian assembly considers **judicial corruption** a matter of great concern, which undermines the **Rule of Law's** foundations and the possibility of **fighting** corruption in other society sectors". This is what the **Resolution 2098 (2016)** literally says, motivated by the Transparency International's barometer results. In its contents, the report also makes clear that this type of corruption "seriously prevents the **protection of the human rights and, more precisely judicial independence and impartiality, weakening, at the same time, public trust on the judicial process and on juridical legality and security principles"** (pages 58 and 59).

Cristina Fallarás at a TV program, on March 12th 2015 said: "In this country, human rights are not respected. The Minister of Internal Affairs made clear in an interview at a TV program, on January 2nd, 2015, that he is not interested in human rights; for this man, the end justifies the means and he considers that the purpose is to cover up the police violence, even causing death, to prevent immigration in Spain. The minister went on disregarding Human Rights on April 9th, 2016 at the TV program "La Sexta Noche", downplaying this violence when he stated "it's the same as in other countries" The Minister has an inherited mentality from Franco's dictatorship.

Along these last years, books about judicial corruption are being written, as for example, "Abusocracia. España: Un Estado sin Derechos" (2011) (Abusocracy. Spain: a State without Rights), in which I described my own experience with the corrupt Spanish justice.

The Judge Elipidio José Silva, in 2013 said: *"The corruption's mother is in the judicial power"*; he wrote about judicial corruption in his book *"The Evicted Justice"* (2014), where he gives a testimony of the corruption he suffered himself. Subsequently, on February 23rd, 2015, at the TV program "Las Mañanas" (Cuatro channel), he stated that the courts confirm the First Instance Courts the operations to cover up corruption. In this regard, journalists and TV tertulians speak out very often. They maintain that the court magistrates are at the serve politicians for their bastard interests. These statements coincide with the criminal report that we, some of the Judicial Victims Associations, are making.

In 2015, the book "Consejo General del Poder Judicial. Jueces, corrupción e independencia" (General Council of the Judicial Power. Judges, corruption and Independence), was published. This book refers that the Spanish Rule of Law is arbitrary and that its corruption is due to the CGPJ vocals, the court magistrates and judicial associations.

"It's useful to recognize the existence of judicial corruption. Because no-one can live turning his back to reality. But also because just recognizing this reality, prevention and repression mechanisms can be implemented.

The judicial system drags Franco's and previous dictatorships' bad practices, including the corrupt judicial authorities opacity and impunity and those allegedly criminal, all of them increased by the politization of Justice in 1985 and the legislative low quality (bad laws), worsen by the bad sentences that create precedent. This situation has caused the Spanish Rule of Law malfunction, as the majority of Spaniards state by making the Judicial Public Service fail at the aforementioned CIS surveys, from 2002 to 2011, except the one of 2005.

The Europe Union Eurobarometer in 2011 reveals that 41% of those Spaniards surveyed, think that corruption is widespread among members of the judiciary (GRECO report). According to the 2014 Eurobarometer, people surveyed about among which groups they think that "bribery and self benefit abuse of power" are extended, 41% of them think that it's usual inside the police and 31% think that it's usual inside the State Prosecution.

Lawyers are part of the problem, because they don't represent the Law. In most cases they are bad professionals and in others they have settled in the judicial system's corruption, regularly swindling their clients with the impunity that is given by the Rule of Law malfunction and the covering up that their bar associations grant them. It is a fact that there is a non-agression pact among judges and lawyers that is reflected on many judicial resolutions where, after making clear the lawyers' conduct, judges do not comply with the law that obliges them to inform their bar association, as it could be a disciplinary offence.

The judicial system dysfunction is having lethal consequences, as in the case of the underground accident in Valencia on July 3rd, 2006, where 43 people died (http://0responsables.com); the case of "Ciudad muerta" in Barcelona on April 2011, a case of suicide because of a corrupt imprisonment; the train accident in Galicia on July 24th, 2013 and the twelve deaths per day for not vaccinating people who had hepatitis B.

Nonetheless, the aforementioned GRECO report says that, "since 1998, in Spain there have been eight sentences for abuse of office" and that not a single public prosecutor has ever been sentenced, this situation is not compatible with what this same document says, among other things: "The 2011 Eurobarometer reveals that 41% of the Spanish people that have been surveyed, thought that corruption is widely spread among the judicature members (the average in UE is 32%)". This contrast reveals that, in Spain, a large number of the criminal actions inflicted by prosecutors, judges and magistrates are covered up.

Regarding the aforementioned public prosecutors' politization, is of public knowledge that, being for their own interest or when they are told, they give up their duties and act as defense lawyers for the corrupted people. To this respect it's important to outline the public complaint made in the "Sindicato Manos Limpias" website about the Public Prosecutors' acts of corruption – presumably illegal - in relevant cases. It should be outlined too, the Ajura's complaint against three ex-General State's prosecutors, who covered up the alleged criminal act committed by the ex-president of the Spanish government, Aznar.

The lawyer Gonzalo Boye Tuset, internationally popular for his defense of the human rights, has stated that in all politic corruption cases, the popular or particular accusations have been the ones that have impelled the procedure, whereas the Public Prosecutor hasn`t done anything; if this was true, prosecutors could have acted in a criminal way for not pursuing crimes. For this, we should ask ourselves if the Spanish public prosecutor service is a criminal organization. Let´s not forget that is usual to define the Spanish political parties as "organized gangs for the plundering of the Spanish State".

The journalist Eduardo Inda, at the TV program La Sexta Noche, asserted that the anti-corruption prosecutor stopped the research about the Madrid Community President's attic, on April 9th 2016.

In Spain, when a public authority violates a citizen's rights, if he claims, individually or collectively, the system acts against him, violating his rights shamelessly, with the purpose of intimidating him to stop his demand of rights, acting as a "mafia". As it is understood by the words of most of the judicial system's victims, who relate in their testimonies threats, tax and judicial reprisals, unfair dismissals, etc.

It is also common for them to declare that the victims, who complain about policial and judiciary corruption, suffer a (non-existent) psychiatric illness, as it was done a century ago, until a victim succeeded in making that the first laws that exist in Spain were enacted, but they are not always respected.

These reprisals help to admit the credibility of those who declare that we have a criminal or mafia-like system, where public authorities take advantage of their victims' vulnerability and the vulnerability of those who claim or complain about the systemic institutional corruption, treating them cruelly, trying to destroy them.

The Administration of Justice's Users Association (AUSAJ) describes Spanish judicial authorities as "Criminals that behave with the biggest IMPERTINENCE", with ARBITRARETY, CORRUPTION and INTIMIDATION, due to their IMPUNITY an IRRESPONSABILITY (http://www.ausaj.org).

Andoni Gómez Corcuera, Secretary of the management board of the Judicial Victim ´s Association, expressed this with his own words in his video-testimony, available on the website http://www.victimasdelajusticia.es/videotestimonios/video/random/andoni-gomez:

> *I would like to know if there's anyone who can tell me why, in this country, when a citizen is misjudged and persecuted, and he tries to prove the truth, the Judiciary System, far from helping and making things easy to clarify, puts all possible obstacles to make this citizen's life extremely difficult, to suck his life out and to make him rot as a calamity? And I consider that, up to these days, the various institutions that were raised to, supposedly, help the defenseless citizen in this country, are absolutely useless. Summing up, I consider that, up to these days, a serious injustice has been committed and that all the people who have taken part in this big injustice has tallied in a great lie.*

In this same sense, the lawyer Gabriel Ruiz García, chairman of the "Justice for All

Association", on his website http://www.justiciaparatodos.org says:

> *Our experience is that the Provincial Court of Palence ratifies the first instance sentences without any reasoning. Therefore, it would imply more costs. It´s enough not to cash what they owe and,oblige to pay the first and second court costs.*

The lawyer declares the same thing about the Provincial Court of Alicante.

My own experience with the Provincial Court of Madrid (APM) and that of Avila (APAV) matches with Mr. Ruiz's declarations, for this I coined the expressions: "Institutional Corruption Covering up Professionals (PECIs)" and "Suspected Institutional Delinquency Covering up Professionals (PEPDIs)" to describe seven APM magistrates more concerned about covering up the shameless, unfair resolutions in first instance cases than about obeying the law.

In two appellate procedures filed in 2015, the managers of the Rule of Law Professionals' Victims Association (APM) had to disallow the intervention of six penal sections of the Madrid Provincial Court for their interventions against Law. The APM has got fifteen sections for which we disallowed a 40%; for this reason, it is worth questioning if the APM could be a presumed criminal band. Moreover, one of these reports was against five "Guardia Civil" officers and many more agents. The other report was against "fourteen judges, eleven prosecutors (including the Chef Prosecutor) and the judicial secretaries of the Arganda del Rey (Madrid) courts". In these two cases, the covering up of the presumed institutional criminality is outrageous. Logically, we reported the APM's three judges and the six magistrates who participated. Later we added Another APM section.

About the Upper Courts' magistrates (judges), it is worth outlining that the ex-judge Elipidio Silva asserted that they know what they are being asked for, that is, to cover up institutional corruption, which is the priority in all Spanish institutions.

The Provincial Courts' Presidents are, at the same time, Magistrates (judges) of the Supreme Court, therefore there are bastard interests in the handling process of the extraordinary resources in the Supreme Court that come from the Provincial Courts. For this reason, it can be asserted that this relationship violates the human European right to an independent and impartial court (ECHR 6.1). In Spain there are no independent or impartial Courts.

The following judicial system victims' testimonies are provided (only in spanish version):

1 - María Flora Villar Molina, Secretary of the "Association of the Rule of Law Professionals' Victims"..
2 –Silvia Villullas, lawyer.
3 – Caso Elena, "Justice for Everyone Association".
4 – Caso Jose Manuel, "Justice for Everyone Association".
5 – Caso Negur 2000, "Justice for Everyone Association".
6 – Caso Pinturas y Escayolas, "Justice for Everyone Association".
7 – Judge Elipidio Silva Pacheco, extract "The Evicted Justice".
8 – Periodista Tomás F. Ruiz
9 – Francisco Javier Marzal Mercader, Chairman of the "Association of the Rule of Law Professionals' Victims".

The Romano van der Dussen (from Netherlands) case reflects the of the Spanish judicial system's functioning. The police forces manipulate the evidence; the judge admits the manipulation and rejects the other evidences that prove his innocence. This way statistics get better and silences social alarm, which are the two big worries of these despicable people. After this, the judges of the Provincial Court, the Supreme Court and the Constitutional Court, cover up the referred police forces' and judicial corruption. Seven years after the criminal sentence, it was known who the real criminal was, but they kept the Dutch man in prison, so the police's forces and judicial crimes would prescribe. The victim himself explains the result of the Spanish Rule of Law's systemic malfunction: My thirteen years in prison have been useful to know that *"Spanish prisons are full of innocent people".* Who is more criminal, Spanish public authorities, including police and judges, or prisoners? His lawyer explains the agony that this police an judicial victim has suffered.

On May 10th 2015, the so-called by media "Pequeño Nicolás" (Little Nicholas), in a TV program, after describing the criminal action of the Judge who is prosecuting a suspicious cause against himself, asserted that he didn't believe in Justice. The Great Nicholas is showing the systemic governmental, police and judicial corruption, proving the opinions of those who say that Spain has a corrupt, criminal or mafia-like system.

In addition to this Judicial System Victims Associations' movement, three other associations created, at the beginning of 2015, the "Reason for the Law Federation", with the aim of giving a boost to certain legislative changes that could make possible the end of impunity in the Judicial System and to boost the observance of the anti-corruption measures proposed at the United Nations convention against corruption, on 2003, that Spain compromised to adopt, but never did in all these years. This associative movement is related to and complements the popular and numerous associations that defend human rights, working against police violence and discrimination, which are so common in our society.

At the same time, as a reaction to the systemic institutional corruption, the social claiming movement 15 M emerged, it was widely covered by the international press and it was the origin of the political party "Podemos". In less than a year, Podemos is pushing the socialist party PSOE into the background, finishing with the PP- PSOE two-party system for the first time in more than 30 years. "Podemos" and "Ciudadanos" are the new political parties that are among the four groups with higher voting intention figures, according to official surveys, even without representation in the Spanish parliament during the 2015 state of the nation sessions, admitting that those who proclaim that "The Breed doesn't represent us", are right.

The judicial statistics are devastating, in the General Judicial Council's file "La Justicia dato a dato" (All the Justice's data) says the following about the year 2013:

- Solved cases in all jurisdictions: 8.875.557
- Solved cases in the civil jurisdiction: 1.814.394
- Solved cases in the criminal jurisdiction: 6.392.63

Civil jurisdiction

- Procedures admitted by a judge: 623,9
- Sentences by a judge: 178,4
- Procedures dismissed by a judge: (previous figures calculation): 71,40%
- **Dismissed civil procedures** (previous figures calculation): 1.295.580

Civil procedures require a lawyer, therefore, one may ask: Who has deceived the judicial victim that has appealed this jurisdiction: The lawyer, the judge or both?

Criminal jurisdiction

- Procedures admitted by judge: 2.277,8
- Sentences by judge: 258,2
- Procedures dismissed by judge (previous figures calculation): 88,66%
- **Dismissed criminal procedures** (previous figures calculation): 5.667.712

Most of these procedures are dismissed illegally, without making any research about the complaint, and the resolution is not notified to the claimant, not fulfilling what the instructor decreed. The claimant is left totally unprotected in front of this judicial opacity and all type of obstacles in the court, where no one follows the law. The judicial system has a dissuasive character because it serves the illicit interests of "The Breed", instead of serving the citizens as a public service.

If they dismiss a criminal case because of the lawyer´s malpractice, the judges have the legal obligation to notify it to the bar association, but they don't do it. It's an unjust system that victimizes. Most of the criminal procedures begin with a complaint and don't use lawyers, one may ask: Do lawyers swindle us or do prosecutors and judges act in a criminal way covering up the reported person or entity?

In brief, most of the conflicts that are taken to Justice are dismissed and don´t arrive to a sentence. Have we tried to cheat the tribunals in these 6.963.292 cases? Or:

These statistics demonstrate that most of **the prosecutors and judges act in a corrupt and allegedly criminal way.**

In the Fiscal Ministry's research about "Quality and sustainability of public services" (2015), about satisfaction towards justice administration, it is said: "As seen, this is without doubt the worst valuated service in the ten years analized, not just in these last years, but also in the 1990s.

Therefore, it can be considered that illegal association is a usual crime among the Spanish public authorities' actions. Precisely for the alleged commission of these crimes, I have reported more than ten judges, more than seven judicial secretaries, some officers and quite a lot of "Guardia Civil" agents, as well as a public prosecutor, presumably illegally associated to a lawyer, to swindle me, probably to cover up part of the aforementioned actions of the "Guardia Civil".

In regard to the police forces that are also part of the judicial system, on April 25th, 2015 the business man Álvaro Pérez, better known as "El Bigotes" (The Moustache Man), said, in a TV program that he had been tortured when he was arrested. A journalist said that he didn´t believe that those things happened in Spain, but the famous journalist Melchor Miralles asserted that he believed him, adding that police's tortures are more usual than what people think, but the victims don't dare to report them. This same journalist, on April 27th, 2015 asserted that he had been a victim of false police statements. As I declared in the attached testimony, I have been a victim myself of three illegal detentions, torture, documental falseness and false testimony of several Guardia Civil officers, who acted as a mafia against me when I was a 50 years old man without police records and without ever been reported. The actions against me have been covered up, till now, by several corrupt prosecutors and judges as well as Guardia Civil chiefs, including the General Officer and by the Minister of Internal Affairs. Due to all this, I asked myself about this National Security Force: Were they criminal actions or the Police Forces are mafia-like organizations where crime is pushed up by the Minister of Internal Affairs and his officers?

"There were no reports that the government or its agents committed arbitrary or unlawful killings. Amnesty International and Human Rights Watch alleged that on February 6, the Civil Guard fired rubber projectiles, blanks, and tear gas at approximately 250 migrants, refugees, and asylum seekers attempting to swim across the border from Morocco into Ceuta and might have contributed to at least 14 drowning deaths". "There were reports of police mistreatment; courts dismissed some of the reports". "The 2013 report by the nongovernmental organization (NGO) Coordinator for the Prevention of Torture indicated that in 2013 a total of 47 persons died in police custody". (SPAIN 2014 HUMAN RIGHTS REPORT) (pages 60 to 80).

In the annual USA's report about Human Rights in Spain in 2014, it is referred that there are missing some government's reports about police murders, as those reported by International Amnesty. It is said that there was police maltreatment, but judges sometimes cover it up and that the NGO "Torture Prevention" 2013 report reflected that 47 people were killed when they were under police custody. These reports reflect that, in Spain, Human Rights are frequently violated by the police authorities, who are covered up by The Breed (politicians) and by the judiciary authorities. Logically, the criminal acts' cover up from the government authorities and from the judicial power, impels police criminality, making it usual, therefore, we can assert that Spanish police forces are more like a "mafia" than a public service.

"The State has recognized to the *Committee against Torture" (UN) that from the 4.211public servants reported with criminal charges between 2009 and 2012, only 29 finished in jail"* (http://www.lamarea.com/2016/04/05/84200/).

Along the year 2014, several non-profit organizations requested the Minister of Internal Affairs to provide police violence statistics, to which he didn't answer. Let's remember that this man lied to the Spanish people about deaths in Ceuta, denying the facts. Logically, with the covering up of the police violence, "The Breed" pushes it up. The famous journalist Jordi Évole, on February 15th, 2015, revealed at his TV program that the Minister's priority is to cover up the police violence. Precisely, due to the Europe Union's critics, in 2015, a law called "Ley Mordaza" (gag law), to cover up and incite police violence, was approved.

The juridic website legaltoday.com, on May 7th 2016, published the following, referring to the Judges for Democracy Association:

> "*Against this, it is necessary to break, not only judicially, but also politically and socially, with the lack of knowledge and with the secrecy that sustain and feed the torture that remains among us, thanks to the covering up strategies, as the hiding, the secrecy and the indifference toward this obscene reality", asserts.*
>
> *This judges' professional association also reminds that the European Court of Human Rights has condemned Spain "at least five times, for not making an effective and deep judicial research of the torture reports during de arrest with no communication in terms of terrorism, being the last one, the Beortegui Martinez case, on May 31st 2016".*
>
> "*For Judges for Democracy Association, this new sentence hurts deeply, as it implies directly judges and Courts, the jurisdictional guarantee that they must provide to supervise human rights and subdue every power to legality". They add this in the statement, where they specify that Spain has also been condemned by the United Nations' Committee of Human Rights, while the European Committee for the Prevention of Torture "has expressed its worry because Spain does not fulfill its obligations in matter of prevention and prosecution of torture".*

In April 21st, 2016, one of the main Spanish newspapers published: "*Judges of the National Court, the Supreme Court, provincial courts and upper courts received money from the Ausbanc for giving talks, speeches and for assisting to the Justice Forum, which this association organizes since 2010*". Since some years ago, the media have been mentioning this type of "briberies" from large enterprises and from politicians, to Magistrates and High Courts.

Some days after (May 9th, 2016), with the President of the Ausbanc, already in prison, an article, where it was asserted that this mafia invited Spanish judges, prosecutors and magistrates to the most famous brothel in Colombia as part of a bribery, was published. This judicial "whoring" led to the police operation named "Nelson. Years ago I accused a judge, in the General Council of the Judiciary (CGPJ), of leaving while he was on duty, provably to go whoring, the manager of the Citizens' Service told me that sometimes judges must excuse , but he didn't give me a reason for the duty desertion.

In a corrupt system, its members feel intimidated by their partners, by other institutions and by their bosses. They are afraid of losing their jobs, but most of them use their institutional power to obtain money and power, in such a way that they all end corrupted, at a larger or smaller extent, so the systemic corruption remains.

Intimidation is extended to Justice public service users. The judicial system authorities intimidate users, blatantly distorting the facts to make resolutions seem fair, they intimidate with unfair sentences, they intimidate with unjustified delays, they intimidate covering up other public officers' criminal proceedings, they intimidate with interrogations, they intimidate with unfair resolutions, they intimidate with the opacity in affairs' procedures, they intimidate insulting those

who don't agree with them, they intimidate by filing claims and complaints. The Supreme Court and the Constitutional Court usually don't admit for consideration the appeals asserting that the requirements have not been accomplished, as for example, saying that some or other resolution has not been provided or that the date of issue for the appeal has exceeded, in both cases being blatantly false.

The Spanish Constitution of 1978 begins its preamble alluding to the Spanish Nation's good wills, being the second one: *"Consolidar un Estado de Derecho que asegure el imperio de la ley como expression de la voluntad popular" (*To consolidate the security of a Rule of Law as the popular will expression); nonetheless, the systemic corruption has transformed the Rule of Law into a rule of public authorities, outlining politicians, prosecutors and judges which means the malfunction of the Spanish Rule of Law. Spain has got a dangerous Police State.

The Spanish institutions, including Public Prosecutors, Courts and the General Council of judicial Power, have turned into "criminals and criminal bands' factories". The impunity with which they act, that derives of their own corruption systemic cover up, is promoting the public sector's criminality, making it go from systemic to systematic. The police and judicial authorities' features are more characteristic of a band of "Mafiosi", than those of a public service or a democracy. Among their features we can outline the following: contempt for legality and for those who are not powerful, despotism, authoritarianism, abuse of power, intimidation, corruption and criminality. The police and judicial authorities in Spain are indecent, mean miserable and despicable.

