

THE IMPACT OF SOFT TOOLS OF EU RULE OF LAW ON MEMBER STATES: THE CASE OF SPAIN

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Abstract

This article aims to analyze the interaction between the European Commission and a member state, Spain, in enforcing the rule of law. The case in point is the General Council of the Judiciary (Consejo General del Poder Judicial, CGPJ), whose composition has not been renewed for five years as a result of disagreements between the main political parties, the People's Party (Partido Popular, PP) and the Spanish Socialist Workers' Party (Partido Socialista Obrero Español, PSOE). This situation has raised doubts about the judicial independence in the country. In this context, the article addresses the following research questions: How has the European Commission influenced political actors to remedy the situation regarding the CGPJ? And how have Spanish political actors used EU actions in the domestic debate on the renewal and reform of the CGPJ? The Spanish case shows that in a pro-European context, political actors strategically use the EU to justify their approach in a given situation. The EU is also perceived as a safeguard against a possible deterioration of the situation. In addition, the visibility of the problem due to the involvement of the EU level makes the politicians concerned about the international image of the country.

Keywords: Rule of Law, European Commission, Judicial council, Judicial independence, Spain.

INTRODUCTION

Since the founding of the EEC, member states have been committed to the idea that the Community is based on the values of liberal democracy. The rule of law is one of the fundamental values of the EU and is essential for the functioning of the EU itself. When the rule of law is challenged in a member state, it has an impact on the enforcement of European law and on mutual trust between member states. However, over the last decade, various aspects of democracy, including the rule of law, have regressed in member states, with the most marked manifestations in Poland and Hungary. But these states are not the only ones. Other member states are also facing

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serious problems. To prevent the democratic backsliding in member states, the Commission has introduced soft tools to monitor the national level (e.g., EU Justice Scoreboard, rule of law reports) and, on that basis, identify the most important problems for member states to address.

The aim of this article is to analyse the interaction between the European Commission and a selected member state, Spain, in enforcing the rule of law. The European Commission exerts pressure on the member states to comply with the rule of law. National actors respond to EU action in different ways. In countries with strong Eurosceptic parties, EU intervention may encourage a rally-round-the-flag effect and anti-EU attitudes (see Schlipphak, Treib, 2017). In a predominantly pro-European context, however, EU intervention may be used more strategically by political and social actors to achieve their objectives. This article examines the latter case, focusing on the blocked renewal of the Spanish General Council of the Judiciary (Consejo General del Poder Judicial, CGPJ). The main research questions are: How has the European Commission influenced political actors to remedy the situation regarding the CGPJ? And how have Spanish political actors used EU actions in the domestic debate on the renewal and reform of the CGPJ?

The case of Spain was chosen for two main reasons. Firstly, the largest political parties are generally pro-European, which represents a different political context compared to member states with strong Eurosceptic parties (e.g. Poland, Hungary, Czech Republic, Slovakia or Austria). Secondly, the renewal of one of the main judicial bodies is the longest stalemate Spain has ever experienced (since December 2018), negatively affecting the functioning of the judiciary and questioning the country's judicial independence.

The article is based on a qualitative content analysis of the European Commission's rule of law reports (European Commission, 2020; 2021a; 2021b; 2022a; 2022b; 2022c), in particular the section on judicial systems, where references to the CGPJ were sought. It also examined the activities and statements of European Commission officials, namely Věra Jourová, Vice-President and Commissioner for Values and Transparency, and Didier Reynders, Commissioner for Justice, since they took office (in 2019). National media articles (from *El Diario*, *El Mundo* and *El País*) were also used to map their activities in Spain.

Stenographic records from the 2018-2023 parliamentary sessions on the CGPJ were used to analyse how political parties use EU actions in domestic political debates. In total, six plenary sessions of the lower house (Congreso de los Diputados 2020; 2021a; 2021b; 2021c; 2022; 2023) and

two plenary sessions of the upper house (Senado 2021; 2022) were held on the CGPJ. National parties (PSOE, PP, Ciudadanos, Unidas Podemos, Vox) and most regional parties (EAJ-PNV, EH Bildu, ERC, JuntsxCat) took part in parliamentary debates. A total of 96 speeches were analysed. Qualitative content analysis focused on searching for statements containing the words “Unión Europea” (European Union) or “UE” (EU), “Europa” (Europe), “Bruselas” (Brussels), “Artículo 7 TUE” (Article 7 TEU) in order to identify the context in which political actors used them and how they used them in the party’s argumentation on the CGPJ. It also included references to the Council of Europe, as reports by the Venice Commission or GRECO are widely used in the field of the rule of law. A total of eleven types of EU-related statements were identified, none of which were anti-EU.

