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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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(VENICE COMMISSION)

SPAIN

OPINION

ON

**THE MANNER OF ELECTION OF THE JUDICIAL MEMBERS
OF THE GENERAL COUNCIL OF THE JUDICIARY**

**Adopted by the Venice Commission
at its 144th Plenary Session
(Venice, 9-10 October 2025)**

on the basis of comments by

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I. Introduction

1. By letter of 21 April 2025, the President of the General Council of the Judiciary, Ms Isabel Perelló Doménech, requested an Opinion of the Venice Commission of the Council of Europe on the *Proposal for reform of the system for electing judicial members of the General Council of the Judiciary* (hereinafter “the Reform Proposal”, [CDL-REF\(2025\)038](#)). The request concerns the analysis of the conformity of the Reform Proposal with the European standards regarding the election system of the judicial members of the General Council of the Judiciary (hereinafter “the GCJ” or “the Council”). The Reform Proposal was prepared by the GCJ in accordance with the requirement of Additional Provision of Organic Law No. 3/2024 of 2 August 2024. It was submitted to the Government, the Congress of Deputies and the Senate for further consideration with a view to elaborating a draft law on reform of the election system for the judicial members of the Council.

2. Ms Cartabia, Ms Kiener and Mr Sénors acted as rapporteurs for this Opinion.

3. On 15 and 16 September 2025, the rapporteurs travelled to Madrid, accompanied by Ms Simona Granata-Menghini, Secretary of the Commission, and Mr Taras Pashuk from the Secretariat, and had meetings with members of the GCJ, the President and Judges of the Supreme Court, the Minister of the Presidency, Justice and Relations with the Parliament, the President of the Senate, and members of political groups in both the Senate and the Congress, representatives of the Association of Prosecutors and the General Council of Spanish Lawyers, as well as civil society organisations. The Commission is grateful to the Spanish authorities for the excellent organisation of this visit.

4. This Opinion was prepared in reliance on the English translation of the Reform Proposal. The translation may not accurately reflect the original version on all points.

5. This Opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 15 and 16 September 2025. It was examined at the joint meeting of the Sub-Commissions on the judiciary and on the rule of law on 9 October 2025. Following an exchange of views with Mr José María Fernández Seijo from the General Council of the Judiciary, Ms Camino Vidal Fueyo, Director General of Constitutional Affairs and Legal Coordination, Ministry of Presidency, Justice and Relations with Parliament, Mr Joaquín Martínez Salmerón, President of the Justice Committee of the Congress of Deputies, and Mr Pedro Rollán Ojeda, President of the Senate of Spain, the Opinion was adopted by the Venice Commission at its 144th Plenary Session (Venice, 9-10 October 2025).

II. Background

A. Legal status of the General Council of the Judiciary

6. The GCJ¹ is the governing body of judiciary of Spain, as provided by Article 122 of the Spanish Constitution, which reads:

(1) The Organic Act of the Judiciary shall make provision for the setting up, operation and internal administration of courts and tribunals as well as for the legal status of professional judges and magistrates, who shall form a single body, and of the staff serving in the administration of justice.

¹ Official website of General Council of the Judiciary, available at [Mission | GCJ | Judiciary | General Council of the Judiciary | Institutional information | What is the CGPJ?](#).

(2) The General Council of the Judiciary is its governing body. An organic act shall lay down its status and the system of incompatibilities applicable to its members and their functions, especially in connection with appointments, promotions, inspection and the disciplinary system.

(3) The General Council of the Judiciary shall consist of the President of the Supreme Court, who shall preside it, and of twenty members appointed by the King for a five-year period, of which twelve shall be judges and magistrates of all judicial categories, under the terms provided for by the organic act; four nominated by the Congress and four by the Senate, elected in both cases by three-fifths of their members amongst lawyers and other jurists of acknowledged competence with more than fifteen years of professional practice.

7. The GCJ was first created in 1980 on the basis of Organic Law 1/1980 on the General Council of the Judiciary,² and then reformed through Organic Law 6/1985 on the Judiciary.³

8. According to Organic Law 6/1985 (Articles 560 and 561), as further amended, the GCJ main powers⁴ include:

- (a) Proposing the appointment of President of the Supreme Court (who is also the President of the GCJ), Judges and Magistrates of the Supreme Court, and two Judges of the Constitutional Court;
- (b) Participating in the selection of judges and magistrates.
- (c) Appointing the Vice-President of the Supreme Court, Promoter of Disciplinary Action, Head of the Court Inspectorate, Directors and staff of the Judicial Academy, Judicial Documentation Centre, and the Technical Office of the GCJ, as well as other administrative personnel.
- (d) Resolving issues on the assignment, career progression, and administrative status of judges and magistrates, application of disciplinary rules.
- (e) Exercising inspection of courts and supervises inspections carried out by court presidents and chamber heads.
- (f) Issuing regulations concerning internal organisation, judicial specialisation, allocation of cases and presentations.

9. The Council is composed of 21 members, who serve for a 5-year term. 12 members are judges and magistrates,⁵ while 8 members (lay members) are legal experts of recognised standing with at least 15 years of professional experience. The President of the Supreme Court serves as the President of the Council and completes the composition.

10. The current appointment system is regulated by Organic Law 6/1985, as amended by Organic Law 2/2001, of 28 June 2001. This reform, approved nearly 25 years ago, resulted from an agreement between the main political forces and was largely supported by members of Parliament. It provides that judicial member candidates are nominated by a judicial association or by at least 25 judges; subsequently, these candidates are elected by Parliament (Article 574 and 578 of Organic Law 6/1985). Prior to their election, candidates appear before the

² Organic Law 1/1980 on the General Council of Judiciary (Ley Orgánica 1/1980, de 10 de enero), available in Spanish at [BOE-A-1980-720 Ley Orgánica 1/1980, de 10 de enero, del Consejo General del Poder Judicial](#).