The new political parties assert that that judicial malfunction problem comes from its dependency on politicians; however, they do not say anything about legislative corruption or jurisprudence that has corrupted every law and the judicial practice. About legislative corruption we must say that offers impunity to public authorities, including police and judicial authorities, with the aim of impelling corruption, so they can have a total control over them. Logically, having corruption as rule, when a judicial authority does not obey, it is easy to end with his or her career. The cases of the ex-judges Garzón and Elipidio Silva are both well-known; both of them were sentenced for the investigation of the highest Spanish institutions' criminality.

Judicial corruption is completely uncontrolled. The High Justice Court and the Supreme Court, cover up the criminality of prosecutors, judges and magistrates, in a systematic way. It would not be surprising that police agents, prosecutors, judges and lawyer were already auctioning the judicial procedures' results.

The Spanish Rule of Law has been replaced by a dangerous police State. In Spain, usually, politicians have much more commanding power than judges and police, and all of them together are more powerful than the laws they all, systematically, violate. In Spain, the Empire of Law has been replaced by the empire of the institutional authorities. In the middle of the crisis, the renowned politician Julio Anguita, said that if he became President of the Government, the first measure he would take, would be enforcing the Constitution, alluding to the fact that public authorities violate the law, even the Constitution.

According to the World Social Forum, the American Social Forum and the European Social Forum, the Spanish judicial system is a good example of the "violence practiced by the State". These institutions impel the organization inside the social sector to defend ourselves from Public Administrations.

Judicial corruption is a fact in all countries of the world, as the international movement that I created in April 2016 (www.corrupcionjudicial.org, www.stopjudicialcorruption.org), is proving. Since I created this web-site, they are hacking the AVIPED web-site, changing my computers' passwords, so I cannot use them and they have altered my two e-mail client programs, so I cannot replicate

my accounts, A loony or an specialist inside the Ministry of Internal Affairs? When I registered the "Federación por la Razón del Derecho" (Reason of Law Federation), my closest circle and me didn't have access to hotmail for a couple of hours and, since then, our computers are very slow, because, probably, they are tapped. The same has happened to other judicial victims.

Years ago, I called the systemic institutional corruption "abusecracy". In 2014, I published a PDF entitled: "From representative democracy to abusecracy", with a whole chapter about the Spanish case which is, probably, the most advanced.

Spanish institutions are installed in corruption

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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Adoption: 6 December 2013
Publication: 15 January 2014

Public
Greco Eval IV Rep (2013) 5E

FOURTH EVALUATION ROUND

Corruption prevention in respect of members of parliament, judges and prosecutors

EVALUATION REPORT

SPAIN

Adopted by GRECO at its 62nd Plenary Meeting
(Strasbourg, 2-6 December 2013)

FOURTH EVALUATION ROUND

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EXECUTIVE SUMMARY

1. In spite of the many measures taken in recent years to introduce regulation to better fight corruption, to strengthen the resources and specialisation of law enforcement bodies dealing with economic crime and ultimately to indict offenders, there has been growing concern about corruption in Spain. The recent scandals besetting political life in the country are severely eroding the credibility of its institutions. The breadth of public disillusionment and mistrust has been further aggravated by the economic crisis.

2. Pollsters reserve the lowest levels of trust for politicians and political parties. Well aware of the lack of confidence they face, the Spanish authorities have initiated several reforms to recast trust levels, i.e. a draft transparency law is currently under debate in Parliament, there is broad access to information regarding the legislative process, a financial declaration system is in place for parliamentarians and open to public scrutiny on the websites of the respective Chambers. The present report takes account of all these positive measures and further supports the on-going reflection in the country as to how to regain institutional credibility. Additional steps are recommended to instill, maintain and promote a strong culture of ethics among parliamentarians, including through the adoption of a code of conduct and the introduction of targeted awareness measures on integrity matters. Likewise, it would also be important to heighten transparency around MPs' contacts with third parties, to provide more detailed and up-to-date information in financial declarations, and to significantly strengthen supervision and enforcement mechanisms in Parliament.

3. The judiciary and the prosecutorial service in Spain are of high quality and, with the exception of some isolated cases, there is no substantial evidence of corruption of individual judges or prosecutors. However, concern exists about the efficient functioning of the justice system, with its overburdened courts that are thus not always in the best position to elucidate matters with real speed. Likewise there are some weaknesses in the judicial and prosecution systems which have led to reiterated criticism as to risks from political influence. More particularly, while the independence and impartiality of individual judges and prosecutors have been broadly undisputed to date, much controversy surrounds the issue of the structural independence of the governing bodies of the judiciary and the prosecutorial service – the primary concern being the appearance that partisan interests could penetrate judicial decision-making processes. This is particularly dangerous at a time when cases involving political corruption are on the rise. The mere existence of this shadow of doubt is undesirable, and steps should be taken to ensure that the justice system is not only free, but also seen to be free, from improper external influence. Moreover, flaws in the structural independence of the government of the judiciary can only become, in the long term, detrimental to the independence and impartiality of individual judges; conditions which must be assured, promoted and protected at all times for justice to be, and be perceived to be, fair and effective.

4. Spanish judges and prosecutors have a strong spirit of public service and dedication to public duty. However, codes of conduct are yet to be adopted for both prosecutors and judges. Likewise, further mechanisms could be introduced to open channels for the discussion of ethical dilemmas shared by the professionals concerned and to provide for dedicated advisory services and guidelines in relation to conflicts of interest and other integrity-related matters. More can also be done to enhance the professional and public accountability of judges and prosecutors. It is essential that the public is made aware of any future efforts taken in each of these areas as they can all serve to strengthen citizens' confidence in the justice system.

I. INTRODUCTION AND METHODOLOGY

5. Spain joined GRECO in 1999. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in June 2001), Second (in May 2005) and Third (in May 2009) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

6. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption prevention in respect of members of parliament, judges and prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the executive branch of public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

7. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

8. As regards parliamentary assemblies, the evaluation focuses on members of national parliaments, including all chambers of parliament and regardless of whether the members of parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

9. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV Rep (2013) 5 REPQUEST) by Spain, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Spain from 10-14 June 2013. The GET was composed of M. Yves Marie DOUBLET, Deputy Director at the National Assembly, Department of Public Procurement and Legal Affairs (France); Mr James HAMILTON, Retired as Director of Public Prosecutions, President of the International Association of Prosecutors (Ireland); Mr Hans NELEN, Professor of Criminology, Criminal Law and Criminology, University of Maastricht (the Netherlands); and Mr Djuro SESSA, Associate Justice at the Supreme Court (Croatia). The GET was supported by Ms Laura SANZ-LEVIA and Mr Yüksel YILMAZ from GRECO's Secretariat.

10. The GET held interviews with representatives of the Ministry of Justice, the Congress of Deputies and the Senate, the General Council of the Judiciary, the Prosecutor General's Office and the Prosecution Council, the Centre for Legal Studies and the Ombudsperson. The GET also interviewed judges and prosecutors, and some of their respective professional associations. Finally, the GET spoke to representatives of Transparency International, journalists and academics.

11. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Spain in order to prevent corruption in respect of members of parliament, judges and prosecutors and to further their integrity in

appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Spain, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Spain shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

12. Spain has been affected by a significant number of corruption cases concerning prominent political figures, high officials and business leaders. An extensive public debate on corruption issues is taking place at present partly due to the economic debacle which began in 2008 and has severely eroded citizens' trust in their government and the financial system.

13. It is to be noted that, until 2008, citizens perceived corruption levels in Spain to be low and the country figured among the least corrupt 20 countries of Transparency International's yearly corruption perception index (CPI). The trend reversed dramatically when the Spanish economy entered into recession after almost 15 years of sustained economic growth. Starting from 2009, the perceived level of corruption in Spain has increased for three consecutive years. By 2012, Spain had dropped down ten places to the 30th position in Transparency International's latest CPI. A recent national poll, published in 2012, highlights that the Spanish citizens rank corruption, fraud, political parties and politics in general among their main concerns together with their biggest disquiet, i.e. unemployment[1].

14. In terms of the focus of the Fourth Evaluation Round of GRECO, back in 2007, members of the Spanish Parliament were enjoying higher rates of trust than the average levels recorded in relation to their EU-27 peers[2]. According to a recent special survey (Eurobarometer) issued by the European Commission, this relatively positive image of the national politicians deteriorated markedly in the following years and the percentage of Spaniards who think that corruption is widespread among national politicians reached 78% (EU average 57%) in 2011[3]. Furthermore, the same survey revealed that 40% of those Spaniards questioned believed that the erratic action of politicians (Government and Parliament) is one of the main issues feeding corruption within the country. The GET was told that there has been no single case in which an MP has been convicted for a corruption-related offence committed in relation to his/her parliamentary functions; when MPs have been convicted for corruption, the corrupt act in question was related to the dual mandate held by the MP concerned in local government.

15. In so far as members of the judiciary are concerned, although their credibility ratings are better than those of politicians, the downfall trend since 2007 is similar to that observed regarding politicians. The 2011 Eurobarometer reveals that 41% of those Spaniards surveyed think that corruption is widespread among members of the judiciary (EU average 32%), whereas those sharing this view was only 17% in 2007. In addition to the effects of the worsening economy, the widespread belief of the Spaniards that their justice system functions poorly seems to have exacerbated this credibility loss in the judiciary[4]. A recent national report published in April 2013 brings more positive results, with an important increase in the levels of trust in the judiciary to 47% which probably finds its cause in recent decisions of judges and prosecutors defending citizens' right to housing and protecting them from facing "express eviction"[5].

16. Spain has nevertheless introduced a number of positive measures over the last two decades to better detect and ultimately punish corruption. An important milestone in the system was the establishment of the Special Prosecution Office against Corruption and Organised Crime (and its corresponding subnational units) in 1995. Since then,

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[1] Barómetro del Centro de Investigaciones Sociológicas (CIS), issued on 4 January 2013. http://www.cis.es/cis/export/sites/default/-Archivos/Marginales/2960_2979/2976/Es2976.pdf

[2] Special Eurobarometer 291 "The attitudes of Europeans towards corruption", European Commission, April 2008. http://ec.europa.eu/public_opinion/archives/ebs/ebs_291_en.pdf

[3] Special Eurobarometer 374 "Corruption", European Commission, February 2012. http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf

[4] http://politica.elpais.com/politica/2012/08/11/actualidad/1344684017_186742.html

[5] http://www.metroscopia.org/

specialisation of law enforcement bodies has only increased and GRECO has expressly paid tribute in some of its previous reports to the proactive attitude of judges and prosecutors alike to try and adjudicate corruption offences[6]. The sense of scandal surrounding political life, and the many different corruption investigations in course, have recently led Parliament to agree upon a resolution aimed at developing a legislative/policy package to better fight corruption (so-called "*pacto de regeneración democrática*"), notably, through adopting legislation on transparency (draft Law on Transparency), amending party funding regulations, strengthening the controls performed by the Court of Audit, providing for a specific offence of illicit enrichment, increasing sanctions for corruption offences and stepping up criminal procedures in order to render investigations more efficient and expeditious. The authorities conceded during the on-site visit that additional efforts had to be devoted to corruption prevention aspects.

17. GRECO trusts that the present report, with its in-depth analysis and recommendations, assists the Spanish authorities in their efforts not only to regain but also to raise the level of integrity of and the public's trust in some of its crucial institutions and their individual members.

[6] See for example the Third Evaluation Round Report on Spain, GRECO Eval III Report (2008) 3E – Theme I: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)3_Spain_One_EN.pdf

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

18. Spain is a constitutional monarchy in the form of a multi-party parliamentary democracy. Its Parliament (*Cortes Generales*) is made up of two elected chambers: the Congress of Deputies (*Congreso de los Diputados*), which holds the primary legislative power[7], and the Senate (*Senado*), which is the chamber of territorial representation. The two-chamber system does not mean that Congress and the Senate operate on the same level. The Constitution has endowed Congress with a series of duties and powers that demonstrate its supremacy. In this way, Congress authorises the formation of the Government, has the power to cause its cessation, is the first to know about procedures concerning bills and budgets, and must confirm or reject amendments or vetoes that the Senate may approve concerning these legislative texts[8]. Pursuant to section 72 of the Constitution, each chamber of the Parliament has institutional, budgetary and operational autonomy, i.e. they lay down their standing orders, adopt their budgets and regulate the statute of their staff without any interference from the other branches of government. The internal organisation and conduct of work of the Congress and the Senate are articulated in their respective Standing Orders.

19. The 350 deputies in the Congress are elected by a d'Hondt system of party list proportional representation. Senators are elected through two different methods: 208 are elected by a majority-direct system (province level) and another 58 are appointed by the respective regional legislatures (Autonomous Community[9]) through a proportional-indirect system[10]. The Congress and Senate serve concurrent terms that run for a maximum of four years. There are 139 women in Congress (out of 350) and 89 women in the Senate (out of 266), respectively; therefore, the ratio of women in Parliament is around 35%.

20. The independence of Parliament is stipulated by Article 66 of the Constitution and members of Parliament (MPs) are expected to represent the national public interest. That said, most of the interlocutors with whom the GET met stressed that the closed and blocked list election system, which was designed after the adoption of the 1978 Constitution to set in place a cohesive political system after years of dictatorship, has led in turn to very strong and rigid internal structures of political parties where party leaders keep key decision-making powers over individual members. Such a system thus favours party loyalty over loyalty to the electorate and results in parliamentary groups keeping firm control and exercising strict internal discipline over individual MPs[11]. The GET heard during the on-site visit that discipline was decisive for inclusion in a candidate list for election purposes. Some tools (e.g. secret vote) are in place to better allow MPs to make decisions by their own convictions rather than because they follow a given party line, but

[7] Laws are presented and debated in the Congress before passing to the Senate. The Senate may propose amendments and even veto legislation. However, Congress can override a veto immediately through an absolute majority vote, or by a simple majority vote after two months.

[8] http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Funciones1

[9] Spain is divided into 17 Autonomous Communities: Andalusia, Aragon, Asturias, Balearic Islands, Basque Country, Canary Islands, Cantabria, Castille-La Mancha, Castile-Leon, Catalonia, Extremadura, Galicia, La Rioja, Madrid, Murcia, Navarre, Valencia.

[10] Senators are elected directly from the provinces and indirectly from the Autonomous Communities. In the provinces, a majoritarian partial block voting system is used. All peninsular provinces elect four senators each; the insular provinces (Balearic and Canary Islands) elect two or three senators per island, and Ceuta and Melilla elect two senators each. Parties nominate three candidates; each voter has three votes (less in those constituencies electing fewer senators), and votes for candidates by name, the only instance of personal voting in Spanish national elections. The autonomous communities receive one senator, plus one for each million inhabitants. They are entitled to determine how they choose their senators, but generally they are elected by the legislature of the respective community in proportion to its party composition.

[11] See also the National Integrity System Assessment of Spain, issued by Transparency International on 28 September 2012. http://www.transparency.org/whatwedo/pub/national_integrity_system_spain

interlocutors deemed these to be insufficient to overturn the aforementioned party-dominated scheme.

21. MPs lose their mandate through (i) a judicial decision annulling the election or proclamation; (ii) death or incapacity; (iii) termination of the mandate; and (iv) relinquishment.

Transparency of the legislative process

22. The Constitution expressly enshrines the principle of publicity of legislation - Article 9 (3). Draft legislation is published when submitted by the Government and then as it undergoes the different consultative stages in Parliament, i.e. when amendments occur and after discussion at committee and plenary level. Information on laws adopted and other parliamentary activity is provided through the official bulletins (*Boletín Oficial*) and journal of debates (*Diario de Sesiones*).

23. Plenary sessions are public as a general rule. However, they may be closed to the public if thus decided by a majority of members or if they relate to internal matters (e.g. statute of deputies/senators, suspension, etc.). The composition of parliamentary committees is a matter of public record. Committees' sessions - standing committees, enquiry committees or special committees - are not public, but media representatives may attend, unless it is decided by a majority of members that sessions are to be held in closed chamber. Witness/expert hearings are public, unless the matters at stake relate to reserved matters, as established by law (e.g. national security), or on-going judicial proceedings. The debates held in plenary and committee sessions (except for closed sessions) are published in the journal of debates and are broadcast on internet and sometimes on television.

24. The Congress of Deputies' Modernisation Plan (2006) has paved the way for some significant measures to improve the transparency of legislative work, e.g. a new website with a dedicated citizens' portal, individual webpages for deputies (although only a limited number of them have actually developed their personal sites), an information service for citizens, details on procurement and contracting processes, etc. The Senate has also taken measures to improve its website and facilitate information on legislative drafts and procurement/contracting matters.

25. Political decisions of special importance have to be subject to public consultation by means of a referendum (Article 92, Constitution). It is possible to consult experts and representatives of economic groups when draft laws are being examined at committee level. For some sectors, the law establishes mandatory consultation of interested parties (e.g. consumers' protection, telecommunications).

26. The GET acknowledges and commends the Spanish authorities for the positive steps taken to assure a high level of transparency in the legislative process. The GET deems this to be one of the key strengths of the system clearly representing an asset in the prevention of corruption, notably, by better enabling public scrutiny of MPs work and contributing to ensuring accountability. The GET had the opportunity to test the swiftness and helpfulness of the feedback provided by the general information services of both Chambers. The GET was made aware of some particular areas where the current level of information available to the public could be improved, for example, with respect to the studies and research that form the basis of or have been commissioned for a legislative proposal, or in connection with detailed schedules of ongoing legislative proposals, or regarding MPs agendas and, more particular, information on the meetings they held with third parties, etc.[12] More can also be done to improve the transparency of the legislative

[12] By way of example, some NGOs (Access Info Europe and Fundación Ciudadano Civio) launched, in March 2013, an online public initiative to demand greater openness with respect to the ongoing drafting of the

initiatives coming from the Government: despite the formal requirements to consult provided by law (i.e. Law 50/1997, Law 30/1992), the GET was made aware that the organisation of public participation processes largely varies in practice and depends on the ministry concerned. The GET understood during the on-site visit that transparency is high nowadays in the parliamentary agenda with additional initiatives in the pipeline (e.g. with respect to lobbying, see also paragraph 50).

Remuneration and economic benefits

27. The average yearly gross salary in Spain is 22,899.35 EUR[13].

28. MPs are expected to work full-time. MPs receive a salary of 2,813.87 EUR per month and have the right to receive benefits, tax exemptions, and compensation for expenditures in connection with their duties. A bonus applies for a number of specific categories in Parliament (i.e. Speaker, Vice-presidents, Secretaries, Spokespersons and their Deputies, Presidents and Vice-presidents, Secretaries, Spokespersons and their deputies in committees).

29. Members also receive additional allowances, including (i) a tax exempt compensation of 1,823.86 EUR (or 870.56 EUR for those MPs elected in Madrid) to cover expenses incurred in performing parliamentary duties; (ii) transport (either public transport, 0.25 EUR per kilometre if a private car is used, or 3,000 EUR per year to cover taxi expenses); (iii) subsistence allowance when on official mission (150 EUR abroad and 120 EUR in Spain) and communications (a laptop and a mobile phone). The aforementioned levels are similar in the Congress and the Senate. An additional allocation is granted to hire personal assistance staff. Control over these allowances is performed by the responsible supervision services of each Chamber by high rank clerks. Information on MPs' salaries and additional benefits is public and can be consulted on the websites of Congress and Senate, respectively. Any other expenditure (e.g. international trips) must be authorised by the Bureau (*Mesa*).

30. Because of the economic crisis, salaries have been frozen several times, and so did contributions to an internal pension scheme, which was launched in 2006 but was then suspended in 2012. The remuneration and benefits package of Spanish MPs fall in the lower middle category in comparison with economically similar countries in Europe[14].

31. The GET did not hear or come across any allegations or cases regarding misuse of the funds allocated to the MPs. The GET was told that it was difficult to misuse parliamentary allowances given the fact that these are not handed over to MPs in cash but in credits utilisable just for the declared expense. For instance, if an MP needs to use a taxi for a parliamentary assignment, he/she will be provided with enough credits that cover the cost of that travel and he/she has to submit the invoice of that expense to the clerks of the Parliament.

Ethical principles and rules of conduct

32. No uniform code of conduct has been issued for deputies or senators. There are, however, some provisions on conduct contained in the Constitution, the electoral law and the respective Standing Orders of the chambers; e.g. these refer to the obligation of confidentiality, to rules on incompatibilities, to the obligation to attend sessions and to act in a respectful manner (to observe parliamentary order, courtesy and discipline). The Speakers of the relevant House, as proposed by the Bureau, may impose sanctions for

Law on Transparency, including details on the schedule of its adoption, committee work and the hearing of witness experts.

[13] National Institute of Statistics.

[14] http://parliamentarystandards.org.uk/payandpensions/Documents/9.%20MPs%27%20Pay%20and%20Pensions%20-%20A%20New%20Package%20-%20July%202013.pdf

infringements of the aforementioned rules, which may entail deprivation of rights or temporary suspension.

33. Moreover, the GET was told that the draft Law on Transparency lays out some ethical principles for public officials (including MPs), such as transparency in the conduct of public affairs, full dedication in the performance of official duties, a ban on gifts, the obligation to report misconduct and to prevent conflicts of interest, etc.

34. The GET takes the view that current arrangements regarding ethical principles and standards of conduct are insufficient. While the GET welcomes the recent reform efforts of the authorities aiming to fill the gaps in this regard with the adoption of a transparency law, it firmly believes that a code/set of standards of conduct may have a clear added value both for parliamentarians and for their public image. Such a document is not meant to replace or bring together the various legislative acts, including the draft Law on Transparency imposing obligations on MPs, but to complement and clarify them. Drafting and adopting a code of conduct/ethics would demonstrate the commitment of Parliament towards integrity. It would create joint expectations among the MPs and the public as to what conduct is to be expected from parliamentarians. It would prompt discussions among MPs about acceptable and unacceptable conduct and would increase their awareness about what is expected of them. The GET believes that the educational value of the preparation of a code and of keeping it up to date are important in a Parliament which has been fighting to overcome the recent credibility crisis. The adoption of such a code would additionally demonstrate to the public that their representatives are willing to take action to instil, maintain and promote a culture of ethics in their houses to improve their integrity and that of their peers. This implies of course that such a code of conduct emanates from parliamentarians themselves or, at least, that they take an active part in its preparation.

