



Mr. Didier Reynders
Commissioner for Justice of the European Commission

December 19, 2022

Dear Sir,

I am addressing you in my capacity as president of Impulso Ciudadano, a Spanish association created in 2009 whose statutory purposes are the following:

- a) promoting and protecting political, ideological, linguistic and cultural pluralism in Spain;
- b) protecting human rights and fundamental freedoms at the national, European Union and international levels;
- c) defending the values contained in the Spanish Constitution of 1978;
- d) promoting cohesion, solidarity and relationships among Spaniards, regardless of their place of residence;
- e) promoting necessary measures to improve functional performance, rationalization and neutrality of institutions and Public Administrations, and opposing all types of corruption;
- f) opposing hate crimes and promoting policies of tolerance, equality and solidarity among citizens.

Our association is clearly pro-European and is therefore registered in the European Parliament and regularly contributes to the European Union's Rule of Law report.

[The disturbing situation of the Rule of Law in Spain](#)

The purpose of this letter is to bring to your attention our concern regarding the events of the last few days in Spain, more specifically, the assaults by the President of the Government on the Constitutional Court. As we shall see, these assaults entail both a breach of judicial independence and a limitation of the right of access to the courts to request respect for fundamental rights. In our opinion, these facts pose a serious threat to the Rule of Law.

The facts to which we refer are the following:

1- On November 11, 2022, the Socialist and Confederal Parliamentary Groups of Unidas Podemos-En Comú Podem-Galicia en Común presented the Proposition of Organic Law for the transposition of European directives and other provisions for the adaptation of criminal legislation to the order of the European Union, and for the reform of crimes against moral integrity, public disorder and smuggling of dual-use weapons.¹

According to public statements, the legislative initiative² is the result of an agreement between the parties supporting the government of Spain and the political party Esquerra Republicana de

¹ https://www.congreso.es/public_oficiales/L14/CONG/BOCG/B/BOCG-14-B-295-1.PDF

² You can find the bill's processing in Congress at the following link :
<https://www.congreso.es/proposiciones-de->

Catalunya (ERC), and it is aimed primarily at achieving the exculpation or reduction of the sentences of those convicted or pending trial for having participated in the facts associated with the illegitimate attempt of secession of Catalonia from Spain during the year 2017.

2- While this reform of the Penal Code was being processed, the Socialist and Confederal Parliamentary Groups of Unidas Podemos-En Comú Podem-Galicia en Común introduced two amendments³ completely disconnected from the text of the law being processed and involving essential modifications of both the Organic Law of the Judiciary and the Organic Law of the Constitutional Court. These amendments affected significantly the election of magistrates of that body, as well as the control of their suitability before accessing the position.

3- The Spanish Constitutional Court has established that it is unconstitutional to take advantage of the processing of a legislative initiative to introduce, by way of amendment, additions to provisions that have no material connection with the content of the initiative. The reason for this rule is to avoid limiting parliamentary debate, which is more limited with respect to the approval of amendments than with respect to legislative initiatives. In the opinion of the Constitutional Court, this limitation of parliamentary debate affects the right to political participation of deputies and senators, which also indirectly harms the right to political participation of the citizens represented thus violating Article 23.2 of the Spanish Constitution (STC 119/2011).⁴

4- Congress' legal counselors warned that the admission of amendments completely disconnected from the text that was being processed was unconstitutional; but despite this warning, the amendments were admitted by the Congressional Board for their vote.

5- Given that the admission of the amendments relating to the reform of the Organic Law of the Judiciary and the Organic Law of the Constitutional Court could entail the violation of the fundamental right to political participation, as has been explained (art. 23 of the Spanish Constitution), some members of the Congress filed a petition for legal protection before the Spanish Constitutional Court - in accordance with the provisions of the Spanish Constitution and the Organic Law of the Constitutional Court - in order to seek a ruling for violation of their right and obtain the adoption of precautionary measures to protect it. They asked for an order

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³ These are Amendments 62 and 63 of the

[https://www.congreso.es/busqueda-de-publicaciones?p_p_id=publicaciones&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&_publicaciones_mode=mostrarTextoIntegro&_publicaciones_legislatura=XIV&_publicaciones_id_texto=\(BOCG-14-B-295-4.CODI.\)](https://www.congreso.es/busqueda-de-publicaciones?p_p_id=publicaciones&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&_publicaciones_mode=mostrarTextoIntegro&_publicaciones_legislatura=XIV&_publicaciones_id_texto=(BOCG-14-B-295-4.CODI.))

⁴ Ruling 119/2011, of July 5, 2011, of the Constitutional Court can be read at the following link:

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2011-13309. The judgment makes the following statement: *The Constitutional Court has said that "...the right of amendment that belongs to parliamentarians (...) is not a mere regulatory right but an actual central content of their right of participation of art. 23.2 CE. In effect, the right of participation, the ius in officium affects a whole series of situations of the parliamentarians in which the governing bodies of the Chambers must respect the representative function, not because they are merely subjective faculties of those who perform that function, but as competences that allow the representatives of the people to correctly exercise that representation by participating in the legislative function. This implies making possible the presentation of legislative proposals, the discussion in the public parliamentary debate on the issues involved in that debate, improving the texts through the introduction of amendments, and respecting their right to express their position through the right to vote. What does not fit is to articulate a debate in such a way that the introduction of more amendments makes impossible the presentation of alternatives and their defense.*

to halt the vote on the amendments that had been admitted for voting despite having no connection with the text of the proposal that was being processed.

