

THE SPANISH JUDICIARY SYSTEM

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THE SPANISH JUDICIARY

According to the 1978 Spanish Constitution ("SC"), Spain is divided into three branches: The Executive Branch, the Legislative Branch, and the Judicial Branch. The Judiciary is regulated in Title VI "Of the Judiciary" of the SC, beginning at article 117, with the provision that justice emanates from the people and is administered on behalf of the King by Judges and Senior Judges that form the Judiciary. It also lays down, as in most EU countries, that they have to be independent, immovable, responsible and subject only to the rule of law. However, we will see below how the legislation regulating the appointments does not ensure that these principles are complied with.

First of all, we need to analyse the Constitutional Court (CC), since it is outside the judicial authority, and then we shall enter into how the judicial corps and the prosecutors' corps are structured and regulated, and go into the detail of how appointments are made, both initially - with the entry into the Judicial and Prosecutors' corps - and with each level of promotion up the ladder, or directly the access of jurists of renowned expertise, in each of the existing judicial bodies.

1.- THE CONSTITUTIONAL COURT, NOT AN INSTITUTION OF THE JUDICIARY

The CC is regulated in articles 159 to 165 of the SC, in Title IX "Of the Constitutional Court", and so it is worth underlining the fact that this Court is outside the jurisdiction of the Judiciary, although, as we will see later, according to the Law, the General Council of the Judiciary ("CGPJ"; in Spanish, Consejo General del Poder Judicial) proposes the appointment of two of its members. But since it is the constitutional collegiate body that has the function of being the supreme interpreter of the SC, it is considered outside the judiciary and is regulated specifically under Organic Law 2/1979, of 3 October, on the Constitutional Court.

As regards the composition, appointment, permanence and termination of its members, let us start saying that it has 12 members, appointed by the King, four of whom are proposed by the Congress of Deputies (Legislative Branch), four are proposed by the Senate - in both cases by a majority of three fifths of their members -, two are proposed by the Government (Executive Branch), and two are proposed by the CGPJ, as we have highlighted.

We find here the first interference of the Legislative and Executive Branches, and even of the highest body in the Judicial Branch, despite being outside their jurisdiction, given that in the appointment of the 12 CC members the three branches directly intervene: The Executive, the Legislative and the Judicial.

The only existing legal limitation is to be found in article 159.2 of the SC, which states that they must be appointed from among Senior Judges and Prosecutors, University Professors, civil servants and lawyers, all of them jurists of renowned expertise with more than fifteen years in the professional practice.

The jurisdictional powers of the CC are laid down in article 161 of the SC, which entitles it to hear:

- a) About appeals of unconstitutionality against laws and regulatory provisions with force of law. The Prime Minister of the Government of Spain, the Ombudsman, 50 Senators, 50 Deputies, and the Governments and Parliaments of each Autonomous Community have active legitimacy to file such appeals. The CC therefore resolves the appeals made by the Executive Branch that has proposed them as members. In this case, we find, for example, the following laws adopted by an absolute majority, or even unanimously, by the Parliament of Catalonia that have been declared suspended or unconstitutional:

- Law of popular polls
- Law on urgent measures for housing emergencies and energy poverty
- Law on the right to housing for people at risk of residential exclusion
- Law on effective equality between men and women
- Law on climate change
- Law on audiovisual matters
- Decree-Law on business hours
- Decree-Law on bank account tax
- Law on the creation of taxes on the production of nuclear energy
- Foreign Action Law
- Consumer Code of Catalonia
- Rate for Internet operators
- Law on the Tax Agency of Catalonia
- Tax Law on Unused Houses
- Law on Digital Wills
- Law on the creation of the Catalan Cybersecurity Agency.

b) About appeals for protection against the violation of fundamental rights. In this case we find the appeals for protection made by the legitimate Speaker of the Parliament of Catalonia and the members of the legitimate Government of the Generalitat de Catalunya who have been in custody for more than a year.

c) About conflicts of jurisdiction between the State and the Autonomous Communities.

d) About other matters attributed to it by the Constitution and organic acts, e.g. appeal for protection in electoral matters.

