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Organization name: Omnium Cultural

Main areas of work: Justic System & Othe (Civil Rights and Culture)

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Òmnium Cultural is a cultural non-governmental organisation, with more than 180,000 members and 59 years of history. Òmnium is one of the main non-profit entities in Spain and one of the most relevant cultural entities in Europe. In Catalonia, Òmnium is a pillar of the promotion of Catalan language and culture, education, social cohesion, and a defender of civil rights, especially freedom of speech and peaceful assembly.

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CONTRY - SPAIN

1. Justice System

a) Independence

- Appointment and selection of judges, prosecutors and court presidents

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- Irremovability of judges, including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

The disciplinary powers in the Spanish Judiciary are held by a body, the General Council of the Judiciary (CGPJ), whose membership is appointed by the legislative arm. It is a politicised governing body, highly conditioned by the decisions of the major political parties that control the central institutions of the state.

In addition to that, as we mentioned last year, the high level of politicization of this body has led, in the context of the political conflict between Catalonia and the state, to some judges being sanctioned with suspension and transfers after expressing certain political opinions (in the case of judge of the Audiencia Provincial, Santiago Vidal, who announced that he was taking part in an advisory role in the drawing up of a future Catalan constitution and whose suspension was decreed by the CGPJ in 2015, or the case of judge Frederic Vidal Grases, who was sanctioned in 2018 for criticising, in an internal chat between judges, the police charges during the referendum of 1st October 2017), but there is no record of sanctions over the expression of opinions of a Spanish unionist nature. This indicates irregular use of the Council's disciplinary powers in relation to the expression of political opinions by judges at different levels.

Another example is the one of the judge Antonio Narváez, from the Constitutional Court. He was one of the judges in charge of resolving appeal of the condemnation of the Catalan leaders in jail for organising the referendum of 1st October 2017. In a conference in November 2017, Narváez compared the Catalan referendum to the failed Coup d'état that Spanish military

forces performed in 1981, and during which they assaulted the Spanish congress with guns. The Catalan leaders' defense asked the Court to put him apart, because of his lack of impartiality, but instead of doing so, it was the judge who stepped back to avoid his dismissal (which, if the vote of the majority of judges had been against it, might have had consequences in a possible appeal in front of the ECHR).

- Promotion of judges and prosecutors

The promotions within the judiciary and of prosecutors are also decided by the General Council of the Judiciary and therefore their membership is subject to the balance between the two biggest Spanish parties when making appointments to the higher courts (Socialist Party and Popular Party), which are the ones that take final decisions on appeal in major matters. This also includes the appointment of the members of the different chambers of the Supreme Court. The decision to promote a judge to the Supreme Court does not depend solely on their academic and legal merits and abilities but there is obvious interference from other factors of a political nature and affinity to the political parties that control the central state institutions. For example, one of the most recent appointments to the Supreme Court, to the Criminal Chamber, one of the most important ones, is Vicente Magro Servet, who has sat as a senator for the Popular Party. Another of the recent appointments, Carmen Lamela, was prior to this appointment responsible for initiating some of the most controversial proceedings and the most heavily criticised by international human rights bodies, the case against the leaders of pro-independence civil associations Jordi Cuixart and Jordi Sànchez, and the imprisonment of the whole Catalan autonomous government following the referendum of 1st October 2017. The fact that Carmen Lamela was not a senior judge with an outstanding record or enjoyed any special prestige within the judiciary meant that her appointment as a Supreme Court judge could be seen as a reward for her role in the political conflict between Catalonia and the institutions of the Spanish state.

Also, during the last year, Mr Angel Hurtado was appointed as a Supreme Court judge. This position, the highest in the Spanish judiciary, is often given to great scholars, old judges with long and prestigious careers. In the case of Mr Hurtado, that's not the case: he is known for being the only judge in the tribunal that judged the greatest Spanish corruption scandal, the "Gurtel", that asked for the acquittal of the Popular Party (PP). While the CGPJ renovation is blocked due to the veto to judge José Ricardo de Prada, who signed the sentence condemning the Popular Party, the one who voted against that has been promoted by the current conservative majority of the CGPJ to the Supreme Court.