³ Organic Law 6/1985 on the Judiciary (Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial), available in Spanish at [BOE-A-1985-12666 Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial](#).

⁴ Official website of Spain's General Council of the Judiciary, focus on the Council's functions, available at [Functions | GCJ | Judiciary | General Council of the Judiciary | Institutional information | What is the CGPJ?](#).

⁵ The difference between judge and magistrate in Spain lies in the fact that the judge is in charge of imparting justice in the first instance, while the magistrate does so in higher instances. Both are part of the judiciary. For brevity, this opinion will refer to judges to encompass both categories.

Appointments Committee of the relevant Chamber, in order to be assessed on the merits of their recognised prestige and suitability (Article 567(2) of Organic Law 6/1985). Each chamber (the Congress and the Senate) elects 6 judicial members. As regards lay members, both chambers elect 4 members each. Both chambers elect judicial and lay members by a three-fifths majority (Article 567(2) of Organic Law 6/1985).

11. The Constitution of Spain expressly prescribes the appointment by parliament only for the lay members, while it remains silent about the appointment of the 12 judicial members (Article 122(3) of the Constitution). Until the approval of the Organic Law of the Judiciary in 1985, these 12 judicial members were elected by the judges and magistrates themselves, without intervention by Parliament (Article 12 of the Organic Law 1/1980⁶); in 1985, election by parliament was introduced. In 1986, the Constitutional Court found that the allocation of the power to elect judicial members to Parliament was not contrary to the Constitution, but it warned that if the parliamentary appointments were made by distribution of political quotas among the political forces present in Chambers, such practice could involve a risk of politicisation of the process.⁷

12. Once elected, all the members of the GCJ are officially appointed by the King. Public prosecutors (*ministerio fiscal*) are not part of the Council.

13. The President of the Supreme Court, who is also the President of the GCJ (Article 122(3) of the Constitution), is appointed by the King, on the Council's proposal (Article 123(2) of the Constitution). The Plenary Session of the GCJ elects a person to be proposed to the King as President of the Supreme Court. Each Council's member can only propose one candidate. In order to be elected President of the Supreme Court and of the GCJ, a person has to either be a judicial member of the Council with the rank of Judge of the Supreme Court and to fulfil the conditions required to be President of a Chamber of the Supreme Court, or else to be a jurist with more than twenty-five years' seniority in the exercise of his profession (Article 586 of Organic Law 6/1985). The term of both offices (President of the Supreme Court and President of the GCJ) coincides with the term of office of the Council which elected him/her (Article 587(1) of Organic Law 6/1985). Moreover, the same person may be re-elected and appointed, once only, for a further term of office (Article 587(2) of Organic Law 6/1985).

14. According to the official statistics as of 1 January 2024, the Spanish judiciary was made up of 5,416 judges; 3,101 of them are women which represents 57.2 percent of the total, compared to 50.1 per cent in 2014, when there were 2,661 women (out of a total of 5,219).⁸ As of 30 September 2024, there were four judicial associations in Spain, representing a total of 58% of active Judges (3139 Judges) as follows: (i) Asociación Profesional de la Magistratura: 45.2%; (ii) Asociación de Jueces Francisco de Vitoria: 29.9%; (iii) Juezas y Jueces para la Democracia: 14%; (iv) Foro Judicial Independiente: 11%.⁹

B. Events relating to renewal of the composition of the GCJ

15. In 2018, the Council's mandate expired and was subsequently extended for several years, until summer 2024, due to the failure of Congress and the Senate to elect the new members. The members of the Council remained in place *ad interim*.

⁶ Organic Law 1/1980 on the General Council of Judiciary (Ley Orgánica 1/1980, de 10 de enero), available in Spanish at [BOE-A-1980-720 Ley Orgánica 1/1980, de 10 de enero, del Consejo General del Poder Judicial](#).

⁷ Constitutional Court of Spain, Ruling [108/1986](#), 29 July 1986.

⁸ [Comunicación Poder Judicial](#), 10 de abril de 2024, El número de magistradas en órganos colegiados ha aumentado en casi diez puntos en la última década.

⁹ Communication to the Venice Commission by the Ministry of the Presidency, Justice and Relations with the Cortes.

16. In that context, the EU Commission repeatedly expressed concern that the election of GCJ was not taking place in due course. In its 2021 and 2022 Rule of Law reports for Spain, the EU Commission noted that in view of the stalemate in Parliament, calls were made for establishing a system of election of the judicial members of the Council by their peers, in line with European standards.¹⁰

17. On 10 October 2022, the President of the GCJ resigned,¹¹ arguing that the absence of renewal was weakening and eroding the rule of law in Spain, and was leading to a clear deterioration of the situation of the Supreme Court and of the GCJ. Following his resignation, the two main political parties in Parliament relaunched negotiations to appoint the new members of the Council.