The article is structured as follows: the first part examines the state of research on the rule of law in the EU and domestic responses to EU interventions. The second part analyses in more detail the so-called soft tools at the Commission’s disposal. The third part briefly outlines the nature of the CGPJ problem, its impact on the Spanish judiciary and the position of stakeholders. The fourth part looks at how the European Commission has dealt with the case, although other institutions such as the European Parliament have also been involved, and what tools it has used in particular to press for a remedy. Finally, the fifth part looks at how Spanish political parties have dealt with EU pressure in the CGPJ debate. It will then be possible to assess the influence of EU actors in enforcing the rule of law at the national level and how political actors have used the involvement of EU institutions in domestic political struggles.

1 LITERATURE REVIEW

The protection of the rule of law is an area where the complexity of EU policy is evident. The focus on the EU as a multi-level system of governance is particularly appropriate given the intertwined responsibilities of the EU and the member states. This concept emphasises that EU policy-making is characterised by the collective decision making of national governments and the autonomous role of EU institutions (Hooghe, Marks, 2001, p. 2). In the words of Soós (2018, p. 197), this means that “European-level policy making competences are no longer monopolized by national governments”. Specifically, Coman (2022, p. 8) sees rule of law conflict “as a multi-level conflict over power, authority, and sovereignty”.

Rule of law has become, in recent years, a matter of increased politicization in member states. In the legal field, the term *rule of law backsliding* (e.g. Pech, Scheppele, 2017; Kochenov, Pech, 2016; Kochenov, 2017; Bárd, Śledzińska-Simon, 2019) or *rule of law crisis* (see Batory, 2016; Konstadinides, 2020) is therefore used. Political scientists use the term *democratic backsliding* (e.g. Bermeo, 2016; Gora, de Wilde, 2022) or *autocratization* (Lührmann, Lindberg, 2019), which has a broader meaning. The article draws on several strands of legal and political science research on the rule of law. First, it is legal research, drawing primarily on work on rule of law enforcement. Second, it is political science research, where the article draws primarily on work on the role of EU institutions, in particular the European Commission, and on the reactions of domestic actors to EU action.

Konstadinides (2020, p. 15) refers to the EU as “a system in which laws are applied and enforced”. The legal research focuses primarily on the EU’s rule of law instruments based on EU law and their effectiveness (see e.g. Kochenov, 2017; Kochenov, Pech, Scheppele, 2017). These so-called hard tools include Article 7 TEU, the infringement procedure and Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget (Coman, 2022, p. 13). First and foremost, there is the problem of the use of Article 7 TEU, which has been seen as a deterrent (“nuclear option”) for member states against possible backsliding. But why does it not work in practice? Amato, Verola (2019), Sedelmeier (2017) or Kochenov, Pech (2016) explain that its application requires a broad consensus among the EU institutions (Commission, Parliament, Council/European Council), which leads to a significant reduction of its deterrent potential. These findings are part of the explanation for the emergence of rule of law protection mechanisms outside the framework of EU primary law, the so-called soft tools, discussed later in the article.

The political science literature tends to focus on the role of the EU institutions (Commission, Council/European Council, Parliament) (e.g. Coman, 2022; Closa, 2019; Closa, 2021; Kelemen, 2017; Oliver, Stefanelli, 2016) and soft tools such as the rule of law framework (Sedelmeier, 2017), rule of law reports (Priebus, 2022) or the EU Justice Scoreboard (Dori, 2015). According to Coman (2022), dissensus is an important factor in shaping the rule of law policy and affecting the capacity of the EU institutions to act. The European Commission is the institution responsible for the monitoring of the member states, including their compliance with the rule of law. In doing so, it relies to a large extent on its power of persuasion and on soft tools, which mainly consist of shaming (Sedelmeier, 2017).

