

Judicial independence in Europe
– Models of self-government and self-responsibility –
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**Self-government in courts – vertical ('hierarchic' model)
versus horizontal ('democratic' model) –**

The Spanish model

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In the Spanish model there are three areas where democratic principles of self-government have inspired the legislator: the Council of the Judiciary (*Consejo General del Poder Judicial - CGPJ*), Governing Chambers of the Supreme Court, National Court and Superior Courts (*Salas de Gobierno*) of each region (*Comunidad Autónoma, Autonomous Community* or 'Land') and the assembly of judges (*Juntas de Jueces*) and its chairperson, the chief judge (*Juez Decano*).

The CGPJ is the body foreseen in the Spanish Constitution as the highest governing instance of the judiciary. It is competent to take all decisions which affect judges (career, promotion, discipline, etc.), so the Ministry of Justice has no power over judges. It is composed of 20 members, plus a President (appointed by them among judges or jurists of prestige), who also presides over the Supreme Court. The election of the 20 members of the CGPJ is done by Parliament. The 12 judicial members are chosen among 36 candidates appointed by judges through their associations or support of at least 2 per cent of all judges. This indirect way of appointment will not be further analysed here.

This presentation will focus in the other two democratic structures, referred to as 'internal' government of the judiciary in the law, beginning from the basic one, the assemblies of judges.

As necessary previous information, it must be explained that the Spanish courts are set up in four levels, namely first instance of all jurisdictions (civil, criminal, labour, etc.), the provincial level (appeal for civil and criminal cases, roughly), regional level (appeal for labour and administrative cases, *cassation* for some civil cases, etc.) and national level (*cassation*). See annex.

Every province is divided into judicial districts, made up by different towns or by a single one (for example a big city as Barcelona). Judicial districts are the first level of jurisdiction (first instance). At that level, all judges act as such -jurisdictional tasks- individually, that is, each court is made up by one single judge, although only in very little towns there is only one judge; normally there are several judges with the same competences. In each judicial district (*partido judicial*) all the judges gather together as general assembly, with no jurisdictional power but organisational purposes. There are two types of assemblies, the general one, made up by all judges regardless of their jurisdiction, and the sectoral ones, made up by the judges of a specific jurisdiction (civil, criminal, etc. -see annex-). This difference may not exist, as in many judicial districts there are only judges of the so-called 'mixed' jurisdiction (all of them have criminal investigation competences, trial of minor penal cases and civil first instance).

The main competence of the general assembly is the election of the presiding judge, the

chief judge or *Juez Decano*, where the number of judges is more than 10. Up to ten judges, the chief judge is the one with most seniority in the judicial carrier (thus the name '*decano*' or dean). In the latest case, the mandate is two years, when the most senior (him/herself or a newcomer) will take over. The elective chief judge's mandate is four years, with no limit in re-election. Where the number of judges is 40 or more (big cities), the chief judge, once elected, will have only presiding and organizational tasks and leave his/her jurisdictional tasks. The chief judge of 39 or less judges keeps his/her previous tasks and assumes the presiding and organizational ones.

The election is done by a majority of present electors, provided that the assembly has constituted itself with a majority of electing members. Thus it is necessary to gather as assembly and then proceed to vote. In cases of many members this aspect is an important inconvenient, as in some cases a blocking situation may arise. To avoid this, voting procedure during a given period of time (some hours) with no assembly gathered would be more convenient. This has been for a long time a proposition of chief judges of main cities, as some times it is difficult to get the necessary *quorum* when the total number of members is very high. Then, if the *quorum* is not achieved, the voting cannot take place. As these assemblies are during working hours, everyone having urgent things or unavoidable tasks, it does not make sense to keep this system in large districts. The alternative proposed is just to apply the same system as in the case of the Governing Chambers (see below). In medium and small districts there is not such a problem, because agendas can be more easily coordinated.

Another competence of the general assembly of judges is the dismissal of the chief judge, by the same majority vote. It happens very seldom.

Aside from these two main functions, the general assembly as such can be called upon by the chief judge or by ten per cent of its members to discuss matters of general interest to all jurisdictions. Normally, its decisions will not have formal value as administrative resolutions, but they do have bidding nature for the chief judge as instructions in his/her approach to other governing bodies or executive authorities. Usually these issues relate to requests, criticism, evaluation, etc. of resources, building conditions, etc. A good example can be the introduction of new ICT means for the use of judges and their secretariat (computers, new software, shared electronic agenda, etc.) Another example is the planning of new buildings and moving to them when they have been built. A third example is the manner in which a legislative change in procedures (new 'express' procedures, a new jurisdiction -the recently established gender violence courts-, etc.) has to be dealt with to keep regular activities and adapt to the new scenario. In these cases the chief judge plays the role of coordinator between the needs and desires of judges and the plans and constraints faced by the executive power (regional government or ministry of Justice) to fulfil those needs, so he or she has to discuss the issues both in the general assembly and with the executive authorities. Some cases of proposal or suggestions of legislative or reglamentary changes are not infrequent.

