



6TH MEETING OF THE CONSTITUTIONAL JURISDICTIONS OF SPAIN, FRANCE, ITALY AND PORTUGAL

QUESTIONNAIRE

1. Procedures and guarantees relating to appointments and the independence of the courts

The process of selecting and appointing constitutional judges is receiving special attention in many countries. Appointments are often the subject not only of institutional and political debate, but also of significant media coverage. Criticism and blockages that may arise during the appointment process, which undermine the perception of the independence and efficiency of the courts, are particularly relevant in these situations.

1.1 What is the procedure for appointing constitutional judges in your country?

As highlighted by its first president, Professor Manuel García Pelayo, the Constitutional Court of Spain, as a fundamental body of the State, derives its *status* and essential powers directly from the Constitution. Through the exercise of these powers, the fundamental political legal order projected by the Constitution itself is updated.

In relation to the legal status of this constitutional-jurisdictional body, the Spanish Constitution of 1978 establishes a series of requirements and guarantees of independence for its members. Firstly, there is a guarantee of diversity in the bodies involved in the appointment of its members, accompanied by a guarantee in the formation of the will of the parliamentary chambers. In this regard, Article 159(1) of the Spanish Constitution (SC) provides that the Court is composed of twelve members appointed by the King. Of these, four shall be nominated by Congress by a majority of three-fifths of its members, four shall be nominated by the Senate with the same majority, two shall be nominated by the Government, and two by the General Council of the Judiciary. There are two guarantees, guarantee of temporary irremovability: the judges of the Constitutional Court are appointed for a period of nine years [Art. 159(3) SC], and a professional guarantee: the judges are appointed from among judges, prosecutors, university professors, civil servants or lawyers, all of whom must be *jurists of recognised standing* with at least fifteen years' experience in the professional exercise [Art. 159(2) SC].

At the same time, a guarantee of democratic legitimacy is established, given that the members of the Constitutional Court are elected by the three branches of government—executive, legislative, and judicial—whose obedience to the Constitution it must monitor.

The Constitutional Court itself is responsible for verifying compliance with these requirements prior to the new judges taking office [Articles 2 (g) and 10 (i) of the Organic Law on the Constitutional Court: OLCC). Once this has been verified, the appointments are made by royal decree and, after publication in the Spanish official gazette (*Boletín Oficial del Estado*), those appointed take the oath of office before the King and take up their positions on the Court.

The constitutional provisions outlined above are supplemented by the provisions of the Organic Law on the Constitutional Court and the regulations of the Congress of Deputies and the Senate. In general, the legislature has introduced the following rules:

(a) Each of the bodies responsible for proposing the appointment of judges must guarantee “the principle of balanced representation of women and men”, so that they must include a minimum of forty per cent of candidates of each sex [Art. 16(1) OLCC, introduced by Organic Law 2/2024 of 1 August 2024]. In practice, this should mean that judges are appointed on an equal basis.

(b) Immediate renewal of the term of office is not possible, with the sole exception that the judge has not completed even the first third of their term. According to Art. 16(4) OLCC, “[n]o Judge may be nominated to the King for a second consecutive term unless he or she had held office for the period of not more than three years”.

(c) Finally, any delays that may occur in the partial renewal by thirds (the Government and the General Council of the Judiciary together make up one third; the other two thirds are appointed on the proposal of the Congress of Deputies and the Senate, respectively) “the time delay in the renewal shall be reduced from the term of office of those [judges] appointed” [Article 16(5) OLCC, introduced by Organic Law 8/2010 of 4 November 2010].

With regard to appointments proposed by the parliamentary chambers, in both cases the candidates must appear before the respective appointments committee [Art. 16(2) OLCC], a provision specified by the regulations of the Congress of Deputies and the Senate. In the specific case of the Senate, Article 16(1), second paragraph, establishes that it shall choose among candidates submitted by Legislative Assemblies of the Autonomous Communities in the terms provided by the House’s Rules, with the aim of reflecting the autonomous structure of the State in the Constitutional Court.

Law 50/1997 of 27 November 1997, on the Government, is silent on the procedure to be followed by the Government in selecting its two candidates for judges of the Constitutional Court. In the case of appointments proposed by the General Council of the Judiciary, the Organic Law on the Judiciary merely attributes the power to the Council as a whole and establishes the need for a three-fifths majority for the adoption of the corresponding agreement [Article 599(1)(1)]. This means that the favourable votes of thirteen of the twenty-one members of the Council are necessary to proceed with the election of the two judges of the Constitutional Court who are the responsibility of this governing body of the Judiciary.

As already indicated, appointment as a judge of the Constitutional Court is for a term of nine years. Upon joining the Court, the president and vice-president are elected by a vote of its members, requiring an absolute majority in the first ballot and a simple majority in subsequent ballots. If the tie persists, the most senior judge is appointed (Art. 9 OLCC). The election is for a term of three years. If the end of this term does not coincide with the renewal

of the Court, the term of office “shall be extended to the end at the time of such renewal occurs and the new judges take up the post.” [Art. 16(3) OLCC].