However, the Commission's authority has been limited due to a lack of support from the Council (Closa, 2019). There are different attitudes among member states, which, according to Oliver and Stefanelli (2016, p. 1081), are mainly influenced by party-political factors. Many of the ruling parties formed the same party group with Fidesz (European People's Party, EPP, now ex-member) and PiS (European Reformists and Conservatives). Other factors include sympathy for backsliding states, fear of a rebound effect or the counterproductive effect of possible sanctions. The Commission's authority could also be weakened by its tolerance of only symbolic or creative compliance by the member states, as shown by Batory (2016) in the cases of France in 2010 and Hungary in 2012-2013. The European Parliament is now seen as an ardent defender of the rule of law, but in the past partisan politics have prevented more effective action against backsliding states. Notable is the case of the EPP, which long protected Fidesz (Kelemen, 2017; Herman, Hoerner, Lacey, 2021) before finally supporting the triggering of Article 7 TEU against Hungary in 2018. It can currently be said to have done so for Bulgaria's GERB (Gherghina, Bankov, 2023).

Member states are crucial to understanding the extent to which EU intervention will be effective. This is linked to how domestic actors will respond. Understanding the different national contexts is therefore essential and much remains to be done. Research has mainly focused on Central and Eastern European (CEE) countries, with Poland and Hungary dominating (see, for example, Ágh, 2019; Haglund, Schulze, Vangelov, 2022; Drinóczi, Bień-Kacała, 2022). This is understandable given the advanced autocratization and activation of Article 7 TEU for these countries. Some works compare these cases with other countries, also from CEE, such as Romania and Bulgaria (Coman, Volintiru, 2021) or the Czech Republic and Slovakia (Bakke, Sitter, 2022).

Data from the rule of law reports show that member states from other parts of the EU also deserve attention. However, there is very little work on them. A notable exception is Austria (Lachmayer, 2017), which was the first case to test the EU approach. There are also studies on France (Batory, 2016) or Malta (Lobina, 2023). In this respect, this article aims to fill a certain gap with research on Spain.

Case studies or small sample research could contribute to a deeper understanding of domestic responses to EU interventions. The EU level is another component of domestic policy debates. Some authors analyse the blame strategy, in which political actors can shift the blame to "external EU actors, such as EU institutions or foreign EU member state governments"

(Heinkelmann-Wild, Kriegmar, Rittberger, 2020, p. 85). Based on the Austrian and Hungarian cases, Schlipphak and Treib (2017) suggest that the EU should therefore think about ways of intervening that do not lead to a rally-round-the-flag effect and do not strengthen anti-EU forces in member states.

On the other hand, EU intervention can also be an opportunity for domestic actors. Wonka, Gastinger and Blauburger (2023) analysed the public debate in Hungarian and Polish newspapers about EU measures against government policies. The EU action enabled the opposition and civil society to take a stand against government backsliding measures and influence public opinion. In their view, EU intervention should be based on the argument that it serves the interests of a country's citizens, rather than on a more abstract defence of common values.

This approach is in line with research on the strategic use of the EU by political actors to pursue their political interests (Woll, Jacquot, 2010). EU intervention may be facilitated by a generally pro-European environment. But even here, EU pressure may not lead directly to a solution to the problem. However, it will not create a rally-round-the-flag effect and will not encourage anti-EU attitudes. On this basis, the article will further analyse European Commission actions and how domestic actors responded to EU pressure to unblock the CGPJ's renewal.

2 EU SOFT TOOLS TO SAFEGUARD THE RULE OF LAW

The Hungarian and Polish cases have shown that the rule of law mechanism under Article 7 TEU is completely toothless. The Commission has therefore developed mechanisms to protect the rule of law outside the framework of primary law. Coman (2016) puts their development in the context of member states' reluctance to increase the Commission's powers. They are based on persuasion, social pressure and shaming. They also reflect the Commission's long-standing preference for dialogue with the member state concerned, as it is ultimately the member state that is responsible for remedying the situation (Closa, 2019).

In 2014, the Commission launched the EU Framework for Strengthening the Rule of Law, which has so far only been applied in the case of Poland. It introduced a structured dialogue on the rule of law with the member state concerned. It seemed to be something different, but the mechanism was essentially equivalent to the preventive arm of Article 7 TEU. Dinan (2017, p. 78-79) therefore concludes that it should be viewed more as an alternative

for the Commission to deal with the lack of a majority in the Council. Expert criticism of structured dialogue points to the fact that if the government in question has chosen the path towards autocratization, dialogue only allows for time to consolidate changes (Kochenov, Pech, Scheppele, 2017; Pech, Scheppele, 2017). Therefore, the activation of Article 7(1) TEU has come too late and with little hope that it could change the course.