18. On 5 December 2022 and again on 21 June 2024, GRECO reiterated its earlier recommendation that Spain should carry out an evaluation of the legislative framework governing the GCJ 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. GRECO stated that when there is a mixed composition of judicial councils, for the selection of judge members, the Council of Europe standards provide that judges are to be elected by their peers (following methods guaranteeing the widest representation of the judiciary at all levels) and that political authorities, such as Parliament or the executive, are not involved at any stage of the selection process. In that context, the deadlock in the designation of the GCJ was a matter of critical concern, which needed to be addressed as a matter of priority.¹²

19. On 30 December 2022, a new legal proposal tabled by a parliamentary group to reform the system of appointment of the GCJ, proposing that its judicial members be directly elected by their peers, did not get enough support in Parliament. In 2023, the EU Commission found that there had been no progress in the implementation of the recommendation made in the 2022 Rule of Law Report.¹³

20. The EU Commission further engaged in facilitating the negotiations between political parties to renew the GCJ and to initiate, immediately after the renewal, a legislative process in view of amending the procedure for appointment of its judicial members, taking into account the European standards. The prolonged delay in appointment of members of the GCJ attracted further international attention.¹⁴

21. On 25 June 2024, the dialogue between political parties led to an agreement¹⁵ on the renewal of the GCJ and on further legal reform in this area. As recommended by the EU Commission, the

¹⁰ EU Commission, [SWD\(2021\) 710 final](#), 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, pp. 3-4; [SWD\(2022\) 509 final](#), 2022 Rule of Law Report, Country Chapter on the rule of law situation in Spain, pp.4-5.

¹¹ Reuters, Spanish top court chief's resignation nudges parties to end 4-year stalemate (10 October 2022), available at [Spanish top court chief's resignation nudges parties to end 4-year stalemate | Reuters](#).

¹² GRECO, Fourth Evaluation Round, Corruption Prevention In Respect Of Members Of Parliament, Judges And Prosecutors, [Addendum](#) To The Second Compliance Report, Spain, Adopted by GRECO at Its 92nd Plenary Meeting (Strasbourg, 28 November- 2 December 2022). See also and [Second Addendum](#) To The Second Compliance Report, Spain, Adopted by GRECO (Strasbourg, 17-21 June 2024), [paragraph 19](#).

¹³ EU Commission, [SWD\(2023\) 809 final](#), 2023 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 5.

¹⁴ United Nations Human Rights Office of the High Commissioner, [Press Release](#) 'Spain: UN expert concerned about five-year delay in appointing General Council of the Judiciary' (19 January 2024).

¹⁵ Reuters, Spain's main parties agree to renew judges' governing body after five-year deadlock (25 June 2024), available at [Spain's main parties agree to renew judges' governing body after five-year deadlock | Reuters](#).

agreement concerned the immediate renewal of the 20 members of the Council and the elaboration of draft amendments to the Organic Law that will strengthen the independence of the judiciary. The agreement provided that the GCJ should within six months adopt a proposal to reform the system of appointment of judicial members and send it to the Government, the Congress and the Senate. On that basis, the holders of the legislative initiative would submit to Parliament a draft law to reform the system for the election of judicial members for debate and, if appropriate, processing and approval.

22. On 25 July 2024 all the members of the Council were elected by Parliament with the support of a broad majority.¹⁶ The Commission notes that among the 8 lay members there was no representative of the Bar association, and the quota of lay members was partly filled by former judges.

23. On 2 August 2024, Organic Law 3/2024¹⁷, amending the Organic Law on the Judiciary, was enacted. The above agreement was reflected in an *Additional Provision* which reads as follows:

“Within six months of the entry into force of this Organic Law, the General Council of the Judiciary shall prepare a report examining the European election systems for members of Judicial Councils similar to the Spanish Council, and a reform proposal for the election system for members designated from among lower-court and senior judges, adopted by a three-fifths majority of its members, in accordance with Article 122 of the Constitution, which guarantees the independence thereof and which, with the direct participation of judges to be determined, can be positively assessed by the European Commission's Rule of Law Report, establishing a General Council of the Judiciary in line with the highest European standards.

This proposal shall be submitted to the Government, the Congress of Deputies and the Senate, for the holders of the legislative initiative, on the basis thereof, to prepare and submit to the Spanish Parliament a government bill or non-government bill to reform the election system for the judicial members, to be debated and, if appropriate, processed and approved”.

24. On 5 February 2025, the GCJ adopted a report alongside the Reform Proposal outlining how to amend the system for electing judicial members. The GCJ failed to agree on a single proposal, instead providing two alternative options. The main difference between the two options is whether or not Parliament is involved in the election of judicial members.

III. Analysis

A. Scope of the Opinion

25. The Venice Commission will examine both options included in the Reform Proposal of the GCJ, focussing on those provisions and issues which were specifically raised during the discussions with the stakeholders. The absence of comments on certain proposed provisions should not be interpreted as their tacit approval.

¹⁶ See, for example, RTVE, [News item](#): Mayorías reforzadas y un freno a las "puertas giratorias": las claves de la renovación del CGPJ, 25 June 2024.

¹⁷ Ley Orgánica 3/2024, de 2 de agosto, de reforma de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial y de reforma de la Ley 50/1981, de 30 de diciembre, por la que se regula el Estatuto Orgánico del Ministerio Fiscal, available in Spanish at [BOE-A-2024-16127 Ley Orgánica 3/2024, de 2 de agosto, de reforma de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial y de reforma de la Ley 50/1981, de 30 de diciembre, por la que se regula el Estatuto Orgánico del Ministerio Fiscal](#).

26. The Reform Proposal cites in detail the relevant European standards and their sources. The Venice Commission has previously observed that, owing to the richness of legal culture in Europe, which is precious and should be safeguarded, there is no single model of organisation of independent judiciary which applies to all countries.¹⁸ It has also noted that there is no standard model that a democratic country is bound to follow in setting up its Judicial Council so long as the function of such a Council falls within the aim to ensure the proper functioning of an independent judiciary within a democratic State.¹⁹ Therefore, the European standards should be regarded as guiding parameters,²⁰ allowing States to exercise discretion when implementing them within their legal systems. In this context, the present Opinion will assess how the European standards concerning the election of members of judicial councils may be integrated into Spain's judicial organisation.