35. For an ethics and conduct regime to work properly, MPs must themselves develop fair and realistic rules and channels and mechanisms to instil and to uphold strong ethical values. All these call for targeted measures of a practical nature, including induction and regular training, issuing frequently asked questions, hands-on guidance materials, etc. The GET positively values the advisory role played to date by the clerks of the respective Chambers on conflicts of interest related matters; it further believes that the current informal consultation mechanism can work more efficiently, and secure on a long-term basis its key added value, if an institutionalised permanent source of confidential counselling for MPs were to be established. **GRECO recommends for each Chamber of Parliament, (i) that a code of conduct be developed and adopted with the participation of its members and be made easily accessible to the public (comprising guidance on e.g. prevention of conflicts of interest, gifts and other advantages, accessory activities and financial interests, disclosure requirements); (ii) that it be complemented by practical measures for its implementation, including through an institutionalised source of confidential counselling to provide parliamentarians with guidance and advice on ethical questions and possible conflicts of interest, as well as dedicated training activities.** The specific matters referred to in this recommendation will be examined further in detail in the following paragraphs.

Conflicts of interest

36. There is no general definition of conflicts of interest in the existing legal texts of Spain. The main rules on the issue are those set by the respective Standing Orders on incompatibilities and the general ban on the performance of private sector activities (see chapter on incompatibilities). Detailed procedures have been structured to provide advice on possible incompatibility, to grant exceptions to the applicable bans and to establish sanctions in case of infringement.

37. There is also no statutory provision barring an MP from taking part in a vote on a matter that concerns him/her personally, either directly or indirectly or in which s/he is involved as a representative. Therefore, the question of how a vote relates to any personal interests of an MP is again a matter for the person concerned to decide. In the GET's view, it is logical to provide some common guidelines about issues that might cause conflict of interest problems in Parliament. Under the assistance of guidelines as such, the individual MPs can judge potential conflicts of interest matters more appropriately and protect both their and the Parliament's credibility if questioned over their conduct. The GET invites, therefore, the authorities to specifically deal with this issue and to provide internal rules and guidance to MPs on conflicts of interest in the course of the preparation of codes of conduct, as per recommendation i above.

Prohibition or restriction of certain activities

Gifts

38. There are no specific rules on gifts. At present, MPs are not required to declare gifts or other advantages (e.g. hospitality) they receive in relation to the exercise of their parliamentary mandate. The draft Law on Transparency proposes to ban the acceptance of gifts, with the exception of those of a social, customary or courtesy nature.

39. The GET notes that, in relation to on-going corruption investigations, there is much public concern regarding the "ethical standard" about gifts and how "normal" could it be for politicians to receive them. In this context, the GET recalls the two different trends seen in other parliaments when dealing with the issue of gifts: some parliaments ban the acceptance of gifts above a certain threshold, while others do not ban the acceptance of the gifts at all but ask for those exceeding a certain threshold (usually not very high) to be declared and made public. In short, the issues of gifts and other types of hospitalities are thus regulated in one way or another in many countries. The GET takes the view that it is paramount for the credibility of parliaments to draw a clear line between acceptable (those of a social, customary or courtesy nature) and unacceptable gifts, benefits and hospitality and to explain this to the parliamentarians and to the public. The GET takes note of the intention of the authorities to deal with this important matter in the draft Law on Transparency, but it urges that the issue of gifts and other advantages is specifically tackled when implementing GRECO's recommendations to develop codes of conduct (recommendation i) and to widen the scope of the declaration requirements to also cover other advantages (recommendation iii).

Incompatibilities and accessory activities

40. As a general rule, the principle of "exclusive dedication" to the parliamentary mandate applies in Spain, i.e. MPs are banned from performing additional activities in the public and private sector. However, exceptionally MPs are allowed to engage in a limited number of accessory activities provided by Law. The accessory posts that are incompatible with the parliamentary mandate are regulated by the Constitution and the electoral law. These incompatible posts can be grouped under two main categories:

(a) Incompatibilities of an administrative nature

41. MPs cannot be members of the Constitutional Court, members of the higher levels of public administration (except members of Government who may or may not be MPs), the Ombudsman, judges, magistrates and public prosecutors (when in office), military personnel and members of the security forces (when in active service), a member of an electoral commission (Article 70, Constitution).

42. Electoral law (Organic Law for the General Electorate Regime, so-called LOREG) extends the aforementioned incompatibilities to other institutional offices, including the

executive offices of the Prime Minister, Ministers and Secretaries of State, the President of the Court for the Protection of Competition; member of the Management Board of the RTVE public enterprise; delegate of the Government to an autonomous port, waterway confederation or motorway toll authority; president or member of the administrative board, administrator, director-general, manager or equivalent of a public enterprise, State monopoly or enterprise with majority public participation, direct or indirect and of whatever nature, or publicly constituted savings bank; civil servant or holder of any other post at the service of or included under the budget of national, regional or local government or a public body or enterprise.

43. It is also incompatible to be a deputy and a senator simultaneously, or member of a regional parliament and deputy in congress simultaneously. However, it is possible for a senator to be a member of a regional parliament and a senator at the same time. Contrary to the restriction on being a deputy and a member of a regional parliament, MPs may simultaneously hold their elected posts in the local governments (municipalities, town halls). Moreover, pursuant to section 156 of the Electoral Law, MPs may sit in collective executive bodies or boards of directors of organisations, public entities or firms directly or indirectly controlled by the public sector through a majority stake. In both of these exceptions, MPs are only entitled to indemnities and cannot perceive any remuneration from their compatible secondary jobs. As far as current MPs are concerned, most of the secondary public posts that they hold are in local government. For instance, around 74 out of 350 members of the Congress and around 98 out of 266 members of Senate have secondary elected posts in local government, whereas only about 20 members of the Senate hold compatible positions in public entities (e.g. advisors/counsellors in public entities at regional or local level)[15].

(b) Incompatibilities of a strictly economic nature

44. MPs are banned from engaging in the performance of business, industrial or professional activities. In particular, membership in Parliament is incompatible with the exercise, whether directly or via a substitute, of any other function, profession or activity, public or private, self-employed or as an employee, remunerated by means of a wage, salary, charge, fee or any other payment. Should the person concerned transfer to a different administrative or employment situation, his/her post shall be kept in reserve for him/her under the conditions laid down by the applicable legislation.

45. Exceptions to the aforementioned ban are listed in the electoral law, i.e. (i) University lectures and cooperation in educational or research activities; (ii) management of personal or family assets; (iii) literary, scientific, artistic or technical production; and (iv) other private activities which are not listed explicitly as incompatible in the law and authorised by the respective Committee of each Chamber, following the petition expressed by those concerned. The GET was told that the relevant committees dealing with the incompatibilities have developed written codified criteria that they use in their elaboration of the accessory activities of the MPs. The plenary session of each Chamber decides on cases of incompatibility, following a report of the Committee of Members' Status in the Congress and the Committee of Incompatibilities in the Senate. Both the request and the authorisation are to be included in the Registry of Interests. The number of MPs engaged in private activities are very limited, e.g. out of 616 MPs sitting in both houses only around 30 of them work in private firms, about 40 of them work as lawyers, and about 100 of them are engaged occasionally in lecturing, conference and writing activities[16].

[15] http://www.congreso.es/portal/page/portal/Congreso/Congreso, data retrieved on 23.07.2013
http://www.senado.es/web/index.html, data retrieved on 23.07.2013
[16] http://www.congreso.es/portal/page/portal/Congreso/Congreso, data retrieved on 23.07.2013
http://www.senado.es/web/index.html, data retrieved on 23.07.2013

46. The GET assesses the system of incompatibilities as comprehensive and rather strict in comparison with the regulations applied in other countries. There are three main rules that apply to the incompatibility regime in Spain: (i) exclusive dedication to the parliamentary mandate; (ii) incompatibility with a secondary activity in the public sector (with the exception of a) posts held in local government, but in any case the MP has to opt for one or the other salary; and b) part-time lecturing work in a public university); (iii) incompatibility with a secondary activity in the private sector which may run counter the principle of exclusive dedication referred to above or which could raise a conflict of interest. The GET considers the detailed procedure and the well-developed mechanisms in place for preventing and resolving incompatibility instances to constitute clear assets in the system. More particularly, the public nature of the debate and the vote on accessory activities by the assembly seem to be dissuasive enough to persuade MPs to abide by the rules. To illustrate this, about 40 deputies and 60 senators have resigned from their previous public or private occupations after the elections. The GET recognises the valuable role that the clerks, in both the Congress and the Senate, have been building up when advising individual MPs on incompatibility criteria.

Financial interests, contracts with State authorities, post-employment restrictions

47. MPs cannot hold any share above 10%, acquired wholly or partly after the date of election (unless acquired by inheritance), in firms or companies which hold contracts with public sector entities. This limitation extends to the spouse/partner and minor children. Moreover, MPs cannot enter into contracts which are paid by public funds. MPs cannot hold offices or positions that entail functions of management, representation, advice or the provision of services in companies with a licence or concession of a public monopoly. There are no other restrictions on the financial transactions that MPs may engage in, e.g. buying/selling shares of companies in the stock market, debts and credits obtained from financial institutions.

48. No rules or measures prohibit or restrict the employment options of MPs, or their engagement in other paid or unpaid activities, on completion of their term of office. The GET was made aware of cases where MPs were hired by private companies after the end of their mandate because of their contacts in the ruling party. While it is clear that a parliamentary mandate will not, as a rule, span a whole career, and that MPs should therefore be provided with fair opportunities to seek outside employment, the GET is nevertheless concerned that an MP could use his/her parliamentary position to secure employment in a private company once s/he leaves Parliament. This is a matter that could be further explored when developing a code of conduct, as per recommendation i.

Misuse of confidential information

49. MPs have a duty of confidentiality; they can be deprived of their rights if they fail to observe this obligation. Moreover, the misuse of confidential information is punished under Article 417 of the Penal Code; sanctions consist of fines, debarment and even imprisonment if serious damage is caused or if the secrets of a private individual are involved.

Third party contacts

50. There are no regulations which would address issues that can arise from MPs' interactions with lobbyists or those who engage in similar informational or persuasive activities. The natural result of the absence of any rule regarding lobbying is the absence of any register of lobbyists and the absence of any legal requirement for MPs to disclose any consultations that they have had with interest groups regarding the legislative bills under review in the Parliament. However, the authorities confirmed their intention to regulate on this particular matter and to establish a register of lobbyists.

51. The GET welcomes the plans preconized by the authorities. In Spain, the main issue concerning contacts of MPs with third parties, relates not so much to lobbying firms (there are just a few), but to the influential role played by interest groups and professional organisations (associations, foundations and unions). In a system in which MPs are generally following party discipline when casting votes (see paragraph 20), the trend would be for lobbyists/interest groups to prefer channelling their influence through parliamentary groups rather than through individual MPs. In the GET's view, it is important that there is appropriate transparency on this type of dealings in order to protect the legislative process from improper influence or the mere appearance of so. Improved transparency in this regard can only contribute to boosting the image of and the trust in the Parliament, as well as the individual MPs. Therefore, **GRECO recommends the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process.**

Declaration of assets, income, liabilities and interests

52. MPs must file two separate forms to declare (i) their financial interests and assets and (ii) their accessory activities. These are to be furnished at the beginning and at the end of the mandate and must be updated, as necessary, whenever changes occur. The obligation to declare does not extend to MPs' spouses/partners or other family members. The Speaker of the Congress/Senate is ultimately responsible for the Registry; the Committee of Members' Status in the Congress and the Committee of Incompatibilities in the Senate are responsible for keeping and controlling declarations on accessory activities. Since 2011, declarations are public and available online.

53. The financial interest and asset declaration form requires the MPs to provide detailed information on land and property, vehicles, any income they receive from their secondary activities and pension plans, financial liabilities (debts, loans financial transactions, etc.) and interest returns from financial investments (stocks and shares).

54. Regarding accessory activities, MPs are asked to submit information on (i) public sector posts or positions; (ii) public responsibilities to which the MP has renounced; (iii) pension payments; (iv) teaching activities; (v) positions in political parties or parliamentary groups; (vi) literary, scientific, artistic or technical productions; (vii) authorised activities in the private sector; (ix) any other activities.

55. In addition to both financial declarations, MPs are not allowed to participate in any official foreign travel without authorisation of the Chamber of the Parliament to which they belong. Starting from 2012, the official foreign trips in which deputies and senators have participated are published on the web-sites of the Chambers, but disclosure forms do not include details on sponsored trips of individual MPs.

56. The GET thinks that there are certain features missing in the current declaration requirements which could prove to be important to better bringing to light potential or actual conflicts of interest. In the GET's view, in a system which has left the control of the accuracy of these forms mainly to citizens and the media, publicly available declaration forms would fulfil their purpose only if they give an image as complete and precise as possible of an individual MP's actual interests. More particularly, the GET believes that adding the market value of the real estate and vehicles, providing the names of the companies to which the shares and stocks belong; disclosing the interest rates paid for the credits obtained from financial institutions; including information on the gifts received and sponsored trips; and inserting the amount of income (even received in the form of indemnities) received from accessory activities in both forms would enhance the preciseness of the information contained in the forms. In the light of the foregoing, **GRECO recommends that current disclosure requirements applicable to the members of both Chambers of Parliament be reviewed in order to increase the**

categories and the level of detail to be reported. Following international experience in this regard and the potential risks of channelling personal financial interests to family members to circumvent the applicable rules, it may furthermore be prudent to consider widening the scope of the declarations to also include information on MPs' spouses and dependant family members (it being understood that such information would not necessarily need to be made public).

Supervision and enforcement

57. Main supervision over compliance with the rules on asset/activities declarations rests with Parliament. With respect to declarations on activities, the responsible committees in the Congress (Committee of Members' Status) and the Senate (Committee of Incompatibilities) play a key role in ensuring abidance by these rules. If questions arise as to the compatibility of an additional activity, the committees are entrusted with requiring the MP concerned to submit further details (e.g. relating to the kind of business, if public or private), as necessary. The committees' clerks provide advice to individual MPs in order to prevent conflicts of interest. As to the verification of asset declarations, these are only checked pro-forma by the presidents of the respective Chambers.

58. The submission of activities declarations is a prerequisite for formally acquiring MP status. Once submitted, the Committee of Member' Status has to complete its control within 20 days and inform the House about incompatible jobs that MPs hold. Once notified, the MP concerned has eight days to decide whether to quit the parliamentary mandate or the incompatible job. Similar verification procedures for accessory activities apply in the Senate. Whenever complaints by the public have been received in relation to incorrect declarations regarding accessory activities, the MP has been requested to rectify, as necessary.

59. The submission and verification of asset declarations is not a prerequisite for MPs to acquire parliamentary status. Nor are there detailed rules on the method and process to be followed in controlling asset declarations filed by MPs. This relatively lenient regulation of asset declarations seems to have taken its toll as some MPs were negligent in submitting their declarations in a reasonable time. For instance, according to a recent article published on a national newspaper, 17 MPs did not deliver their asset declarations even 100 days after they had been sworn in, and at least one deputy submitted her declaration after 8 months[17].

60. The Speaker of Congress/Senate is to impose disciplinary sanctions for violations of activity declaration requirements, as decided by the plenary and the Bureau upon proposition of the committees responsible, i.e. the Committee of Members' Status in Congress and the Committee of Incompatibilities in the Senate, which are composed of one representative of each parliamentary group. Sanctions consist of temporary suspension (breaches on parliamentary duties, e.g. assistance to sessions, courtesy, confidentiality) or even loss of the parliamentary mandate (breaches of incompatibility rules). Whenever MPs engage in incompatible activities, they must choose between the parliamentary seat or the disqualifying position, and if s/he fails to exercise the said option, s/he is deemed to have relinquished his/her seat (Article 160(3), LOREG). The GET was told that no sanction has ever been imposed; most incompatibility questions are resolved through consultation between the concerned MP and the Chambers' clerks so that conflicts of interest are prevented from the start. The GET was told that, in practice, MPs follow the clerk's advice, even if not in complete agreement with such advice, in order to avoid a potential sanction at a later stage.

[17] http://www.cadenaser.com/espana/articulo/diputados-siguen-presentar-congreso-declaracion-bienes/csrcsrpor/20120323csrcsrnac_13/Tes, retrieved on 23.07.2013

61. There is no institution/service in Parliament which is vested with investigative capacity, the only exception being the specific process set in place for suspicions of trading in influence inside Congress. In such cases, at the request of a parliamentary group of the deputy whose reputation is in question, the Committee of Members' Status is vested with investigative capacity. It can conduct hearings and require all necessary cooperation and access to information in order to efficiently perform investigations. The deputy concerned is to be heard once a draft report on the activity of the committee is prepared. The work of the committee and the deliberations held in plenary session are secret, but the final conclusions of the plenary must be published in the official bulletin. The GET was told that although this procedure is limited to trading in influence-related inquiries, in practice, it has also been used to control the activities declared by MPs.

62. The GET has misgiving as to the efficiency, sufficiency and dissuasiveness of the current supervision and enforcement arrangements on integrity-related matters in Parliament. While the system appears to work more effectively for failure to comply with incompatibility requirements, the existing regime is significantly weaker with respect to asset declaration requirements. In particular, there is no authority formally vested with substantial control responsibilities (other than the mere pro-forma collection of forms and its publication on the website) over asset declarations. Moreover, no sanctions are foreseen for the non-submission, the late submission or the submission of false information. The information contained in asset and activity declaration forms submitted at the beginning and at the end of MPs mandates are not cross checked by any authority (e.g. tax authorities). The fact that declaration forms are filled out manually and posted online after being scanned renders it difficult their comparability across time as variations may occur; ways could be explored to utilise technology to improve the effectiveness of disclosure systems in areas such as submission of disclosures, data management and verification. For example, the use of technology could better allow for comparability across time of asset and income variations could well facilitate early detection of potential anomalies and irregularities. Finally, the committees and speakers of the houses responsible for enforcing the rules have no legal tool to force the MPs, who are not re-elected and cease to be MPs, to declare their activities and assets at the end of their term as required by the rules.

63. The system heavily relies on public control. As one of the interlocutors pointed out, an MP who is accused of illicit enrichment has to prove his/her innocence to the public and the Parliament has neither authority nor competence to investigate these allegations. The GET was made aware of some actions led by citizens to scrutinise MPs work, e.g. "adopt an MP" which not only allows for the follow-up of individual MPs, but has also developed an online tool to compare MPs declaration forms[18]. The GET heard that a parliamentary group intended to table an initiative after the summer requiring greater control of asset and activity declarations in Parliament, by vesting the relevant committees with statutory investigative powers.

64. Despite the undisputed importance of the control carried out by the public and the media, the GET takes the view that greater institutional safeguards are needed in order to strengthen credibility and accountability of the integrity system in Parliament. Also bearing in mind the above recommendations to further develop the rules on MPs' conduct and their declaration duties, the GET believes that it is only natural to require some improvement in the monitoring and enforcement of such standards by competent bodies, as several of its interlocutors clearly recognised. Obviously, it is up to the Spanish authorities themselves to decide how appropriate monitoring could best be organised and

[18] "Adopt a member of Congress":
https://docs.google.com/spreadsheet/ccc?key=0AowzHU9kHzeudHlSemNzcVc2OTRqd05YbnkxdUlhMWc&hl=en_US#gid=0
"Adopt a senator":
https://docs.google.com/spreadsheet/ccc?key=0AowzHU9kHzeudG9aSjVVOEQxVHpzR2E4ZDdhVXJLQlE&hl=en_US#gid=0

improved, with due respect of defence rights of MPs. While such a role could be exercised by existing parliamentary bodies, provided they are equipped with adequate resources and investigative powers, the GET sees merit in introducing an element of independence into the supervisory regime of Parliament. This is all the more important in Spain given the troubling level of public unease with its political class. If public trust is to be restored and ensured on a long-term basis, a model that relies solely on politicians regulating themselves is unlikely to retain citizens' credibility. Some procedural elements could be introduced to address the public misgivings about Parliament being too inward-looking and potentially acting as judge and jury when investigating and punishing misbehaviour. In this connection, the GET draws the attention of the authorities to the experience already developed in some other countries to bring in lay expertise and involvement, i.e. to include in the oversight process and mechanism persons or institutions external to Parliament, whose appointment and role are vested with adequate guarantees of legitimacy, transparency and efficacy. This would not only demonstrate to the public Parliament's willingness to adopt a more proactive approach towards upholding the integrity of its members, but also its commitment to continue infusing transparency, independence and accountability in-house. Finally, in order to be credible, the system will have to foresee the imposition of appropriate sanctions in case of infringements of the rules. For the system to operate with broad parliamentary and public support, it must be regarded as independent, legitimate and proportionate. Therefore, **GRECO recommends that appropriate measures be taken to ensure effective supervision and enforcement of the existing and yet-to-be established declaration requirements and other rules of conduct of members of Parliament.** Such arrangements will also need to be reflected in the codes of conduct recommended before.

65. Criminal liability applies pursuant to the provisions on bribery (Articles 419 to 427) and trading in influence (Articles 428 and 429) of the Penal Code. MPs benefit from non-criminal liability (*inviolabilidad*) for any opinion expressed or vote cast during a sitting of the Parliament or its working bodies. They also benefit from procedural immunity; notably, no criminal investigation and prosecution can be undertaken against deputies and senators, without prior authorisation by the respective House. The Supreme Court (Section II) retains responsibility for hearing cases against MPs. This is known in Spain as "*aforamiento*". The GET heard some unease in this regard, namely, in relation to greater exposure of the Supreme Court to risks of political pressure. The issue of politicisation risks in the judiciary is dealt with in detail in the next section of the present report.