2.- THE JUDICIAL CORPS

The Judicial corps has 3 categories: (i) that of Senior Judge (“Magistrado”) of the Supreme Court (SupC), (ii) that of Senior Judge (“Magistrado”) and (iii) that of Judge.

The members of the SupC, the members of the National Court (NC), of the Provincial Courts, and the High Courts of Justice (in Spanish, Tribunal Superior de Justicia, «TSJ») of each Autonomous Community are senior judges («magistrados»), and the members of the single-judge courts of first instance of each judicial district are judges.

The competent authority to approve every three years the regulation of the scales of the judicial corps is the highest authority of the Judicial Branch, which is the General Council of the Judiciary (CGPJ).

Let us highlight the oath that has to be taken by the members of the judicial corps before taking possession of their first posting, and in each promotion from one category to the next: “I swear (or promise) to uphold and to make keep faithfully and at all times the Constitution and the rest of the Legal Order, to be loyal to the Crown, to administer justice righteously and impartially and to fulfil my legal duties before all”. It defines exactly the Spanish judiciary: the Crown (the King) and the Constitution above all as supreme institutions. No reference to fundamental rights and public liberties recognized by international treaties, or to democratic principles.

3.- THE PUBLIC PROSECUTORS' OFFICE

Public Prosecutors are equated in honours, categories and remuneration to Judges and Senior Judges. Even in the official acts they attend, the representatives of the Public Prosecutor's Office occupy the place immediately following that of the judicial authority, and at meetings of the governance of the Courts they occupy the same place in relation to the person that chairs them.

According to Spanish law, the Public Prosecutor's Office, regulated in the Organic Statute of the Public Prosecution, adopted by Law 50/1981, of December 30, and modified by Law 24/2007, of October 9, has the mission of promoting the action of justice in defence of legality, the rights of the citizens, as well as of ensuring the independence of the courts and ensuring the satisfaction of the social interest, and ultimately, very briefly, it is laid down that it has to pursue crimes or offences, while receiving complaints and performing criminal and civil actions; and it is granted to this effect broad powers and prerogatives, such as:

- I)** Taking testimony from a suspect;
- II)** Ordering the practice of proceedings;
- III)** Undertaking proceedings for six months, unless an extension is granted by a reasoned decree of the State Prosecutor-General;
- IV)** Asking for any information to the courts and tribunals on the state of the proceedings;
- V)** Visiting at any time detention centres or penitentiaries and obtain information and files on any intern;
- VI)** Requiring the support of the authorities of any kind and of their agents;
- VII)** Giving orders and instructions to judicial police officials.

They can even order preventive detention, and, most serious, all the proceedings that a Prosecutor practises or that are carried out under his or her direction enjoy the presumption of authenticity, without their having to be subject to judicialization or revision by the Courts.

Though, according to law, the Public Prosecutor's Office has to promote the action of justice in defence of legality and of citizens' rights while trying to satisfy the social interest, we find cases such as one that occurred recently in Lleida, where colleagues of the Lawyers for Democracy Association have filed a criminal complaint for crimes of torture, abuse of authority and public disorder against the Sub-delegate of the Spanish Government in Lleida and the Colonel of the Guardia Civil coordinating the operation during the 1 October 2017 Self-determination Referendum, which was admitted to be processed by Investigating Court No. 1 of Lleida, and the investigation has been opened by ordering the relevant proceedings to be undertaken, but the Prosecutor's Office, instead of safeguarding the victims' interests, disregarding its legal obligation to pursue the crime, has appealed against the admission of the lawsuit and asks for the case to be dropped without the slightest investigation having been undertaken.