- Allocation of cases in courts

Problems:

- 1) *There is a special jurisdiction held by the Audiencia Nacional (National Court), a central court set up to deal with matters of particular legal and political importance, with rules on competence that are elastic and can be reinterpreted according to circumstances, with the power to take over matters that it is felt should NOT be tried in ordinary regional courts. A traditional way to do this is to classify the most radical forms of political dissidence as possible terrorist offences. This can lead to the criminalization of movements and can have a deterrent effect, so the political use of the figure "terrorism" to allocate a case in the National Court is constant, in Spain. In September 2019, for example, 9 members of a Catalan pro-independence platform called "CDR" were detained (and kept in prison for months, some until February 2021)*

under the accusations of terrorism, without any solid ground. Also, the more recent imprisonment of the rapper Pablo Hasel was decided by this Madrid court (instead of a regular judge in Lleida, where he lives), as he was sentenced to serve jail time for “glorification of terrorism” and “injuries against the Spanish crown”, another crime also judged by the National Court. This arrest has triggered weeks of demonstrations in Spain in favour of freedom of expression.

- 2) *A Supreme Court that can reinterpret the rules on competence to give itself the right to hear a case without any right of appeal, accountability or supervision of these decisions. In the case of the trial over the protests of 20th September 2017 and the referendum of 1st October the same year, the Supreme Court changed the previous criterion that this case was to be heard by the High Court of Justice of Catalonia in Barcelona in order to transfer the hearing to the Supreme Court in Madrid. In this sense, this is especially serious in the case of Jordi Cuixart, a civil society leader who has never held any political office, and who was unjustly judged in front of the Supreme Court, which can only judge elected officials accused of having committed crimes outside its autonomous community. His right as a natural judge, his right to appeal in the second instance and the individualization of his case were thus violated.*

This lack of competence of the Supreme Court, in addition, was acknowledged by the Belgian justice in 7 August 2020, and in 7 January 2021 (in a definitive ruling), in the frame of the extradition process of former Catalan Minister Lluís Puig, who is involved in the same judicial process that sentenced Mr. Cuixart to 9 years of prison. The Belgian Court of Appeal ruled that the only court allowed to ask for the extradition is the one competent to judge the facts, and that it was not the case with the Supreme Court. The Belgian Court of Appeal made references to the decision of the United Nations Working Group on Detention which also claimed that the Supreme Court was not competent.

- *Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)*

It has already been pointed out that the General Council of the Judiciary is chosen by the legislative arm, 10 members of Congress and 10 members of the Senate, and therefore there is extraordinary dependence and affinity with legislative power, at least in the period when the political colours coincide - they are appointed for five years and remain on extension until new appointments are made. This is particularly obvious in relation to the senior justices and the appointment of the central legal bodies of the state.

The clear political character of this body has been in the focus for more than two years now. Since 8 December 2018, the members of the governing body of the judiciary in Spain have been performing as acting members, as their mandate ended on that date. Since then, it has been impossible to reach a political agreement on its new composition, which is both an outrageous situation - it is a very important institution - and a worrying one - its members depend solely on a political decision.

In December 2020, an agreement was almost reached, but political forces decided to wait “after Catalan elections” (on February 14 2021) to resume talks.

- Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges
- Remuneration/bonuses for judges and prosecutors
- Independence/autonomy of the prosecution service

The prosecution service is a hierarchical body dependent on the fact that its head, the State Attorney General, is appointed by the central government and changes whenever there is a change of government. There is no independent prosecution service, nor is one envisaged either in the Spanish constitution or in the law governing the institution. They provide for precisely the opposite: each government's criminal policy is directed through the Attorney General's Office. This is currently clearly evident in that the current state attorney general, Dolores Delgado, was previously the minister of justice in a government also headed by Pedro Sánchez.

There have been clear examples of this lack of independence during 2020, the main one regarding the prison regimes of the Catalan leaders in jail. The main one is that the Prosecution has acted against every single permit they have asked for - to which they are entitled, as any other prison inmate -, asking for them to be revoked, on the basis that they have not conducted yet a “course” to learn “to respect the legality and the constitution”, and that as long as they don't regret for their actions and admit they committed a crime- in the case of Mr Cuixart, organizing a peaceful demonstration -, there is risk of “criminal recidivism”. This constitutes a clear ad hoc interpretation of the penitentiary code, directed solely to change an inmate's political ideas, and also an attack against the inmate's Right to a Defense, as the Prosecutor wants them to renounce their constitutional right to not plead guilty.

- Independence of the Bar (chamber/association of lawyers) and of lawyers
- Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

On June 13 and July 10, 2019, the United Nations Working Group on Arbitrary Detention made public two opinions regarding the provisional imprisonment of several Catalan social and political leaders accused of rebellion for organizing a peaceful demonstration. on September 20, 2017 (case of Jordi Cuixart, Jordi Sanchez, imprisoned since October 16, 2016, and Oriol Junqueras – https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_6.pdf)

and a referendum on self-determination on October 1, 2017 (case of Josep Rull, Joaquim Forn, Raül Romeva and Dolors Bassa -https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_12%20ADVANCE%20EDITED%20VERSION.pdf).

