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Seven Theses on Spanish Justice to understand the Prosecution of Judge Garzón

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"Something is rotten in the state of Denmark" (Hamlet)

Abstract

Judges may not decide cases as they wish, they are subject to the law they are entrusted to apply, a law made by the legislator (a feature of heteronomy). But in doing so, they do not take any instruction from any other power or instance (this contributes to their independence or autonomy). Sometimes, they apply the law of the land taking into account the norms and principles of other, international, supranational, even transnational systems. In such cases of conform interpretation, again, they perform a delicate balance between autonomy (domestic legal order and domestic culture of legal interpretation) and heteronomy (external legal order and culture of interpretation). There are common shared aspects of Justice in the Member States of the EU, but, this contribution explores some, perhaps the most salient, features of Spanish Justice in this wider European context. They are not exclusive to Spain, but they way they combine and interact, and their intensity is quite uniquely Spanish. These are seven theses about Justice in Spain, which combine in unique ways as can be seen in the infamous Garzón case, discussed in detail.

Key words

Spanish Judiciary; Judicial statistics; Transition in Spain; Sociology of the Judiciary; Consejo General del Poder Judicial; Politicisation of Justice; Judicialisation of Politics; Spanish Constitutional Court; Spanish Supreme Court; Audiencia Nacional; Acusación Pública; Judge Garzón; Basque Political Parties; Clashes between Judicial Hierarchies

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Judges may not decide cases as they wish, they are subject to the law they are entrusted to apply, a law made by the legislator (heteronomy). But in doing so, they do not take any instruction from any other power or instance (independence or autonomy). Sometimes, they apply the law of the land taking into account the norms and principles of other, international, supranational, even transnational systems. In such cases, again, they perform a delicate balance between autonomy (domestic legal order and domestic culture of legal interpretation) and heteronomy (external legal order and culture of interpretation). There are common shared aspects of Justice in the Member States of the EU, but, this contribution explores some, perhaps the most salient, features of Spanish Justice in this wider European context. They are not exclusive to Spain, but the way they combine and interact, and their intensity is quite uniquely Spanish. These are seven theses about Justice in Spain:

1. First thesis: Justice in Disrepute

According to Perfecto Andres Ibañez (personal communication, 25 Mar 2011), judge of the Supreme Court, Spanish justice is in an endemic crisis¹. In order to illustrate a general malaise shared by the members of the Judiciary, by other powers and institutions of the State, by the legal profession and by public opinion at large, a few examples of a very different nature can be brought to the fore:

- (1) In March 2010, a large number of Spanish judges signed a manifesto urging to de-politicise Justice. They were very critical towards the General Council for the Judicial Power (*Consejo General del Poder Judicial*, hereafter "CGPJ" or the "Council") and the Administration of Justice. The Manifesto was a sequel to the so-called 8th October movement, which had organised two judicial strikes all over Spain (it was hotly debated, but never settled, whether such strike would be unconstitutional). Not often does one find such blunt criticism from the judiciary itself. The long list of complaints was most critical of the nomination practices at the Council and of the methods to nominate its members, but not really self-critical as to members of the judiciary, their performance or their relationship with other powers, sectors or even other collaborators with the Justice administration. The CGPJ called these movements "one of the most striking events of Spanish judicial history" ("uno de los acontecimientos más llamativos de la historia judicial española") and admits in its Report for 2010 that Spain is living a crisis of trust in Justice, "una crisis de confianza en la Justicia" (p. 11).
- (2) The Catalan political parties in 2010 (including the governing Socialist Party of Catalonia PSC, affiliate of the Socialist Party, PSOE), considered that the Constitutional Court of the time lacked legitimacy to rule on the Catalan Statute and called for its urgent and immediate renewal. It has taken the Constitutional Court almost four years (3 years and 11 months) to reach a sufficient majority to decide on the *Estatut*. The new Catalan Statute of Autonomy (*Estatut*) was approved first by the Catalan *Parlament*, next by the Spanish *Cortes* and then by the Catalan people in referendum 4 years ago, and the *Estatut* has been in application since its approval. The mandates of three Constitutional Court judges, including its President, expired more than two years ago, another member died². But the Senate was unable to agree on the new candidates on a list submitted by the Autonomous Communities (because one candidate proposed by all the Autonomous Communities with a Popular Party government received a

¹ "Crisis de la Justicia. Una perspectiva desde la judicatura", Lecture given in Bilbao, 25-March 2011, in the seminar "La Justicia y sus problemas: retos y oportunidades", organised by Margarita Uria (member of the CGPJ) and Alberto Saiz (University of the Basque Country).