Since 2016, the European Parliament has been urging the European Commission to set up a more effective tool to focus on the observance of the rule of law and fundamental rights in member states (van Ballegooij, 2020, p. 4-5). Since 2013, there has been an EU Justice Scoreboard that focuses on national judiciary systems, but it is too narrow to be used for a more general assessment of whether checks and balances are weakening and fundamental values are being violated in member states (Sedelmeier, 2017, p. 347). The Juncker Commission has already started to prepare the so-called rule of law reports, introduced by the von der Leyen Commission in 2020. In addition to preventing rule of law backsliding in other member states, the rule of law reports should address the argument used by the states concerned, such as Hungary, that the EU uses a “double standard” in its dealings with member states (Pech, 2020).

The rule of law reports was issued in 2020, 2021, 2022 and 2023. They focus on four key areas: (1) justice system, (2) anti-corruption framework, (3) media pluralism, and (4) other institutional issues related to checks and balances. Member states are involved in the elaboration of the report as Commission requires a written input from member states and effectuates country visits where its members meet national authorities and stakeholders. This information is contrasted with written contribution by the stakeholders and information produced by international organizations. From 2022, the Commission is also issuing recommendations to member states, moving from mere description to pressure for compliance. This allows the Commission to better link rule of law reports to hard tools such as infringement procedure, conditionality regulations or triggering Article 7 TEU (Maňko, 2023).

The results of this tool are perceived in different ways. On one hand, e.g., Sedelmeier (2017) thinks that monitoring of all member states together with the rule of law framework can have a potential to deal with rule of law problems, because it increases social pressures, it enables the Commission to comment regularly on the problems which can improve its argumentative consistency and make it more difficult to countries concerned to justify their backsliding measures. Another positive aspect of rule of law report consists

of giving the rule of law the same meaning across the EU. This is very important as the states concerned as Hungary try to dilute the meaning and emphasize that the EU has an obligation to respect national identity, see e.g., argumentation of the former Hungarian Minister of Justice, Varga (2019). Annual monitoring of member states also means that the Commission stopped to be indecisive regarding the content of rule of law. This can help it to determine earlier if there is a systemic threat to rule of law in a member state and gather evidence which can be used in infringement proceedings (Bárd, Śledzińska-Simon, 2019).

The limitations of rule of law reports have been noted, for example, by Pech (2020), who argues that rule of law reports alone cannot stop autocratization if national governments choose to do so. Moreover, he considered it to be an error to compare democratic states with non-democratic regimes like Orbán's which can lead to a normalisation of non-democratic regimes in the EU. These regimes can also use the report to claim that there are plenty of problems in other member states, therefore trying to divert attention away from itself. From the European Parliament it is voiced that it is unclear what the Commission will do if the state would not treat problems and how active it would be in its follow-up of member states (Mańko, 2023, p. 1).

In the following section, the article focuses on whether the rule of law reports have any impact on member states, along with other forms of pressure from EU officials. It is important to distinguish that the chosen case is a country, Spain, where most political and social actors still consider the values of liberal democracy as fundamental in their national context. It is also a country where the main political parties positively identify with the EU. Even taking these facts into account, the impact of the EU may be limited by the logic of national politics, which is characterized by exacerbated political polarisation.

3 PROBLEM: THE CGPJ AS AN OBJECT OF POLITICAL STRUGGLE

The CGPJ is a body of judicial self-government that is to guarantee the independence of the judiciary (see Kosař, 2018). It was introduced by the 1978 Constitution, Article 122(2) and (3) (Constitución Española, 1978), as part of the democratization process, with the aim of transferring influence over the judiciary from the executive to a self-governing body. The CGPJ performs several functions, including decisions on judicial appointments, transfers, and promotions. Fundamentally, the CGPJ also proposes persons for the highest positions in the judiciary who are formally appointed by the

Minister of Justice. These are the judges of the Supreme Court (Tribunal Supremo, TS) and the presidents of its chambers. The president of the TS also presides over the CGPJ. In addition, there are the presidents of the National High Court (Audiencia Nacional, AN) and its chambers, the presidents of the highest courts of the Autonomous Communities and their chambers, and the presidents of the provincial courts (Torres Pérez, 2018, p. 1776-1777). Finally, it proposes two judges of the Constitutional Court (Tribunal Constitucional, TC).

The CGPJ is composed of 12 judicial members and 8 members from other legal professions, subject to 15 years of experience in the field. According to the Constitution, the 8 members are elected by the Parliament. The Congress of Deputies and the Senate elect four persons each by a qualified three-fifths majority. For the 12 judicial members, the Constitution does not specify how they are to be elected. Since 1985, it is the Parliament as well which designates by three-fifths majority 12 judicial members. This necessarily implies an agreement between the two largest political parties: the PP and the PSOE. The method of appointment is the major factor in the politicization of the body because political parties want to design persons who are ideologically aligned with them (Rosado Iglesias, 2022, p. 277-279).