B. Level of regulation

27. The Venice Commission has consistently advocated that the fundamental features of judicial councils should be established at the constitutional level. In 2008, it expressed the view that constitutional guarantees should extend to the composition, powers and autonomy of the councils.²¹ The Commission elaborated that the constitutional entrenchment of these elements is important in order not to expose the system of judicial governance to the imperatives of the prevailing politics, as otherwise, any new political majority could be tempted to change the system, which may be detrimental to the independence and efficiency of the judiciary.²² Recently, the Commission recommended, for the same considerations, that the method of election of the members of the judicial council should be set out in the Constitution.²³

28. In this context, it should be noted that the Spanish Constitution sets out the process for electing lay members of the GCJ, assigning the competence to both Chambers of Parliament and imposing the requirement of qualified majority. However, the Constitution does not define the method for electing the judicial members of the Council, instead delegating the matter to an Organic Act (see paragraph 6 above). Initially, the peer election method was introduced in 1980, but was replaced by parliamentary election in 1985. This change was challenged in the Constitutional Court of Spain which declared it constitutional but warned against the risks of politicisation of the process (see paragraph 11 above).

29. The Venice Commission considers it suitable to provide, at the constitutional level, for the election method of not only the lay members, but also the judicial members of the Council, should a constitutional reform be considered in the future in Spain.

C. Standard of peer-elected judicial members

1. Relevant sources

30. According to Recommendation CM/Rec 2010(12) of the Committee of Ministers of the Council of Europe, not less than half the members of judicial councils should be judges elected

¹⁸ Venice Commission, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, para. 32.

¹⁹ Venice Commission, [CDL-AD\(2007\)028](#), Report on Judicial Appointments, para. 28.

²⁰ Venice Commission, [CDL-PI\(2022\)005](#), International round table on "Shaping judicial councils to meet contemporary challenges", 23 March 2022, General Conclusions.

²¹ Venice Commission, [CDL-AD\(2007\)028](#), Report on Judicial Appointments, para. 48.

²² Venice Commission, [CDL-AD\(2022\)020](#), Lebanon - Opinion on the draft law on the independence of judicial courts, para. 22.

²³ Venice Commission, [CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the Law on the National Council of the Judiciary of Poland, para. 76.

by their peers.²⁴ This approach has been consistently maintained in the Venice Commission's country-specific Opinions.²⁵ The Consultative Council of European Judges (CCJE) recommends that the majority of members of judicial councils should be judges elected by their peers and that election of judicial members by parliament or selection by the executive must be avoided.²⁶ This standard is also supported by the European Network of Councils for the Judiciary.²⁷

31. As regards the non-judicial component of the judicial council, it fulfils an important balancing function. A large majority of the judges may give rise to concerns about the risk of corporatist management or self-government. The inclusion of lay members is therefore broadly justified by the principle that the supervision of the quality and impartiality of justice extends beyond the interests of the judiciary itself. By exercising such oversight, the judicial council can enhance public confidence in the administration of justice. In many systems, legislative bodies elect part of the membership of judicial councils from qualified legal professionals, ensuring a measure of pluralism and democratic legitimacy in the council's composition. In general, members, including both judicial and lay members, must be selected in a transparent procedure that supports the independent and effective functioning of the judicial council and the judiciary and avoids any perception of political influence, self-interest or cronyism.²⁸ As a safeguard against politicisation, the Venice Commission has recommended the introduction of a requirement for a qualified majority in the election of the parliamentary component of the judicial council.²⁹

32. Moreover, the Venice Commission has warned against the politicisation of the process of electing the judicial members of the judicial councils. Where judicial reforms shifted the power to elect judicial members from the judiciary to the Parliament, the Commission considered that this change carried the risk of politicisation and recommended reverting to the election of judicial members by their peers.³⁰

33. In that context, the CJEU considered that the election procedure for the judicial members of a judicial council is one of the factors which may call into question the council's independence.³¹ Likewise, the ECtHR has considered that where a legislative amendment "deprived the judiciary of the right to nominate and elect judicial members of the [judicial council] – a right afforded to it under the previous legislation and recognised by international standards – the legislative and the executive powers achieved a decisive influence on the composition of the [judicial council] The Act practically removed not only the previous representative system but also the safeguards of independence of the judiciary in that regard. ..."32

²⁴ Committee of Ministers of the Council of Europe, Recommendation [CM/Rec\(2010\)12](#) on judges: independence, efficiency and responsibilities, para. 27.

²⁵ [CDL-AD\(2017\)018](#), Bulgaria - Opinion on the Judicial System Act, para.14; [CDL-AD\(2018\)028](#), Malta - Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement, para.42; [CDL-AD\(2020\)035](#), Bulgaria - Urgent Interim Opinion on the draft new Constitution, para.44; [CDL-AD\(2021\)043](#), Cyprus - Opinion on three Bills reforming the Judiciary, para.53; [CDL-AD\(2022\)020](#), Lebanon - Opinion on the draft law on the independence of judicial courts, para.45; [CDL-AD\(2022\)030](#), Serbia - Opinion on three draft laws implementing the constitutional amendments on Judiciary, para. 71.

²⁶ CCJE, Opinion [No. 24 \(2021\)](#): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, paras. 30 and 31.

²⁷ European Network of Councils for the Judiciary, Compendium on Councils for the Judiciary, page 5.