1.1. Has the process of appointing constitutional judges to your Court ever been blocked? If so, can you explain why?

The Constitutional Court, created by the Spanish Constitution of 27 December 1978, was regulated by Organic Law 2/1979 of 3 October 1979 (OLCC). The first appointments took place in February 1980 and the Court began its jurisdictional activity on 15 July 1980. However, it had to do so with an incomplete number of judges because, as the General Council of the Judiciary had not yet been established, this body was unable to propose the two judges corresponding to it until November of that same year.

The first partial renewal of the Court was carried out by the Congress of Deputies in accordance with the provisions of the ninth transitional provision of the Constitution and the third transitional provision of the Organic Law on the Constitutional Court (according to these transitional provisions, the decision as to which third should be renewed was made by drawing lots; each of the blocks appointed by the parliamentary chambers —Congress and Senate— formed one third, and the two appointed on the proposal of the Government were added to the two appointed on the proposal of the General Council of the Judiciary to make up the remaining third). This partial renewal should have taken place in February 1983, but was delayed until 24 October of that same year.

The second partial renewal (Government and General Council of the Judiciary) took place on schedule in February 1986. The same happened with the third one (Senate) in February 1989. The fourth partial renewal (Congress) was delayed by a few months, from February to July 1992. The fifth partial renewal (Government and Council) was also slightly delayed, from February to April 1995.

The delay in the sixth partial renewal (Senate) was greater, lasting ten months, from February to December 1998. The seventh partial renewal (Congress) was delayed by four months, between July and November 2001. The eighth partial renewal (Government and Council) suffered a slight delay of two months, between April and June 2004, directly related to the legislative elections held in March of that same year.

It is from the ninth partial renewal (Senate) onwards that the delays reach an unprecedented scale. Specifically, this partial renewal was delayed by three years (December 2007 to December 2010). The tenth renewal (Congress) suffered a delay of almost two years (from November 2010 to July 2012).

The time discrepancies had reached such extent that the legislator had been forced to pass Organic Law 8/2010 of 4 November 2010, according to which, “if there is a delay in the renewal of one third of the judges, the time delay in the renewal shall be reduced from the term of office of those judges appointed”.

This amendment did not affect the eleventh partial renewal (Government and Council), which took place on schedule (June 2013, i.e. upon the expiry of the nine-year appointments issued in June 2004). On the contrary, it did affect the twelfth partial renewal (Senate), which

took place in March 2017 for judges who had been appointed in December 2010 and who, therefore, had not even served seven years in office.

The thirteenth partial renewal (Congress of Deputies) was again delayed, by four months between July and November 2021. The fourteenth and final renewal (Government and Council) was delayed by six months, between July and December 2022.

The delays in the partial renewals of the Court were due to different causes, which, in any case, can be grouped into two main categories:

- a) In principle, the delays in the appointments corresponding to the Government and the General Council of the Judiciary were due to the holding of elections or the renewal of the very bodies that were to make the proposals. As was the case with the initial constitution of the Court, this delay in the renewal of the proposing body inevitably carried over to the renewal proposal.
However, in the case of the fourteenth partial renewal, the cause of the delay can be found in the institutional deadlock suffered by the General Council of the Judiciary. The term of office of the members of the Council is five years, in accordance with the provisions of Article 122(3) of the Constitution, and yet the Council appointed in December 2013 could only be renewed in September 2024.
- b) As for the delays suffered by the parliamentary chambers, the plausible explanation lies in the difficulties in reaching a consensus on appointments. This is without excluding a certain degree of tactical manoeuvring that in no way benefits the Court.

1.2. Is the process of appointing constitutional judges within your Court the subject of particular attention and/or criticism that negatively affects the perception of your Court's independence?

1.2.1. If so, is it frequent (and have you noticed any change in frequency)?

1.2.2. If so, to what extent (if at all) has this criticism influenced the perception of certain decisions of the Court?

1.2.3. Does the criticism of procedures or decisions relate to specific issues or public policies? Does it refer to specific actors (or other specific characteristics observed)?

1.2.4. What has been the specific impact on the functioning of the Court?

1.3. Do you identify any tools (institutional, legislative, case-law, educational, communicative or other) that could be used to overcome these situations?

Joint response:

The process of appointing judges to the Constitutional Court is a matter of great public importance due to its impact on the functioning of the institution. Given that judges are responsible for guaranteeing the supremacy of the Constitution and the effectiveness of fundamental rights, it is of the utmost importance to know the names, backgrounds, training and other aspects that allow the profile of the candidates to be identified. For this reason, each

appointment process is widely covered, both by the traditional media and, more recently, by social media users.