The law also lays down that the exercise of the functions of the public prosecutor must respect the principles of unity of action and hierarchical dependency; the prosecutors are thus subjected through the following bodies:

- a.** The State Prosecutor-General, who is appointed by the King, at the proposal of the Government (executive branch, after the opinion of the CGPJ), and will be assisted in his or her functions by the Council of Prosecutors, the Board of Chamber Prosecutors, the Prosecution Inspectorate, the Technical Secretariat and the Chamber Prosecutors fixed in the staff.

- b.** The Council of Prosecutors, which will be set up under the chairmanship of the State Prosecutor-General, by the Prosecutor-Lieutenant of the SupC (who is regarded as a Chamber Chair), the Chief Inspecting Prosecutor and nine prosecutors.
- c.** The Board of Chamber Prosecutors.
- d.** The Board of Chief Prosecutors of the Autonomous Communities.
- e.** The Prosecutor's Office to the SupC has the same status as the SupC Senior Judges.
- f.** The Prosecutor's Office to the CC.
- g.** The Public Prosecutor's Office to the National Court.
- h.** The Special Prosecution Offices.
- i.** The Public Prosecutor's Office to the Court of Auditors (which is governed by the provisions of the Organic Law of the Court of Auditors).
- j.** The Military Public Prosecutor's Office.
- k.** The Public Prosecutor's Offices of the Autonomous Communities.
- l.** The Provincial Prosecutor's Offices.
- m.** The District Prosecutors.

As hierarchical dependence is prioritized and given that the head - the State Prosecutor-General - is an Executive Branch (that is a Government) appointee, we find that there is a violation of the principle of separation of powers, which makes the governmental origin of his or her appointment give rise to permanent suspicion and distrust. This makes him or her not enjoy the social credibility that this institution should have, thanks to being associated with the Government that proposed the appointment.

In addition, hierarchical dependency means that the State Prosecutor-General issues the orders and instructions that he or she deems appropriate to all members of the corps - he or she can even assign a particular affair to himself, or designate another prosecutor or change one -, and all in all has total freedom of action. The best example of this principle of hierarchical dependency is the judicialization of the participatory process (popular poll) on the Independence of Catalonia held on November 9, 2014, which it was up to the High Court in Catalonia (HCCat) to resolve, and where its Public Prosecutor's Office issued a report on November 17, 2014 stating that the facts did not amount to a crime, and ruling out taking to court the then Rt. Hon. President of the Generalitat of Catalonia Sr. Artur Mas, and other Ministers of the Government of the Generalitat de Catalunya. However, later the State Prosecutor-General ordered and demanded that the Prosecutor's Office of the HCCat go lay charges. The lawsuit was filed against the legal opinion of the HCCat prosecutors, and this court went so far as to decide not to include in the case this report accrediting the lack of existence of a criminal offence.

As is well known, the Rt. Hon. Artur Mas and the charged Ministers were convicted of a crime of contempt of court with fines and debarment from public office as punishments.

4.- SYSTEM OF ACCESS TO THE JUDICIAL CORPS AND THE PROSECUTOR'S OFFICE

4.1.- Access by open competition

Entry is based on the principles of merit and capacity for the exercise of the jurisdictional function, through an open competition and a theoretical and practical selection course at the Judicial Academy, and those who intend to enter the Judicial corps in the senior judge category must also pass a training course in the Judicial Academy.

The call for entry to the Judicial corps, which takes place at least every two years in conjunction with entry to the Prosecutor's office, includes all existing vacancies and an additional number that allows those that can be expected to occur until the next call to be covered.

The formal requirements that candidates have to meet are: to be Spanish, adult, with a law degree, and not fall within any of the causes of incapacity or incompatibility provided for in Organic Law 6/1985, of July 1, of the Judiciary, modified by Organic Law 4/2013 ("Ley Orgánica del Poder Judicial", LOPJ). And the material requirement is to pass the access examination with full resolution of the syllabus.

The candidates that pass will then choose, according to the posts convened and with the top scorers choosing first, one or other of the corps (judicial or prosecutor) in the timespan decided by the selection committee.

The law lays down that the selection procedure must ensure, with objectivity and transparency, the equal access of all citizens who have the necessary conditions and skills, as well as the professional suitability and standards of the people selected.