²⁸ CCJE, Opinion [No. 24 \(2021\)](#): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, Part B.IV.10.

²⁹ Venice Commission, [CDL-AD\(2007\)028](#), Report on Judicial Appointments, paras. 30-32.

³⁰ Venice Commission, [CDL-AD\(2017\)031](#), Poland - Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, para. 130.

³¹ CJEU, [Judgment of 19 November 2019](#) in the case A.K. (Independence of the Disciplinary Chamber of the Supreme Court)(C-585/18, C-624/18, C-625/18), notably paras. 140-144.

³² ECtHR, [Reczkowicz v. Poland](#), [no. 43447/19](#), 22 July 2021, para. 274.

2. Implementation of this standard in the Reform Proposal

34. As noted above, the European Commission and GRECO have drawn the attention of the Spanish authorities to the importance of the principle that judicial members should be elected by their peers. While the Additional Provision of the Organic Law 3/2024 of 2 August 2024 does not establish an unconditional obligation to modify the existing model, it provides that the Reform Proposal should consider a model that, “with the direct participation of judges to be determined, can be positively assessed by the European Commission's Rule of Law Report, establishing a General Council of the Judiciary in line with the highest European standards” (see paragraph 23 above).

Option 1

35. According to Option 1, (i) judicial candidates are nominated by 25 judges or by a judicial association; and (ii) the candidates are directly elected by judges.

36. The Venice Commission finds that Option 1 reflects the European standard of peer election by permitting the judicial community to directly elect the judicial members of the Council. To the extent that these elections are free, direct, pluralistic and fair, they could eliminate the risk of politicisation. The Venice Commission considers, however, that the election process should be protected not only from external political influence but also from internal politicisation. Judicial independence requires that the election of the members of judicial councils be protected from direct interference by political actors, as well as from indirect dependence on, or alignment with, such actors, notably through judicial associations. In some countries, particularly where judicial associations hold significant influence on the electoral process, the judicial council faces dual risks: external political interference and internal politicisation.

37. As concerns Spain, the question arises as to whether Option 1 would merely transfer the opportunity for politicisation from parliament to the judiciary. A number of interlocutors indeed stressed that at least two of the four main judicial associations may be closely linked to the two main political orientations – conservative or progressive – existing in the country. As judicial associations would play a significant role in the nomination process and in the election campaigns, thus influencing the choice of the voters, this procedure would not rule out political interference in this selection process. Some interlocutors feared that only so-called “conservative judges” would be elected, depriving the GCJ of political pluralism. Having said this, the Commission cannot discern the basis on which the Spanish judiciary as a whole could be characterised as “conservative”.

38. The Commission notes that, since 1985, Spanish judges have not had the opportunity to vote for their candidates. Judicial members, like lay members, have all been elected by Parliament, in which the two main parties have taken turns in holding a majority. Consequently, since 1985 all members of the GCJ have been elected through political processes along partisan lines. It appears logical, in this context, that judicial associations may have developed close links with the political sphere.

39. The Commission cannot predict whether judicial associations would maintain these links under the new system. A substantial proportion of judges remain unaffiliated (as of September 2024, 58% of judges were members of judicial associations), and no peer elections have taken place in the last forty years. It is therefore uncertain to what extent judicial associations might exert influence over judges, particularly non-associated ones. Nevertheless, the Commission accepts that, against the background of forty years of political election of the judicial members of the GCJ, the risk of political influence being exercised through judicial associations cannot be entirely excluded, at least during the initial stages of the operation of a new system of peer election.

40. In this light, direct elections by the judicial community alone may be insufficient to address entirely the risk of politicisation. Where such elections are envisaged, judicial associations – which as such play an important role for the judicial community – may, in practice, act as proxies for political actors. Further safeguards may therefore be necessary to prevent internal politicisation adequately. In particular, measures should be taken to encourage non-associated judges to stand as candidates and to ensure that they are not placed at a significant disadvantage compared to those supported by associations. This consideration is significant given the substantive proportion of non-associated judges in Spain. In this context, the electoral framework would require further elaboration to ensure that independent candidates have adequate opportunities to be elected. The authorities may wish to consider several elements specified below. As both options share similar features in their electoral models (differing, of course, in the involvement of Parliament), these considerations apply not only to Option 1 but also, where appropriate, to Option 2.

41. Firstly, as regards the nomination process, the practice in other jurisdictions varies. Judges can be nominated by other judges, associations of judges, courts, the conference of judges or by the different instances or courts they represent.³³ Option 1 provides that candidates not endorsed by an association need 25 endorsements from other individual judges (while Option 2 requires 30 endorsements). In view of the practical difficulties of securing this number of signatures, particularly for judges in remote or isolated areas, and depending on the mechanisms available for the collection of these signatures (in person, by electronic means, etc.), this requirement could be substantially reduced, or even abolished in both Options 1 and 2, in order to avoid unduly favouring the role of judicial associations in the nomination process. Another possibility would be to allow nominations to be based on an open call for independent candidates. However, this approach would require careful consideration in view of the risk of overburdening the electoral administration with a large number of submissions in a short period, potentially delaying procedures.

42. Secondly, holding an election with alternates, as provided by Option 1, implies that candidates must find another judge to participate in the election to act as substitute of the elected judge in case of early termination of his/her mandate. This arrangement may place an additional burden on candidates, particularly those who are not affiliated. One possibility could be to envisage a by-election in the event of the early termination of a Council member's mandate.