This extensive coverage has led to the debate on appointments transcending the institutional spheres in which decisions are made—the legislative chambers, the government, and the General Council of the Judiciary—and extending into the public sphere. Thus, the debate on potential new judges has been enriched by the participation of various sectors of society, including academics, jurists, journalists, and citizens. As a result, the appointment process has become an important moment in the constitutional debate, in which not only the individual profiles of the candidates are discussed, but also conceptions of the role of the Court in democratic life and in the protection of rights.

Of course, this openness to public scrutiny has had mixed effects. On the one hand, it has helped to strengthen transparency and accountability, fostering greater social understanding of the role of the Constitutional Court. On the other hand, it has introduced tensions arising from the increasing politicisation of the debate, highlighting the need to preserve the prestige and institutional independence of the Court.

In addition to public debate, the process of appointing judges to the Court has been subject to constant scrutiny by academic doctrine. Numerous studies have analysed the evolution of appointment mechanisms, the influence of political balances on renewals, and how these factors affect public perception of judicial independence. On this basis, both academia and civil society have formulated various proposals on the system for appointing constitutional judges.

For example, it has been suggested that the current model of renewals by thirds be replaced by an individualised appointment system, so that each vacancy is filled as it arises, thus avoiding possible delays in renewals due to a lack of agreement on any of the appointments. It has also been proposed that independent commissions should be involved in the election process, that the requirements for becoming a judge of the Court should be increased, and that criteria of inclusivity (gender diversity, origin, professional experience, among others) should be incorporated. This last proposal has been reflected in the amendment of the Organic Law of the Constitutional Court by Organic Law 2/2024 of 1 August 2024 on equal representation and balanced presence of women and men, which introduced the following paragraph in Article 16(1) OLCC: “Each of the bodies responsible for making the proposed appointments [Congress, Senate, Government and General Council of the Judiciary] shall guarantee the principle of balanced representation of women and men, so that they include at least forty per cent of each sex.”

Needless to say, there have been many voices calling for a reduction in partisan intervention in the selection of members of the Court.

Finally, while it is true that there has been criticism of the procedure for electing judges to the Constitutional Court, it is also true that this criticism has not led to any interruption in the normal activities of the Court as an institution, nor has it affected the exercise of the office of individual judges. This is particularly true because the Organic Law itself already provides for a mechanism that guarantees the continuity of the Court’s activities through the so-called *prorrogatio* of functions. According to Article 17(2) OLCC, “[t]he Judges of the Constitutional Court shall remain in office until their successors take up office”.

A good example of the impact that social perception of partial renewal procedures can have on the functioning of the Court itself is provided by the recusals of judges. A study of the recusal incidents formalised between 2010 and 2025 shows that there is no clear correlation between the number of recusals filed and the possible difficulties faced by the Constitutional Court as a result of the delays occurred in successive partial renewal processes.

For example, the longest delay to date (2007-2010), suffered by the judges appointed on the proposal of the Senate, did not result in an increase in the number of recusals to the judges actually appointed in 2010. The same could be said of the election of judges in 2019 by the Congress of Deputies.

It therefore does not seem reasonable to infer that recusals—which, if successful, have an impact on the functioning of the Court—are due to criticism related to delays in the process of appointing constitutional judges. Instead, they tend to be linked to the types of cases brought before the Court, their subject matter and their legal and social significance. In any case, it should be noted that the vast majority of recusals are inadmissible or dismissed. Therefore, even though there have been times when a high volume of recusals has been filed, this has not meant that the Court has removed the recused judges from hearing the corresponding case.

This reinforces the position that the Court functions autonomously and independently despite criticism and actions that may affect the normal course of its activities.

As for possible tools to prevent or mitigate damage, it is worth emphasising the existence of an extension of the judges' terms of office. The so-called *prorrogatio* [Art. 17(2) OLCC] allows the body to maintain its full composition until the partial renewal takes place and guarantees its continued functioning.

1.4. What guarantees exist to preserve the independence of your Court?

The independence of the Spanish Constitutional Court is not conceived solely as a normative proclamation, but as a structural condition of constitutional jurisdiction and an indispensable guarantee for the fulfilment of its function, which is to ensure the supremacy of the Constitution and the effective enforcement of fundamental rights. Its preservation rests both on express legal guarantees and on institutional elements that consolidate its autonomy from public authorities and any external influence.

The constitutional basis for this independence is found in Article 159 of the Spanish Constitution, which establishes the Court as an autonomous body, separate from the other powers of the State. The system for appointing judges, which distributes the powers of appointment between the Congress of Deputies, the Senate, the Government and the General Council of the Judiciary, responds to a logic of institutional balance and distribution of power and influence. No single authority can determine the composition of the Court on its own, which prevents its capture or political alignment. The partial renewal every three years and the long term of office (nine years) reinforce the stability of the body and isolate it from partisan circumstances.