However, we often find cases like that of the daughter of Sr. Manuel Marchena, Chair of the Second Chamber of the SupC, Sra. Sofía Marchena, who passed the joint competition for the fiscal and judicial corps with a score of 68.20, and decided to enrol in the Judicial Academy as a judge. But after a month she dropped out of the Judicial Academy on health grounds, and despite being laid down in the Law that in such cases people can be reincorporated in later selection procedures, it turns out that around Christmas 2017, specifically on December 21, the CGPJ made an unprecedented agreement whereby Sra. Marchena could join as a Public Prosecutor, when she had already joined as Judge.

Moreover, it should be borne in mind that the Director of the Judicial Academy where Sra. Marchena was is Sra. Gema Espinosa, wife of senior judge Sr. Pablo Llarena, who is also a member of the Second Chamber of the SupC chaired by Sr. Marchena, and as is well known, has been the investigating judge in the cause against the Catalan independence movement, which is why the two presidents of the civic and social organizations, Sr. Jordi Sánchez and Sr. Jordi Cuixart, have been in pre-trial detention for a year, as have been the Speaker of the Parliament of Catalonia, the Rt. Hon. Sra. Carme Forcadell, as well as the Vice President of the Government of the Generalitat, Sr. Oriol Junqueras, and Ministers Jordi Turull, Quim Forn, Josep Rull, Raul Romeva and Dolors Bassa.

And to round it off, in July 2018 the wife of Sr. Llarena, Sra. Gema Espinosa, left her post in the Judicial Academy to present her candidacy for membership of the CGPJ, in the renewal of posts that was to take place before December 4, 2018, so that right now the Congress of Deputies (legislative branch) is in the process of deciding on the candidates that it will propose, and we may well find her joining the CGPJ.

Moreover, we find that the Ministry of Justice, which is included in the Executive Branch, can legally call on the CGPJ, which is the highest body of the Judiciary, to announce the competitions, contests and selective examinations for promotion and specialization required to cover the existing vacancies in the Judicial corps workforce.

4.2.- Access for jurists of renowned expertise

Jurists of renowned expertise can also enter the Judicial corps for the category of senior judge of the SupC, or for the category of senior judge and judge, in

the cases, form and proportion respectively laid down by law, which are mainly the following:

For the category of Senior Judges, for every four vacancies, one is covered by competition between jurists of renowned expertise and with more than 10 years in the professional activity, once they pass the relevant training course.

For the category of SupC Judge, for every five posts, one is covered by lawyers and jurists of recognized competence – whose prestige the CGPJ evaluates in a totally discretionary way -, who are only required to have exercised the profession for more than 15 years, preferably in the branch of law corresponding to the jurisdictional type of the Chamber for which they have to be appointed.

This is the so-called “fourth route,” which is among the most obscure of schemes, in which the minimum requirements for transparency are not met, as their merits and curricula vitae are not subject to public scrutiny.

4.3.- Promotion

For promotion, candidates have to have rendered three years of effective service as a judge; however, in order to be eligible for the selective or specialization examinations, two years of effective services are enough.

Specifically, for the category of Senior Judge, it must be borne in mind that, for every four vacancies that occur, two will be covered by the promotion of judges who will occupy the top status within this category. The third vacancy is covered by a judge through selective examinations for the civil and criminal jurisdictional orders, and by specialization examinations for the administrative and social orders. As we have started above, the fourth vacancy is covered by competition, by jurists of renowned expertise and with more than 10 years in the professional activity, once they pass the relevant training course.

For their part, a third of the vacancies will be reserved to members of the corps of Judicial Secretaries of first or second category, although by this procedure the number of posts that can be announced may not surpass the total of the vacant posts, plus the foreseeable vacancies that are to occur during the duration of the resolution of the contest.

For the category of SupC senior judge, of every five places, four are covered by members of the Judicial corps with at least 10 years of service in the category of Senior Judge, and not less than fifteen in the corps, and the fifth is for lawyers and jurists of renowned expertise.