66. The GET was informed that all authorisation requests to prosecute MPs had been granted by the chambers since 1998; the Constitutional Court has developed very restrictive jurisprudence in this respect. A detailed procedure has been laid out in the respective statutes of each House. An exception exists in the event of *flagrante delicto* in which case the beneficiaries of the immunity can be arrested. GRECO concluded in its First Evaluation Report on Spain that the scope of the procedural immunity afforded to MPs was generally acceptable.

Advice, training and awareness

67. At the start of a new session of Parliament, MPs are informed on their duties to declare interests and activities. The clerks of the Chambers are available to advise whenever an individual MP has a query on his/her declaration duties and they are indeed playing a positive role in this respect, as recognised before. Apart from these, no other induction or specific ethical training is offered to MPs.

68. The information gathered by the GET strongly suggests that there is room for improvement in the current arrangements for raising the awareness of MPs about integrity and providing advice when necessary. A more institutionalised training and counselling system would raise the profile of integrity matters within Parliament and sharpen the awareness of MPs; a recommendation has been already issued in this

respect (recommendation i). The GET considers this especially important as new rules and mechanisms on integrity are also recommended to be introduced in this report.

69. Finally, as a sign of politicians' commitment to repair their image and recapture public confidence, each House needs to keep exploring ways to instill, maintain and promote a strong culture of integrity in its Members. This requires more than just accountability mechanisms. It needs visible support from leadership, as well as effective opportunities to engage in individual and institutional discussions on integrity and ethical issues related to parliamentary conduct. Furthermore, to support and strengthen public trust in Parliament, GRECO believes it is essential that the public continues to be made aware of the steps taken and the tools developed to reinforce the ethos of parliamentary integrity, to increase transparency and to institute real accountability.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

70. The judicial system of Spain is organised territorially (municipalities, judicial districts, provinces, Autonomous Communities and the State) and by subject matter (ordinary: civil, criminal, administrative, social; special: military; and specialised: courts dealing with violence against women, juvenile courts, etc.). It consists of the following courts:

- The Supreme Court (*Tribunal Supremo*), exercising jurisdiction over all of Spain, is the highest judicial body in all areas of law, except in relation to constitutional rights. It has five chambers: civil, criminal, administrative, social and military.
- Below the Supreme Court is the National Court (*Audiencia Nacional*) which also has jurisdiction over all of the nation's territory. It tries criminal cases that transgress regional boundaries, appeals against central administration, as well as certain labour cases.
- The Higher Regional Courts (*Tribunales Superiores de Justicia*) are the highest courts within each Autonomous Community. They have four chambers: criminal, administrative, labour and civil. They constitute the final court of appeal in relation to the application of the law of the Autonomous Community in question.
- The Provincial Court (*Audiencia Provincial*) has jurisdiction over a province. It tries criminal and civil cases.
- District Courts (*Juzgados*) have jurisdiction to deal in the first instance; the different types of district courts are detailed as follows. In particular, examining courts (*Juzgados de Instrucción*) investigate and prepare criminal cases for other courts. Courts of First Instance (*Juzgados de Primera Instancia*) hear civil cases that are not designated by law to be heard by a higher court and hear appeals of judgements made by the Justice of the Peace. The Justice of the Peace (*Juzgados de Paz*) hears minor civil cases. Criminal Courts (*Juzgados de lo Penal*) try crimes prepared and investigated by the Court of First Instance. Administrative Courts (*Juzgados de lo Contencioso-Administrativo*) hear administrative appeals. Labour Courts (*Juzgados de lo Social*) have jurisdiction over work-related cases. Courts of Prison Vigilance (*Juzgados de Vigilancia Penitenciaria*) have jurisdiction over prisons and detainees. Juvenile Courts (*Juzgados de Menores*) try criminal cases committed by minors over 14 years old and under 18 years old; they may have jurisdiction over several provinces in an Autonomous Community. Domestic Violence Courts (*Juzgados de Violencia de Género*) hear criminal cases entailing domestic violence against women. Commercial Courts (*Juzgados de lo Mercantil*) hear all matters in connection with insolvency proceedings.

71. As regards the single judge or collegiate nature of the aforementioned courts, all are single judge with the exception of the Supreme Court, the National High Court, the Higher Courts of Justice and the Provincial Courts. Collegiate courts decide by majority vote. There are 4,689 judges of whom 2,422 are men and 2,267 are women[19].

72. The Constitutional Court (*Tribunal Constitucional*), which has jurisdiction over the national territory, is competent to examine the compatibility of legislation with the Constitution and decide on appeals on alleged breaches of fundamental rights and freedoms (*recurso de amparo*).

73. The Constitution enshrines the principles of independence, impartiality and irremovability of judges: judges shall be independent, shall have fixed tenure, shall be accountable for their acts and subject only to the rule of law (Article 117, Constitution).

[19] Fourth Evaluation Report on European Judicial Systems, European Commission for the Efficiency of Justice (CEPEJ), 20 September 2012.

To ensure the principle of impartiality and that of a fair trial, the Spanish system has a clear separation of investigation and adjudication functions. A strict incompatibility regime to shelter the judicial profession from any improper influence is required by the Constitution (Article 127) and subsequently developed by the Organic Law 6/1985 of the Judiciary (LOPJ), the latter being the key instrument regulating the judiciary in detail. The LOPJ the Organic Law of the Judiciary devotes an entire section to judicial independence, addressing such issues as security of tenure, incompatibilities, immunity and economic independence.

74. In particular, the General Council of the Judiciary (*Consejo General del Poder Judicial*, CGPJ) is a constitutional, professional, autonomous body mostly consisting of judges, which performs strategic, administrative, inspection and managerial functions with the final aim of guaranteeing judicial independence. The Constitution specifies the core functions of the CGPJ, i.e. appointment, promotion and discipline of judges. Over the years, the CGPJ duties have extended to virtually all organisational matters relating to the judiciary. All administrative decisions of the CGPJ can be subject to review in the Supreme Court.

75. According to the Constitution, the CGPJ consists of the President of the Supreme Court, who presides over the CGPJ, plus 20 individuals, each of whom serves for five years. Of the 20 members, the Constitution specifies that 12 are to be judges; the other 8 are attorneys or other jurists. The Constitution requires that the latter be appointed by a 3/5 majority of Parliament. The Constitution does not specify how the members belonging to the judicial shift are to be appointed and the system of appointment has varied over the years: before 1985, they were elected by judges themselves. However, that system was criticised at the time for generating a rather conservative composition of the CGPJ. The system was then changed with a view to ensuring that the CGPJ composition was more reflective of society as a whole and to avoid self-perpetuating government of judges: from 1985 onwards, Parliament assumed responsibility for appointment among the list of candidates proposed by the judges' associations.

76. At the time of the on-site visit, the manner of selection of the CGPJ members was repeatedly singled out by the representatives interviewed as a source of concern given its susceptibility to "politicisation" – the main criticism being that the method of election enabled political parties to divide the CGPJ seats among those whom they support. After the on-site visit, the GET was informed of the adoption of Law 4/2013 of 28 June 2013 reforming the CGPJ, including some changes in the appointment of the members of the CGPJ belonging to the judicial shift. Accordingly, while Parliament retains responsibility for formal appointment by a 3/5 majority, any active judge can now present his/her candidacy if relying on the support of 25 judges or a judicial association. A minimum requirement for candidacy is at least 15 years of legal experience. The authorities indicated, after the on-site visit, that the new system has enabled a total of 54 judges, including about 18 non-associated judges, to run for election (in the former system 36 was the maximum number of candidates).

77. The GET recalls Recommendation CM/Rec(2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibility, which enshrines the independence of councils of the judiciary and recommends that not less than half the members of such councils be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary. This has also been reiterated by the Council of Europe European Commission for Democracy through Law (Venice Commission)[20]. In this connection, the GET notes that the recent reform in the

[20] Report on European Standards as regards the Independence of the Judicial System, Part I – the Independence of Judges, European Commission for Democracy through Law (Venice Commission), CDL-AD (2010)004.
Report on Judicial Appointments, European Commission for Democracy through Law (Venice Commission), CDL-AD (2007)028.

appointment of CGPJ members opens up candidacy to any judge with sufficient support and not only to those proposed by judicial associations which was the case before. This, in principle, could have the potential of broadening representation of the corps of judges in the CGPJ's composition since half of the judges in Spain are not affiliated to a judicial association. In turn, the number of candidates for election in Parliament could be fairly large and room for political bargaining at the time of the vote thereby increased. Moreover, the required 3/5 vote could easily allow a political party with a commanding majority in Parliament to place its preferred candidate in the post.

78. The GET remains cautious as to the effect that the recent reform could trigger in the future and whether this reform would effectively strengthen the CGPJ's image as a non-partisan body. While understanding that the role of Parliament in the appointment of the members of the CGPJ may have been justified for historical reasons, the GET refers back to the text of Recommendation CM/Rec(2010)12 quoted above, which calls for election of at least half of the council by the judges themselves through a democratic system where all the judges have the right to vote and to be elected. The GET also draws the attention of the authorities to Opinion no. 10(2007) of the Consultative Council of European Judges (CCJE) which more explicitly stresses that political authorities such as the Parliament or the executive should not be involved, at any stage, in the selection process. The GET further notes that the establishment of judicial councils is generally aimed at better safeguarding the independence of the judiciary - in appearance and in practice, the result in Spain seeming to be the opposite as evidenced by recurrent public disquiet in this domain. This is particularly dangerous at a time when cases involving political corruption are on the rise.

79. Another novelty introduced with the LOPJ amendment of June 2013 is that only some of the CGPJ's members (5 out of 20) are full-time. Before the reform, all members devoted themselves solely to CGPJ functions, to the exclusion of any other professional activities. The change in approach has reportedly been justified on efficiency grounds, but some in the profession argue that this reduces the work capacity of the CGPJ and further weakens its independence.

80. In the GET's view, given the key decision-making role that the CGPJ plays in vital areas of the judiciary, including on appointments, promotion, inspection and discipline concerning judges, it is crucial that this body is not only free, but also seen to be free from political influence. When the governing structures of the judiciary are not perceived to be impartial and independent, this has an immediate and negative impact on the prevention of corruption and on public confidence in the fairness and effectiveness of the country's legal system. The GET understands that it is too early to assess the effects of the recent changes introduced in the appointment process of the CGPJ judicial members, but it fears that the perception of politicisation of the CGPJ, given the role of the Parliament in the process, may not be resolved in the citizens' eyes. Moreover, the current reform has also encountered widespread discontent amongst the profession. The first testing experience of the recent reform took place with the election of the CGPJ members in November 2013; this issue having been a major point of contention for years, and in the particular context for Spain, the GET considers it deserves close follow-up. **GRECO recommends carrying out an evaluation of the legislative framework governing the General Council of the Judiciary (CGPJ) and of its effects on the real and perceived independence of this body from any undue influence, with a view to remedying any shortcomings identified.**

81. The Ministry of Justice (and the relevant executive bodies in the eight Autonomous Communities with devolved judicial competence) retains responsibility pertaining to court administrative personnel and management of buildings and resources. It handles salaries and pensions. The CGPJ has a separate budget, but it only covers the activities of the Council itself. The GET notes that the Ministry's of Justice responsibilities over the budget and the budgetary process, as well as its role to re-allocate funding amongst courts and

judicial needs during the budgetary year, are perceived by many in the profession as posing a threat to the independence of the judiciary. Internationally binding texts do not strictly provide for budgetary autonomy of the judiciary. However, in the GET's view, it is important to ensure that there is, at the very least, active and decisive judicial involvement both in drawing up and disbursing the budget, taking into account real needs and priorities as these emerge and with the requisite accountability mechanisms. One form which this judicial involvement could take would be by providing the CGPJ with greater budgetary management functions. This would be in line with the overall aim of economic independence of the judiciary which is enshrined in Chapter V of the LOPJ. This is also in accordance with Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) which stresses that a system in which the council for the judiciary has extended financial competences requires serious consideration in those countries where such is not the case at present; it further states that courts can only be properly independent if they are provided with a separate budget and administered by a body independent of the executive and the legislature. This is an issue that can be taken in due consideration when implementing recommendation v above.

82. There is a comprehensive reform of the judiciary underway aiming at enhancing efficiency. An Inter-institutional Commission (composed of 7 members representing judges, prosecutors, academics and the legal profession) has been created to work in this area. The reform would reportedly look into appointment procedures, the territorial set-up of the judicial system and "single-judge" structures, the excessive workload of courts, the centralisation of judicial information, etc.

Recruitment, career and conditions of service

83. Judges are appointed to office, for an indefinite period of time, until the official age of retirement. Judges cannot be transferred, suspended, dismissed or be made to retire for causes other than those prescribed by law (Article 118, Constitution).

84. Access to the judicial career is based on the principle of merit and capacity to perform judicial duties (Article 301(1), LOPJ). The principal route to the judiciary is organised by way of (i) a rigorous public competition open to law graduates of Spanish citizenship with full legal age (18 years old), which is then followed by (ii) a period of training (theory and practice) at the Judicial School. A minority of judges are drawn from experienced lawyers of recognised competence; they must also follow the training course of the Judicial School (Article 301(5), LOPJ). All candidates must present proof of clean criminal records.

85. The selection process is designed to fulfil the goals of transparency and objectivity (Article 301(2), LOPJ); the relevant selection bodies (Selection Committee and Examining Board) have a mixed composition bringing together representatives of the Ministry of Justice, judges, prosecutors and academia. Furthermore, the LOPJ contains provisions encouraging the selection and appointment of disabled persons on the basis of the principles of "equal opportunities, non-discrimination and compensation for disadvantages"; according to these provisions the selection procedures must also respect the principle of "equality between men and women". The initial training and selection course includes a multidisciplinary training programme and practical supervised training targeted at different bodies of the judiciary (Article 307, LOPJ). All selection tests to enter and to be promoted in the judicial career include a chapter on the principle of gender equality, including particular measures against gender violence (Article 310, LOPJ). Candidates who pass the theoretical and practical course are formally appointed judges by the CGPJ, following a proposal made by the Judicial School.

86. In theory, promotion in the judicial career is based on the principles of merit and capacity and also on suitability and specialisation to perform judicial duties (Article 316(3), LOPJ). In practice, according to the relevant rules on merits' contests

(Articles 329 and 330, LOPJ), seniority is the main criterion for promotion or transfer. That said, the GET was told that increasing attention was being paid to specialisation in the context of the ongoing reform of the judiciary. Evaluation of judges' performance is based on the achievement of quantitative targets. The evaluation system is currently moving from a court-based to a more institutionalised mechanism.

87. For higher appointments, i.e. Presidents of Provincial Courts, High Courts of Justice, the National Court and Supreme Court, the CGPJ exercises a discretionary power regarding the relevant proposals for appointment. All decisions of the CGPJ concerning this issue must be reasoned and can be challenged by way of judicial review (before the Administrative Chamber of the Supreme Court) by any of the applicants. The appointment of the aforementioned higher officials is made for a five-year period. In order to refine the discretionary power of the CGPJ in this matter, Regulation No. 1/2010 of 25 February 2010, on decisions regarding appointment of holders of high judicial offices, was issued. It contains guidance on the merits and criteria of competence to be assessed when adopting decisions on appointment; all proposals for appointments must be consistent with the principles of merit and capacity in the performance of judicial duties, objectivity, transparency and gender balance.

88. The GET acknowledges the positive steps taken to enhance the skills of justice professionals and to ensure transparency and fairness in their recruitment. The Spanish entry system to the judiciary is said to be one of the toughest across Europe. The GET further notes that, in principle, judges and prosecutors are promoted according to their length of service, particularly at the lower levels of the hierarchy. However, questions were raised on-site concerning the potential of greater discretion by the CGPJ in promotions of some categories of senior judges (i.e. Presidents of Provincial Courts, High Courts of Justice, the National Court and Supreme Court judges) and the possibility of political interference in such promotions which were not perceived to be carried out in a fully transparent manner. Criticism in this regard has been expressed by both civil society and judges themselves: there is a certain impression that while the judiciary is independent at its base, it is politicised at the top in its governing bodies, i.e. the CGPJ and the senior ranks of the judiciary. Some indicated that it was sometimes known beforehand who would be appointed to the senior position in question.

89. International standards are unequivocal in this respect: all decisions concerning appointment and professional career must be based on objective criteria; councils of the judiciary should demonstrate the highest degree of transparency[21]. The GET has difficulty in reconciling such standards with the "discretion" as to how to assess merits and professional qualifications with which the law vests the CGPJ when appointing senior judges. Some attempts have been made in recent years to refine the criteria on which the CGPJ should base these appointments, notably, through a 2010 regulation and a number of Supreme Court decisions. However, the representatives interviewed conceded that it would be preferable for these criteria to be specifically included in the law and indicated that the draft amendments of the LOPJ included provisions in this respect (e.g. requirements to submit CVs, documents/titles certifying merits, performance reports, etc.). The GET welcomes the anticipated regulatory change. When promotions are not based on seniority, but on qualities and merits, these must be clearly defined and objectively assessed. In the GET's view, the promotion of judges is an extremely important issue to instil public trust in the fairness and transparency of judicial processes; any suspicion of undue influence in the promotion of judges to higher positions must be dispelled. **GRECO recommends that objective criteria and evaluation requirements be laid down in law for the appointment of the higher ranks of the judiciary, i.e. Presidents of Provincial Courts, High Courts of Justice, the National Court and Supreme Court judges, in order to ensure that these appointments do not cast any doubt on the independence, impartiality**

[21] Recommendation CM/Rec(2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibility.

and transparency of this process. When implementing this recommendation the authorities should bear in mind the concerns expressed in paragraph 80 (recommendation v) on the perceived politicisation of the CGPJ.

90. Judges cannot be redeployed, even by way of promotion, without having freely consented thereto; an exception to this principle is permitted only when compulsory transfer (*traslado forzoso*) is provided for and has been pronounced by way of a disciplinary sanction, e.g. in cases of incompatibilities. Both appointments and transfers of judges are publicised.

91. Judges can only lose their position (a) if they renounce their judicial career; (b) if they lose Spanish nationality; (c) by virtue of a disciplinary sanction; (d) if convicted when the sanction entails imprisonment of over six months; (e) if they fall under incapacitating circumstances; (f) when they retire. The prosecution service must be informed if removal occurs in the terms foreseen in indents (b), (c), (d) and (e). Dismissal procedures are the responsibility of the CGPJ and are always carried out with a hearing of the interested party and reporting to the public prosecutor. Proceedings in such cases are entrusted either to the disciplinary committee or the full assembly of the CGPJ.

92. The gross annual salary of a first instance judge at the beginning of career is 47,494 EUR; it amounts to 111,932 EUR for judges of the Supreme Court. Professional incentives are in place for judges who exceed performance targets.

Case management and procedure

93. The premise is that cases are to be assigned to judges on objective grounds. Case allocation is computerised and based on objective criteria, however, these criteria are not homogenised throughout the Spanish territory. Although this was not said to pose any problem in practice (the different courts in Spain were generally following the same sort of criteria), the authorities were looking into establishing a unified system of distribution of cases to judges. The GET considers this to be a positive development which the authorities are encouraged to complete so that consistent procedures in case allocation apply countrywide and are not subject to local variation.

94. As a rule, a judge can be removed from hearing a case only if there are grounds for her/his disqualification (e.g. disciplinary reasons). No court or judge, nor their governing bodies or the CGPJ, may issue instructions to lower courts (Article 12 (3), LOPJ). Any judge who sees his/her independence compromised may report it to the CGPJ in order to initiate the appropriate legal proceedings to preserve such independence (Article 14, LOPJ). Lower court decisions may be appealed to a higher court and, ultimately, to the Supreme Court.

95. Legal proceedings are to be carried out within a "reasonable period of time" (Article 24(2), Constitution). Numerous attempts have been made to streamline the workings of the judicial system, including by increasing the number of judges or amending certain procedural laws; however, the excessive workload of courts puts at risk the capacity of the system to deal with the number of cases they receive, and to do so in a timely manner. In February 2013, over 2,000 judges went on strike to protest worsening work conditions. The ratio of 10 judges per 100,000 population in Spain is one of the lowest in Europe. As a matter of fact, one of the chief problems continuing to affect Spanish justice is undue delay in decisions by the courts[22].

[22] A number of judgments by the European Court of Human Rights (ECHR) have established violations of Article 6 of the Convention on the grounds of undue delay. See for example, *Garcia Mateos vs Spain* (19.2.2013), *Serrano Contreras vs Spain* (20.3.2012), *González-Doria Durán de Quiroga vs Spain* (28.10.2003).

96. Corruption cases are no exception and there is a great deal of concern over the length of time they take. The GET was told that courts have been swamped with about 800 corruption cases in the last five years and only a few have resulted in conviction or reached conclusion. The problems seem to arise principally at the investigation stage, but there does not appear to be any difficulty with the length of trial themselves. It seems that investigations have a tendency to mushroom and to turn into investigations of every possible aspect of the particular matter being enquired into. The root cause of this seems to be a combination of the legality principle applied in Spain in very strict terms which requires that every offence be investigated and prosecuted, and the control of the investigating judge over the investigation – or, at least, an unclear division of responsibility between the prosecutor and the judge. The ongoing reform of the judiciary is looking into this problem and has proposed several initiatives to curb it, including by resorting to alternative resolution mechanisms, decriminalising certain minor offences (misdemeanours), increasing judicial taxes and restricting free legal aid to persons with low income levels, reorganising judicial structures, prioritising cases, etc. Likewise, the GET was told that proposals had been tabled to place control of the investigation in the hands of the prosecutor in order to empower him/her to choose what charges to investigate and prosecute rather than requiring him/her to investigate and charge a multiplicity of offences which in turn could create an unwieldy and unnecessarily complex investigation and trial. The GET encourages the authorities to tackle this issue, as a priority, since it severely undermines public trust in justice, as polls repeatedly evidence.