In addition, a personal statute for judges is designed to ensure their individual independence. Irremovability during their term of office, strict limitations on the grounds for dismissal and a particularly rigorous regime of incompatibilities constitute guarantees that

exclude any hierarchical subordination or functional dependence. The oath to exercise the office “with independence and objectivity” is not a mere formality, but the expression of an institutional commitment to impartiality as the guiding principle of constitutional control.

The Court also enjoys full organisational and budgetary autonomy. Its ability to issue its own internal regulations, organise its services and draw up its draft budget guarantees a space for institutional self-government. Functional independence is decisively manifested in the binding and definitive force of its rulings. The Court’s decisions are not subject to review or control by any other body—with the exception of possible subsequent control of State action by supranational treaty enforcement bodies—and are binding on all public authorities, thus ensuring its position as the supreme interpreter of the Constitution.

However, formal guarantees would be insufficient without established institutional practices and a legal culture that reinforce independence in the day-to-day application of the law. Collegial deliberation, the requirement to provide reasons for rulings and the publication of decisions contribute to preserving transparency, objectivity and public control over the exercise of constitutional jurisdiction. These elements, together with the stability of its case-law and the self-restraint that the Court itself has developed, constitute not only legal independence, but also practical and case-law independence.

1.5. Does the Court find that certain networks or partners (institutional, case-law, civil society, etc.) are useful in addressing the criticisms levelled at it? If so, how is this showed?

The Court observes that some networks, particularly academic and jurisdictional ones, have been especially useful in addressing criticism of the institution and its decisions. The contributions of the members of these networks have made it possible to reinforce the arguments adopted by the Court in some decisions, which shows that these are positions shared by other important legal actors and that, consequently, they do not reflect a subjective and arbitrary conception of the law on the part of the Court. Where appropriate, they have led to a process of internal reflection that has made it possible to update, supplement or modify lines of case-law.

The Constitutional Court participates in the European Commission for Democracy through Law (Venice Commission), a body for cooperation between constitutional courts and bodies with equivalent jurisdiction, through which members submit queries on legal issues in order to find out how they are addressed in other countries. The responses provided within the framework of this network do not condition the Court’s position, nor are they a parameter for constitutionality control, as recalled in Constitutional Court judgments (CCJ) 197/2014, of 4 December 2014, and 15/2015, of 5 February 2015. However, they provide information that allows the Court to learn about different practices and points of view on the same legal issue, so that they can be taken into consideration when formulating decision criteria.

In addition, the Spanish State recognises the jurisdiction of the European Court of Human Rights, whose case-law is incorporated quite naturally into the rulings of the Spanish Constitutional Court. Furthermore, a network of higher courts has been created within the European Court to enable the exchange of information and experiences.

What is relevant, therefore, is not the use of *soft law* instruments, not even as interpretative parameters. What we are trying to point out is that (i) participation in these networks allows for the creation of a “case-law corpus” that underpins decisions—notably, the citation of ECHR case law and the transfer of any criticisms to this *ius commune*—; and (ii) the basis in the reports of these networks, due to their special relevance, notoriety and prestige, allows criticism to be dissociated from strictly national dynamics. Thus, for example, in the aforementioned CCJ 137/2025 of 26 June 2025, which ruled on the appeal of unconstitutionality filed against the Amnesty Law, it used the citation of a commission report as a kind of argument from authority:

“The reasons that may lead the legislator to dispose of their *ius puniendi*, renouncing the exercise of this right in order to deal with a specific exceptional context, may be very diverse and, in any case, both case-law and historical and comparative experience highlight that the aims of reconciliation or political pacification are characteristic of amnesty laws, *as recognised, in particular, the opinion of the European Commission for Democracy through Law (Venice Commission) adopted at its plenary session on 15-16 March 2024, § 80*” [point of law 8(3)(3); emphasis added].

2. Direct and indirect effects of institutional and political crises on the functioning of courts and the perception of their decisions

The blocking of appointment processes can lead to institutional crises, sometimes lasting ones, which have a demonstrated or perceived impact on the role, functioning, resources and/or perception of courts by third parties.

Beyond their composition, the decision-making process and the decisions themselves may be subject to attacks and criticism regarding the positioning, composition, functioning or reasoning of the courts. These may also affect, in various ways, aspects such as their image, functioning, effectiveness or perception by the public and other institutions.

2.1. Has your court ever experienced an institutional or political crisis that has had an impact on its functioning or the perception of its decisions?

2.1.1. If so, could you describe one or more situations?

The Constitutional Court of Spain has experienced institutional crises of two different kinds: on the one hand, crises that may have been caused by delays in the appointment of judges; on the other, crises arising from criticism of the functioning of the Court and its decisions.