In addition, the distribution of one out of every four places reserved for the Judicial corps is covered as follows:

a. Two places for senior judges who have attained the category by means of the relevant selection examinations in the civil and criminal jurisdictional order, or who have passed them while belonging to this category or, depending on the jurisdictional order, two to specialist senior judges in the Administrative and Social Jurisdictional order, fifteen years in the corps and five in the category being required.

b. Two places for senior judges with at least ten years of service in the Senior Judge category and not less than fifteen in the corps.

Having explained how the Judicial corps and the Prosecutors' corps are structured and regulated, and how the appointments take place, we shall first analyse the governing body of the Judicial branch, and then the judicial structure or bodies of the Judicial branch.

5.- THE GENERAL COUNCIL OF THE JUDICIARY AS A GOVERNING BODY OF THE JUDICIARY

Organic Law 6/1985 of July 1, on the Judiciary, amended by Organic Law 4/2013 (LOPJ), states that the governance of the Judicial branch corresponds to the General Council of the Judiciary (CGPJ), which exercises its powers throughout Spain; so the governing chambers of the SupC, the NC and the High Courts (TSJ) of each of the current 17 Autonomous Communities have to exercise the functions attributed to them under the LOPJ with subordination to the CGPJ.

In short, the top authority of the Spanish Judiciary is the Chairperson of the CGPJ, who at the same time is the President of the SupC, to which the rest of the Courts are subordinate. The CGPJ, which is regulated in the LOPJ and the Organization and Functioning Regulations of the CGPJ, of April 23, 1986, is renewed every five years, and has to be chaired by the same person, who will hold two positions: President of the CGPJ and President of the SupC.

It thus consists of the President of the SupC and twenty members, of which twelve are Judges and Senior Judges in active service in the Judicial corps and eight jurists of recognized competence. The violation of the principle of separation of powers is found in the election of these twenty-one members of the CGPJ who are called to be the highest body of the Spanish Judicial Branch, since they are the Congress of Deputies and the Senate, the two chambers of the legislative power, who each choose, by voting of 3/5 of their members, ten members, four of whom have to be jurists of renowned expertise with more than fifteen years in the profession, and the six remaining ones fall under the judicial route.

In addition, both the Congress of Deputies and the Senate also designate substitutes, setting the order in which to proceed in the event of replacements.

Thus both the President of the CGPJ, who is at the same time the President of the SupC - the top posts in the Spanish Judicial branch - and the other members of the CGPJ, are chosen by the legislative branch through the votes of the deputies and senators of political parties that meet in the Congress of Deputies and the Senate.

Once the twenty-one members of the judiciary (CGPJ) have been selected by the legislative branch, the King appoints them by means of a Royal Decree endorsed by the President of the Government and a constituent session of the Plenary Session of the CGPJ is held, chaired by the most senior member, at which candidatures to become President of the SupC and at the same time the President of the CGPJ are presented, so that from amongst them the President is chosen in a totally discretionary way.

The appointment of the following discretionary posts is also attributed to it by law:

- By a Royal Decree endorsed by the Ministry of Justice (Executive Branch), the senior judges of the SupC and the Chairs of Courts and Chambers.
- The Vice President of the SupC, the Secretary General and the Deputy Secretary General of the CGPJ.
- The Promoter of Disciplinary Action and the Head of the Inspection of Courts.
- The Director of the Judicial Academy and its teachers, the Director of the Judicial Documentation Centre and the rest of its staff.
- The Director of the Technical Office of the CGPJ and the staff of the administrative services.

On the other hand, as the governing body of the Judiciary, the CGPJ also

has power over the following regulated appointments and promotions:

- Those of judges, by a statutory writ, after the selection process that we have set out in the previous sections, and after their training in the Judicial Academy.
- By a Royal Decree endorsed by the Ministry of Justice (Executive Branch) the Senior Judges.