97. The CGPJ, in its supervisory capacity, can carry out ad-hoc inspections (which it can also delegate to the superiors responsible for the different courts) to verify the functioning of the administration of justice; the Ministry of Justice may request the CGPJ, as appropriate, to inspect the operation of a given court, as necessary. This inspection is in no way to interfere with the due independence of justice. In relation to the problem highlighted above concerning the excessive length of judicial processes, the GET considers that the current internal audit system could pay closer attention to the efficiency of working methods and procedures in court.

98. As regards publicity of judicial work, court hearings are public unless provided by law for justified reasons, e.g. protection of minors (Article 120(1), Constitution). All judgments must be reasoned and of a public nature (Article 120(3), Constitution). The CGPJ publishes judicial statistics on its website as well as reports on perceptions, on inspections performed, on the functioning of courts, etc. The CGPJ also contains a search engine for jurisprudence. Furthermore, there is a Centre for Judicial Documentation (CENDOJ), under the auspices of the CGPJ, providing a database with Spanish, European and international legal texts, judgements, publications and other legislative materials. There are plans underway to better centralise judicial information through the establishment of a common database.

Ethical principles, rules of conduct and conflicts of interest

99. No code of conduct, nor set of rules or principles in the field of judicial ethics, has been specifically issued for the judiciary in Spain. That said, the LOPJ enshrines the principles of due independence and impartiality of the judicial function, and introduces a strict incompatibility regime for judges. The Constitution establishes core values governing the judicial function, i.e. independence and impartiality of judges, security of tenure, etc. and other principles that apply to judicial proceedings, such as the right to legal remedies, the presumption of innocence, etc. The draft amendments of the LOPJ also include provisions on ethics (independence, respectful treatment) and transparency.

100. Spain has actively participated in the preparation of model codes of conduct in other regions of the world, and more particularly, the London Declaration (2010)[23] and

[23] European Network of Councils of the Judiciary: http://www.encj.eu/images/stories/pdf/ethics/encj_london_declaration_recj_declaration_de_londres.pdf

the Latin American Code of Judicial Ethics (2007)[24], which the GET was told constitute inspirational guidance for the Spanish judiciary. So do other materials on ethics issued by the European Network of Councils of the Judiciary. These documents are available at the CGPJ website. The Spanish CGPJ actively participates in the Latin American Committee of Judicial Ethics which functions comprise (i) issuing non-binding opinions on topics and questions related to judicial ethics at the request of the Summit of Presidents of Supreme Courts of Latin American countries or any of its members (i.e. Supreme Courts or Councils for the Judiciary of Latin American countries; (ii) promoting the development of judicial ethics and discussions on the subject through training activities, seminars, publication of papers and monographs, etc.; and (iii) strengthening the ethical standards and consciousness of judges from Latin American countries.

101. The GET acknowledges the active role taken by the Spanish judiciary to further develop deontological standards for the Ibero-American region. The GET was informed that the Latin American Code of Judicial Ethics is applied in practice although it has never been formally adopted. Many in the profession recognised that it was awkward that the Spanish judiciary had greatly contributed to the development of deontological standards, but that it had not formally adopted a code of its own and that it was probably time to do so. The GET can only share such a view. It further believes that drafting and adopting a code of conduct specific to the Spanish judiciary would enable broad discussion among Spanish judges themselves about the ethical dilemmas and the potential conflict of interest situations they may face in the fulfilment of their tasks. Such discussion in itself could only be beneficial towards agreeing on shared values and to restate the commitment of the profession towards integrity. The adoption of a code of conduct would also represent a key opportunity to translate core values into behavioural norms. Furthermore, the adoption of a clear set of deontological standards would assist in creating joint expectations among judges and the public as to what conduct is to be expected in court. Regarding guidance on deontological matters, the GET was told that these can be referred, through the CGPJ, to the Latin American Committee of Judicial Ethics which can issue non-binding opinions, as per request. This possibility has, however, never been used to date. In practice, judges were turning to other colleagues for advice whenever confronted with integrity questions. The GET takes the view that the establishment of an institutionalised advisory service could not only assist in better advising judges in case of integrity-related dilemmas, but also in bringing coherence to the court's integrity policy and in developing best practice across the profession. Consequently, **GRECO recommends that (i) a code of conduct for judges be adopted and made easily accessible to the public; and (ii) that it be complemented by dedicated advisory services on conflicts of interest and other integrity-related matters.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

102. Judges are subject to a very strict regime of incompatibilities, much stricter than any other public servant. In particular, judges are banned from membership of political parties or unions[25] (Article 395, LOPJ). The aforementioned ban does not apply to judges of the Constitutional Court and the GET notes that such an exception is triggering some debate for conflicts of interest-related allegations in course. On the other hand, judges can be granted "special leave" to take up political activity. In 2012 the law was changed and, under the terms of special leave, judges/prosecutors continue to contribute to health and pension schemes, acquire seniority in service and are able to return to the same post they left. Prior to the said reform, judges/prosecutors who took up a political

[24] http://perso.unifr.ch/derechopenal/assets/files/legislacion/l_20120308_02.pdf
[25] Judges may, however, form professional associations.

activity were considered to be on "sabbatical leave" according to which their post could not be kept for their return, nor could the years spent outside the service count for seniority reasons. The GET has doubts about this situation since it raises questions from the point of view of separation of powers and regarding the necessary independence and impartiality of judges in reality and in appearance, all the more so given public concerns as to the risks of politicisation of the judicial function in Spain. The GET was told that the planned reform is looking into this matter: the possibility for a judge to take leave to a join political activity will continue to exist, but the conditions upon return, and more particularly those relating to promotion, would be more restrictive. The GET fears this move may not be sufficient to redress concerns over politicisation of the judiciary.

103. Moreover, judges cannot hold any paid jobs or professions (except teaching and legal research, literary, scientific, artistic and technical papers), nor any position of popular election or political appointment or within the public administration (Article 389, LOPJ). The GET is satisfied that supervision over accessory activities carried out by judges appears to be exercised in an adequate manner.

104. There are no regulations that would prohibit judges from being employed in certain posts/functions or engaging in other paid or unpaid activities after exercising a judicial function. Cases where judges resign from office to assume work in the private sector are rare and not seen as a threat to judicial independence.

Recusal and routine withdrawal

105. It is forbidden for judges to hear and decide on cases in which they may be an interested party, either personally or as representatives of others. Grounds for recusal are extensively listed in the LOPJ (Articles 219, 391-393) and include family relationship, friendship or enmity with the parties and involvement in previous stages of litigation. The ongoing amendment of the LOPJ introduces one more ground as way of a "blanket provision" for judges to abstain in a case where they may have any sort of direct or indirect interest.

106. Judges are required to abstain if a conflict of interest arises and in the event of not doing so an objection may be filed by the injured party. It is possible to review the judicial decision issued by a biased judge in the form of an application of annulment on grounds of illegality of the decision and breach of due process for lack of impartiality of the responsible judge (ordinary appeal or cassation appeal, in accordance with Articles 5(4) and 228(3) of the LOPJ. Furthermore, the matter can be invoked before the Constitutional Court (*recurso de amparo*) once the available domestic legal remedies provided by ordinary jurisdiction have been exhausted.

Gifts

107. There are no detailed rules on the acceptance of gifts specifically by judges. There was consensus among the different interviewees on-site on the fact that, in practice, there is no culture of making gifts to judges. This should also be clearly stated, in writing, in the code of conduct recommended above.

Misuse of confidential information and third party contacts

108. While court proceedings are, as a general rule, public, confidentiality obligations apply concerning the handling of information in a case. Breach of professional confidentiality is punishable by Article 417 of the Penal Code; sanctions consist of fines, debarment and even imprisonment if serious damage is caused or if the secrets of a private individual are involved. The disclosure of confidential information may also entail disciplinary consequences.

Declaration of assets, income, liabilities and interests

109. There are no specific requirements, duties or regulations in place for judges to submit financial declarations, others than those applying for taxation purposes. The GET was made aware of a case where the Inspection Service of the CGPJ, upon a complaint over illicit enrichment of a judge, had asked tax authorities to access the judge's financial record in order to assess potential irregularities. The GET was further told that the number of cases in which either a judge or a prosecutor has been prosecuted and found guilty of a corruption offence is virtually nil. All interlocutors met stressed that both judges and prosecutors had a strong spirit of public service and dedication to public duty, and that, other than some isolated case, there had been no evidence of financial corruption amongst either the judiciary or prosecutors. While the GET does not see the need to issue a formal recommendation on the establishment of an asset declaration system, it notes the varied and evolving experience being gathered by GRECO member States in this domain and encourages the Spanish authorities to explore the advisability of making judges disclose their financial interests to their relevant hierarchy in order to better safeguard independence and impartiality vis-à-vis parties to proceedings or regarding the outcome of a given case; the existing rules on recusal outlined in paragraphs 105 and 106 are also valuable tools in the system to better prevent conflicts of interest.

Supervision and enforcement

110. Judges are subject to civil liability (Articles 411 to 413 LOPJ) for intentional damages caused in the performance of their duties. Civil action against the judge concerned can only take place once the proceedings where the damage has occurred are closed.

111. Judges are also criminally liable. Criminal liability proceedings against a judge may be filed either by an order issued by the competent court or following a complaint lodged by the prosecutor, the aggrieved or injured party, or by exercising popular action on behalf of public interest. Articles 398-400 LOPJ provide that serving judges may only be arrested by order of the competent court or in case of *flagrante delicto*. Criminal proceedings against a judge must be instituted, either before the competent higher court of justice or before the Supreme Court, depending on the hierarchical position of the judge in question. Since 1998, there have been eight convictions for abuse of judicial office. From 1988 to 2013, there have been five cases of members of the Spanish judiciary prosecuted for corruption-related offences. In all these cases the CGPJ decided to suspend temporarily the involved judges from office, once the indictment had been filed and the opening of trial had been ordered by the competent court. In one of the five afore-mentioned cases, the indicted judge was acquitted following the final decision rendered by the Criminal Chamber of the Supreme Court.

112. Disciplinary liability for violations of ethical (e.g. incompatibilities) or professional duties (e.g. undue delay) applies. It is regulated in detail in Articles 417 to 419 LOPJ (as amended in June 2013), which distinguishes three categories of infringements: petty offences (e.g. unjustified leave of service for one or two days), serious offences (e.g. disrespect to superiors, hindrance of inspection activities, unjustified recusal, etc.) and very serious offences (e.g. affiliation to political parties or unions, disqualifying positions, abuse of authority, etc.). Petty offences are sanctioned with warnings and/or fines; serious offences are sanctioned with fines of up to 6,000 EUR; very serious offences are punished with removal from office/suspension or dismissal from the judiciary.

113. In principle, the opening of disciplinary proceedings is mandatory for all types of disciplinary offences (including petty disciplinary offences), the only exception being when the sanction of warning is applied. This type of sanction can be imposed directly by either the Presidents of the courts or the Government Boards of the courts by means of a brief proceeding after having heard the judge concerned.

114. For all other cases, Law 4/2013 of 28 June 2013 has introduced the institution of the Commissioner for Disciplinary Action (*Promotor de la Acción Disciplinaria*) which is now the competent authority to initiate disciplinary proceedings; it can do so ex-officio, upon a citizen's complaint or if requested by the Plenary of the CGPJ. Hence, the Commissioner has responsibility for receiving complaints, for obtaining the representations of the judge concerned and for deciding in their light whether or not there is a sufficient case against the judge to call for the instigation of disciplinary action, in which case it would refer the matter to the Disciplinary Committee. The Commissioner is appointed for a five-year term and can only be a judge from the Supreme Court or a judge with more than 25 years of experience. As regards the adjudication of disciplinary cases, the CGPJ (Disciplinary Committee[26]) is competent to impose sanctions on judicial office holders for serious and very serious violations. The sanction of dismissal can only be imposed by the Plenary of the CGPJ.

115. The decisions of the CGPJ are subject to judicial review before the Third Chamber of the Supreme Court. The disciplinary legal authority of the CGPJ is concerned only with the performance of judicial functions (undue delay, abuse of authority, incompatibilities, etc.) and it can in no way affect jurisdictional matters, that is, the specific content of judicial judgments. If disciplinary and criminal proceedings run in parallel, the decision on discipline needs to await the outcome of the criminal case.

116. The GET welcomes the fact that the initiation and the adjudication phases of a disciplinary case are now separated in line with international standards; the recent reform introduced in this area have the potential of ameliorating the fairness and effectiveness of disciplinary action. The GET however notes that disciplinary proceedings cannot last longer than six months. This short time span has given rise to a number of decisions of the Supreme Court overturning the sanction of the CGPJ on the grounds that the relevant disciplinary proceedings had not respected the statutory 6-month deadline. It is to be noted that the applicable deadline for proceedings against judicial secretaries and civil servants working in the judicial administration is 12 months. In the GET's view this state of affairs calls for further review. **GRECO recommends extending the limitation period for disciplinary procedures.**

117. It is possible for citizens to channel their complaints about judges to the CGPJ, which, when appropriate, can open disciplinary proceedings and impose sanctions. The Spanish Ombudsman (*Defensor del Pueblo*) receives a fair number of applications from citizens complaining about the operation of justice; most of the complaints received refer to undue delays and poor service. The latest report of the European Commission for the Efficiency of Justice (2012) includes the following statistics on disciplinary proceedings and sanctions based on 2011 data[27].

Number of disciplinary proceedings initiated against judges

Total number (1+2+3+4)	47
1. Breach of professional ethics	10
2. Professional inadequacy	33
3. Criminal offence	4
4. Other	0

[26] The Plenary of the CGPJ designates among its members and for a five-year term, those officers who will be part of the Disciplinary Committee. The Disciplinary Committee is composed of seven members of the CGPJ: four belong to the judicial career and three are legal professionals with recognised expertise (Article 603, LOPJ).
[27] Fourth Evaluation Report on European Judicial Systems, European Commission for the Efficiency of Justice (CEPEJ), 20 September 2012. http://www.coe.int/T/dghl/cooperation/cepej/evaluation/2012/Spain_en.pdf

Disciplinary sanctions against judges

Total number (total 1 to 9)	41
1. Reprimand	11
2. Suspension	12
3. Removal of cases	0
4. Fine	17
5. Temporary reduction of salary	0
6. Position downgrade	0
7. Transfer to another geographical (court) location	0
8. Resignation	1
9. Other	0

118. The current system has been subject to civil society complains about its alleged corporatism and opacity. Although it is possible for the public to submit complaints to the CGPJ on a judge's misconduct, the fact is that there is no public record on how many such complaints have been filed, for which type of misconduct and which type of action has been taken by the CGPJ thereafter. In the GET's view, transparency is an essential tool to fostering citizens' trust in the functioning of the judicial system and is a guarantee against any public perception of self-interest or self-protection within the judiciary. Moreover, the dissemination of case law on matters of discipline can be a valuable tool for judicial practice. In order to help identify and further promote corruption prevention within the judiciary and raise public awareness of the action that is taken, the authorities may wish to publish more detailed information on complaints received, types of breaches and sanctions applied.

Advice, training and awareness

119. The Judicial School is in charge of judges' education and training. There are two main objectives to the courses offered at the Judicial School: fostering the specialisation of judges and keeping judges in touch with emerging legal areas. All judges, regardless of seniority, are continuously offered courses in different areas of law. The Judicial School offers mandatory initial training courses on, *inter alia*, the role of a judge and the functions of the courts, which include sections on independence and impartiality, ethical rules for a judge and basic values. In-service training courses on matters related, *inter alia*, to the fight against corruption and judicial ethics are also available on an optional basis. Annual training programmes are prepared in coordination between the Judicial School and the CGPJ. It was also mentioned that when preparing for the entrance examination, candidates undergo preparation which lasts for several years and is often provided by a senior judge who acts as a mentor and teaches the candidate not only theoretical knowledge, but also about the high values to which the profession must adhere.

120. Judges can obtain guidance on disqualification and incidental employment from the Department of Judicial Personnel of the CGPJ. As explained before, institutionalised counselling for integrity-related matters is lacking; a recommendation has already been issued in this respect.

121. Efforts are currently being made to better communicate on justice matters and to improve the understanding and confidence of citizens in this domain. A communication strategy has been developed. Likewise, a programme on education in justice in school has been launched. The GET welcomes these efforts which could be critical in building citizens' confidence in the justice system.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

122. The State Prosecution Service (SPS) is a constitutional body, with legal personality and incorporated with functional autonomy within the judiciary. Article 124 of the Constitution provides that the SPS has the mission of promoting justice in defence of the law, the rights of the citizens and the general interest, as well as contributing to guaranteeing the independence of the courts. It also states that members of the SPS act in accordance, on the one hand, with the principles of unity of action and hierarchical subordination and, on the other hand, with those of legality and impartiality. Under the principle of legality, the SPS acts subject to the rule of law; under the principle of impartiality, the SPS acts with full objectivity and independence in the defence of the interests entrusted to it. The basic regulations governing the Spanish prosecution service are set out in the Organic Statute of the Prosecution Service (OSPS) approved by Law No. 50/81, as amended in 2007. The Organic Law 6/1985 of the Judiciary (LOPJ) supplements its provisions, notably, for a number of career related issues. There are 2,408 prosecutors, of whom, 963 are men and 1,445 are women[28].

123. The SPS consists of the following bodies:

- The Prosecutor General
- The Prosecution Council (*Consejo Fiscal*)
- The Board of High Prosecutors and the Board of Superior Prosecutors of the Autonomous Communities (*Junta de Fiscales Jefes de Sala*)
- The Prosecutor's Office at the Constitutional Court
- The Prosecutor's Office at the Supreme Court
- The Prosecutor's Office at the National Court
- The Prosecutor's Office at the Court of Audit
- Special Prosecutor's Offices
    - Special Prosecutor's Office against Illegal Drug Trafficking
    - Special Prosecutor's Office against Corruption and Organised Crime
- Territorial Prosecutor's Offices
    - Prosecutor's Office at an Autonomous Community
    - Provincial Prosecutor's Offices
    - Area Prosecutor's Office

124. The Prosecutor General is the head of the SPS and has public authority throughout the Spanish territory. Pursuant to Article 124 (4) of the Constitution, the Prosecutor General is appointed and removed by the King, on proposal of the Government, after consulting the General Council of the Judiciary (CGPJ). In 2001, GRECO expressed concerns over the degree of independence and operational autonomy of the SPS and recommended that the nature and the scope of powers of the Government in relation to the SPS be established by law, and that any future exercise of such powers be made in a transparent way and in accordance with international treaties, national legislation and the general principles of law[29].

125. In 2007, the OSPS was amended (Law No. 24/2007) to introduce additional safeguards enhancing the independence of the Prosecutor General; further amendments followed in 2009 to provide for greater assurances of autonomy to the prosecution service. Several guarantees coexist at present in this respect. Firstly, the choice must be made from among Spanish lawyers of recognised prestige with more than 15 years of active professional practice. Secondly, the mandate of the Prosecutor General is limited

[28] Fourth Evaluation Report on European Judicial Systems, European Commission for the Efficiency of Justice (CEPEJ), 20 September 2012.
[29] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2001)1_Spain_EN.pdf

to four years (non-renewable) and there is a closed list of objective causes for removal and leave of office (Article 31, OSPS)[30] so that the Government can no longer demote the Prosecutor General solely at its discretion. Thirdly, the proposal of the Government must be subject to consultation with the General Council of the Judiciary (CGPJ) and then the candidate must appear before Congress. The three branches of the State thus participate in the appointment of the Prosecutor General. Fourthly, the involvement of the Board of High Prosecutors (see also paragraph 134) is required whenever the Prosecutor General has to instruct his/her subordinates on any matter affecting members of Government (regardless of their procedural position), as well as when a decision concerning recusal of the Prosecutor General must be taken. Lastly, the neutral statute of the Prosecutor General's Office is preserved through its support and operation by a technical body (see also paragraph 132 for concrete details on how neutrality of the relevant technical services is articulated).

126. Despite all the aforementioned safeguards, there continues to be concern as to the "perceived independence" of the Prosecutor General. The GET notes that Recommendation Rec(2000)19 of the Committee of Ministers on the role of public prosecution in the criminal justice system, allows for a plurality of models, ranging from systems in which the public prosecution is independent of the Government and others where it is subordinated to the executive branch. However, it is essential that at the level of the individual case the prosecution service has sufficient autonomy to take decisions free of executive or governmental direction, or when directions can be given that the process is fully transparent in accordance with the requirements of paragraph 13 of Recommendation Rec(2000)19. Leaving aside the model in place, it is crucial for public confidence that prosecution is, and appears to be, impartial, objective and free from any improper influence, particularly of a political nature. The GET welcomes the steps taken by the authorities to create "safety nets" to better ensure that prosecution is carried out without unjustified interference. That said, the GET can also see why there continues to be public criticism in this area. In particular, the Prosecutor General is chosen by the Government. There is no real input from any other State body. The CGPJ has to approve the appointment, but its role is confined to examining whether the candidate has the necessary qualifications, and thus, it is a purely formalistic role leaving no scope for the CGPJ to form or offer a view on the merits of the rival candidates. Moreover, the Prosecutor General leaves office with the Government that proposed him/her.