It is important to distinguish between criticism—which is both common and legitimate—directed at the composition of the Court and criticism arising from its decisions. Among the first type, it is worth mentioning (as will be discussed in the following sections) the crisis that arose between 2008 and 2011 due to the failure to renew the Court and the amendment of the Organic Law on the Constitutional Court, which meant that the then president remained in office after the three-year term for which she had been elected had expired. Another crisis, which occurred between 2021 and 2023, included an attempt at legal reform due to the delay

in renewing the General Council of the Judiciary, which in turn led to a delay in the partial renewal of the Court.

Among other crises, it is worth noting the “crisis” arising from the Court’s workload — with significant delays in the examination of cases— which led to the reform of the OLCC by Organic Law 6/2007, resulting in the inclusion of the requirement of “special constitutional significance” for the admission of appeals for constitutional protection or *amparo* (its interpretation can be found in CCJ 155/2009 of 25 June 2009, point of law 2. Organic Law 6/2007 represented a paradigm shift, so that, in contrast to the traditional presumption in favour of admitting appeals, it was decided to objectify the *amparo* process, so that only those cases that allowed the Court to review, complete or modify its case-law; counter normative or jurisprudential interpretations contrary to the fundamental rights protected by the Constitution, or guarantee the general effectiveness of its rulings, deserve to be admitted and studied in the form of a judgment.

The impact caused by the challenge to the constitutionality of the reforms of the statutes of autonomy (CCJs 247/2007 of 12 December 2007, Statute of Autonomy of the Valencian Community, and 31/2010 of 28 June 2010, Statute of Autonomy of Catalonia) has resulted in the amendment of the Organic Law of the Court through Organic Law 12/2015 of 22 September 2015, which introduced the preliminary appeal of unconstitutionality with respect to the draft approval and reform of the Statutes of Autonomy. It should be noted, however, that the so-called preliminary appeal can only be lodged after parliamentary approval of the text and before its entry into force or submission to a referendum, as the case may be.

2.1.2. If so, what was the real or perceived impact

- on the functioning of your Court?

The contours of the real impact on the functioning of the Court can be seen in three areas: (i) the increase in recusals and abstentions by judges, which matches the moments when cases of greater political and media significance are brought before the Court; (ii) the increase in dissenting opinions; and (iii) in certain specific episodes, which are particularly illustrative.

With regard to the increase in dissenting opinions, it should be noted that their formulation may respond to very diverse reasons and that, in quantitative terms, the existence of some of the crises outlined above may have had some impact.

It is true that, limited to recent years, there are no particularly significant trends in relation to the formulation of opinions: in the period 1993-2008, the percentage of dissenting opinions fluctuated between 10.05 per cent in 1993 and peaks of 19.61 per cent in 2004.

However, in 2010, 25.20 per cent of decisions included a dissenting opinion (with an extraordinary decline the following year to 8.27 per cent), becoming increasingly common in subsequent years —coinciding with greater polarisation, delays in the election of judges, and the admission of cases of high media significance—. Between 2012 and 2024, in most years, dissenting opinions were issued in around 30 per cent of judgments, with the highest number

of opinions and decisions with dissenting opinions (in relative and absolute terms) being reached in 2023.

The fact that, over the last 14 years, up to 2024, on average, 25.80 per cent of rulings have had a dissenting opinion; while in the immediately preceding period, the average was 15.40 per cent, however useful this may be, it does not allow us to speak of a correlation between institutional crises and trends in the issuance of dissenting opinions. If anything, such a correlation can be inferred with greater certainty when analysed in relation to rulings issued in proceedings that seek the objective purification of the legal system and therefore exclude appeals for *amparo*, which are more closely linked, as befits their nature, to the redress of specific violations.

in the perception of the role and decisions of the Court?

Indeed, the role of the Court and some of its decisions have been widely commented on, establishing a supposed causal relationship between the lack of renewal, or a certain composition of the Court—which is argued to have varying degrees of permeability to different political sensibilities—and the meaning of decisions with significant social impact.

However, it is vital to make the difference between those criticisms that arise from the delays in renewing the Court and the delays in resolving cases due to their accumulation. In this regard, it is worth highlighting the particularly notorious delay in the resolution of the appeal of unconstitutionality filed by a parliamentary group regarding Organic Law 2/2010 on sexual and reproductive health and voluntary termination of pregnancy, which was not handed down until 2023, thirteen years later.

To the extent that many of the cases before the Court have media and political implications (due to the nature of the conflicts it resolves), and given that the positions involved are highly polarised, this does nothing to promote an image of independence and impartiality, an aspect that can be exacerbated when situations such as those described above arise. To this extent, the decisions of the Constitutional Court may not be criticised precisely because of the interests at stake and because judicial rulings are not always assessed with the desired impartiality and calm.

in relations between your Court and other institutions?