As far as the legal status of the members of the CGPJ is concerned, it is worth emphasizing that only the members of the Permanent Commission of the CGPJ are duty-bound to exclusive full-time employment, while the rest can remain in active service if they belong to the Judicial corps or to a civil service corps, and they can carry on their professional activity if they are lawyers, solicitors or have any other liberal legal profession, which means it is often hard to detect incompatibilities amongst jurists who take cases to their offices and are prosecuted by the courts, and amongst judges and magistrates for the matters that they resolve in their own courts, when by means of a final appeal they can access the SupC, since the system itself does not ensure the objective impartiality in their actions as members of the CGPJ.

The bodies of the CGPJ are: President of the SupC and of the CGPJ, Vice-president, Office of the Presidency (whose Director has, at the representative level, the status of a SupC Senior Judge, even if he or she is not one), the Plenary, and the Commissions (Permanent, Disciplinary, of Equality, of Economic Affairs).

It also has the following technical bodies: (i) the General Secretariat, (ii) the Inspectorate, (iii) the Technical Office, (iv) the Judicial Academy, (v) the Judicial Documentation Centre and (vi) the Press Office.

I) The Director of the General Secretariat is chosen freely by the CGPJ from amongst senior judges with at least fifteen years of experience in the Judicial corps, or from amongst jurists of recognized competence, also with more than fifteen years of exercise of the profession.

II) The Inspectorate.

III) The Technical Office offers advice and technical and legal assistance to the bodies of the CGPJ.

IV) The Judicial Academy is in charge of the selection and training of the judges and senior judges, also in accordance with Regulation 2/1995, of June 7, of the Judicial Academy, and with Regulation 2/2011 of the Judicial corps.

V) The Judicial Documentation Centre.

VI) The Press Office.

The LOPJ lays down that the CGPJ must be heard by the Government before the appointment of the State Prosecutor-General, and issues a prior report. Thus the judiciary has an influence upon the executive power, which appoints the State Prosecutor-General, even though the issue requires respect for the principle of separation of powers.

It also has jurisdiction to file a dispute appeal involving the State's constitutional bodies, under the terms of Organic Law 2/1979, of October 3, of the Constitutional Court (LOTIC).

And finally, in the extrajudicial field, the CGPJ has the power to propose, by a majority of three fifths, the appointment of two senior judges of the CC, as set out in the preceding section 1.

It needs to be emphasized that the 2018 GRECO Interim Compliance Report drawn up by the Council of Europe called in its Recommendation VI for objective criteria and evaluation requirements to be laid down in law for the ap-

pointment of the higher ranks of the judiciary, thereby criticizing Spain and questioning the discretionary nature of appointments by the CGPJ, as a clearly politicized body.

6. THE INSTITUTIONS OF THE JUDICIARY

6.1.- THE SUPREME COURT

The SupC is the highest jurisdictional body in all orders (except for constitutional matters, in which, as we have seen, the CC is located outside the jurisdictional branches of the Judiciary), and tops the appeals system. It is ultimately responsible for the unity of interpretation of jurisprudence. It resolves final appeals, review appeals and other extraordinary appeals, and for trying members of the State's top bodies.

For jurisdictional purposes, it has five chambers: the First chamber (for Civil matters), the Second chamber (for Criminal matters), the Third chamber (for Administrative matters), the Fourth chamber (for Social matters), and the Fifth chamber (for Military matters).

Its Second Chamber (for Criminal matters) took on the investigation of the procedure against the legitimate Speaker of the Parliament of Catalonia, the legitimate President of the Generalitat of Catalonia, and all the Ministers of his Government who are currently in custody or exile.

For organisational purposes, the SupC consists of the Governing committee, formed by the President of the SupC (who as we have seen is appointed by the CGPJ), the Chairs of each of the five Chambers, and five senior judges, among whom the Vice President is chosen.