127. The GET refers to international standards which could be a source of inspiration for the Spanish authorities for the weaknesses identified above[31]. Concerning the method of selection of the Prosecutor General, it is important that it is such as to gain the confidence of the public and the respect of the judiciary and the legal profession. To achieve this, professional, non-political expertise should be involved in the selection process. Furthermore, the term of office of the Prosecutor General should not coincide with that of Parliament or the continuance in office of the Government as this could create an impression that the Prosecutor General is linked to or a part of the executive branch of Government. The GET additionally considers that the four-year term could be considered short, particularly if a Prosecutor General is expected to carry out a programme of reform within the office, although it must be conceded that such a short term is by no means unusual. The GET welcomes the fact that the Prosecutor General's mandate is not renewable which is an important guarantee for his or her independence.

128. The Government, through the Ministry of Justice, may ask the Prosecutor General to introduce motions in court in order to promote and defend the public interest. The

[30] Article 31, OSPS: Removal of the Prosecutor General can only take place (i) at his/her own request; (ii) for involvement in conflicts of interests or disqualification clauses; (iii) due to incapacity or illness that disqualifies him/her for the office; (iv) for gross or repeated dereliction of duties; (v) when the Government that nominated him/her leaves power.

[31] Report on European Standards as regards the Independence of the Judicial System, Part II – the Prosecution Service, European Commission for Democracy Through Law (Venice Commission), CDL-AD (2010)040.

latter is, however, not legally bound to follow such instructions, but will respond to the Government on the feasibility and adequacy of implementing the request after consulting the Board of High Prosecutors. The Government, through the Ministry of Justice, may ask the Prosecutor General to provide information on specific cases being prosecuted, as well as, more generally, on the development of the prosecutorial function (Article 9, OSPS). Parliament may require the Prosecutor General to appear before any of its Chambers to report on matters of general interest. The Government cannot give instructions of a general or specific nature to the Prosecutor General. Public prosecutors may not receive orders or indications concerning how to discharge their functions except from their hierarchical superiors (Article 55, OSPS – see also section on case management and procedure).

129. Doubts were expressed as regards the possibility provided by law for the Government to ask the Prosecutor General to report back on specific cases being prosecuted. Although it was said that this possibility does not pose problems in practice: the type of information being requested was more of a general nature and a public prosecutor could in any case refuse to disclose information on an individual case; many indicated that the law should better define the process by which this communication, between the Prosecutor General and the Government through the Ministry of Justice, is structured. In the GET's view, it is key that communication between the Prosecutor General and the Government is made in a transparent manner, in writing and published in an adequate way subject to the possibility to delay publication where this was necessary to protect the interests of justice, for example where publication could interfere with the accused person's right to a fair trial. The GET recalls the remarks it made in paragraph 126 as to the applicable standards laid out in Recommendation Rec(2000)19 concerning transparency of communication between the Government and the public prosecution.

130. With regard to economic autonomy, the SPS budget is part of the Ministry of Justice budget (and part of the budget of those Autonomous Communities to which competences in judicial administration have been devolved). The issue of economic autonomy of the prosecution services is clearly a live one. In the GET's view, the existing budgetary arrangements for the prosecutor's office are not entirely satisfactory. There should be either a separate budget for the prosecutor's office or it should be covered by a separate heading if it is to remain part of the Ministry of Justice budget. In either event, the prosecutor's office should know how much money is being allocated to the prosecution service and should be able to choose how to spend money allocated to particular purposes subject to adequate budgetary controls, this includes the training chapter. The Centre for Legal Studies is attached to the Ministry of Justice; its budget and programmes are established by the said Ministry after consultation with the prosecution services. The GET considers that training of prosecutors should be controlled primarily by the prosecutors themselves. Likewise, under the existing arrangements it is for the Ministry of Justice to decide on staff allocation in the different prosecutor's offices, including that specialised in the fight against corruption and organised crime, which has recently witnessed a temporary addition of three prosecutors given its increasing workload. The GET is of the opinion that the Prosecutor General should be able to manage his/her own office. It should not be necessary to obtain the approval of the Ministry for detailed items of expenditure provided these are within the overall allocation of funds established by the budget and are subject to appropriate auditing and accounting controls. At present, the Prosecutor General is dependent for funds on both the Ministry and the regions. The GET draws the attention of the authorities to Opinion no.7(2012) of the Consultative Council of European Prosecutors (CCPE) which underscores that autonomy of management represents one of the guarantees of the independence and efficiency of the prosecution services. These services must be enabled to estimate their needs, negotiate their budget and decide how to use the allocated funds. This is an area which merits further follow-up by the authorities.

131. In light of the foregoing considerations, the GET considers that additional efforts could be made to better ensure that prosecution is, and appears to be, impartial, objective and free from any influence or interference from any external source, as well as to enhance its functional autonomy. Therefore, **GRECO recommends (i) reconsidering the method of selection and the term of tenure of the Prosecutor General; (ii) establishing clear requirements and procedures in law to increase transparency of communication between the Prosecutor General and the Government; (iii) exploring further ways to provide for greater autonomy in the management of the means of the prosecution services.**

132. The Prosecutor General is assisted by technical bodies (Technical Secretariat, Support Unit and Inspection Service), whose staff is banned from running for seats in the Prosecution Council as a way of guaranteeing the neutral, technical and operational conditions of such assisting services.

133. The Prosecution Council (*Consejo Fiscal*) is the body that represents the prosecution profession. It is chaired by the Prosecutor General and is composed of two kinds of members: (i) ex-officio members (Deputy Chief Prosecutor of the Supreme Court and the Chief Prosecutor Inspector); and (ii) elective members (nine prosecutors belonging to any category within the prosecution profession, elected for a four-year period by all members of the SPS in active service). As a body meant to help the Prosecutor General perform his/her tasks, its main responsibilities are, among others, to give advice on as many subjects as required; to draw up general criteria to ensure the SPS unity of action with regard to the territorial structure and operation of its different bodies; to provide information on proposed appointments for different public offices and promotions; to encourage appropriate reforms for the service and practice of prosecution; to report on draft bills and regulations that affect the structure, organisation and functions of the SPS; to rule on the appeals filed against decisions made by Chief Prosecutors in disciplinary proceedings, etc.

134. The Board of High Prosecutors and the Board of Superior Prosecutors of the Autonomous Communities (*Junta de Fiscales Jefes de Sala)* are bodies of a technical nature which assist in the interpretation of legal and technical matters and ensure coordination across the national territory.

Recruitment, career and conditions of service

135. Entrance into the prosecution profession is open to Spanish nationals of legal age (18 years old) who hold a degree in law and pass the corresponding open competitive examination process. All candidates must present proof of clean criminal records. Those wishing to follow a career in either the SPS or the courts are first subject to a common examination. After passing the theoretical tests, the candidates choose between being a judge or a prosecutor. Those opting for prosecution must then pass a training course at the Centre for Legal Studies, after which they become members of the SPS by taking the corresponding oath and are assigned a position.

136. Prosecutors are appointed for a lifetime; they may only be removed from office in the cases provided by law (i.e. as a result of disciplinary proceedings for serious breaches of their duties).

137. As to promotion within the SPS, the Prosecutor General plays a predominant role in the appointment of members of those services – specifically established to assist him/her – and of the higher grades of the hierarchy. In particular, Chief Prosecutors and those working at the higher court's prosecution offices or specialised prosecution offices[32]

[32] Specialised High Prosecutors: Prosecutor's Office against Violence on Women, Prosecutor's Office for the Protection of the Environment and Land Planning, Prosecutor's Office for the Protection of Minors, Prosecutor's Office on Labour Accidents, Prosecutor's Office on Road Safety and Prosecutor's Office on Foreign Nationals.

are appointed by the Government on a proposal submitted by the Prosecutor General. The Prosecutor General must previously consult the Prosecution Council (as a representative body of public prosecutors) and the objective requirements concerning length of service/professional experience gained in the SPS, as provided for in the OSPS, must be respected. All other public prosecutors' posts are filled by means of a selection process predominantly based on seniority, although in certain specialised fields, merit, capacity and experience are valued.

138. Transfers generally take place at the request of the prosecutor concerned. Compulsory transfer (*traslado forzoso*) is possible as a way of sanction, in the event of a conflict of interest, if there is serious dissent with the responsible chief prosecutor or if there are serious confrontations with the competent court. Compulsory transfer can only take place after hearing the concerned prosecutor and subject to a favourable opinion of the Prosecution Council.

139. The GET discussed at length the law and the practice governing the careers of public prosecutors, which are reportedly decided on the basis of known and objective criteria; in addition to seniority, specific experience and specialisation play an increasing role in this context. No question was raised on-site concerning the fairness and impartiality of the existing appointment processes (other than the few misgivings already highlighted with respect to the Prosecutor General). The GET was repeatedly told by the different interlocutors heard that the Spanish prosecution service is a highly professional body. The GET is pleased to note this positive assessment of the profession in the eyes of citizens; this can only strengthen the level of public trust in the criminal justice system.

140. Prosecutors lose their status only in the event of (i) resignation; (ii) loss of Spanish nationality; (iii) dismissal by virtue of a sanction; (iv) disqualification from public office by virtue of a sanction; (v) incapacitating circumstances; (vi) retirement (Article 46, OSPS).

141. Whenever the OSPS does not include specific provisions regarding the acquisition and loss of the status of member of the SPS, incapacity, rights and duties, incompatibilities, prohibitions and responsibilities of prosecutors, the provisions of the LOPJ apply. Prosecutors are therefore generally paired in their status with judges.

142. Ranks and salaries of prosecutors are paired with those of judges. The gross annual salary of a prosecutor at the beginning of career is 47,494 EUR; it amounts to 111,932 EUR for prosecutors of the Supreme Court. Professional incentives are in place for prosecutors who exceed performance targets.

Case management and procedure

143. The chief prosecutor, i.e. the head of the office, distributes the criminal cases to the prosecutors, following consultation with the respective Board of Prosecutors. The criteria for the distribution may be a special competence or specialisation, but the workload of each prosecutor is also taken into account. Working methods are evolving and there is now greater recourse to teams of specialists.

144. The Prosecutor General is empowered to give orders and instructions regarding the service, its internal functioning and the exercise of prosecutorial functions, whether of a general nature or referring to specific matters. General guidelines are deemed to be essential for maintaining the principle of unity of action and are generally issued by means of circulars (general criteria for the operation of the SPS and interpretation of rules), instructions (general provisions on the organisation of matters that are more specific and less important than those referred to in circulars) and enquiries (settling of questions that any Prosecutor's Office may bring to the Prosecutor General's attention about the interpretation of a given rule).

145. As outlined before, public prosecutors cannot receive orders or indications concerning how to discharge their functions except from their hierarchical superiors. Subordinate prosecutors are, in principle, bound to follow such instructions or could otherwise face disciplinary proceedings. Chief prosecutors can also decide to replace one prosecutor by another regarding the assignment of a case. The GET was told that the SPS is very hierarchical in nature. GRECO has always underlined the importance of having clear mechanisms to ensure a proper balance between, on the one hand, the consistency of prosecution policy, and on the other, the risk of undue considerations being introduced into individual cases. During the First Evaluation Round, GRECO expressed reservations as to the strict understanding of the hierarchical principle in the SPS and recommended introducing reforms in order to ensure that instructions were made with adequate guarantees of transparency and equity[33]. In its compliance procedure, GRECO considered that, although there can be no absolute guarantee against a possibly illegitimate order/instruction, both points had been settled through several measures aiming to strike a balance between hierarchical powers and the requirements of legality and impartiality of the SPS[34].

146. In particular, any public prosecutor who receives orders or instructions that s/he considers contrary to law or wrongful shall notify the chief prosecutor in a reasoned report. The chief prosecutor, after consulting the relevant board of prosecutors decides whether or not to ratify the instruction/order. If s/he confirms the instruction/order, it must be done in a reasoned, written form expressly relieving the recipient of any liability stemming from his/her performance or else decide to entrust the matter to another public prosecutor (Article 27, OSPS). Moreover, public prosecutors remain free to orally submit before the court any legal arguments of their choice even if they are under a duty to reflect in writing the instructions received for a specific case (Article 25, OSPS). These provisions are in line with the requirements of Recommendation Rec(2000)19.

147. Moreover, the GET was informed that the hierarchical powers of chief prosecutors are to be framed in a broader structure and counterbalanced by the action of the corresponding Board of Prosecutors (*Junta de Fiscales Jefes de Sala*). The latter meet on a regular basis to fix unified criteria and analyse complex cases. Although the views of the chief prosecutor in principle prevail, if his/her opinion contradicts that of the majority of prosecutors of the Board, both opinions will be submitted to the hierarchical superior who will take the final decision (Article 24, OSPS). Participation of the Board of High Prosecutors is now mandatory whenever the Prosecutor General issues instructions to subordinates in connection with any matter involving members of Government.

148. Finally, the principle of mandatory prosecution applies in Spain. Therefore, the SPS must prosecute all crimes that come to its knowledge and cannot receive instructions not to prosecute. Likewise, the SPS is not empowered to drop prosecution or investigation. Even if it considers that there are reasons to do so, the final decision is taken by a judge. All decisions made by prosecutors in criminal cases may be subject to revision, either after a complaint or ex officio. Some changes are envisaged in the system, including by introducing the "principle of opportunity", reviewing the role of the investigative magistrate and giving the leading role in the investigation to the prosecutor in order to tackle one of the most important problems in the Spanish justice system, i.e. the excessive length of trials (for specific details on this, see also paragraphs 95 and 96).

149. Prosecutors are supervised in order to ensure that they act in accordance with the legislative framework. The Prosecution Inspection Service has powers of inspection by permanent delegation of the Prosecutor General, without prejudice to the ordinary inspection tasks of chief prosecutors regarding the prosecutors accountable to them.

[33] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2001)1_Spain_EN.pdf
[34] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoRC1(2003)7_Spain_EN.pdf and http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoRC1(2003)7_Add_Spain_EN.pdf

There are currently 10 inspectors in charge of both routine controls and disciplinary proceedings.

150. Concerning transparency of the SPS action, the Prosecutor General presents an annual report to the Government on its activity, criminality trends, crime prevention measures and recommended reforms to increase efficiency. This report is also presented to Parliament and the CGPJ. Similar activity reports are prepared at Autonomous Community level. These are all available online.

151. The GET is satisfied with the current arrangements on case allocation, on checks and balances in the interpretation of the SPS principles of hierarchy, unity of action and non-interference in the work of prosecutors and the handling of individual cases, as well as with the tools in place to account for the activities of the SPS to the general public.

Ethical principles, rules of conduct and conflicts of interest

152. There is currently no code of conduct or ethics for prosecutors. The OSPS includes provisions reflecting on the duty of prosecutors to observe the principles of legality and impartiality and to develop their functions in good faith, objectively, independently, promptly and efficiently, as well as requirements concerning incompatibilities and accountability (Chapters V to VII, Title III on Rights and Duties of Members of the SPS). Spanish prosecutors were involved in the formulation of the Budapest guidelines but they have never formally adopted these. The GET was also told that the Charter of Citizens' Rights before Public Administration as well as the Statute for Public Officials provide further inspirational guidance on ethics, although the interlocutors who cited these texts also recognised that they were partial and insufficiently adapted to the specific features of the prosecutorial function. The GET understands that the absence of a code has reportedly not created any difficulty for prosecutors when carrying out their function. Unlike judges, prosecutors are subject to hierarchical control; it is thus common that any doubtful or disputed issue concerning a possible conflict of interest is referred to a superior prosecutor for a ruling. That said, the GET still sees merit in the development of a reasonably broad set of standards aimed at delimiting what is and is not acceptable in the professional conduct of prosecutors. Such a document could be of use not only for the profession itself, but also for the general public as it would constitute a clear public statement on the high standards of decision-making and professional conduct to which the prosecution service adheres. Moreover, the provision of dedicated guidance on the prevention of conflicts of interest and other integrity-related matters would be a further asset. **GRECO recommends that (i) a code of conduct for prosecutors be adopted and made easily accessible to the public; and (ii) that it be complemented by dedicated guidance on conflicts of interest and other integrity-related matters.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

153. Prosecutors are subject to a very strict regime of incompatibilities comparable to that of judges. Prosecutors are also banned from membership of political parties or unions[35] (Article 59, OSPS). The same concerns as regards leave to take up political activity, which were expressed in paragraph 102 for judges, apply to prosecutors.

154. Moreover, prosecutors cannot hold any paid jobs or professions (except teaching and legal research, literary, scientific, artistic and technical papers), nor any position of popular election or political appointment or within the public administration, nor hold any judicial or jurisdictional (e.g. arbitration) function (Article 57, OSPS). The GET heard that the procedure to grant authorisation for secondary activities is rather rigid and shows

[35] Prosecutors may, however, form professional associations.

again the dependence of the prosecution services on the executive given that the pertinent authorisation is to be granted by the Ministry of Justice rather than a specific service within the prosecution itself. The authorities are encouraged to look into this matter when further developing an articulated system on integrity-related matters, as per recommendation x.

155. It is forbidden for prosecutors to hold positions in an office where his/her spouse or partner acts as a prosecutor, or as a lawyer or barrister, or in an office territorially located where the spouse or partner is involved in an industrial or commercial activity that may give rise to a conflict of interest with the prosecutor's post. Likewise, prosecutors are banned from working in an office in whose jurisdiction they practiced as a lawyer or barrister in the two years prior to their appointment (Article 58, OSPS).

156. There are no regulations that would prohibit prosecutors from being employed in certain posts/functions or engaging in other paid or unpaid activities after exercising a judicial function. The interviews conducted in Spain showed that the office of prosecutor was discharged on a lasting basis and that very few left office to work in another field, which limits certain risks. In the very few cases that prosecutors had left for the private sector, generally to work as lawyers, this has not been seen by others in the legal profession as generating a conflict of interest situation. The GET therefore refrains from recommending changes in this area.

Recusal and routine withdrawal

157. Prosecutors must recuse themselves for the same reasons as judges, e.g. family relationship, friendship or enmity with the parties and involvement in previous stages of litigation. It is possible for an individual (an interested party in the case at stake) to call for a prosecutor's disqualification. It is the responsibility of the superior prosecutor to reassign the case to another prosecutor (Article 28, OSPS).

Gifts

158. There are no detailed rules on the acceptance of gifts specifically by prosecutors. As was the case for judges, the practice of gift giving to a prosecutor is neither common nor even tolerated in Spain. This should also be clearly stated, in writing, in the code of conduct recommended above.

Misuse of confidential information and third party contacts

159. While court proceedings are, as a general rule, public, confidentiality obligations apply concerning the handling of information in the case. Breach of professional confidentiality is punishable by Article 417 of the Penal Code; sanctions consist of fines, debarment and even imprisonment if serious damage is caused or if the secrets of a private individual are involved. The disclosure of confidential information may also entail disciplinary consequences.

Declaration of assets, income, liabilities and interests

160. The situation of prosecutors is the same as that of judges. At present, there are no arrangements for prosecutors to submit financial declarations (other than those required for tax filing purposes). The situation in Spain, where virtually there has been no case of corruption involving a prosecutor, does not seem at present to justify the introduction of such restrictive arrangements and the GET refrains from issuing a formal recommendation in this respect. However, as per the GET's advice concerning judges (see paragraph 109), the authorities are encouraged to reflect on this matter in order to assess whether the filing of financial declarations (not for general publication but to be

lodged with the Prosecution Inspection Service) could constitute a useful tool to prevent corruption and to increase public trust in the prosecution service.

Supervision and enforcement

161. Prosecutors are subject to civil and criminal liability in the exercise of their functions, which are governed in the same manner as that pertaining to judges. There is no immunity regarding prosecutors. The only difference in relation to other citizens is provided in Article 56, OSPS, according to which, public prosecutors in active service may not be arrested without the authorisation of their hierarchical superior, except by order of the competent judicial authority or if caught in *flagrante delicto*. In the latter event, the detainee must be brought immediately before the nearest judicial authority and his/her superior notified without delay. There have not been any criminal proceedings for a corruption-related offence involving a prosecutor.

162. Concerning disciplinary action, a detailed list of misconduct and sanctions is provided by the LOPJ, together with rules on who can impose them and how. Disciplinary liability for violations of conflicts of interest rules applies. It is regulated in detail in Articles 60 to 70 OSPS, which distinguishes three categories of infringements: petty offences (e.g. unjustified leave of service for one or two days), serious offences (e.g. disrespect to superiors, hindrance of inspection activities, unjustified recusal, etc.) and very serious offences (e.g. affiliation to political parties or unions, disqualifying positions, abuse of authority, etc.).

163. Petty offences are sanctioned with warnings and/or fines of up to 300 EUR; serious offences are sanctioned with fines of up to 6,000 EUR; very serious offences are punished with compulsory transfer, suspension of up to three years or dismissal. Chief prosecutors can impose sanctions such as fines and warnings for the commission of petty offences. The Prosecutor General is to decide on sanctions consisting of suspension. Removal from office can only be pronounced by the Minister of Justice on a proposal from the Prosecutor General after receiving the favourable opinion of the Prosecution Council.

164. The right to be heard of the prosecutor concerned, in adversarial proceedings, is preserved at all times. In all cases there is the possibility to appeal to the hierarchical superior and when administrative changes are exhausted to turn to judicial review. The latest report of the European Commission for the Efficiency of Justice (2012) includes the following statistics on disciplinary proceedings and sanctions based on 2011 data[36].