Beyond the institutional crises mentioned above, it is worth noting a significant institutional crisis that affected relations with the Supreme Court, which was caused by ruling 51/2004 of 23 January 2004 of the First Chamber of the Supreme Court. On the occasion of the dismissal of an appeal for *amparo* by the Constitutional Court, the Supreme Court declared the eleven judges who made up the Constitutional Court at the time of issuing the ruling to be liable for civil damages. In the opinion of the First Chamber of the Supreme Court, the judges of the Constitutional Court had acted negligently and with “absolutely unlawful conduct”. The constitutional judges filed an appeal for *amparo*, which was upheld by CCJ 133/2013 of 5 June 2013 (by which time the Court had been completely renewed). In turn, the legislature amended Article 4(2)

OLCC through Organic Law 6/2007 to ensure that no ruling of the Constitutional Court could be prosecuted by any other state body. This episode, perhaps the one with the greatest media impact, is indicative, first of all, of some of the crises that the Court has gone through, arising from criticism of its rulings (the most intense manifestation of which can only be the attribution of civil liability for negligence, which represents a qualitative leap from mere disagreement with the legal content of the ruling); and, secondly, it reveals how criticism of certain criteria set out in its rulings can crystallise into tense relations between the Court and other institutions (such as the Supreme Court).

in relations with the media and in the media's perception of it? Others: please specify

2.2. Have you identified any tools (institutional, legislative, jurisprudential, educational, communicative or other) that could be used to anticipate, avoid or overcome such situations of institutional deadlock or misperception of your Court's procedures and decisions?

2.2.1. If so, can you specify what they are?

2.2.2. Are they applied by the Court or other institutions? If so, how do they work?

2.3. What efforts are made after these crises and to what end(s) for the Court?

(a) Institutional tools (technical-legal and operational)

- Staggered renewal and continuity of judges: The Constitution provides for nine-year terms for Constitutional Court judges, with one-third being renewed every three years. This design ensures continuity within the renewal process, with outgoing and incoming judges at the same time, thus guaranteeing continuous experience and stability. Furthermore, when renewal is delayed due to a lack of political agreement, judges remain in office until they are replaced, avoiding vacancies and allowing the Court to continue operating without paralysis [the aforementioned *prorrogatio*, Art. 17(2) OLCC]. This institutional rule has prevented a power vacuum even in periods of prolonged deadlock in Court appointments.
- Jurisdictional procedures for resolving deadlocks: The Court has specific procedural channels for resolving conflicts between branches of government. For example, conflicts of jurisdiction allow the Court to settle disputes over powers (e.g., if one branch fails to fulfil its constitutional duty to appoint or encroaches on the functions of another) through binding rulings. Likewise, the Court may adopt extraordinary precautionary measures —such as the temporary suspension of contested laws, agreements, or acts— to prevent irreversible damage to the constitutional order while the merits of the case are being decided. This type of precautionary intervention, although unusual, has been used in extreme situations to prevent the crisis from worsening (see 2022, when the Court provisionally suspended parliamentary proceedings on a reform initiative that substantially altered the regime of partial

renewals of the Court). With these jurisdictional tools, the Court can halt actions that deepen an institutional deadlock until their constitutionality can be assessed.

- Constitutional loyalty and cooperation between bodies: Beyond the written rules, the Court has emphasised the need for loyal collaboration between institutions as a guiding principle to avoid deadlocks. In practice, this means that political actors must fulfil their constitutional functions (e.g., renewing bodies on time) with a sense of statehood, putting institutional functioning before partisan interests.
- Political agreements to speed up renewals: Ultimately, an effective solution to a deadlock usually requires political will. The Court has pointed out that delays in appointments are a problem to be resolved by the powers responsible, implicitly urging consensus. A recent example was the agreement reached in 2023-2024 between the main parties for the simultaneous renewal of several constitutional bodies, including the General Council of the Judiciary, after almost five years of delays.

(b) Legislative tools (regulatory reforms to prevent deadlock)

- Legal reforms to unblock appointments: Regulatory changes adopted are explicitly aimed at preventing or correcting deadlock in the renewal of the Court. In 2022, for example, the Organic Law on the Judiciary was reformed, introducing an exception that enables the General Council of the Judiciary to propose the two judges of the Constitutional Court that correspond to it, even as an acting plenary, with a maximum period of three months from the expiry of the previous term (Articles 570a and 599). This reform circumvented the effects of the political deadlock in the Council (whose term of office had expired years ago) and allowed for the partial renewal of four judges of the Court that was pending. As a result, in January 2023, the appointment of new members of the Constitutional Court was completed, altering the internal majority and restoring regularity to the body. The Court itself subsequently endorsed the constitutionality of this legal reform by dismissing an appeal of unconstitutionality, implicitly recognising that this legislative route was legitimate and effective in overcoming the institutional deadlock in its composition.
- Legal limits to force renewal and proposals for improvement: Other reforms sought to create incentives to avoid prolonged deadlocks. For example, in 2021, a law was passed prohibiting the acting Council from making appointments to the top ranks of the judiciary (including the Constitutional Court) until its own body was renewed. This pressure tactic was intended to promote a parliamentary agreement to renew the Council, while preserving the appearance of independence in expired bodies. However, it had unintended side effects, such as the accumulation of numerous vacancies in the Supreme Court due to the impossibility of filling them during the interim period. Given the persistence of the deadlock, broader structural reforms have been proposed in the political and legal debate—for example, modifying the system for electing Council members (returning to a model in which judges elect some of its members, or reducing the required parliamentary majorities)—to make the procedure less vulnerable to the lack of consensus. However, such proposals have not yet been successful.