In December 2018, the mandate of the CGPJ expired and new members were to be appointed. However, in the spring of the same year, a vote of no confidence was passed against the PP government led by Mariano Rajoy, and a new majority led by the PSOE was formed. Pedro Sánchez took the seat of Prime Minister and won the November 2019 general elections, subsequently forming the country's first coalition government with the far-left Unidas Podemos. From these moments, the blockage of the renewal of this body dates back. The fact that the renewal of a constitutional body is blocked and occurs later than it rightly should is not unusual in Spain as it already happened in 1995 and 2006. However, the duration of this situation is unusual and corresponds to a full five-year mandate at the end of 2023. The PP and the PSOE have come close to an agreement several times, but other political circumstances have usually scuppered the deal.

To understand the current state of play, it is necessary to focus on the disagreement between the PP and the PSOE (Měšťánková, 2023) and what it means for the judiciary. From the beginning, the CGPJ has pointed out that its credibility is weakening with the expiration of its mandate. After the general elections in 2019, the CGPJ temporarily stopped the process of appointments between January and May 2020 with the expectation that its renovation would be soon resolved. This did not happen, and so it returned

to making appointments. In 2021, however, the governing parties pushed for restrictions on the CGPJ's appointment powers, which affected the highest positions in the judiciary. The PSOE expected that this "pressure" would force the PP to reach an agreement, which did not happen. On the contrary, the crisis in the functioning of the judiciary was deepened, as the vacancies could not be filled. The concrete impact is that at the end of 2022, one-third of the top positions in the judiciary were vacant (Romero, 2022), with the Supreme Court being the most affected institution. There is a slowing down of judicial proceedings, thus undermining the efficiency of justice. The governing parties partially restored the appointing powers of the body in July 2022, when they allowed it to nominate its two candidates for judges of the Constitutional Court.

Another aspect that eventually stepped into the political game was the method of appointment. For a long time, the largest political parties (PP and PSOE) did not show any interest in changing the method. The PP has pushed through two reforms (2001, 2013) leading to greater involvement of judges in drawing up the lists of candidates. It was only in the 2011 parliamentary elections that the PP promised to transfer the election of 12 judicial members of CGPJ to their peers, but despite its victory and the formation of a government with an absolute majority, she did not put this promise into practice. At present, the PP states that to reach an agreement with the PSOE, it is first necessary to agree to change the method of appointment. The 12 judicial members should be elected by their peers which corresponds with recommendations of the Council of Europe and the EU (see further). However, the PSOE rejects this and insists that the appointments remain in the hands of parliament. In autumn 2020, the governing parties proposed to reduce the majority required to elect members of the CGPJ. If a three-fifths majority was not achieved in the first round, it would be reduced to an absolute majority in the second round. This was criticized not only by the opposition but also by professional organizations and the EU, leading to the withdrawal of the proposal.

The judiciary's highest officials and professional organizations have repeatedly appealed to political parties to remedy the situation. TS and CGPJ President Carlos Lesmes (who resigned in the fall of 2022) assessed the situation as unsustainable. He repeatedly called for the renewal of this body and, consequently, for a change in the system of appointing the 12 members of the judicial council (Comunicación Poder Judicial, 2022). The professional organizations, which currently comprise 56.1% of all judges out of about 5 600 (Navas, 2021), have transferred the problem

to a supranational level. In April 2021, three professional organizations (Asociación Profesional de la Magistratura, Asociación Francisco de Vitoria, Foro Judicial Independiente) sent an open letter to EU Commissioners Věra Jourová and Didier Reynders, in which they warned of the risk of breaching the rule of law in the country, namely the independence and impartiality of the judiciary. They openly denounced the politicization of this body by political parties and called on the Commission to activate the general regime of conditionality for the protection of the Union budget and, ultimately, to activate Article 7(1) if no remedy is found (A la Comisión Europea, 2021). Clearly, the supranational level was seen as a safeguard that could prevent the situation from worsening.

Further on, conservative members of CGPJ addressed again the European Commission by sending an open letter to Didier Reynders in January 2023, complaining about the limitation of their powers. According to them, the fact that they cannot appoint judges to the highest positions seriously threatens the functioning of the Supreme Court and the military jurisdictions (Viúdez, Abad Liñán, 2023). On the other hand, in March 2023, two representatives of the progressive camp resigned from their positions, which was supported by the progressive judicial organization Juezas y Jueces para la Democracia (JJpD) as a path leading to the renewal of this body (JJpD, 2023).