Number of disciplinary proceedings initiated against prosecutors

Total number (1+2+3+4)	2
1. Breach of professional ethics	2
2. Professional inadequacy	0
3. Criminal offence	0
4. Other	0

[36] Fourth Evaluation Report on European Judicial Systems, European Commission for the Efficiency of Justice (CEPEJ), 20 September 2012. http://www.coe.int/T/dghl/cooperation/cepej/evaluation/2012/Spain_en.pdf

Disciplinary sanctions against prosecutors

Total number (total 1 to 9)	2
1. Reprimand	0
2. Suspension	0
3. Removal of cases	0
4. Fine	2
5. Temporary reduction of salary	0
6. Position downgrade	0
7. Transfer to another geographical (court) location	0
8. Resignation	0
9. Other	0

165. As explained above, the existing disciplinary rules in the prosecutor's office are those included in the Organic Law of the Judiciary (LOPJ). The LOPJ is thought to be insufficiently adapted to the features of the prosecution service. The SPS has reiterated in its annual reports the need to develop a specific regulatory framework for disciplining prosecutors. The GET can only share this view; the development of specific rules on discipline for prosecutors can be not only an asset for the profession, but also for the general public, as this would entail greater certainty of the applicable disciplinary rules and processes. **GRECO recommends developing a specific regulatory framework for disciplinary matters in the prosecution service, which is vested with appropriate guarantees of fairness and effectiveness and subject to independent and impartial review.**

166. Some civil society representatives raised concerns as to a certain degree of corporatism when investigating possible offences committed by prosecutors themselves. The GET found no evidence of such a situation, but it concedes that it would be better if the public were made aware of the results of disciplinary action to dispel any possible doubt as to the fairness and the effectiveness of the system. In this connection, the annual report of the SPS includes tables of the number of inspections carried out, as well as on the number of disciplinary proceedings instigated and an explanation of the files opened during the year, but there are no details on the number of complaints received and the outcome of disciplinary proceedings. In the GET's view the transparency of disciplinary action in the prosecution service could be further stepped up if more detailed information on complaints received, types of breaches and sanctions applied were to be included in the SPS annual report.

Advice, training and awareness

167. As part of the initial training of prosecutors, the curriculum of the Centre for Legal Studies includes three days dedicated to the rights and duties of prosecutors, liability of prosecutors and disciplinary proceedings alongside the international provisions related to ethics. The programme includes practical sessions with analysis of cases as well. The initial training is obligatory for all future prosecutors. As regards in-service training, three-day seminars dealing with the OSPS and the rules related to ethics were scheduled in the period running from 2009-2012; this pattern was said to be followed in the present year as well. Attendance of the in-service training is optional. The budget for initial and in-service training in 2013 amounts to 3.5 million EUR.

168. The GET was positively impressed with the training curricula of the Centre for Legal Studies and the attention that is paid to developing innovative learning methods, including by resorting to e-learning techniques. Joint training for judges and prosecutors are also developed on themes of common interest. When it comes to training on ethics, the curricula includes both a theoretical and a practical approach, comprising practical cases and open debates. On the basis of the training catalogues provided by the Centre for Legal Studies for the GET's perusal, it would appear that prosecutors have appropriate education and training on the principles and ethical duties of their office, both before and after their appointment.

VI. RECOMMENDATIONS AND FOLLOW-UP

169. In view of the findings of the present report, GRECO addresses the following recommendations to Spain:

Regarding members of parliament

i. **for each Chamber of Parliament, (i) that a code of conduct be developed and adopted with the participation of its members and be made easily accessible to the public (comprising guidance on e.g. prevention of conflicts of interest, gifts and other advantages, accessory activities and financial interests, disclosure requirements); (ii) that it be complemented by practical measures for its implementation, including through an institutionalised source of confidential counselling to provide parliamentarians with guidance and advice on ethical questions and possible conflicts of interest, as well as dedicated training activities** (paragraph 35);

ii. **the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process** (paragraph 51);

iii. **that current disclosure requirements applicable to the members of both Chambers of Parliament be reviewed in order to increase the categories and the level of detail to be reported** (paragraph 56);

iv. **that appropriate measures be taken to ensure effective supervision and enforcement of the existing and yet-to-be established declaration requirements and other rules of conduct of members of Parliament** (paragraph 64);

Regarding judges

v. **carrying out an evaluation of the legislative framework governing the General Council of the Judiciary (CGPJ) and of its effects on the real and perceived independence of this body from any undue influence, with a view to remedying any shortcomings identified** (paragraph 80);

vi. **that objective criteria and evaluation requirements be laid down in law for the appointment of the higher ranks of the judiciary, i.e. Presidents of Provincial Courts, High Courts of Justice, the National Court and Supreme Court judges, in order to ensure that these appointments do not cast any doubt on the independence, impartiality and transparency of this process** (paragraph 89);

vii. **that (i) a code of conduct for judges be adopted and made easily accessible to the public; and (ii) that it be complemented by dedicated advisory services on conflicts of interest and other integrity-related matters** (paragraph 101);

viii. **extending the limitation period for disciplinary procedures** (paragraph 116);

Regarding prosecutors

ix. **(i) reconsidering the method of selection and the term of tenure of the Prosecutor General; (ii) establishing clear requirements and procedures in law to increase transparency of communication between the Prosecutor General and the Government; (iii) exploring further ways to provide for greater autonomy in the management of the means of the prosecution services** (paragraph 131);

x. **that (i) a code of conduct for prosecutors be adopted and made easily accessible to the public; and (ii) that it be complemented by dedicated guidance on conflicts of interest and other integrity-related matters** (paragraph 152);

xi. **developing a specific regulatory framework for disciplinary matters in the prosecution service, which is vested with appropriate guarantees of fairness and effectiveness and subject to independent and impartial review** (paragraph 165).

170. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Spain to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2015. These measures will be assessed by GRECO through its specific compliance procedure.

171. GRECO invites the authorities of Spain to authorise, at its earliest convenience, the publication of this report, to translate the report into its national language and to make the translation publicly available.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: www.coe.int/greco.

Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2098 (2016)[1]

Judicial corruption: urgent need to implement the Assembly's proposals

Parliamentary Assembly

1. The Parliamentary Assembly considers judicial corruption a matter of great concern. It undermines the foundations of the rule of law and the very possibility of fighting corruption in other sectors of society.

2. Judicial corruption severely impedes the protection of human rights, in particular judicial independence and impartiality. It also undermines public trust in the judicial process and infringes the principles of legality and legal certainty.

3. While recognising that the perception of judicial corruption cannot serve as the sole indicator for the actual extent of this phenomenon, the Assembly is alarmed that public trust in the integrity of the judiciary continues to be very low in a number of member States, with the judiciary being perceived, according to Transparency International's 2013 Global Corruption Barometer, as being among the most corrupt institutions in Albania, Armenia, Azerbaijan, Bulgaria, Croatia, Georgia, Lithuania, the Republic of Moldova, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Spain and Ukraine. In the case of Romania, this may be partly explained by the country's considerable efforts to increase transparency. It is important, however, that the existence of judicial corruption be assessed in the context of the relevant legal framework which exists in a given country and, more importantly, the effectiveness of tools used to combat corruption.

4. Judicial corruption takes complex forms and comprises corruption related both to cases and to the career of a judge. Council of Europe member States must channel their efforts with regard to both of these aspects and provide effective mechanisms which allow for identification and investigation of cases of corrupt practices in the judiciary, and adequate sanctions for perpetrators.

5. The Assembly deplores the fact that crucial aspects in the fight against judicial corruption, most notably concerning the implementation of anti-corruption legislation and access to data, identified in its Resolution 1703 (2010) and Recommendation 1896 (2010) on judicial corruption, are still left unaddressed by member States.

6. In order to fight judicial corruption, the Assembly invites member States to, in particular:

6.1. sign and ratify, if they have not yet done so, the relevant conventions of the Council of Europe, namely the Civil Law Convention on Corruption (ETS No. 174) and the Criminal Law Convention on Corruption (ETS No. 173) and its Additional Protocol (ETS No. 191);

6.2. implement fully and in a timely manner all relevant recommendations of the organs and monitoring bodies of the Council of Europe, especially:

6.2.1. the Assembly's resolutions and recommendations, most notably Resolution 1703 (2010) and Recommendation 1896 (2010), and Resolution 1943 (2013) and Recommendation 2019 (2013) on corruption as a threat to the rule of law;

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1. *Assembly debate* on 29 January 2016 (9th Sitting) (see Doc. 13824 and addendum, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Kimmo Sasi). *Text adopted by the Assembly* on 29 January 2016 (9th Sitting).
See also Recommendation 2087 (2016).

6.2.2. the recommendations issued by the Committee of Ministers, in particular Recommendation No. R (2000) 10 on codes of conduct for public officials and Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities;

6.2.3. the recommendations adopted by the Group of States against Corruption (GRECO), in particular those emanating from its fourth evaluation round which focuses, *inter alia*, on corruption within the judiciary;

6.2.4. the recommendations contained in the opinions on national legislation issued by the European Commission for Democracy through Law (Venice Commission);

6.2.5. the guidelines and reports adopted by the European Commission for the Efficiency of Justice (CEPEJ) in its work on the evaluation of judicial systems;

6.2.6. the recommendations issued by the Council of Europe Commissioner for Human Rights with regard to the administration of justice, the functioning of judicial systems and the prevention of corrupt practices within the judiciary;

6.3. give full effect to the judgments of the European Court of Human Rights, especially those which impact on the prevention and eradication of judicial corruption;

6.4. align their national legislation and practice with the standards developed in the relevant international instruments and monitoring bodies, especially with regard to the criminalisation of corruption, immunities of judges, organisation of disciplinary bodies, conflicts of interest, declaration of assets and aspects related to a judge's career (recruitment, promotion, dismissal);

6.5. strengthen legislation to sanction corruption and provide all necessary means and support for its proper implementation by effectively investigating and prosecuting those responsible for corruption in the judiciary;

6.6. adapt legislation and practice so as to allow an appropriate assessment of corrupt practices within the judiciary that are particularly difficult to decipher, such as those related to exchange of favours, hierarchical pressure or external interference;

6.7. improve the status of the judicial profession as well as the selection and training of judges, so as to ensure ethical behaviour of judges, and strictly scrutinise any practices related to a judge's career which pose a risk of corruption or affect the independence and impartiality of judges throughout their careers;

6.8. put into place appropriate procedures to eradicate political interference and undue influence in the judicial process;

6.9. keep track of, and follow up on, the implementation of anti-corruption measures by making available data pertaining to the number and nature of alleged and proven cases of judicial corruption, in order to make a proper assessment of the phenomenon;

6.10. where perception of the existence of widespread judicial corruption persists, take all necessary measures to restore public trust in the judicial system; monitor closely and consistently the evolution of perception indicators and develop a viable strategy to remedy the lack of public trust in the judiciary;

6.11. continue to collaborate closely with the Council of Europe monitoring bodies, especially GRECO, and provide them with all the information needed for their work, and engage actively in redressing the shortcomings identified;

6.12. guarantee an environment in which cases of (alleged) judicial corruption can be uncovered, so as to foster a climate in which the root causes of judicial corruption can be eradicated.

7. The Assembly notes that the Secretary General of the Council of Europe has explored, in his two annual reports on the "State of democracy, human rights and the rule of law in Europe" published to date, the existence of corruption in member States, and urges him to indicate clearly, in future reports, the member States in which problems relating to, in particular, judicial corruption have been identified.

8. The Assembly will continue to monitor closely the progress made by member States in the implementation of this resolution.

SPAIN 2014 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

The Kingdom of Spain is a parliamentary democracy headed by a constitutional monarch. The country has a bicameral parliament, the General Courts or National Assembly, consisting of the Congress of Deputies (lower house) and the Senate (upper house). The head of the largest political party or coalition usually is named to head the government as president of the Council of Ministers, the equivalent of prime minister. Observers considered national elections held in 2011 free and fair. Authorities maintained effective control over the security forces.

The most significant human rights problems during the year included mistreatment of asylum seekers by police, corruption by government officials, and violence against women and children.

Other problems included the circulation of anti-Semitic and other hate speech on the internet, sexual harassment, the trafficking of girls for sexual exploitation, acts of anti-Semitic vandalism, and societal discrimination and violence against Muslims and ethnic minorities including the Roma, and against lesbian, gay, bisexual, and transgender (LGBT) persons, and persons with disabilities.

The government generally took steps to prosecute officials, both in the security services and elsewhere in the government, who committed abuses. There were some instances where officials engaged in corruption and created the impression of impunity.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings.

Amnesty International and Human Rights Watch alleged that on February 6, the Civil Guard fired rubber projectiles, blanks, and tear gas at approximately 250 migrants, refugees, and asylum seekers attempting to swim across the border from Morocco into Ceuta and might have contributed to at least 14 drowning deaths. According to the Amnesty International report in July, *The Human Cost of Fortress Europe*, Minister of the Interior Jorge Fernandez Diaz confirmed the

week following the incident that antiriot equipment had been fired "to mark the border" and claimed it was used in such a way as to avoid hitting any of the persons who were in the sea. The Amnesty International report asserted that authorities made no effort to rescue those at risk of drowning.

b. Disappearance

There were no reports of politically motivated disappearances, abductions, or kidnappings.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution and laws prohibit such practices, and the government normally respected this prohibition. There were reports of police mistreatment; courts dismissed some of the reports.

Prison and Detention Center Conditions

Prison and detention center conditions mostly met international standards.

Physical Conditions: At the end of August, 66,083 persons were in prison. During the year the capacity of the country's 83 prisons was 76,851 persons. Women accounted for 7.6 percent of the prison population. No prisoner was under 18 years of age; 1.3 percent were under age 21 years. Convicted prisoners and pretrial detainees were held in separate facilities within the same prisons.

The 2013 report by the nongovernmental organization (NGO) Coordinator for the Prevention of Torture indicated that in 2013 a total of 47 persons died in police custody, including 29 in jail, seven in the custody of the National Police, four in the custody of the Civil Guard, two minors in youth detention centers, and one in the custody of the Catalan regional police.

Prisoners had access to potable water, sufficient food, and medical care in jails, prisons, and hospitals, as necessary.

Administration: Recordkeeping on prisoners was accurate. In many cases authorities offered alternative sentencing for nonviolent offenders, including expulsion from the country instead of jail time for nonviolent offenders from other countries. Prisoners can file complaints regarding mistreatment with the national

ombudsman, who investigates complaints but does not have authority to take corrective measures directly. Prisoners and detainees had reasonable access to visitors and could observe their religious practices. Authorities permitted prisoners and detainees to submit complaints to judicial authorities without censorship. Authorities investigated credible allegations of inhuman conditions and documented the results of such investigations in a publicly accessible manner. The government generally investigated and monitored prison and detention center conditions.

Independent Monitoring: The government generally permitted monitoring by independent nongovernmental observers, including the Coordinator for the Prevention of Torture, in accordance with their standard modalities.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

Police forces include the national police and the Civil Guard, both under the authority of the national Ministry of the Interior, as well as regional police under the authority of the Catalan and the Basque Country regional governments. Civilian authorities maintained effective control over all police forces and the Civil Guard, and the government generally has effective mechanisms to investigate and punish abuse and corruption. Although there were no reports of impunity involving the security forces during the year, in 2013 the Council of Europe's commissioner for human rights noted that judges frequently dismissed allegations of mistreatment by police and reportedly few investigations into mistreatment resulted in convictions. Police forces have put in place policies to increase accountability. For example, at the end of 2013 on the recommendation of the regional ombudsman, the Catalan government modified the uniforms of its riot police so that they are clearly numbered. All police forces operated effectively. There were isolated reports of corruption, which authorities handled promptly and with results.

Arrest Procedures and Treatment of Detainees

The law provides that police may apprehend suspects for probable cause or with a warrant based on sufficient evidence as determined by a judge. Authorities

generally informed detainees promptly of the charges against them, and the courts released defendants on bail unless they believed the defendants might flee or be a threat to public safety. With certain exceptions police may not hold a suspect for more than 72 hours without a hearing. In certain rare instances involving acts of terrorism, the law allows authorities, with the authorization of a judge, to detain persons for up to five days prior to arraignment. The country has a functioning bail system. If a potential criminal sentence is less than three years, the judge can decide to impose bail or release the accused on his own recognizance. If the potential sentence is more than three years, the judge must set bail. The law provides detainees the right to consult a lawyer of their choice. If the detainee is indigent, the government appoints legal counsel. There were often lengthy delays, however, between the time a detained person first requested a lawyer and the time the lawyer arrived at the place of detention.

In certain rare instances involving acts of terrorism, a judge may order incommunicado or solitary detention for the entire duration of police custody. The law stipulates that terrorism suspects held incommunicado have the right to an attorney and medical care, but it allowed them neither to choose an attorney nor to see a physician of their choice. The court-appointed lawyer is present during police and judicial proceedings, but detainees do not have the right to confer in private with the lawyer. The government continued to conduct extensive video surveillance in detention facilities and interrogation rooms to deter mistreatment or any violations of prisoner rights.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence.

Trial Procedures

The constitution and law provide for the right to a fair and public trial, and the judiciary generally enforced this right. Defendants enjoy a presumption of innocence and the right to be informed promptly and in detail of the charges against them with free interpretation as necessary. Trials were held without undue delay. There is a nine-person jury system. Defendants have the right to be represented by an attorney of their choice. If the defendant is indigent, the government appoints an attorney. Defendants and their attorneys have adequate time and facilities to prepare a defense, have access to government-held evidence, confront witnesses, and present their witnesses and evidence. Defendants cannot

be compelled to testify or confess guilt and they have the right of appeal. These rights apply to all defendants without discrimination.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Individuals or organizations may bring civil lawsuits seeking damages for a human rights violation. The complainant may also pursue an administrative resolution. Persons may appeal court decisions involving alleged violations of the European Convention on Human Rights to the European Court of Human Rights (ECHR) after they exhaust all avenues of appeal in national courts.

Regional Human Rights Courts Decisions

The country is subject to the jurisdiction of the ECHR.

In October 2013 the ECHR ruled that the country must release and pay 30,000 euros ($37,500) in compensation to Ines del Rio Prada, a member of Basque Fatherland and Liberty (ETA) convicted of taking part in 24 killings carried out by the Basque terrorist group. The money compensated the families of the persons killed by del Rio, a decision supported by the Committee of Ministers of the Council of Europe.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The constitution prohibits such actions, and the government generally respected these prohibitions.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and press, and the government generally respected these rights. An independent press, an effective judiciary, and a functioning democratic political system combined to ensure freedom of speech and press.

Freedom of Speech: The law prohibits, subject to judicial oversight, actions including public speeches and the publication of documents that the government interprets as glorifying or supporting terrorism. The Office of the General Prosecutor reported that in 2013 there were 41 accusations and 55 sentences involving 103 persons, of whom 62 were found guilty. The law provides that persons who provoke discrimination, hatred, or violence against groups or associations for racist, anti-Semitic, or other references to ideology, religion or belief, family status, membership within an ethnic group or race, national origin, sex, sexual orientation, illness, or disability may be punished with imprisonment for one to three years.

Press Freedoms: The independent media were active and expressed a wide variety of views without restriction. In May Jewish organizations, including the Israeli Community of Barcelona, the Catalan Association of Friends of Israel, the Cultural Association of Friends of Israel, the Collectiu Israel a Catalunya (Israel's Collective in Catalonia), and the Foundation Baruch Spinoza, asked prosecutors to investigate 18,000 allegedly anti-Semitic insults against Jews and Israelis sent by Twitter following a May 18 basketball game between Israel's Maccabi Tel Aviv and Spain's Real Madrid. Authorities were investigating to establish the identity of the perpetrators and the location of the crimes.

Censorship or Content Restrictions: In June the Supreme Court confirmed the withdrawal of refugee status from Pakistani citizen Imran Firasat for his attacks against Islam (see section 2.d.). In December 2013 the Madrid Press Association and the Federation of Journalists Union criticized the government for handpicking two favorite journalists to have exclusive access to the prime minister.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content without appropriate legal authority. The International Telecommunication Union estimated 72 percent of the population used the internet. Authorities monitored websites for material containing hate speech and advocating anti-Semitism.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedom of Peaceful Assembly and Association

The constitution provides for the freedoms of assembly and association, and the government usually respected these rights.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations, including the NGO Spanish Commission for Refugee Assistance (CEAR), in providing protection and assistance to refugees, asylum seekers, stateless persons, and other persons of concern.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The law permits any foreigner who was a victim of gender-based violence or of trafficking in persons in the country to file a complaint at a police station without fear of deportation, even if that individual is in the country illegally. The UNHCR reported 4,344 asylum seekers and 4,637 refugees were in the country as of the end of December 2013. During the first six months of the year, the country granted asylum to 175 persons and subsidiary protection to another 185. During the first six months of the year, the country received 2,174 asylum requests; 2,476 requests were received during that same period in 2013.

In August and September respectively, Human Rights Watch and Amnesty International alleged that the country returned asylum seekers to Morocco without observing the relevant legal procedures. In its July report, *The Human Cost of Fortress Europe*, Amnesty International noted that in the February 6 incident in which approximately 250 migrants, refugees, and asylum seekers attempted to swim across the border from Morocco into Ceuta, Spanish authorities returned survivors to Morocco, "apparently without access to any formal procedure."

According to the report, the week after the incident, Minister of the Interior Jorge Fernandez Diaz stated that 23 persons had reached the Spanish beach and had been immediately returned to Morocco (see also section 1.a.).

Potential asylum seekers were able effectively to exercise their right to petition authorities. In July the national high court ordered the Ministry of the Interior to give temporarily asylum to Alexander Pavlov, a Kazakhstani citizen who claimed persecution in his country. The court found that the government had not explained sufficiently the reasons why it considered Pavlov a danger to the security of Spain. In April the government also granted asylum to one victim of human trafficking, a Mexican citizen.