- Sanctioning power to ensure compliance: An important tool introduced through legal reform is the Court's ability to enforce its own rulings in the face of attempts at contempt. Organic Law 15/2015 gave the Court mechanisms to impose coercive fines and even suspend public authorities or employees who disobey its rulings. In practice, this power has been used to overcome serious challenges to the constitutional order: for example, during the Catalan crisis of 2017, the Constitutional Court imposed coercive fines of up to €12,000 per day on members of the regional administration (members of the "Electoral Syndicate" of the illegal referendum) who ignored the suspension ordered by the Court. These sanctions, together with the eventual suspension of officials who continued in contempt, were instrumental in curbing acts contrary to the Constitution and ensuring the real effectiveness of the Constitutional Court's decisions.

(c) Case-law tools (Court case-law and jurisdictional solutions)

- Constitutional case-law to facilitate institutional normality: The case-law of the Constitutional Court has developed principles that serve as a guide to prevent and correct situations of deadlock. In its reasoning, the Constitutional Court often invokes the requirement of constitutional loyalty and cooperation between powers, derived from the spirit of the Constitution and the principle of separation of powers.

(d) Educational tools

- Institutional visits and educational workshops: The Court has opened its doors to the public through guided tour programmes and educational activities. Groups from universities, secondary schools, civil associations and other institutions can request visits to the Court to learn first-hand about its headquarters, its history and how it operates. During these visits, organised for educational purposes, Court staff — sometimes even judges or counsels— explain the constitutional procedure and the guarantees surrounding it, and answer questions, thereby bringing the work of the Court closer to citizens.
- Academic collaboration and dissemination of case-law: The judges of the Court, as well as its counsels, frequently participate in academic forums, seminars and conferences on constitutional law, both nationally and internationally. In 2025, the Constitutional Court hosted the 6th World Conference on Constitutional Justice, held in Madrid from 28 to 30 October. Representatives from 85 constitutional courts and bodies with equivalent jurisdiction from different continents attended. The Court publishes both the proceedings of the conferences of the Association of Counsels of the Constitutional Court and the Francisco Tomás y Valiente Award, which is given annually. Obviously, specialised journals (Revista Española de Derecho Constitucional, Teoría y Realidad Constitucional, Revista General de Derecho Constitucional, among others) give full coverage to the rulings of the Constitutional Court that academic doctrine considers particularly worthy of study.

(e) Communication tools.

- Institutional communication policy. In recent years, the Constitutional Court has developed a proactive communication strategy to give greater visibility and transparency to its activity, thus anticipating inaccurate interpretations of its decisions. The Court has a Press Office that prepares press releases and official communications on its activities, with special attention to the most relevant rulings. These notes — written in clear language, with summaries of the background, legal issues, and ruling— are publicly disseminated through the Court’s official website and social media channels. In fact, the Spanish Constitutional Court has a presence on platforms such as Twitter (now X) and Instagram, where it publishes links to its press releases and notices of important rulings.

3. Issues of exposure and communication in the face of criticism and crisis.

Public communication is essential to give greater visibility to the courts and reinforce the confidence that public authorities and citizens have in their role and functioning. In the face of criticism, obstacles or crises, sometimes also driven by actors and the media, communication by the courts in particular is a strategic issue that has been little studied by commentators, despite its fundamental role in disseminating information about the decisions and activities of constitutional courts in general.

3.1. Has your court ever been the subject of criticism questioning its legitimacy or that of its decisions? If so, by whom (public authorities, media, jurists, public opinion, etc.) and by what means?

Since its creation, the Court has been the subject of different criticisms. First, there has been criticism of what some have considered to be an overreach by the Constitutional Court in admitting cases that should have been dealt with—in the opinion of its critics— by other courts. Such is the case of so-called ‘excesses of jurisdiction’: by its very nature, any criticism raised as an excess or defect of jurisdiction calls into question the legitimacy of the Court.

There has been no shortage of criticism of the positions taken by some judges, positions that did not correspond to the expectations of those same critics.

