



CONSEJO GENERAL DEL PODER JUDICIAL

RESOLUTION OF THE PLENARY SESSION OF THE GENERAL COUNCIL OF THE JUDICIARY

1. In recent weeks there have been repeated declarations and communiqués from this Council, through the Permanent Commission, its President (p.s.) and of its Members, as well as those of the Supreme Court, the High Courts of Justice, the Provincial Courts, the Dean Judges and numerous public and private institutions warning of the risks to judicial independence that the recently constituted Commissions of Inquiry in the Congress of Deputies could pose if members of the judicial career were to appear before them in order to testify on matters of which they are aware or have been aware in the exercise of their jurisdictional function.

2. In spite of this, prominent spokespersons of the parliamentary groups that have promoted the constitution of the commissions of inquiry insist that judges and magistrates be called upon to appear before them. It is therefore necessary for the Plenary of the General Council of the Judiciary to make a new pronouncement on the matter in order to express, first of all and without reservation, the absolute respect of this constitutional body for the autonomy of the Chambers that form the Cortes Generales to create as many commissions of this nature as they deem appropriate under the protection of Article 76 of the Constitution (EC) in order to clarify the facts that have occurred on the matters that are the object of the same with the purpose of demanding, if necessary, the appropriate governmental political responsibility.

3. Secondly, with the same clarity and firmness that it respects parliamentary autonomy, the General Council of the Judiciary must guarantee judicial independence at all times and under all circumstances. Therefore, and by imperative of Article 76 EC, in conjunction with Article 117 EC and Articles 396 and 399 of the Organic Law of the Judiciary (LOPJ), it must be noted that these parliamentary committees lack the power to call to testify before them and investigate judges and magistrates on matters that they know or have known in their work of judging and enforcing what has been judged.

4. Judges and magistrates are fully subject to the Constitution and the laws and are subject to disciplinary and criminal liability when they incur in the cases typified as infractions or crimes, respectively. Now, the requirement of the first corresponds exclusively to this Council by mandate of Article 122 EC and, the second, to the judicial bodies served by "Judges and Magistrates who are members of the judiciary, independent, irremovable, responsible and subject only to the rule of law". Conditions that, obviously, are not met by the members of the parliamentary committees of inquiry, since, after all, their representative function is strictly political and is oriented and limited, as far as it matters here, to the demand for responsibilities of that nature.

5. Consequently, in the event that, notwithstanding the foregoing, judges and magistrates are called upon to testify before repeated commissions of inquiry on matters in which they have intervened or are intervening in their capacity as such, even under the warning that they may incur criminal liability if they do not appear, they shall not be obliged to comply with the request sent to them for this purpose, they shall not appear before them and the General Council of the Judiciary shall not authorize service commissions for this reason.

6. Finally, the reminder that each power must confine its actions to its respective sphere must be complemented by a call for the Council to be renewed as soon as possible and to put an end to the constitutional anomaly in which we find ourselves, the duration of which has far exceeded the limits of what is tolerable.

By virtue thereof, the Plenary of the General Council of the Judiciary

AGREES

First: To urge the Congress of Deputies and the Senate, in accordance with articles 76 and 117 CE, 396 and 399 LOPJ, to refrain from summoning judges and magistrates to testify before the investigation commissions constituted therein on facts that have come to their knowledge in the proceedings subject to their jurisdictional activity.

Likewise, judges and magistrates may not disclose in writing, or in any other way, facts or circumstances of which they have become aware by reason of their professional practice.

Second: Judges and magistrates who, notwithstanding the above, are summoned to a commission of inquiry shall immediately inform the Standing Committee of the General Council of the Judiciary, sending it a copy of the summons received.

Third: The Permanent Commission shall deny the authorization of service commissions to judges and magistrates to appear to testify before the aforementioned commissions of inquiry on facts of which they have or have had knowledge on the occasion of their jurisdictional activity.

Fourth: To communicate this Agreement to the presidencies of the Congress of Deputies and the Senate and to the European Network of Councils for the Judiciary.

Madrid, December 21th, 2023