² Roberto García Calvo, a curious character, former provincial civil governor during the Franco dictatorship, who had displayed a gun in a traffic incident with a driver who had confronted him. On this judge see Calvo, Díaz (2007)

negative opinion from the Senate Committee for failure to fulfil the condition of 15 years experience as a jurist so they let the time lapse in order to reach the 15 years). There were many contentious issues in the *Estatut* discussed before the Court, but none as hotly debated as the national status of Catalonia i.e. "nación" v "nacionalidad" (and the "national symbols"), and the preferential treatment of the Catalan language. Other contentious issues were the creation of a Catalan Council of the Judiciary, the detailed distribution of competences between Catalonia and the State, and limitations on the harmonising competences of the Central level. An interesting fact is that similar recent statutes of autonomy with similar clauses but for the national status and the language question have not been brought before the Court by other Autonomous Communities and have been voted favourably by the Group which brought the action in the Catalan case, the Popular Party. Some provisions of the Catalan *Estatut* have finally been found to contravene the Constitution in relation to the financial mechanisms and the Catalan Council of the Judiciary; other provisions have been declared in conformity with the Constitution, insofar as they receive a "constitutionally conform" interpretation. But the judgment of the Constitutional Court has created a constitutional problem of legitimacy and on who has the last word, the *pouvoir constituant* of the electorate in referendum or the *pouvoir constitué* of the Court³.

- (3) Judge Garzon, the Spanish personality with greatest World notoriety, is being tried for "prevarication" in two different cases, i.e. willingly adopting a judicial decision known to be wrong or unjust (Article 446-449 of the Spanish Criminal Code) and has been provisionally suspended from his office at the Juzgado Central 5 in the Audiencia Nacional by the Council (May 2010) after the Supreme Court, instructed by Judge Varela, decided to try him for the criminal charges brought against him by two extreme right-wing organisations (Manos Limpias and Falange de las JONS) as popular prosecutors (*acusación popular*) on the grounds that he had willingly misapplied the Amnesty Act (1977) when he decided to investigate the crimes and forced disappearances during and immediately after the Civil War and to exhume or unearth some of the burials of victims. Judge Garzón claims to have interpreted Spanish legal norms in conformity with the norms on universal jurisdiction, "*al amparo de tratados y normas internacionales de justicia universal*" (El País, 19-05-2010). Garzón was again suspended from office by the Council on 19 April 2011, because the Supreme Court has opened judicial proceedings against him for having ordered the recording of conversations between the accused, in provisional detention, and their counsel in the Gürtel corruption case, something which, arguably, can only be lawfully ordered in cases of terrorism but which the Supreme Court itself has accepted in other ordinary crimes. The hearing took place between 16 and 19 January 2012 and the Court is to render judgment in the coming months. The Garzón case will be examined in detail below (part 7).
- (4) After seven years of judicial proceedings, the Audiencia Nacional, successor to the former francoist *Tribunal de Orden Público*, found the general editors, board of directors and managers of the Basque language newspaper Egunkaria "not guilty" of the criminal charges brought against them by AVT (Association of Victims of Terrorism) and *Dignidad y Justicia*, two other organisation close to the extreme right acting as "popular prosecution" (*acusación popular*, more on this below). They alleged that the board of directors of the newspaper were members of ETA and were using the

³ Pérez Royo (2010): "La expresión de la voluntad de autogobierno a través de la reforma del Estatuto era un problema *estatuyente*. La declaración de inconstitucionalidad de dicha expresión de voluntad nos sitúa ante un problema *constituyente*."

newspaper as an instrument of ETA. The newspaper had been closed down seven years ago by interim decision of *Audiencia Nacional's* instructing judge Del Olmo (a colleague of Garzón's) (ab)using exorbitant powers. The decision to shut down the paper was not in conformity with the Spanish Constitution, according to the judgment of the Constitutional Court of 2010. Interestingly enough the case generated public outrage in Euskadi, but was largely ignored, if not applauded in the rest of Spain. It must also be recalled that Garzón himself had, in 1998, ordered the interim closure of *Egin*, another newspaper ideologically close to the radical Basque national left, for similar reasons to those later applied in *Egunkaria* and that some eight years later the Supreme Court declared there were no relevant links between the directors and ETA. It also decided that the interim decision to close the newspaper was a disproportionate infringement of the freedom of expression. These are just two of a long line of cases concerning Basque political expressions. One of the most recent and troubling cases has been the 10 year jail and incapacitation from office imposed on Arnaldo Otegi and Rafa Diez Usabiaga, leader and former Secretary General of the Batasuna movement and of the Trade Union LAB respectively, by judgement 22/11 of 16-09-2011, of the Audiencia Nacional (4th Section presided by infamous judge Angela Murillo⁴) in case Bateragune, an attempt to organise a political party that would fulfil the conditions declared by the Constitutional Court and would thus be cleared of any structural link with ETA. The Supreme Court has declared that Otegi and Diez Usabiaga were actually following ETA's instructions, and were therefore leading cadres of ETA, in setting up a party that would be finally independent from ETA.