Article 127 of the LOPJ lays down that both the President of the SupC and the Chairs of the Chambers and Judges of the SupC are appointed by the CGPJ, so that the same defect of lack of separation of powers spreads, since those who appoint the members of the CGPJ are the Legislative branch and the Executive branch, although they obviously have to be members of the Judicial corps with the category of "magistrado" (that is, a senior judge) or jurists with renowned expertise, with more than twenty-five years of experience in the profession.

6.2.- THE NATIONAL COURT

The NC ("Audiencia Nacional") is defined in Spanish legislation as a singular jurisdictional body in Spain, with jurisdiction throughout Spain, constituting a centralized and specialized Court for the resolution of certain matters that are attributed to it by Law.

It consists of its President (who has the status of the Chair of a SupC Chamber), the Chair of each Chamber and the judges of each of the Chambers, which are: Chamber of Appeal, Criminal Chamber, Administrative Chamber and Social Chamber.

The NC Criminal Chamber has jurisdiction to resolve, among others, crimes against the Crown, Consort or Successor, High Bodies and the Government; counterfeiting currency; defrauding and altering prices that might cause serious damage to the country's economy; drug trafficking by criminal organizations; implementation of foreign judgments or enforcement of prison sentences issued by foreign courts, etc., as well as appeals against the Central Courts for criminal cases.

The Administrative Chamber resolves appeals against decisions and dispositions of Ministers and Secretaries of State that are not attributed to the Central Courts; appeals against decisions of the Commission for the Monitoring of Terrorism-Funding Activities, agreements of public administrations, and appeals of

the Central Courts.

The Social Chamber has jurisdiction in resolving challenges to collective bargaining agreements and collective conflicts of a scale above that of an Autonomous Community.

And the Chamber of Appeals resolves the appeals against the resolutions of the NC's own Criminal Chamber.

It should be pointed out that under the NC, and within its scope, are to be found the Central Investigating Courts, which are responsible for conducting processes that need to be tried before the Central Criminal Court or the NC's Criminal Chamber. They mainly deal with Habeas Corpus procedures (the immediate appearance before a court of any person detained illegally), European Arrest Warrants and surrender, and cases of passive extradition.

We also find in the same area of the NC the Criminal Central Court, based in Madrid, which is competent for the prosecution of crimes for matters reserved to the NC but which involve penalties of deprivation of liberty of less than five or ten years, depending on each crime, and the execution of penalties.

For its part, the Central Juvenile Court is responsible for crimes committed by minors when the jurisdiction of matters concerned falls under the NC, the Central Court of Penitentiary Surveillance carries out the functions of the General Penitentiary Law in relation to the crimes under the jurisdiction of the NC, and the Central Administrative Court resolves the administrative appeals against decisions and provisions of public authorities, bodies and entities that have jurisdiction throughout Spain.

6.3.- THE HIGH COURTS OF EACH AUTONOMOUS COMMUNITY

The High Courts (TSJ) are the highest organs of the Judicial Branch in each Autonomous Community, since they do not have their own judicial organization to try cases that arise in application of their legislation, for all are subject to the Spanish Judiciary. Each TSJ has three Chambers: Civil and Criminal Chamber, Administrative Chamber, and Social Chamber. It has the President of the TSJ - who is nominated for his or her appointment by the CGPJ and at the same time chairs the Civil and Criminal Chamber -, and the Chamber of Administrative Litigation and the Social Chamber also have their Chair, as well as the Chairs and Senior Judges for each of the sections created.

The posts are covered by competition between Senior Judges, depending on their relative positions on the judicial scale, and positions are reserved according for specialization in each of the jurisdictional fields. Thus a third of the positions in the Civil and Criminal Chamber are reserved for jurists of renowned expertise and prestige, and they are appointed by the CGPJ from a list proposed by the Parliament of each Autonomous Community (Legislative Power).