4 EU LEVEL: EUROPEAN COMMISSION ACTIONS RELATED TO CGPJ

The judicial systems are one of the four key areas which are monitored by the European Commission in rule of law reports. A substantial part of the monitoring focuses on the independence of the judiciary. The Commission examines how judicial independence is perceived by the public and what systemic safeguards are in place. In this context, judicial councils are seen as important safeguards of judicial independence, which derives from Court of Justice rulings (e.g., case C-64/16, Associação Sindical dos Juízes Portugueses; C-824/18 A.B. and others v. CJEU). For these reasons, the case of CGJP has become an issue of interest to the Commission.

The case of CGPJ has regularly appeared in the Commissions' rule of law reports as a matter of urgency because the stalemate around the CGPJ has questioned the judicial independence in the country. Věra Jourová and Didier Reynders actively involved in the matter, sending letters to national authorities and stakeholders and meeting with them. In 2022 the CGPJ renovation received high relevancy which can be demonstrated on the visits which were realized by both commissioners to Spain. Jourová visited Spain

in June 2022 and Reynders in September 2022. The Commission has also heavily supported its position on the recommendations of the Council of Europe (Venice Commission and GRECO) and the national stakeholders' positions (professional organizations, president of CGPJ and Supreme Court and presidents of high courts).

The rule of law reports (2020, 2021, 2022) consistently highlight that the mandate of this key body for the functioning of the judiciary has expired and political parties have been unable to reach an agreement despite appeals from concerned stakeholders. And that the persistence of this situation undermines the credibility of the institution and shows its vulnerability to politicization. The Commission has called on the political parties to renew the institution. Addressing the opposition, the Commission said that it should not block the appointment of important state bodies where a qualified majority is required, and at a minimum, partial appointments should be possible where there is a qualified majority consensus (European Commission, 2021b, p. 3). In a letter to Carlos Lesmes, President of the CGPJ and the Supreme Court, in September 2022, Jourová insisted that state institutions cannot be prisoners of political debate (Pozas, 2022).

From 2021 the method for the appointment became a part of the reports. In 2022 in general assessment of the rule of law situation across the EU the Commission stated: "The method for the appointment of judges can have a key impact on judicial independence and public perception of independence. As established by the CJEU, in order to guarantee judicial independence, substantive conditions and procedural rules governing judicial appointments must be sufficient to prevent reasonable doubts as to the imperviousness of the judges concerned to external factors and as to their neutrality as judges" (European Commission, 2022a, p. 6).

Commission representatives, therefore, intervened when a proposal was presented in the Congress of Deputies to reduce the majority required for the appointment of CGPJ members. The proposal by the governing parties (PSOE and Unidas Podemos) was seen as further deepening the politicization of the body. After pressure from the EU and judicial stakeholders, the governing parties eventually withdrew the proposal. EU representatives urged that a compromise on reforming the method of appointment be reached between all relevant actors. The Commission then supported those proposals that sought to promote the election of judicial members of the body by their peers, backed up by the recommendations of the Council of Europe (e.g., Council of Europe, 2010) and the preferences of various national stakeholders (European Commission, 2021b, p. 3). On the other

hand, the Commission never challenged the law that limited the powers of the CGPJ after its mandate expired.

In 2022 and 2023, the Commission's involvement multiplied when, in addition to issuing the first recommendation to the country, the visits of the two Commissioners happened. The Commission's position has been established as follows: "Proceed with the renewal of the Council for the Judiciary as a matter of priority and initiate, immediately after the renewal, a process in view of adapting the appointment of its judges' members, taking into account European standards." (European Commission, 2022c, p. 9). In June 2022 Jourová on her visit to Spain stressed the urgency of the renovation and expressed a preference that judicial members of the CGPJ be appointed by their peers as a solution to the alleged politicization of the body. She also stressed that a new attempt to reduce the necessary majority for the appointments would be now considered to be an infringement of EU law (Cruz, 2022), thus increasing the pressure. In September 2022 also Reynders visited Spain on the same matter. In February 2023 the EU representatives (Jourová and Reynders) met with members of the Spanish government. They urged them to renew the CGPJ before taking the Presidency of the EU Council (Suárez-Bustamante, Jiménez, 2023), but this has not yet happened.