The UN WGAD determined that their pre-trial detention was arbitrary and that they should be released without delay, granting them the effective right to a compensation, and urged the Spanish Government to conduct a thorough and independent investigation into the circumstances with regard to their arbitrary deprivation of freedom, as well as the adoption of

the pertinent measures against those responsible for the violation of their rights. As it has been said, the Supreme Court did not comply with the opinion of the WGAD and after a few months sentenced all these people to between 9 and 13 years in prison for sedition.

It is significant to point out that, during 2020, none of the bodies that could act to comply with this opinion has done so. Neither the Prosecution, the State Attorney nor the Tribunal made any steps towards complying with the Opinion, which is binding for Spain. Nowadays, these Catalan prisoners people are the detainees in the EU for whom the WGAD has asked the immediate release, but the required state has not acted consequently.

b) Quality of justice

- Accessibility of courts (e.g. court fees, legal aid, language)
- Resources of the judiciary (human/financial/material)
- Training of justice professionals (including judges, prosecutors, lawyers, court staff)
- Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)
- Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)
- Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialization

c) Efficiency of the justice system

- Length of proceedings
- Other - please specify

2. Anti-Corruption Framework

a) The institutional framework capacity to fight against corruption

- List of relevant authorities (e.g. national agencies, bodies) in charge of prevention, detection, investigation and prosecution of corruption.

b) Prevention

- Integrity framework including incompatibility rules (e.g.: revolving doors)
- General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)
- Rules on preventing conflict of interests in the public sector.
- Measures in place to ensure whistleblower protection and encourage reporting of corruption.

- List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other).
- Measures taken to address corruption risks in the context of the COVID-19 pandemic
- Any other relevant measures to prevent corruption in public and private sector.

c) Repressive measures

- Criminalisation of corruption and related offences
- Data on investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards the implementation of EU funds
- Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g.political immunity regulation).

Juan Carlos I was king of Spain until the year 2014, when he abdicated in favour of his son, the current head of state.

From July 2018, public opinion became aware of the existence of possible illegal business carried on by Juan Carlos I during his time as head of state. On 15th March 2020 the current head of state recognised the existence of illicit funds in his father's name, explicitly stating his intention to renounce the inheritance because it was not "in accordance with legality or with the rectitude or integrity" of the crown and stripped him of the public allowance he had received. On 3rd August 2020 Juan Carlos I fled Spain, moving to live in the United Arab Emirates.

Spanish Courts have repeatedly stopped any investigation against Juan Carlos I and his allegedly fraudulent businesses, on the basis that the Article 56 of the Spanish Constitution grants the head of State total immunity.

In 2020, only after the public statements by the current head of state recognizing irregularities, on 5th June the Spanish attorney general's office issued a decree opening an investigation against Juan Carlos I, concentrating exclusively on actions taken after June 2014, i.e. since his abdication, considering all previous actions immune. No conclusion, decision or result of these proceedings has emerged publicly.

International public law has developed a considerable body of doctrine concerning the validity and withdrawal of immunity for heads of state in relation to their prosecution by other states. However, this is not currently the debate with regard to Juan Carlos I because it is the state he formerly headed that is called on to exercise jurisdiction. Article 56.3 of the Spanish constitution stipulates his inviolability and immunity from liability, but only in relation to the functions he performs as head of state, which must necessarily be endorsed by another state authority. Thus, it can be stated that an equivalence is established between immune actions and endorsed actions, which necessarily means the emeritus king is liable for actions without such endorsement. This interpretation is also the most in accordance with international

practice, which has made a distinction between official or public actions (ius imperii) and private actions of a commercial nature (ius gestionis), clearly excluding the latter from the institution of immunity.

*Under these criteria, this inviolability does not extend to actions that are not part of the exercise of his position and are illegal. Internationally it is an uncontested interpretation that *ratione personae* immunities lapse following the end of the exercise of their functions. The complete absence of investigation based on the inviolability of the emeritus king is against international law. Also contrary to international law is the investigation by the Spanish public prosecutor's office concentrating exclusively on actions after 2014 as those taken before the abdication are considered to enjoy immunity*

- Other – please specify

3. Media Pluralism

a) Media authorities and bodies

- Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies
- Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies
- Existence and functions of media councils or other self-regulatory bodies

b) Transparency of media ownership and government interference

- The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference
- Rules governing transparency of media ownership and public availability of media ownership information

c) Framework for journalists' protection

- Rules and practices guaranteeing journalist's independence and safety
- Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists
- Access to information and public documents
- Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse
- Other - please specify

4. Other institutional issues related to checks and balances

a) The process for preparing and enacting laws

- Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

- Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)
- Regime for constitutional review of laws.