43. Thirdly, the electoral model in Option 1 proposes that voters will be able to cast a maximum of eight votes.³⁴ While the authorities are free to determine the number of votes to be granted to each voter, they are invited to consider if the proposed maximum number of votes per voter could potentially favour associated candidates. A high number of votes may have a majoritarian effect, thereby reducing the chances for individual and minority candidates to be elected, and diminishing the judicial council's pluralistic vocation.

44. Fourthly, appropriate safeguards should be considered to ensure a level playing field for all candidate judges. This includes introducing guarantees and rules regarding access to information and campaigning opportunities, as well as rules on financing and material support, in order to uphold a fair election campaign. In this context, it is also relevant whether the system provides elected judges with the right to take leave from their judicial duties during their mandate in the judicial council (as established in Article 351(a) of the Organic Law on the Judiciary).

³³ Council of Europe, [DG I – DCJ \(2022\)1](#), Comparative Overview on Judicial Councils in Europe, 14 March 2022, page 6.

³⁴ It is notable that Option 2 is more flexible: It provides that the number of votes should be set between six and eight. One of the modalities it further proposes is to allocate seven votes per voter (one vote for the Supreme Court quota, four votes for the senior judges quota, and two votes for lower-court judges).

45. The Venice Commission concludes that Option 1 is in principle in line with the peer election standard. However, additional safeguards should be incorporated into the system of election by the judges to prevent the risk of political influence through judicial associations and ensure genuine pluralism.

Option 2

46. Option 2, which does not appear to be fully developed, provides that: (i) each candidate must be endorsed by either 30 judges or a judicial association; (ii) the judicial community conducts a pre-election to create a pool of candidates three times larger than the number of vacancies; and (iii) the final election is held by Parliament, which elects members from the pre-elected pool. The participation of judges in the election of the judicial members of the Council thus takes place at the stage of endorsement of the candidates (either through a judicial association or by supporting independent candidates) and through a pre-election. It is Parliament, however, that proceeds with the final election. It is commendable that Option 2 represents an effort to improve the system by introducing a first stage in which candidates are pre-selected by their peers, thereby strengthening the participatory element of the process.

47. The Venice Commission does not necessarily rule out that the standard of “peer election of the judicial members of the judicial council” may be respected when the peer election is followed by another phase of selection. Nevertheless, it appears clearly from the goal and the rationale of the European standards – removing the risks of influence of parliament or the executive on the judicial council – that such further selection phase cannot be a political election, even with a qualified majority.

48. In support of the involvement of Parliament, Option 2 refers to the general idea that the judicial branch should benefit from democratic legitimacy, which can be achieved through the participation of Parliament in the election of the judicial members of the Council. It also asserts that entrusting this role exclusively to the judicial community could lead to corporatism and limit the extent of social pluralism that Parliament is able to provide. The interlocutors supporting this view emphasised that the GCJ is not a judicial body, but an administrative one, and that therefore the standards of independence do not apply to the GCJ in the same manner as to the judiciary itself.

49. The Venice Commission underlines that it is generally accepted that a modern democratic state is founded upon the separation of powers, functioning as a system of checks and balances, and that the judiciary must remain independent from the other branches. Given the important functions entrusted to the judicial council, including judicial appointments and other career-related matters, its independence is inextricably linked to that of the entire judiciary and must be preserved accordingly. There are admittedly no legally binding standards imposing the establishment of a judicial council. However, as the ECtHR has held, “where a judicial council is established, the authorities should be under an obligation to ensure its independence from the executive and legislative powers in order to, inter alia, safeguard the integrity of the judicial appointment process. ... States are free to adopt such a model as a means of ensuring judicial independence. What they cannot do is instrumentalise it so as to undermine that independence.”³⁵

50. As regards the legitimacy of the judiciary and of the judicial councils, the Venice Commission stresses that it emanates from the Constitution, from the respect of laws, the principle of legality, and from public trust,³⁶ not from political agreements on the appointment of the members of the councils. Moreover, the mixed composition of the judicial council which includes lay members

³⁵ ECtHR, *Grzęda v. Poland* [GC], application no. [43572/18](#), 15 March 2022, para. 307.

³⁶ CCJE, Opinion [No. 24 \(2021\)](#): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, Part B.I.9.

elected by Parliament already addresses the concern of corporatism, thereby ensuring pluralism and democratic accountability. It should be emphasised that the judicial council is also intended to include representatives of other legal professions, such as practising lawyers and university professors. This plurality is a value in itself, and it also serves to counter the risk of corporatism.

51. While certain interlocutors expressed concerns that the direct election of judicial members by their peers through judicial associations may lead to internal politicisation, in the Venice Commission's view, Option 2 would only exacerbate this risk. Involving Parliament following the pre-election by judges does not neutralise the political connotations in the process; rather, it duplicates them: first, within the judiciary, and subsequently through political groups in Parliament. Election by parliament of the judicial members of the GCJ has created and strengthened the links between the judicial associations and the political sphere, and this would be maintained. Requiring judicial candidates – even after being pre-elected by the judicial community – to undergo a political process in Parliament risks attributing a “political colour” to those judges for the rest of their professional careers. It is irrelevant whether such risk actually materialises; as the ECtHR stated on many occasions, *“even appearances may be of a certain importance, or in other words, “justice must not only be done, it must also be seen to be done”*. *What is at stake is the confidence which the courts in a democratic society must inspire in the public.*³⁷

52. Option 2 fails to provide any specific criteria for the parliament's choice among the pre-selected candidates, which thus seems to amount to a discretionary decision. It does not provide either that Parliament would need to provide adequate reasons. It is also doubtful that effective judicial review would be available in relation to such political decisions,³⁸ in view of the wide discretion afforded to Parliament and the absence of a clear duty to justify decisions against objective criteria.