5 NATIONAL LEVEL: EU IN THE DISCOURSE OF POLITICAL PARTIES ON CGPJ

The situation regarding the CGPJ in 2018-2023 has been discussed several times in the Parliament. Discussions have intensified as the deadlock has lengthened, but also in the wake of criticism from EU institutions. In the following section, the article analyses how political parties used references to the EU in their arguments regarding CGPJ.

The CGPJ has been debated twice in the Parliament in conjunction with the modification of its powers. First it was a law limiting the powers of the body after its members' mandate expires. The law was discussed three times by the plenary of the lower house (15 December 2020, 28 January 2021 and 11 March 2021) and once by the plenary of the upper house (24 March 2021). The law was approved (*Ley Orgánica 4/2021*, of 29 March). Year after, the powers of CGPJ were modified again giving back the appointment of two members of the Constitutional Court to the CGPJ. The law was debated in a legislative emergency in the lower house (July 13, 2022) and the upper house (July 20, 2022), and it was also passed (*Ley Orgánica 8/2022*, of 27 July). During this period, PP also submitted twice a proposal to change the

method of appointment of the CGPJ, which was discussed by the plenary of the lower house (21 September 2021 and 16 May 2023). The Congress of Deputies rejected the proposal on both occasions. Other parliamentary groups have also tabled proposals to change the method of appointment (Ciudadanos, Vox), but these proposals did not reach the plenary.

In terms of political parties, the debate involved national parties (PP, PSOE, Ciudadanos, Unidas Podemos, Vox) and regional parties (notably the Basque parties Partido Nacionalista Vasco (EAJ-PNV) and EH Bildu, the Catalan parties JuntsxCat, Esquerra Republicana de Catalunya (ERC)). In relation to the EU, it is necessary to frame the discussion in a generally pro-European environment. The EU is associated with Europe, so in many speeches, there is no distinction between the EU and Europe. The EU is conceived as an association of the most progressive countries, which Spain wants to approach. Thus, there is no advocacy of national specifics and no rallying of politicians against the EU. Thus, the rule of law reports is not seen as a way how to interfere in the internal affairs of the state. The EU is seen by politicians more as another playing field. The only party in the period under review that emphasized that the country should manage its own affairs was the far-right Vox (see below).

Let's look at how political parties refer to the EU in their arguments about the CGPJ. First, references to EU reports, reports of Council of Europe bodies (GRECO, Venice Commission), decisions of the Court of Justice of the EU, and statements by European Commissioners (Jourová, Reynders) appear most in the main opposition parties - the liberal-conservative People's Party and the liberal Ciudadanos - and to a lesser extent in the governing PSOE. Left-wing parties such as Unidas Podemos mention the EU only minimally. Of the regional parties, the separatist parties EH Bildu and ERC have been the most involved in the debate, using the situation more to promote their own causes and to demonstrate that there is no independent judiciary in the country.

The two main political parties - the PSOE and the PP - used the rule of law reports in favour of their solution to the CGPJ stalemate. The PSOE stressed that the European Commission demands the renewal of the body in the first place. Only then can the debate on changing the method of appointment begin. In this position, the governing parties has been supported by the parties that currently support them as regional parties, including separatist ones. On the contrary, the PP has given priority to changing the method of appointment of the 12 judicial members of the CGPJ. It argued that the Spanish system should be brought into line with European standards. The

liberal Ciudadanos party held similar positions, although it differed from the PP in the details of its proposal to change the CGPJ's appointment method.

The following table (Table 1) summarises the political statements on the role of the EU in resolving the stalemate on the CGPJ and the related concerns about the independence and impartiality of the judiciary in the country.

Table 1: *The EU in the national political debate on the CGPJ*

Statement	Political Party
The EU supports the unblocking and renewal of the CGPJ in the first place	PSOE, Unidas Podemos EAJ-PNV, EH Bildu, ERC
The EU supports the change in the method of appointment of CGPJ members	PP, Ciudadanos
The EU is a safeguard against the deepening politicization of the judiciary	PP JuntsxCat
The country must approximate to European standards	PP
The international image of the country is being damaged	PSOE PP, Ciudadanos ERC
Spanish government goes against the EU	PP, Ciudadanos
The EU may activate the general conditionality regime for the protection of the Union budget against Spain	PP, Ciudadanos
EU may trigger Article 7 TEU against Spain	Ciudadanos
Spain is compared to Poland	PP, Ciudadanos
Spain is compared to Hungary	Ciudadanos
Spain should solve the problem without EU intervention	Vox