Of course, there have been critical opinions regarding the Constitutional Court’s response times. This was the case with CCJ 31/2010, of 28 June, which ruled on the appeal of unconstitutionality filed against various provisions of Organic Law 6/2006 of 19 July 2006, reforming the Statute of Autonomy of Catalonia, and which took almost four years. The resolution of the appeals of unconstitutionality filed against Organic Law 4/2015 of 30 March 2015 on the protection of public safety took five years (CCJs 172/2020 of 19 November 2020 and 13/2021 of 28 January 2021). Finally, CCJ 44/2023 of 9 May 2023, which resolved an appeal of unconstitutionality filed against various provisions of Organic Law 2/2010 of 3 March 2010, on sexual and reproductive health and voluntary termination of pregnancy, was handed down a few days before the thirteenth anniversary of the filing of the appeal.

By way of example, we can cite statements by politicians (*“The Constitutional Court is the cancer of democracy”*; *“One of the problems our country has now is the configuration of the Constitutional Court”*; *“Most citizens, myself included, have serious doubts about the objectivity of the Constitutional Court”*, etc.).

Criticism has also been levelled by members of the government (describing a court ruling as *“case-law musings”*).

On the other hand, it is common for law professors or emeritus judges of the Constitutional Court to express dissenting opinions on rulings.

3.2. Have you ever responded publicly or considered responding to such criticism or crises? If so, can you give an example and explain the reasons that led you to respond or not to respond?

The Constitutional Court as such pronounces itself through its court orders and judgments. This limitation on the Court’s jurisdictional activity is perfectly compatible with the fact that its president may give interviews in which he promotes the legitimacy and public confidence in the institution through transparency and the dissemination of constitutional values in an accessible manner.

Public responses by the Court are exceptional. It does not normally react to opinions or criticism. On the occasions when it has responded, it has been to refute verifiable facts.

The last time a public statement was issued in response to information published in the press was on 1 July 2025 (press release 62/2025). It refuted a news item that referred to a judgment whose rapporteur had been “hand-picked”. The Court explained that it was done in accordance with the Plenary’s reassignment schedule of rapporteurs, as recorded in an order signed by the Secretary of Justice. The reason for this response was to clarify and make public an objective and verifiable fact that was being questioned. This serious accusation not only damaged the Court’s image of impartiality but also implied unlawful conduct.

3.3. What strategies has your Court implemented in terms of communication in general, or crisis communication more specifically, to anticipate and deal with this type of situation? How does this translate into practice according to the Court’s experience?

The Constitutional Court has a press office, which reports to the Office of the President, and works on a daily basis on institutional communication. The daily work of this office includes the aforementioned publication of press releases on the functioning and exercise of the Constitutional Court’s jurisdictional role, disseminating some of the Court’s most relevant rulings (in 2024, 122 press releases were issued, and as of 31 October 2025, 88 press releases have been issued).

The Constitutional Court has always been committed to rigour and transparency in its information strategy. To this end, it always communicates truthfully, comprehensively and as quickly as possible. The aim is to make any matters or information of public relevance available to the media and the citizens.

Through the Press Office, many issues related to the jurisdictional and institutional activity of the Constitutional Court are made public. These include the agenda —when and what the Court will deliberate on—; press releases and judgments, orders and rulings affecting issues of particular legal, political, social or economic significance; institutional events, trips or visits made by the president or judges; etc.

The Press Office also maintains constant contact with journalists through multiple channels (WhatsApp, telephone, social media, email, website). On a daily basis, it explains and clarifies any doubts, reports on news items, and holds *off-the-record* conversations to explain possible key points or improve understanding of technical or legal matters.

In collaboration with the Association of Legal Communicators and Reporters (ACIJUR), the Constitutional Court also organises an annual training course for journalists entitled “The Constitutional Court and the media”, with the aim of improving understanding of its functioning, powers and case law.

In addition, the Court publishes an annual report on its activities, which is available in electronic format at <https://www.tribunalconstitucional.es/es/memorias/Paginas/default.aspx> (in Spanish). Of particular note are the summary of its judicial activity and the accompanying statistical annexes.

3.4. With regard to outreach and public relations, are there any ongoing initiatives or debates in relation to the criticism or obstacles you may have encountered? If so, could you give us some idea of the direction you are considering taking?

Recently, on the occasion of the presentation of the 6th Congress of the World Conference on Constitutional Justice, held in Madrid last October, the President of the Constitutional Court gave a series of interviews, a press conference and an informative breakfast to the media.

These events allowed the president to explain in detail, in an educational and rigorous manner, how the Constitutional Court works, what its democratic legitimacy is, how its judges are elected, what exactly its powers are —what constitutional review is and when a fundamental right is violated— and the content of some of its judgments.

It has been an excellent opportunity to defend and demand respect for the institution and the independence of its judges.