53. Option 2 provides for election by qualified majority of three fifths (as for the lay members), but fails to provide for an adequate anti-deadlock mechanism in the event of a parliamentary stalemate. In light of the recent failure of Parliament to appoint the members of the Council in the last six years, a suitable solution would be to introduce a rule providing that if the appointments of judicial members are not made within a short but reasonable timeframe, the shortlisted candidates are automatically appointed in accordance with the ranking determined by the results of the vote by the judicial community.

54. Against this background, the Venice Commission is of the view that Option 2 contains significant improvements in securing participation of the judiciary in the election of the judicial members of the GCJ; however, this aim is frustrated by the involvement of Parliament in their final election. The mere nomination and pre-election by the judiciary would not suffice to render this model compatible with the European standard of peer election. While, in the Venice Commission's opinion, compliance with this standard is not necessarily ruled out when a second phase of selection is envisaged, it should not be of a political nature. Therefore, Option 2, as it is, cannot be considered to align with this standard.

D. Representation of all levels of the judiciary and different categories

55. In line with the standards, the Venice Commission has consistently recommended balanced representation of judges from all different levels and courts, as well as the widest possible diversity and representation of gender and regions.³⁹ Indeed, the system should be designed so

³⁷ ECtHR, *Denisov v. Ukraine* [GC], [no. 76639/11](#), 25 September 2018, para. 63.

³⁸ See also ECtHR, *Lorenzo Bragado and Others v. Spain* (app. nos. 53193/21, 53707/21, 53848/21 et al.), 22 June 2023.

³⁹ Venice Commission, [CDL-AD\(2011\)010](#), Opinion on the Draft Amendments to the Constitution of Montenegro, as well as on the Draft Amendments to the Law on Courts, the Law on the State Prosecutor's

that the election results are seen as representative of the country's judiciary.⁴⁰ The CCJE maintains this approach by referring to "the widest possible representation of courts and instances, as well as diversity of gender and regions."⁴¹ GRECO also "clearly supports these efforts to ensure the judiciary is not isolated"⁴².

56. Both options in the Reform Proposal seek to ensure a certain proportion of judges from different categories are represented on the Council. According to Option 1 (draft Article 575(4)), the judicial members are divided into three groups: (i) three Supreme Court Justices; (ii) three senior judges with more than twenty-five years' experience; (iii) six shall be lower-court or senior judges, with no length of service requirement. Option 2 proposes the following ratio: (i) two Supreme Court Justices; (ii) six senior judges; (iii) four lower-court judges.

57. Regarding proportionality among the three groups of judges, Options 1 and 2 differ in their approach ensuring the diversity. As a general remark, a majority of senior judges may place greater emphasis on experience and perceived legitimacy but could potentially lead to corporatism or resistance to reform. On the other hand, equal representation across all judge categories could encourage a wider range of perspectives, as judges from different court levels could contribute their particular expertise. It should be noted, however, that less experienced judges might be more susceptible to internal or external pressures, though it appears unlikely that very inexperienced judges would be elected.

58. Reserving a separate quota for Supreme Court judges is a possible solution. Despite the fact that this category of judges represents only a small proportion of the overall number of judges in Spain, it should be noted that these candidates come from the highest judicial authority in all branches of justice (Article 123 (1) of the Constitution). However, it should be made clear that these candidates will not be eligible under the other two quotas. Looking further into the *seniority* principle, it could be argued that the requirement of 25 years of experience (Option 1) is excessive and thus inadequate. The Venice Commission deemed a seven-year requirement to be adequate,⁴³ but not a ten-year one.⁴⁴ On the other hand, it is also questionable whether the *lack of any experience* for the judges falling into the third category, for whom there is no length of service requirement, is compatible with the level of required professional experience required for the effective exercise of duties on the judicial council.⁴⁵ In this latter regard, Option 1 makes no requirement for length of service, while Option 2, which includes only a brief description of the approach and is much less elaborated, does not mention this requirement either.

Office and the Law on the Judicial Council of Montenegro, paras.21-22; [CDL-AD\(2023\)029](#), The Netherlands - Joint opinion on the legal safeguards of the independence of the judiciary from the executive power, para.42; [CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft amendments to the Constitution, para.48.

⁴⁰ Venice Commission, [CDL-AD\(2015\)007](#), Joint opinion by the Venice Commission and the Directorate of Human Rights of the Directorate General of Human Rights and the Rule of Law on the Law on the Judiciary and the Status of Judges and amendments to the Law on the High Council of Justice of Ukraine, para.89.

⁴¹ CCJE, Opinion [No. 24 \(2021\)](#): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, para.30.

⁴² GRECO, [Report on Trends and Conclusions of Fourth Evaluation Round](#) in the field of Corruption Prevention of MPs, Judges and Prosecutors, p.19.

⁴³ Venice Commission, [CDL-AD\(2008\)006](#), Opinion on the Draft Law on the High Judicial Council of the Republic of Serbia, para. 51.

⁴⁴ Venice Commission, [CDL-AD\(2025\)021](#), Chile - Opinion on the draft Constitutional amendments in respect of the judiciary, para. 40; [CDL-AD\(2011\)019](#), Opinion on the draft law on the council for the selection of judges of Kyrgyzstan, para. 36.

⁴⁵ Venice Commission, [CDL-AD\(2025\)015](#), Kosovo, - Opinion on the Law on the Judicial Council and the draft law amending and supplementing it, para. 23.

59. Option 1 further elaborates the voting system based on the gender parity principle, providing a mechanism ensuring gender balanced composition of the Council (draft Article 577(15)(b)). This arrangement is welcome.