Source: Author

The EU was seen as a safeguard against the deepening politicization of the judicial council. The fact that there was no agreement between the political parties was attributed by the opposition to the government. The limitation of the powers of the body after the expiration of its mandate was

then interpreted as a step against the recommendations of the European institutions. For example, senator De Rosa Torner (PP) stated in the plenary session of the upper house on 20 July 2022: “You, ladies and gentlemen of the Socialist Group, are in rebellion against Brussels. You are in rebellion against Brussels, which has indicated that the General Council of the Judiciary must be renewed... The judicial policy of the Government worries Brussels, and you know that it can apply the conditionality mechanism, the mechanism that has been ratified by the European Court of Justice, which provides that those states that seriously endanger the rule of law may be deprived of European funds; this has happened in Poland, and this has happened in Hungary” (Senado, 2022).

Considerable attention was paid to the country’s international image. Political parties, especially mainstream ones, perceived that the impasse over the CGPJ was damaging the country’s international reputation creating a negative image within EU institutions and other European states. The opposition parties - PP and Ciudadanos - also compared the situation in the country to Poland and Hungary. At the 28 January 2021 plenary session of the lower house, Ciudadanos deputy Bal Francés said: “You pretend that my country, you pretend that Spain, resembles a country that is governed by the ultra-right [Poland] and that is an absolutely authoritarian system...” (Congreso de los Diputados, 2021a). At the plenary session of 16 May 2023, his statements escalated to: “You pretend in this to homologate with Poland or with Hungary; you prefer to homologate with Orbán than not to homologate with Macron” (Congreso de los Diputados, 2023). Addressing the PSOE at the plenary session of the upper house on July 20, 2022, senator Pradas Ten (PP) said: “Rectify, because we have a lot at stake, not only the credibility of Spanish institutions, but also our economy, the economy of the Spaniards, who are the ones out there and whom we represent.”(Senado, 2022).

National specifics or national sovereignty did not play a significant role. The only party that referred to national sovereignty with the idea that the country should solve the problem itself was the far-right Vox. Deputy Ortega Smith-Molina (Vox) said at the plenary session of the lower house on 16 May 2023: „How does the People’s Party justify returning to this issue? It says it is because the Greco group, because the Venice Commission or the Court of Justice of the European Union itself tell us that it should be done this way, but do we not believe in our own national and judicial sovereignty? Do we have to wait for the European Union or the various international organizations to tell us that we have to defend the division of powers and judicial independence?”(Congreso de los Diputados, 2023).

CONCLUSION

The CGPJ case reveals a complex matrix of relationships between the national and supranational levels in the context of safeguarding the rule of law in the EU. On the question of the Commission's influence on member states, the article supports the finding that it makes extensive use of persuasion and pressure, as remedies must be achieved at the national level. In addition to rule of law reports, interactions take the form of letters, meetings and public statements. Persuasion and pressure thus remain the Commission's main tools vis-à-vis member states.

On the national side, the article examined how political actors use EU interventions in political competition. The EU has become an integral part of the political debates on the CGPJ impasse. Judicial actors see the EU as a safeguard against further deterioration. By turning to the European Commission, they have made the issue more visible on the international stage. It can be said that they have actively sought the involvement of EU actors in finding a solution. The justice sector thus expected that EU pressure would force politicians to compromise.

Political parties on their part were highly responsive to the EU critique and admitted the problem. They did not rally against the EU and did not consider that the EU is interfering too much in domestic affairs with the only exception of the far-right Vox. They have strategically used EU reports, visits and statements to justify their position on the issue, but this has not led to any compromise. However, rule of law reports and EU interventions have raised the visibility of the problem and increased the parties' concern about the country's international image. This has had an impact at the national level. But the Spanish case has also shown that the potential loss of influence over an important institution still outweighs a country's international reputation.

To date, the situation has not changed and the renewal of the CGPJ is still blocked. This means that even in a pro-European environment, EU intervention may not lead to a remedy. On the other hand, EU involvement has prevented further politicization of the body. It has also contributed to the formulation of new proposals for the appointment of the CGPJ (PP, Ciudadanos) and prevented the reduction of the majority for the appointment of the CGPJ (withdrawal of the proposal by the government). It remains to be seen whether the current government will manage to reach an agreement with the opposition, possibly by getting the EU more involved. Further developments on this issue may follow the European Parliament elections and the formation of the new Commission.

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