

**QUESTIONNAIRE FOR THE PREPARATION OF THE CCJE OPINION
NO. 23 (2020):**

**“THE ROLE OF THE ASSOCIATIONS OF JUDGES
IN SUPPORTING THE JUDICIAL INDEPENDENCE”**

GENERAL

1. How many Associations of Judges exist in your country?

In Spain there are five associations, but from the point of view of the number of associated judges, the most relevant are three.

- a) For judges of all jurisdictions and all court levels _ Yes_____
- b) For judges of certain jurisdictions only _No_____
- c) For judges of certain court levels only _No_____
- d) Are there Associations of Judges on some other criteria (i.e. women judges)
_No_____

Total number of all types of Associations of Judges _ Five_____

MEMBERSHIP

2. What are the requirements for membership in the Associations of Judges?

Just to be a judge.
The regulations of the different associations foresee the possibility to reject a request for admission as an associate.

3. Are prosecutors members of the Associations of Judges?

No there are not (Prosecutors have their own associations)

LEGAL FRAMEWORK / OBJECTIVES

4. Which is the legal framework of the Association of Judges? Are there specific legal regulations (law, by-laws) which deal with the Associations of Judges in your country?

The Constitution establishes the right to association of judges.

There is a Law that rules the Right to Association, and judges are not excluded.

5. According to their statutes, what are the main objectives of the Associations of Judges? (please mark yes or no and indicate by "1", "2" and "3" the three most important objectives)

Defending and fostering the independence of judges and the judiciary	. yes 1
Defending and fostering the rule of law	Yes 2
Fighting for economic safeguards of judges	yes 3
Fighting for social and physical security of judges	Yes 3
Contribution to the development of the law	yes
Training of judges	yes
Ethics and accountability of judges	Yes 3
Involvement in judicial self-government, especially influencing the election of officers of self-government	yes
Media work	yes
Organising conferences	yes
International contacts and networking	yes
Other objectives (which)	yes . The provisions existing in their statutes are very wide

SUPPORT OF INDIVIDUAL JUDGES

6. a) How do the Associations of Judges interact with individual judges?

The associations have a territorial structure. Every one has a delegation in specific territories coincident with the territorial structure of the Administration of Justice; every judge decides voluntarily to be associated requesting his admission as an associate.

The territorial delegations are integrated in a national structure.

b) Can judges get assistance from the Association (which kind)?

Support for promotion (when necessary), legal assistance, information of legal provisions, insurance of civil liabilities, organization of conferences, receiving publications...

c) Do the Associations of judges defend individual judges (against what)?

Normally the association defends the judge from attacks to their independence, through public communications or requesting some reaction from the Council of the Judiciary.

Some associations provide, too, legal assistance to judges that are subject of judicial claims or disciplinary proceedings.

7. If there is an infringement of the independence of a judge or of the judiciary, by what means do the Associations of Judges react?

Mainly, through public communications or requesting the Council of the Judiciary to fulfil its functions in the defence of the judicial independence.

8. Is there any influence of the Associations of judges on appointment or promotion of judges?

Not on the appointment. Some associations have a kind of academy that facilitates the preparation for the examination that is necessary in order to be appointed as a judge.

They may have some influence on promotion in an indirect way. Promotion is in general ruled by law, but there are few positions (the most relevant) that precise a decision of the Council of the Judiciary. The Spanish Judiciary Council is composed by 20 members and 12 of them have to be judges. The Legislative Power select the 12 judicial members of the Council, between the judges that are candidates to this position. A single judge is entitled to present himself as a candidate, but he needs the support of a minimum number of judges. The associations can provide such support. In fact the associations are the ones that provide the largest support.

9. Is there any influence of the Associations of Judges in disciplinary procedures?

No, there isn't.

The Council of the Judiciary has the disciplinary power over the judges. The associations don't participate in the disciplinary proceedings, but they may have an indirect influence through the members of the Council that have been supported by an association for their appointment.

Some associations can provide legal assistance to the judge subject to disciplinary proceedings, when the judge requests it.

10. Is there any influence of the Associations of Judges on training?

Formal training of judges is one of the functions of the Council of the Judiciary, performed with public funding; in some occasions the Council requests the associations in

order to present training initiatives with public funding. In this way the association participates in training activities of the Council.

It is normal that associations organize informal training activities for their associates with their own funding

RESOURCES

11. Are there membership fees?

Yes.

12. What other resources are available for the Associations of Judges?

The Council of the Judiciary provides economic resources to the associations; the amount of the grant aid may depend on the number of associates.

The associations may receive donations or other kind of financial support from public or private institutions.

ADMINISTRATION OF THE ASSOCIATIONS OF JUDGES

13. How are the governing bodies, the secretariat and officers of the Associations of Judges selected?

The associations have different governing bodies.

According to their democratic functioning, the most important governing body is the General Assembly of all the associates that meet once every year or when necessary.

There are too, another reduced bodies with different names (Permanent Commission or Steering Committee, Secretariat or Executive Committee), composed by judges that have been elected in the General Assembly. Normally the members of this commissions or committees are responsible for different areas of activities of the association. In some association there is, too, a committee composed by the representing of the territorial structures (territorial delegations or sections).

Only in one of the associations is foreseen the position of President that has the representation of the association.

. The members of the Permanent Commission and the President or Chairman are appointed by the associates in the General Assembly.

There are, too, territorial structures (delegations or sections), with a lesser formal organization.

What is their term of office?

The President and the members of the permanent commissions are submitted to a term of office , normally of two years. They can be reappointed but with a limit of number of mandates (no more than one or two).

14. Are there restrictions as regards the number of terms of office for members of the governing bodies of the Associations of Judges, and if yes, how many terms and for how long

Yes, there is a limit, of two years.

