

Key questions

- **Have judges played an active role in safeguarding democracy and upholding fundamental democratic rights in your country?**

In the Spanish State, as well as in the majority of European States, judges play a crucial role in safeguarding democracy. Their main function is to ensure respect for legality and protect the fundamental rights of citizens. There are five ways in which judges protect democracy: interpretation and application of the law, control of constitutionality, protection of fundamental rights, judicial independence, and ensuring an effective justice system. In summary, Spanish judges have the vital role of preserving democracy by ensuring legality, protecting fundamental rights, and acting independently and impartially.

It is important to emphasize the need for judicial independence as a fundamental principle for the preservation of democracy. However, at times, some judges in the Spanish State have acted in a way that generates controversies regarding this safeguard of democracy. To this issue, it should be added that the subjective interpretation of the law can lead to personal and political biases influencing their decisions, as well as the judicial weakening that has been denounced on various occasions by entities such as the NGO Transparency International. These issues affect not only the judicial system itself but also public trust in the impartiality of judges.

Recently, this judicial discretion has been recently observed in cases such as the trial of "Tsunami Democràtic," an initiative that defines itself as arising from civil society with the aim of protesting against the *Tribunal Supremo* (spanish Supreme Court's) verdict on the Catalonia independence referendum that took place in 2017. This movement had no official spokespersons, but the *Audiencia Nacional* (spanish special Court), after considering this movement as a "criminal organization promoting terrorist attacks," initiated legal proceedings against Tsunami Democràtic, identifying some individuals associated with the Catalan independence movement as alleged responsible parties. This investigation is led by judge Manuel García-Castellón of *Audiencia Nacional*, who announced on January 29, 2024, that the investigation into this case would be extended for six months, further prolonging the process.

However, it is important to note that these are exceptional cases that do not usually represent the norm, as the majority of judges in the Spanish State carry out their functions with integrity and respect for democracy and the rule of law.

- **Is there a specific role played by the judiciary in democratic elections?**

The role of the judiciary in Spanish democratic elections is to ensure that the electoral process is carried out fairly, transparently, and in accordance with the law. In this regard, their functions include overseeing the electoral process, resolving conflicts within the electoral framework, ensuring the right to vote, monitoring campaign financing, and verifying the constitutionality of electoral regulations.

Therefore, the role of judges in the democratic elections of the Spanish State is crucial to guarantee the integrity of the electoral process, preserving fundamental principles of democracy such as equality, freedom, and representativeness.

It is important to note that, although the majority of judges in the State carry out their function with impartiality and respect for the rule of law, there are specific cases, where some judicial decisions have generated controversy. In the Catalonia independence process, there have been actions that can be interpreted as interference in the democratic will of the country. Examples include the judicialization of political aspects and the imposition of restrictive measures towards specific individuals that may affect the exercise of democratic rights. This could also serve as an example for others with certain political ideas not to make them public and avoid frontline political situations, directly and indirectly affecting the freedom that should be presumed in democratic elections.

An example of this potential politicization of the judges' role is the recent disqualifications of prominent politicians advocating for independence and the Catalan self-determination process. Through these disqualifications, there may be an intention to interfere in democratic elections, impeding the constitutional right to choose and be chosen through elections. This was evident in the case of politicians involved or tried in the trial of leaders of the Catalan independence process, led by Judge Manuel Marchena. The decision resulted in absolute disqualification, in addition to corresponding prison sentences, for many of the politicians on trial, such as Joaquim Forn and Josep Rull of the party Junts per Catalunya, Oriol Junqueras and Dolors Bassa of the party Esquerra Republicana, or Jordi Sànchez and Jordi Cuixart, political and social leaders and activists. Subsequently, after a reform in the Spanish Penal Code, some of these disqualification sentences have been reviewed and modified. In this sense, despite being a judgment in accordance with Spanish law, there is a possibility that, exceptionally, some judges may have used the norm to interfere in the democratic elections of the State.

- **Are lawyers facing any risks, obstacles, or challenges in your country when fulfilling this role? If so, provide examples, and highlight if lawyers face particular obstacles, risks, or challenges based on their gender, racial identity, or other characteristics protected by human rights law.**

In the Spanish State, lawyers may face various political risks within the exercise of their profession, such as the judicialization of politics, threats to judicial independence, restrictions on freedom of expression, or, as recently happened in Catalonia, they may find themselves involved in a case of espionage. Some lawyers representing politicians involved in the self-determination movement have reported that not only were politicians, both Spanish and Catalan, spied on by the malicious software "Pegasus," but they themselves, due to their role as lawyers, also discovered that they had been victims of espionage through this system.

All this espionage plot is framed within what has been called "CatalanGate," where it is alleged that the Catalan sovereignty movement had been under surveillance for more than 5 years by the malicious "Pegasus" program, with over 65 victims announced so far. This practice, as denounced, was carried out at the request of the Spanish State and constitutes a crime of illegal surveillance practices. Some UN special rapporteurs, in his communication AL ESP 8/2022, have already monitored this case, expressing their concern about the widespread use of spyware, as it can lead to increased self-censorship. This, in general, can have a limiting effect on the freedom of opinion and expression of Catalan civil society, but it is notably detrimental also to lawyers in the exercise of their functions, as they may develop fears and anxieties when handling and defending their cases and, therefore, in the performance of their work.

It is important to highlight that, in the Spanish State, these risks are not omnipresent or systematic, so the vast majority of Spanish lawyers can carry out their work normally and in accordance with the ethical and legal principles of the State. However, on occasion, when their roles involve political matters, even if they are not dedicated to them, they may find themselves entangled in situations like those previously described.