Sectoral assemblies by jurisdiction (civil, criminal, criminal investigation, administrative, labour-social, juvenile criminal, prisons surveillance, mercantile, gender violence -see annex-), presided over by the same chief judge (regardless his/her own jurisdiction) are much more frequent. A monthly meeting is normal. Aside from the general issues affecting only that jurisdiction, the main competence of these sectoral assemblies is the drafting and approval of the proposal of the rules on distribution of cases, to be confirmed by the Governing Chamber (see below). These rules try to set up a system combining both the need to share equal burden of work and the respect for antecedents, so that a withdrawn case or a linked case to another (e.g. divorce and child care dispute) are handled by the

same judge. In especial situations, like the enlargement of the number of judges of the same jurisdiction or a new complicated case (e.g. a complex criminal case being investigated) a judge can be allocated with a higher proportion of incoming cases (new courts) or lower proportion (overloaded court) during some time. These rules are applied by the incoming register service, under the authority of the chief judge. He/she resolves disputes over the attribution of cases and his/her decisions are only revised, through appeal, by the CGPJ.

Another task of the sectoral assemblies is to set up a system of replacement of judges among themselves for cases of short illness, vacation, etc. For more permanent substitution, assistant judges are available (see below).

Sectoral assemblies also discuss issues of legal interpretation. The aim is to reach a common understanding but there is no binding effect towards each individual judge in his/her jurisdictional independence, as he/she remains free to follow whatever interpretation he/she thinks it the appropriate, subject only the revision in the appeal procedure. Normally these questions are matters of procedure, and seldom of substantive law, which have been introduced by new legislation and pose problems having impact in many cases. A moment in which the need was felt frequently was right after the approval of the new Civil Procedural Law, which was the occasion the hold civil sectoral assemblies and exchange of information with other colleagues. Given the fact that first instance judges in Spain, as said, work as individual judges, not having to discuss matters to be decided with colleagues, the sectoral assemblies are the only formal forum -with no decisive character- to share concerns and interpretations. They are good for the judges but also for the functioning of jurisdictions, as their aim is to avoid open divergences of approach. Nevertheless, the decision belongs to each individual judge and the last word is that of the court of appeal and, eventually, of the court of cassation, which sets the final criterion.

The chief judge is also responsible for the use of buildings and common elements, hears complains against malfunctioning of the tribunals and carries the permanent relations with the executive power on material and personal means of the courts of his/her judicial district. Depending the regions, material means and personnel are the responsibility of the Ministry of Justice or of the equivalent in the regional government. So if more staff is needed in the secretariats or temporary agents are not being recruited to substitute officials on sick leave, for example (indeed this is a permanent problem), the chief judge, with the support of the judges' assembly, will have to demand solutions

In many judicial districts there are common services for the several tribunals, usually to notify resolutions and practice seizures (*embargos*). So the documents are served to the parties or the act of seizure is done by officials who act under the direct responsibility of the chief judge. In big cities, such as Barcelona, there are many other common services as well: keeping and auctioning of goods from crimes, electronic information from public agencies, etc. These services are always under the direct authority of the chief judge, which means having the last responsibility over many officials (about 400 in Barcelona).

The chief judge is responsible for the decisions of replacement of judges by assistant judges, chosen by the Governing Chamber of the Superior Court and appointed yearly by the CGPJ among law professors and other jurists, in cases of long sickness, vacancy and other absences affecting the judges of the district. He is also responsible for monitoring the performance of these assistant judges. The system is strongly contested by some sectors of the judiciary, questioning the performance of these assistant or substitute judges (*jueces sustitutos*). The reality is that professional judges cannot substitute one another for more than a few days, as one judge cannot reasonably do the work of two judges. It has to

be born in mind that every judge is regarded as an individual 'court' and works by him/herself, almost always with too many cases to handle¹. The reality is that no better solution than substitute judges, selected as well as possible, is available. They represent around 10 or 15 % in a given moment of all the judges in the first instance. In the second instance (provincial courts and superior courts) their equivalent, the so called *magistrados suplentes* are less and, of course, share with other two professional judges all decisions, while in the first instance *jueces sustitutos* act on their own.

As said, the chief judge represents all his/her colleagues, thus has the authority of his/her democratic election. This is especially meaningful in cases of big districts, such as the eight main cities (Madrid, Barcelona, Bilbao, Zaragoza, Valencia, Seville, Málaga and Palma de Majorca), where the chief judge has no jurisdictional duties and only has tasks as chief judge. In cases like Madrid or Barcelona, the chief judge represents around 200 peers or more and has a clear important role in judicial matters and policies. S/he is an authoritative voice listen to by public opinion and other authorities. The regular meeting of these main chief judges gather the opinion of an important part of the judiciary and, depending their profile and the interaction with other authorities (CGPJ, Ministry of Justice, regional government, etc.), have a meaningful impact. So the level of his/her jurisdiction counts but it is also important the number of peers who back up a judicial representative.