There is the possibility for re-election, but for no more than two mandates (in some cases, only one)

15. Are there restrictions to become an officer of an Association of Judges?

It depends on the concept of "officer".

The members of the different committees have to be elected by the General Assembly , but fulfilling certain requirements. The regulations of the different association foresee the possibility of losing the condition of member of the committee other than the term of office.

There can be a certain administrative staff that is engaged by the association without any limit. Normally the engagements is performed through a labour contract.

The different members of the committees are responsible of different areas of activity (webpage, publications, training activities, speaker etc); they are not included in the administrative staff. These commitments depend only on their own decision (they are volunteers) and skills.

INTERACTIONS WITH STATE INSTITUTIONS AND POLITICAL PARTIES

16. How do the Associations of Judges interact with the parliament?

The only interaction happens in the proceedings for making laws, but in a very indirect way.

In case of laws that concern the Administration of Justice, the Ministry of Justice prepares a draft law, and in order to do so, the Ministry can ask a report (not binding) from the associations.

Are Associations of Judges involved in the process of law-making?

Only in the explained indirect way.

If yes, how (is this formal or informal)?

The associations are obliged to present the report, but their opinion is not binding.

17. How do the Associations of Judges interact with the government, especially with the ministry of justice?

The associations don't have a formal interaction with the Ministry of Justice, but frequently the Ministry request information or reports from associations.

There are regular meetings between the associations and the Ministry of Justice in order to discuss different topics, mainly the one that concern the salaries, pensions and courts administration.

18. a) How do the Associations of Judges interact with political parties?

There is not a formal interaction; the statutes of some associations proclaim formally their independence from political parties or trade unions (sindicatos). Judges cannot be members of a political party.

But amongst judges the opinion is that, in practice, there is a certain interaction through non transparent channels.

The Council of the Judiciary is a constitutional and autonomous body, composed of judges and other jurists, that exercises functions of government of the Judiciary in order to guarantee the independence of the judges in the exercise of the judicial function in front of all.

Actually the Legislative Power (in practice, the political parties that have a wide representation in the Legislative Power) appoints the members of the Council; such a way of appointment gives them a certain influence on them. The associations of judges want, too, to prevail or being relevant in the Council. such interest leads to a certain interaction with the political parties

b) Are certain Associations of Judges connected with certain political parties?

No association shall admit it. But there are some facts that lead to a different conclusion.

c) Is there an influence of party politics within the Associations of Judges?

No association shall admit it.

19. a) How do the Associations of Judges interact with the Council for the Judiciary?

They interact in different ways:

- Normally the 12 judicial members of the Council are associated and in most of the cases the association has supported their appointment as members of the Council.-

- The Council frequently request reports or information from the different associations.

-The Council in some occasions ask the cooperation of associations in training matters.

-The associations may requests the Council in order to fulfil its functions, through public communications;

- The associations are frequently very critical with the performance of the Council.

b) What is the role, if any, of the Associations of Judges in the selection of members of the Council for the Judiciary and/or presidents of courts and judges (please describe)?.

Judges that want to become members of the Council of the Judiciary have to present their candidature; in order to do so, they need to be supported by some colleagues (actually a short number) . The associations can support some of the candidates and in this case the candidate can have the support of a large number of colleagues.

The Presidents of Courts are appointed by the Council of the Judiciary and the association may have an indirect influence on such decisions through the vote of the judicial members of the Council that are associated to an specific association.

20. How do the Associations of Judges interact with the court administration and what, if any, are the problems in these relations?

Actually, court administration is ruled by the Ministry of Justice. The only interaction that associations may have is performed through the non binding reports or opinions that they provide under request of the Ministry.

Another way to interact is through non requested public communication or calling the judges to the strike or other way of protest.

The different courts are included in a territorial structure. The head of each territorial structure is the High Court of Justice. Every High Court of Justice has a non jurisdictional chamber (Government Chamber) that rules administrative matters and some of the may concern the court administration. One part of the members of the Government Chamber has to be elected directly by the judges of the territory and the associations have an important role in this elections, because with their organization the may concentrate the votes in a certain candidate. Normally the candidates to be members of the Government Chamber are presented by the associations.

INTERACTIONS WITH OTHER ORGANISATIONS

21. a) If there is more than one Association of Judges, how do they interact with each other?

Normally there is a high level of opposition between them, because everyone wants to prevail or to be more relevant. Only when there is a common interest and they want to show their strong disappointment to the Ministry of Justice or to the Council of the Judiciary they may reach agreements in order to show a common position.

b) If there is more than one Association of Judges, how other stakeholders deal with this fact?

22. How do the Associations of Judges interact with NGOs?

Through specific agreements.

23. How do the Associations of Judges interact with foreign or international organisations?

Through specific agreements. The associations can join international judicial organizations when it is appropriate according to their rules.

24. Is there a trade union, in which judges can be members? If so, what are the relations between this trade union and the association of judges?

Judges cannot join a trade union, it is forbidden by the law.

Associations of judges may have agreements with trade unions on certain topics; the more frequent concern the organization of conferences.

ETHICAL STANDARDS

25. Is there any influence of the Associations of Judges in establishing ethical standards?

Yes, the judicial ethical standards are foreseen in the statutes of all the associations.

26. Do the Associations of judges contribute to a further improvement of the justice system? How?

Improvement of Justice is, too, one of the main targets of all associations. Their contribution is performed through the reports or opinions requested in a formal way by the Ministry of Justice or by the Council of the Judiciary or in an informal way through communications done by the associations.

PERCEPTION

27. How does the public at large see the Associations of Judges?

The opinion is positive when they claim for the independence of justice, for the rule of law or for the improvement of justice.