It should be noted, very briefly, that the Civil and Criminal Chamber resolves, among other things, final appeals and extraordinary appeals for review based on breaches of the Autonomous Community's civil law norms, as well as demands for civil liability for deeds committed in the exercise of their positions by the president or the members of the Government of the Autonomous Community and their parliament, or in many cases against senior judges of the Provincial Court. And in criminal matters, it resolves cases against judges, senior judges and prosecutors for crimes or offences committed in the exercise of their position in the Autonomous Community, appeals against the first instance resolutions issued by Provincial Courts, and issues of jurisdiction.

The Administrative Chamber mainly resolves appeals against decisions of the Local Authorities and of the Autonomous Communities unless expressly assigned to the Administrative courts, and the appeals against their resolutions,

as well as the final appeals on grounds of the unification of doctrine or in the interest of law in matters in which the Autonomous Community has powers. And the Social Chamber deals largely with procedures of a higher level than the social courts, that affect the interests of workers and entrepreneurs of the Autonomous Community.

6.4.- THE PROVINCIAL COURT OF EACH PROVINCE

The Provincial Courts are located in each province and are also organized in Civil and Criminal Chambers, with Sections in each Chamber. The President of the Provincial Court is appointed by the Plenary Session of the CGPJ, and there is a Chair for each Chamber and Section, as well as the respective Senior Judges. They are veritable second instances, that resolve any appeals against all the civil and criminal cases of the courts of first instance and investigation in their province.

6.5.- THE COURTS OF FIRST INSTANCE AND / OR investigation

Depending on the subject matter, there are several types of Courts of First Instance and / or investigation in each of the judicial districts established in Law 38/1988, of December 28, on Judicial Demarcation and Districts, and that have jurisdiction over the deeds that occur in their demarcation. In very summarized form, let us list some:

First Instance Courts: They mainly resolve civil claims between individuals, and the judge is usually responsible for the Civil Registry as well.

Investigating Courts: They investigate those suspected of offences and misdemeanours.

Administrative Courts: They have jurisdiction throughout the province, and, based in the capital, they resolve the appeals brought against the decisions of local administrations and certain decisions of the Autonomous Communities.

Social Courts: They also extend their jurisdiction to the province and resolve labour conflicts between employers and workers and claims against the State or the Social Security scheme.

Courts of Penitentiary Surveillance: They also have jurisdiction throughout the province, they are within the criminal jurisdictional field, and they deal with the implementation of prison sentences and interns' issues in the penitentiary centres.

Juvenile Courts: Also provincial and within the criminal field; they resolve offences committed by minors.

Family Courts: They resolve conflicts in family law.

Mercantile Courts: They are competent in corporate matters.

Justices of the Peace: These exist only in towns where there is no court of first instance. It is worth emphasizing that the Justice of the Peace is not included in the Judicial corps and the Justices of the Peace perform functions of the Civil Registry and judicial court support, by resolving civil and criminal matters of minor importance.

7.- CONCLUSION

Lastly, let it be underlined that this Judiciary we have just described is the one that has about 1,000 judicial proceedings opened with imputation of crimes and offences not only against the legitimate Speaker of the Parliament of Catalonia and against the legitimate President of the Generalitat of Catalonia and all the members of his Government who are unjustly in pre-trial detention or in exile, but also against 712 mayors, other public officials, and numerous people of Catalan civil society: lawyers, journalists, singers, actors, activists, tweeters, for the sole fact of having publicly expressed their political and personal opinion and in favour of the independence of Catalonia, as well as actions that fall under the free exercise of fundamental rights and public liberties of protest, striking, assembly, expression, etc.

We need to recall that article 19 of the United Nations Declaration of Human Rights of December 10, 1948 states that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The International Covenant on Economic, Social and Cultural Rights, adopted by Resolution 2200 (XXI) of December 16, 1966, in force in Spain following its ratification of the agreement on January 3, 1976, lays down in article 1 that all peoples have the right of self-determination, and further on, that each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant.

Article 11 of the Charter of Fundamental Rights of the EU, proclaimed in Strasbourg on December 12, 2007, stipulates likewise that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

In Article 2 of the consolidated version of the Treaty on European Union, of March 30, 2010, it is also laid down that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.