The idea of an assembly of judges, with the legal consideration of 'internal' government is not applied to other levels of the judiciary (provincial courts, regional courts, national court and supreme court -see annex-). There the main emphasis is the presidency, which might be more or less eager to check his/her colleagues' opinions. A meaningful aspect is that the rules of distribution of cases are legally drafted by the president and not by gathering of members of the specific chamber of the court. The presidents of collegial courts are appointed by the CGPJ.

There is also the legal provision of meetings of all judges of the first instance of all jurisdictions in a given province or region, presided over by the most senior in that province or region, to deal with issues of common interest. They rarely take place.

The upper internal government bodies, just below the CGPJ, are the Governing Chambers of the Supreme Court, National Court and Superior Courts. These chambers are made up by the president of the respective court and the presidents of jurisdictional chambers (civil, criminal, etc.), plus, in the case of the Superior Courts of regions, the presidents of all the provincial courts of the region. In all courts this number is duplicated with an equal number of elected judges by their peers, every five years. An intermediate case as an example could be that of Catalonia, with four provincial courts, where the Governing Chamber has 15 members in total. The largest one is that of Andalucia, with eight provincial courts. In the case of Superior Courts of regions, the chief judge of the capital/s with more than 40 judges in the first level of jurisdiction is added (see above). The system of election of the elective members is a majority one: those with higher number of votes are elected, regardless the list of candidates in which they were. The lists are presented by the different judicial associations (four associations in total) or by groups of judges. This majority system is has a serious democratic deficit, as minorities are unable to be represented. A proportional system, with lists of candidates, should correct such a negative aspect. Now, all posts are granted to those candidates obtaining most votes, so the predominant judicial association gets in many cases all elective posts, and other

1 The ratio of Spanish judges with population is very low (1/10.000, including all jurisdictions and instances) and the first instance judges have also other functions: most acts of execution of resolutions (what in Germany is done by the *Rechtspfleger*, in France the *huissier de justice* or in the UK by the *bailiff*), the keeping of the civil register (done in most countries by the local administration), non contentious civil procedures (e.g. adoptions), etc.

associations and non-associated judges have no chance in practice. By law, one elective post is guaranteed to the most voted judge belonging to the initial category (junior judge, 'juez'², as opposed to senior judge, 'magistrado'), so s/he will be elected even if his/her votes are fewer than other candidates.

If the total number of members is more than ten, there is a permanent commission of the Governing Chamber, meeting every week, composed of the president of the court plus three ex officio members and three elective members.

The competencies of the Governing Chambers are minor disciplinary measures (the main disciplinary power belongs to the CGPJ), some permissions to judges, judicial clerks and rest of personnel, selection and control of assistant judges, etc. In the case of Superior Courts of regions, an important task is the relationship with the executive of the region, through specific joint commissions on different topics (computers, buildings, personnel, etc.). Indeed, in most regions the government of the region is competent, instead of the Ministry of Justice, for the personnel and material means of the courts.

An important competence of the Governing Chambers of regions is the final approval of the rules of distribution of dossiers among the judges of the same jurisdiction in every judicial district and among the different chambers of the Superior Court and Provincial Courts, as adopted by the assembly of judges and presidents of jurisdictional chambers or provincial courts (see above). Equivalent function belongs to the Governing Chamber of the Supreme Court and the National Court for the distribution within their jurisdictional chambers. Governing Chambers also give final approval to the rules of substitution among judges.

The Governing Chambers of regions have also competences in the appointment and monitoring of *jueces de paz* (French *juges de paix* or UK *magistrates*), who have minor civil and criminal competences and are non-professional judges.

The acts of all Governing Chambers can be appealed of before the CGPJ.

A proposal of law being considered in Parliament, introduced in January 2006, and following the approval of the Statutory Law of Catalonia (*Estatuto de Autonomía de Cataluña*), proposes to generalise in all regions the provisions of this *Estatuto* and to replace the present Governing Chambers by Autonomic Councils of Justice (*Consejos Autonómicos de Justicia*), with the same composition as the present chambers plus a number of jurists elected by the respective Autonomous Parliament equal to the number of present judicial elective members. The same proposal gives regional parliaments the role of proposing candidates for the presidency of the Superior Court. The reasons behind this proposal basically aim at the decentralisation of the governing structure of the judiciary, heavily concentrated in the General Council of the Judiciary, which holds most administrative power regarding judges (discipline, career, etc.). The Spanish legislative and executive is very decentralised, with important powers at regional level (equivalent to German *länder*). The judiciary has not undergone this process, which took place after the adoption of a democratic constitution. The opponents to this decentralisation argue the risks of interference of the political parties at the level of regions as it is said to happen at the Council level. It should be possible to achieve both decentralisation and guarantees, by keeping the numbers of members well balanced and reserving certain powers to the present judicial members only.

² The term 'juez' means both a junior member of the judiciary and the generic idea of 'judge'. Thus the Spanish judges belong to one of these three categories: juez, magistrado and magistrado del Tribunal Supremo.

ANNEX