60. Further arrangements would be welcome in relation to the other criteria for diversity, including judicial specialisation and geographical principles.

E. Body in charge of the electoral process

61. Option 1 provides that an election committee shall be formed to oversee the electoral process; it will be composed of three judges of the Supreme Court and a secretary (draft Article 578 (1)). This approach is a possible solution ensuring that the election of the governing bodies of the judiciary is managed by the judiciary itself.⁴⁶ However, other possibilities could be examined, such as establishing an election committee within the Council, especially in view of the appeal role of the Supreme Court and the risks of incompatibilities and conflict of interest.

62. As regards the composition of the election committee, it will include three members, and a secretary. Given the scope of duties and the deadlines proposed in the Option 1 (example, see draft Article 577 (10) and (16)), it might be relevant to increase the number of members and envisage sufficient staff in the technical support secretariat.

F. Judicial remedy in the electoral process

63. The Venice Commission recognises the importance of providing a judicial remedy in the elections to judicial councils.⁴⁷ It is welcome that Option 1 introduces an appeal against decisions of the Election Committee to the Supreme Court (draft Article 577 (11) and (17)). However, since the Election Committee consists of Supreme Court judges, it is necessary to establish clear rules on withdrawals and recusals to avoid conflicts of interest. Regarding Option 2, it has been discussed above that it remains unclear if an effective judicial review of parliamentary appointment decision would be available. Accordingly, this issue would require further attention from the authorities.

IV. Conclusion

64. The President of the General Council of the Judiciary of Spain (GCJ), Ms Isabel Perelló Doménech, requested an Opinion of the Venice Commission of the Council of Europe on the *Proposal for reform of the system for electing judicial members of the General Council of the Judiciary*. The Reform Proposal was prepared by the GCJ in accordance with the requirement of the Additional Provision of Organic Law No. 3/2024 of 2 August 2024. It was submitted to the Government, the Congress of Deputies and the Senate, for further consideration with a view to elaborating a bill on reform on the election system for the judicial members of the Council. However, the GCJ failed to reach an agreement and submitted two alternative proposals.

65. The two options differ principally on the involvement of Parliament in the election of the judicial members. Option 1 provides that judicial candidates should be endorsed by 25 judges or a judicial

⁴⁶ Venice Commission, [CDL-AD\(2025\)015](#), Kosovo - Opinion on the Law on the Judicial Council and the draft law amending and supplementing it, para. 34.

⁴⁷ Venice Commission, [CDL-AD\(2021\)018](#), Ukraine - Urgent joint opinion on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068), para. 63; [CDL-AD\(2022\)023](#), Ukraine - Joint amicus curiae brief of the Venice Commission and DGI on certain questions related to the election and discipline of the members of the High Council of Justice, para. 49, [CDL-AD\(2025\)015](#), Kosovo - Opinion on the Law on the Judicial Council and the draft law amending and supplementing it, para. 34.

association, and judges directly elect the GCJ members from among these candidates. Option 2 provides for endorsement by 30 judges or a judicial association, followed by a pre-election by the judiciary to create a shortlist, and the final election from this pool by Parliament.

66. Option 1 empowers the judges to directly elect the Council's judicial members, aiming to eliminate politicisation in the parliamentary process. This approach is welcome, as it complies with the European standard of peer election. However, the risk of internal politicisation should not be overlooked, especially where judicial associations may exert significant influence over nominations and campaigning, potentially shaping the election process. The election process must be protected not only from external interference but also from internal politicisation, as these could both undermine judicial independence. To address these risks, the following measures could be considered in the further elaboration of the election system (also applicable to Option 2, where relevant):

- (1) nomination stage: removing or substantively reducing the requirement for 25 endorsements (30 in the second Option) for judicial candidates and considering an open call for nominations;
- (2) alternate candidates: examining other models, such as by-election in the event of the early termination of mandate;
- (3) number of votes: reviewing the maximum number of votes per voter, in light of the requirement for equal opportunities for associated and independent candidates;
- (4) fair election practices: implementing rules to ensure a level playing field for candidate judges, including equal access to information, balanced campaign opportunities, transparent and regulated financing, and material support.

67. As regards Option 2, the Commission is of the view that in addition to the internal risks of politicisation discussed under Option 1, this Option makes the procedure vulnerable to external politicisation in Parliament. Moreover, Parliament is given broad discretion in selecting candidates, without clear criteria or an obligation to provide adequate reasons. Additionally, the availability of an effective legal remedy to challenge appointments remains uncertain. Furthermore, Option 2 lacks adequate anti-deadlock mechanisms, leaving the process vulnerable to parliamentary stalemate and delays. Overall, the pre-election of the judicial members of the judicial council by the judges is valuable, but insufficient to meet the peer election standard, because it is followed by their political election. Therefore, in this respect Option 2 does not comply with the European standards.

68. The Venice Commission further emphasises the importance of ensuring the composition of the judicial council, with balanced participation of judges from all levels of the judiciary, as well as adequate diversity in terms of specialisation, gender, and region. The principle of pluralism should likewise apply to lay members, who should represent academia and other legal professions. The requirement for senior judges to have 25 years of experience in Option 1 may be considered overly restrictive and it is recommended that this threshold be reviewed. While Option 1 assigns responsibility for the electoral process to a committee composed of three Supreme Court judges, it may be advisable to consider expanding the committee and providing it with enhanced technical support, given the scope of its duties and the proposed timelines.

69. The Venice Commission remains at the disposal of the Spanish authorities for further assistance in this matter.