6- As expected, the Constitutional Court initiated procedures for the study of requested legal protection requested by the aforementioned deputies. A plenary session was convened for December 15, which will continue on December 17.

The actions of the Spanish Government violate European values.

The facts described above have deserved an irate reaction from the Spanish government that Impulso Ciudadano considers contrary to basic democratic principles and clashes head-on with the European values contained in art. 2 of the Treaty on European Union as follows.

After having attended the European Council of December 15, the President of the Spanish Government, Mr. Pedro Sánchez, criticized in a public appearance the “political, judicial and media” opposition and “demanded” the Constitutional Court to act in accordance with common sense. **He added that “we are facing an attempt to trample democracy, not only from the political right, but also from the judiciary, encouraged by the media”. And he further stated: “democracy will prevail in the face of the outrage, be it from the conservative judges, the political right or the media that has attempted this unspeakable operation.”**⁵

His pronouncement is in line with the statements made on the same day by other members of the government, such as the The Minister for Treasury and Public Function,⁶ who criticized the Constitutional Court’s attempt to “meddle” in Congress and the fact that it had convened a plenary session to study the protection requested by the deputies who considered their right to political participation to have been violated. Other deputies of the Socialist parliamentary group and of the Confederal group of Unidas Podemos-En Comú Podem-Galicia en Común compared the actions of both the deputies who asked for the protection of the Constitutional Court and the judges of the Constitutional Court with the military military coup that took place in the Spanish Congress of Deputies in 1981.⁷

The Council of Europe and the European Commission have clearly established that when the executive criticizes judicial decisions, it must do so with restraint and not in such a way as to delegitimize the courts or contribute to the loss of public confidence in the courts. The recommendation of the Committee of Ministers of the member states of the Council of Europe on 17 November 2010 (No. 18)⁸ can be consulted in this regard. The European Commission has welcomed this perspective in the Reasoned Proposal pursuant to Article 7(1) TEU as regards the rule of law in Poland of 20 December 2017⁹ [COM(2017)835 final, No. 177].

⁵ The complete video of the President's speech is on the web page of the Presidency of the Government:

<https://www.lamoncloa.gob.es/multimedia/videos/presidente/Paginas/2022/151222-sanchezeuco.aspx>

This video includes questions from the media, starting at minute 3:15. The reference to the Constitutional Court and the judges, starting at minute 14.

This speech has had an extensive media coverage. As an example, the following references are included:

<https://www.elmundo.es/espana/2022/12/15/639b934bfc6c837c2a8b45e0.html>

<https://elpais.com/espana/2022-12-15/pedro-sanchez-sobre-los-recursos-de-pp-y-vox-al-constitucional-la-derecha-y-la-ultraderecha-han-intentado-atropellar-la-democracia.html>

⁶ <https://www.europapress.es/nacional/noticia-montero-considera-grave-tc-intente-entrometerse-congreso-peticion-pp-frenar-renovacion-20221215111808.html>,

⁷ https://www.eldiario.es/politica/ultima-hora-actualidad-politica-directo_6_9795582_1096431.html

⁸ <https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809f007d>

⁹ <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:52017PC0835&from=EN>

If statements made by members of the executive branch are not respectful of the courts, with what degree of freedom will judges and courts be able to make decisions when they see the president of the government declaring that the “judicial right” is trying to trample democracy, and that democracy will prevail against the “conservative judges”? Will those who decide to go to court to demand respect for their fundamental rights have the same freedom when the exercise of that right is described by the president of the government as an “unspeakable operation”?

In the reports submitted by Impulso Ciudadano to the European Commission on the Rule of Law in the European Union, we have exposed the attacks perpetrated in Spain by the executive power (mainly autonomous) on the judiciary, as well as the lack of independence of the General Council of the Judiciary, the governing body of judges. These attacks have also been reported by other associations and entities, both in Spain and in international organizations. The constant deterioration of respect for the courts has eventually resulted in a situation of open crisis, which cannot be otherwise defined when the President of the Government himself speaks of an attack on democracy and involves the Constitutional Court in this attack, even before it makes its decision.

[Petition to the European Commissioner of Justice](#)

Our organization considers that it is unacceptable within the European Union that the exercise of the right of access to the courts should be labeled a "coup d'état" by members of the Spanish government. It is also reproachable that the exercise of the jurisdictional function, consisting in the processing of appeals filed by citizens, should have been labeled by the President of the Government of Spain as a violation of democracy.

The facts reported in this letter and, in particular, the government's statements questioning the actions of the courts are similar to the statements made by the governments of other EU member states, which have been criticized by the Commission.

Therefore, we consider it necessary for the European Commission to make a statement:

- (a) On the attacks by the Government of Spain on the Constitutional Court and judicial independence; and.
- b) On the consequences that the disqualifying remarks of the members of the Spanish Government towards those who seek their rights before the competent jurisdictional bodies may have, with regard to the limitation of the right of access to the courts of citizens and citizens' representatives,

Yours faithfully,

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President of Impulso Ciudadano

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