In June the Supreme Court confirmed the decision to withdraw the refugee status from Pakistani citizen Imran Firasat, holding that his attacks against Islam were "a real and serious threat for the security of the country." Firasat became a refugee in the country in 2006, and since 2012 he had published articles against Islam on his webpage, threatened to burn the Quran, and planned to film a movie jointly with American pastor Terry Jones. The Supreme Court considered that "refugee status is not compatible with seriously offensive remarks against religious beliefs that incite violence or religious hate, or offend religious beliefs."

Safe Country of Origin/Transit: Authorities review asylum petitions individually, and there is an established appeals process available to rejected petitioners. Under EU law the country considers all other countries in the Schengen area, the EU, and the United States to be safe countries of origin. Under the EU's Dublin III regulation, asylum seekers who enter the country through other Schengen countries are liable for return to the country of first entry into the Schengen area under the EU's Dublin III regulation.

Refugee Abuse: Human Rights Watch alleged that on August 13 personnel of the Guardia Civil beat with batons immigrants trying to climb the fence along the border between Melilla and Morocco. Some of the victims reportedly required treatment in hospitals.

Durable Solutions: The country accepted refugees for resettlement from foreign countries and provided protections with the assistance of NGOs such as the CEAR. The government assisted in the safe, voluntary return of refugees to their homes.

Temporary Protection: Under the Program for Assistance and Protection of Human Rights Defenders at Risk of the Ministry of Foreign Affairs and

Cooperation, human rights defenders who faced oppression and death threats could move to the country for a period ranging from six months to two years, depending on the circumstances. The ministry received 10 such defenders in 2013, 10 in 2012, and 16 in 2011. The participants came from Colombia, Sierra Leone, and Mexico.

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

The constitution provides citizens the ability to change their government through free and fair elections, which they exercised through elections based on universal suffrage.

Elections and Political Participation

Recent Elections: Observers considered national elections in 2011 free and fair. The countries' elections to the European Parliament on May 25 were likewise free and fair.

Participation of Women and Minorities: The law requires parties to nominate lists in which women comprise between 40 and 60 percent for elections to the Congress of Deputies. There were 141 women in the 350-seat Congress of Deputies, 89 women in the 264-seat Senate, and five women in the 13-member Council of Ministers. There were 10 women on the 21-member General Council of the Judiciary.

The government did not keep statistics on the ethnic composition of parliament, but linguistic and cultural minorities existed in parliament. There were Muslim political parties in the city enclaves of Ceuta and Melilla in North Africa. The Roma had no elected representation in the government.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally implemented these laws effectively, although prosecutions and convictions for corruption were rare.

Corruption: According to the Attorney General's Office, in 2013 there were 18 guilty sentences, 55 new criminal cases were opened (compared with 41 in 2012), and there were 434 allegations of corruption.

The constitution provides for an ombudsman who investigates claims of police abuse. In 2013 the national ombudsman filed 347 ex officio judicial complaints, a 32 percent decrease from 2011. In 2013 the Office of the Ombudsman processed 33,167 complaints, an increase from 24,381 complaints in 2011. The Anti-Corruption Prosecutor' Office and Court of Auditors handled investigation and prosecutions of corruption cases, while the office of the Secretary of State for Public Administration was responsible for policy development. They collaborated effectively with civil society, operated effectively and independently, and received sufficient resources.

On July 25, the former president of the region of Catalonia, Jordi Pujol, admitted he and his family concealed large sums of undeclared money in secret foreign bank accounts (mostly in Andorra) for 34 years. Pujol was president of Catalonia from 1980 to 2003 and one of the founders in 1974 of the nationalist Convergence and Union coalition in power during the year in Catalonia. Pujol appeared before the Catalan parliament on September 26 to explain the undeclared money. On October 2, the Catalan parliament decided to open a formal investigation into his alleged crimes of tax evasion and political corruption.

Beginning in August authorities subpoenaed approximately 200 individuals for their misuse of "ERE" (layoff) funds meant to pay early retirement compensation at companies that implement labor-adjustment plans involving substantial layoffs. The General Union of Workers (UGT) was under investigation for misuse of funds allocated for the regional Andalusian government meant to provide job training to the unemployed.

Financial Disclosure: Public officials are subject to financial disclosure laws and are required to publish their income and assets on publicly available websites each year. There are sanctions for noncompliance. Elected officials are not required to publish the assets and income of spouses and dependent children. The Ministry of Finance and Public Administration is responsible for managing and enforcing the law regarding conflicts of interest.

Public Access to Information: The law mandates public access to government information. The government implemented the law effectively and generally granted access to citizens and noncitizens, including foreign media.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were cooperative and responsive to their views.

Government Human Rights Bodies: The ombudsman serves to protect and defend basic rights and public freedom on behalf of citizens. The ombudsman is appointed by the ruling party after consultation with the opposition; was generally effective, independent, sufficiently resourced; and had the public's trust. In 2013, the latest year for which data are available, the ombudsman initiated 33,167 investigations (22,692 complaints, 10,128 unconstitutional appeals, and 347 ex officio cases) and concluded 4,401; another 6,271 were pending. She did not pursue 10,297 investigations. Additionally, 12 of the country's 17 autonomous communities have an ombudsman's office to handle cases at the regional level.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination based on race, gender, disability, language, sexual orientation, gender identity, or social status, and the government generally enforced the law effectively.

Women

Rape and Domestic Violence: The law prohibits rape, including spousal rape, and the government generally enforced the law effectively. The penalty for rape is six to 12 years in prison. The law also prohibits violence against women, and independent media and government agencies generally paid close attention to gender violence. The law sets prison sentences of six months to a year for domestic violence, threats of violence, or violations of restraining orders, with longer sentences if serious injuries result.

According to the government's Delegate for Gender Violence, by August, 31 partners or former partners killed women. The delegate noted that only 11 of the women killed had reported abuse prior to their deaths. According to the Special Prosecutor against Gender Violence, 76 of the 86 accusations handed down in 2013 resulted in guilty verdicts in 2013. The Observatory against Domestic and Gender Violence reported 30,411 complaints of gender-based violence in the first three months of the year. The observatory cautioned that immigrant women and women over the age of 56 remained vulnerable, especially to gender violence.

The secretary of state for equality operated a digital platform where units working on gender violence could share information, best practices, and documents. More than 50 offices provided legal assistance to victims of domestic violence, and there were more than 454 shelters for battered women. A 24-hour toll-free national hotline advised battered women on finding shelter and other local assistance. The hotline took calls in Spanish, French, German, Arabic, Bulgarian, Chinese, Portuguese, Romanian, and Russian. Through August the hotline handled 43,796 telephone calls.

In April the Ministries of Health, Social Services, and Equality; Justice; and Home Affairs adopted a series of commitments to enhance coordination and improve the capabilities of the three ministries to combat gender violence.

Female Genital Mutilation/Cutting (FGM/C): The law prohibits FGM/C and authorizes courts to prosecute residents of the country who have committed this crime in the country or anywhere in the world.

Sexual Harassment: The law prohibits sexual harassment in the workplace, but harassment reportedly continued to be a problem, although few cases came to trial. The punishment in minor cases can be between three and five months in jail or fines of six to eight months' salary. In aggravated cases it can be five to seven months' jail time or fines of 10-14 months' salary. Penalties can be increased for victims the court determines may be especially vulnerable.

Reproductive Rights: Couples and individuals decide freely the number, spacing, and timing of their children and have the information and means to attain the highest standard of reproductive health free from discrimination, coercion, and violence.

Discrimination: Under the law women enjoy the same rights as men, including rights under family law, property law, labor law, and inheritance law. The law requires equal pay for equal work. Discriminatory wage differentials continued to exist, and women held fewer senior management positions than men. According to the secretary of state for social services and equality, in 2013 women earned 22 percent less than men for comparable work. The Women's Institute within the Ministry of Health, Social Services, and Equality conducted and published studies on women's problems and processed complaints of gender-based discrimination.

Children

Birth Registration: Citizenship is derived from one's parents. When a child does not acquire the parents' nationality, the government may grant it.

Child Abuse: As of August the Observatory against Domestic and Gender Violence registered the killing of one child. In addition, 517,000 children were victims of mistreatment within the context of gender violence. By August gender violence orphaned 24 children. In 2013 the NGOs answered 414,722 telephone calls from children/adolescents; 37.9 percent of the calls had to do with physical/psychological mistreatment or violence. According to the NGO Foundation for Children and Youths at Risk, mistreatment of children and adolescents increased, compared with 2012. The NGO received 424,171 telephone calls reporting child violence, compared with 324,643 in 2012.

In August the UN Committee on the Elimination of Discrimination Against Women (CEDAW) publicly condemned the government for not providing protection, prosecution, or compensation to Angela Gonzalez after her former partner killed her seven-year-old daughter, Andrea, in 2004. The CEDAW ruling required the government to compensate Gonzalez "properly and fully," investigate the institutional weaknesses exposed by the case, and take adequate and effective measures to ensure a history of violence is taken into account when establishing custodial rights. The ruling also required the government to reinforce mandatory gender-based violence training for judges and relevant administrative staff and report to CEDAW within six months on the actions taken. The committee also noted discrimination and gender stereotyping by judges, prosecutors, social workers, and others who made protection of women and children difficult.

Early and Forced Marriage: The minimum age of marriage is 16 years for minors living on their own. In 2013 a total of 77 persons under the age of 18 married (60 girls and 17 boys); none of them was under 15. These marriages were 0.02 percent of all marriages that year.

Female Genital Mutilation/Cutting (FGM/C): The law prohibits FGM/C, authorizes courts to prosecute cases even if the crime occurred outside the country, and it provides that parents who subject their children to FGM/C risk losing custody. In May 2013 the provincial court of Barcelona sentenced a Gambian couple residing in Vilanova i la Geltru to 12 years in prison for performing FGM/C on their two daughters ages six and 11 years. In May the Supreme Court confirmed the sentence.

According to the Wassu Foundation, an NGO dedicated to the study and prevention of FGM/C, in 2013 approximately 16,869 girls under the age of 14 in the country, of whom 6,182 resided in Catalonia, had roots in countries where FGM/C is practiced.

Sexual Exploitation of Children: The law criminalizes the "abuse and sexual attack of minors" under the age of 13. The penalty for sexual abuse and assault of children under the age of 13 is imprisonment from two to 15 years, depending on the nature of the crime. Individuals who contact children under the age of 13 through the internet for the purpose of sexual exploitation face imprisonment of one to three years.

The minimum age for consensual sex in the country is 13. If deceit is used to gain the consent of a minor under the age of 16, an individual can be charged upon parental complaint. The law specifically provides for imprisonment for one to two years or an equivalent fine for an individual who, by use of deceit, commits sexual abuse against a person over the age of 13 but younger than 16. The law defines nonconsensual sexual abuse as sexual acts committed against persons under 13 years, and it provides from four to six years in jail.

Penalties for recruiting children or persons with disabilities into prostitution are imprisonment from one to five years. If the child is under the age of 13, the term of imprisonment is four to six years. The same sentence applies to those who seek to victimize children through prostitution. The penalty for pimping children into prostitution is imprisonment from four to six years. If the minor is under 13, the term of imprisonment is five to 10 years.

Trafficking of teenage girls for commercial sexual exploitation remained a problem. Although trafficked women traditionally were 18 to 25 years of age, the government identified 12 child victims in the first half of 2013.

The law prohibits child pornography. The penal code criminalizes both using a minor "to prepare any type of pornographic material" and producing, selling, distributing, displaying, or facilitating the production, sale, dissemination, or exhibition of "any type" of child pornography by "any means." The penalty for recruiting children or persons with disabilities for child pornography is one to five years' imprisonment; if the child is under the age of 13, imprisonment is five to nine years. Knowingly possessing child pornography also is penalized, carrying a potential prison sentence of up to one year. The penalty for the production, sale, or

distribution of pornography in which a child under 18 years of age was involved is imprisonment from one to four years or up to eight years if the child is under 13.

In July the Supreme Court confirmed a 29-year prison sentence of an engineer for child pornography and sexual abuse of minors. In June a court imposed a three-year prison term on a member of the National Police for distributing child pornographic material through the internet.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For country-specific information see travel.state.gov/content/childabduction/english/country/spain.html.

Anti-Semitism

According to Jewish community leaders and the NGO Movement against Intolerance, while violence against members of the approximately 48,000-member Jewish community was rare, anti-Semitic incidents, including graffiti against Jewish institutions, continued.

The Observatory on Anti-Semitism in Spain reported 35 anti-Semitic events in 2012, most of them on websites and social media, followed by anti-Semitic graffiti, and to a lesser extent verbal assaults and damage to property. Acts of physical violence against individuals or property were almost nonexistent, and the Ministry of Home Affairs linked only three crimes to anti-Semitism.

On March 4, a Barcelona court sentenced Jaime T. to two years in prison for spreading Nazi, racist, and homophobic propaganda against Jews, Muslims, and other minorities on the internet.

The Anti-Defamation League reported that in August the imam of a mosque in Azuqueca De Henare delivered a sermon in which he called for all Jews to be killed.

Trafficking in Persons

See the Department of State's Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The law prohibits, with fines of up to one million euros ($1.25 million), discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, air travel and other transportation, access to health care, access to information technology and communication, including social media, and the provision of other government services. The government generally enforced these provisions effectively. The law mandates access to buildings for persons with disabilities. While the government generally enforced these provisions, levels of assistance and accessibility differed among regions. Children with disabilities attended school, and there were no patterns of abuse in educational or mental health facilities. The government requires companies with more than 50 workers to reserve 2 percent of their jobs for persons with disabilities.

The law defines sexual acts committed against unconscious persons or mentally ill persons as nonconsensual sexual abuse, and it provides from four to six years in prison. Penalties for recruiting persons with disabilities into prostitution are imprisonment from one to five years. The penalty for pimping persons with disabilities into prostitution is imprisonment from four to six years. The penalty for recruiting persons with disabilities for pornography is one to five years' imprisonment.

The Ministry of Home Affairs reported a link to disability bias in 290 crimes.

National/Racial/Ethnic Minorities

The Ministry of Home Affairs and the Ministry of Health, Social Services, and Equality had a map of "hate crimes" in the country. On April 24, Secretary of State for Security Francisco Martinez announced in the senate that during 2013 there were 1,172 "hate crimes." According to Martinez, between 60 and 80 percent of victims did not report hate crimes because they believed the crime would not be addressed. Martinez told senators that security forces received specific training to record discrimination even if the victim does not agree with it. Crimes motivated by bias were connected to racial or ethnic origin bias (381 cases), religious bias (42), and poverty bias (four).

On April 27, during a soccer game, a spectator threw a banana at Football Club Barcelona player Dani Alves and called him a monkey (Alves is Afro-Brazilian). Soccer team Villarreal banned the person who threw the banana from all future stadium events.

In June the public prosecutor of the province of Barcelona for hate crimes presented a complaint against the presidents of the political parties National Alliance and the Falange Spain for incitement of violence. During a demonstration in Barcelona in October, these political parties called for the use of violence against Catalan proindependence groups similar to what Basque terrorist group ETA employed during its armed struggle.

In 2013-14 the State Commission against Violence, Racism, Xenophobia, and Intolerance in Sports (in the Ministry of Home Affairs) recorded a total of eight racist incidents in soccer games and assessed fines that amounted to between 3,001 and 4,000 euros ($3,800 and $5,000) against 23 persons. After each game the police security coordinator sent the commission a report on any violent, racist, xenophobic, or intolerant behavior. Esteban Ibarra, a member of the Observatory against Racism and of Movement against Intolerance, minimized the commission's efforts, stating, "The attitude of the commission is indolent and fails to sanction violators. It tries to cover up as much as possible."

In April the Office of the Ombudsman reported that the racially motivated police checks continued in many cities

According to the domestic NGO Fundacion Secretariado Gitano, Roma continued to face discrimination in access to employment, housing, and education. The Romani community, which the NGO estimated to number 750,000, experienced substantially higher rates of unemployment, poverty, and illiteracy than the general population. The NGO's 2013 report reported 168 cases of discrimination against Roma (see also section 7.d.).

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The LGBT community was widely accepted throughout the country. Discrimination in employment is banned. The law can consider an anti-LGBT hate element an aggravating circumstance in crimes.

On October 2, the Catalan parliament approved the Law on Gay, Lesbian, Bisexual, and Transsexual People's Rights and on the Eradication of Homophobia, Lesbophobia, and Transphobia. The first of its kind in the country, the law provides members of the LGBT community greater protections than those provided by national law and prohibits discrimination based on sexuality. It reverses the burden of proof involved in cases of discrimination in the realms of

civil and social law. The law is limited to competencies of the regional government, such as the provision of education and health care.

The Ministry of Justice ordered all Spanish consulates to allow enrollment in the civil registry of children born through surrogacy. The order entered into force on July 14.

A report from the security forces indicated that of the 550 hate crimes recorded during the first three months of the year, 235 were focused on LGBT members.

In January a Barcelona court sentenced the manager of an Austrian transportation company based in Barcelona to three and one-half years in prison for accessing his employees' e-mail accounts without permission. He found information indicating two employees were gay and then conveyed that information to management in their Austrian office. His actions led to the dismissal of the two individuals (see also section 7.d.).

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law allows most workers, including foreign and all migrant workers, to form and join independent unions of their choice without previous authorization or excessive requirements. Military personnel and national police forces do not have the right to join unions, and judges, magistrates, and prosecutors are not free to join the union of their choice. The law allows unions to conduct their activities without interference.

The law provides for collective bargaining, including for all workers in the public sector except military personnel. Public sector collective bargaining includes salaries and employment levels, but the government retained the right to set these if negotiations failed.

The constitution and law provide for the right to strike, and workers exercised this right by conducting legal strikes. Any striking union must respect minimum service requirements negotiated with the respective employer. Law and regulations prohibit retaliation against strikers, antiunion discrimination, and discrimination based on union activity are illegal, and these laws were effectively enforced. According to the law, if an employer violates union rights, the right to conduct legal strikes, or dismisses an employee for participation in union, the

employer could face imprisonment from six months to two years or a fine if the employer does not reinstate the employee. These penalties were sufficient to deter violations.

Workers freely organized and joined unions of their choice. The government generally did not interfere in union functioning. Collective bargaining agreements covered approximately 80 percent of the workforce in the public and private sectors since the end of the year. On occasion employers used the minimum service requirements to undermine planned strikes and ensure services in critical areas such as transportation or health services.

Although the law prohibits antiunion discrimination by employers against workers and union organizers, unions contended that employers practiced discrimination in many cases by refusing to renew the temporary contracts of workers engaging in union organizing.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor including by children, but there were reports that such practices occurred.

The government effectively enforced the law, but prevention efforts remained minimal. Resources and inspections were adequate, but the government did not implement new awareness campaigns pertaining to forced labor. Penalties of five to 12 years' imprisonment were sufficiently stringent to deter violations.

Undocumented migrant men and women were forced to work in domestic service, agriculture, construction, and the service industry. Unaccompanied children remained particularly vulnerable to labor exploitation, sex trafficking, and forced begging.

Also see the Department of State's Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The statutory minimum age for the employment of children is 16. The law also prohibits the employment of persons under the age of 18 at night, for overtime work, or in sectors considered hazardous, such the agricultural, mining and construction sectors. The Ministry of Employment and Social Security has

primary responsibility for enforcement of the minimum age law and enforced it effectively in major industries and the service sector. Laws and policies provide for protection of children from exploitation in the workplace, and these laws generally were enforced.

There were reports that children were trafficked for the sex trade and forced begging. Foreign children intercepted at the borders are not automatically registered in police databases, making them vulnerable to exploitation including forced begging and commercial sexual exploitation (see section 6, Children).

The ministry had difficulty enforcing the law on small farms and in family-owned businesses, where child labor persisted. The government enforced effectively laws prohibiting child labor in the special economic zones. In 2011, the most recent year for which data is available, the Ministry of Employment and Social Security detected 19 violations related to child labor, affecting 24 minors. Penalties included imprisonment for six to 10 years and were sufficient to deter violations.

d. Discrimination with Respect to Employment or Occupation

Labor laws and regulations prohibit discrimination regarding race, sex, gender, disability, language, sexual orientation and/or gender identity, HIV-positive status or other communicable diseases, or social status. While the government enforced these laws and regulations, discrimination in employment and occupation occurred with respect to race and ethnicity, gender, and sexual orientation (see section 6).

e. Acceptable Conditions of Work

The national minimum wage was 645.30 euros ($806.63) per month. The Ministry of Employment and Social Security effectively enforced the minimum wage. For a family of two adults and two children, the poverty level was set at 15,445 euros ($19,306) per year.

The law provides for a 40-hour workweek, with an unbroken rest period of 36 hours after each 40 hours worked. The law restricts overtime to 80 hours per year unless a collective bargaining agreement establishes a different level. Pay is required for overtime and must be equal to or greater than regular pay. The law provides for 22 annual vacation days and 14 federal holidays.

The National Institute of Safety and Health in the Ministry of Employment and Social Security has technical responsibility for developing occupational safety and

health standards, and the Inspectorate of Labor has responsibility for enforcing the law through inspections and judicial action when inspectors find infractions. At the end of 2012, there were 1,871 labor inspectors in the country. In 2013 penalties for violations averaged 875 euros ($1,090) and were not sufficient to deter violations. Unions criticized the government for devoting insufficient resources to inspection and enforcement. In January the Association of Tax Inspectors reported that the informal economy amounted to 253.13 billion euros ($316.41 billion), or 25 percent of the gross domestic product. At the end of 2013, 423,800 of the estimated 680,000 domestic employees were registered with the social security system. The remaining share of the estimated total remained outside the formal economy.

Through May the Ministry of Employment and Social Security recorded 170,265 accidents in the workplace. Of these, 168,748 were reported as minor, 1,331 serious, and 186 fatal. The law protects workers who remove themselves from situations that could endanger their health or safety without jeopardy to their employment. The government effectively protected employees in this situation.