- (5) Other examples of judicial abuses could be mentioned, e.g. concerning the relation of Spanish Courts with the European Court of Human Rights, who has on repeated occasions found that that Spain infringed the Convention in refusing to investigate allegations of torture, a breach of HR that had already been denounced by the United Nations rapporteur for Human Rights protection in the fight against terrorism, Martin Scheinin, but which Spain's government had discarded on the ground of the rapporteur's lack of knowledge of the situation on the ground in Spain. A recent example of abuse could be the Troitiño case⁵ and the so-called *Parot* doctrine of the Supreme Court in contrast with the Constitutional Court's more guarantee oriented interpretation: the years spent in provisional detention can be counted towards the total sentence time, but can it be counted to reduce the time as converted into the maximum sentence to be served (maximum 30 years) or is it to be deduced from the total computation of time after accumulation of all the declared crimes. This can add to several hundred

⁴ Judge Murillo had been removed or recused from a different case involving Otegi when she had stated in Court that she already knew what Otegi was going to reply to one of her questions on evidence. However the recusation in that other case, which on 22 July 2011 cleared Otegi of glorification of terrorism in the Sagarduy case, was not an obstacle to keeping her as presiding judge in the Bateragune case. In a previous case Otegi had been condemned to a two year prison sentence for the crime of injurias or disgraceful insult on the Spanish King (Article 490,3 of the Spanish Criminal Code). The Strasburg Court however decided on 15-03-2011 that Spain had infringed Otegi's freedom of expression (case 2034/07, Otegi Mondragon v Spain).

⁵ Troitiño served eight years under preventive custody, which added to the 24 years served under prison sentence for different crimes as ETA activist meant 32, full years, two extra years beyond the maximum penalty of 30 years according to the Criminal Code in force at the time he perpetrated his crimes. After the judgment of the Constitutional Court No 57/2008 was made public, the Criminal Chamber of the Audiencia Nacional decided to interpret that the double computation of preventive prison time was to be deducted from the total sum of prison years and not from the total or maximum penalty time of 30 years. However the Supreme Court quashed this decision of the AN in February 2010 on the ground that this interpretation was punitive and went against the doctrine of the Constitutional Court. Finally Article 58 of the Criminal Code was amended to the effect that time served on preventive prison is to be deducted only from the crime according to which it was decreed but not from different crimes for which the accused might be sentenced. This new legal limitation cannot be applied retroactively before that date. At any rate Troitiño served two extra years.

years, see the case Fernández de Larrinoa and Lopez de Luzuriaga, accomplices, over 100 years, AN, 2nd Chamber refused to take preventive prison time into account, now TS orders them to do so but to deduce it from the total time resulting from the accumulation of sentences, this is seen as a clear message of authority – heteronomy – to the 3rd Chamber of Audiencia Nacional, who deduces the preventive detention time from the final applicable sentence as converted to real serving time, in line with the Constitutional Court's interpretation (judgment 57/2008). The Supreme Court has been fluctuating but leans towards its own *Parot* doctrine which amounts to virtual time. In any case authority over the Audiencia Nacional (or over one of its sections or chambers, given internal divergences) becomes a major issue of confrontation between the Supreme Court and the Constitutional Court.

Differences of opinion and interpretation between different courts, or chambers within the same court, are not new phenomena. What seems to be interesting is that these differences are to be seen as the result of interferences and interpellations to the judiciary made from different political actors, an underlying agreement between the governmental party and the opposition party, and also from most mass media calling for a more punitive and repressive approach. The media contributes in Spain to this image of the judiciary as abiding to political pressure or mobilizing it and eroding the principle of *ultima ratio*. A good example at hand is the overall reaction to the judgment of the Constitutional Court in Bildu (May 2011) where this coalition has been allowed to stand in local elections.

All these examples contribute to a general image of eroded legitimacy, disrepute, corporatism and political instrumentality of, at the very least, the higher instances of the judiciary in Spain: the Council, the Audiencia Nacional, the Supreme Court and, to a lesser degree, the Constitutional Court.

2. Second thesis: Justice in Transition

La transición española is a special type of transition based on three governing principles in the framework of a social contract of sorts: (1) amnesty for prisoners condemned of politically motivated crimes against the State, (2) amnesia, forgetfulness, and to some extent forgiveness, of the coup d'état and the excesses of the dictatorial Regime, and (3) a new constitutional order which was not discontinuous with the legal order of the dictatorship and where State officials – judges, police, military, diplomats, key administrators, law professors – were not removed from office. There was never a true "transitional justice", no victim recognition, and therefore no elements of discovery of the past, no memory politics, truth commissions, reconciliation commissions... until 2008 when a Law on Historic Remembrance was finally passed. At most there was a "justice in transition" to constitutional rule of law and democratic principles. The Cortes that passed the Amnesty bill in 1977 were not intending to abolish the legality of the pre-constitutional order nor to restore republican legality.

In Kelsenian terms, the prior legal system was transformed by its highest norm and Grundnorm. The continuity of the state was largely secured by the head of state, King Juan Carlos (Bourbon), who had been reinstated by the *generalissimo* as his successor as head of state (1973) and became King upon the death of Franco (Nov 1975), and only later confirmed as constitutional monarch by referendum of the Constitution (Dec 1978). Let it be remembered, *en passant*, that judgments in Spain are still handed down in the name of the King, not in the name of the People, although Justice emanates from the people, according to Article 117(1) of the Constitution.

The judiciary was left untouched and unreformed to apply and interpret the legal order now brought under the aegis of the new democratic Constitution, on the assumption that it would progressively adjust to the new ethos largely by the

technique of conform interpretation. This meant that all the norms of the Spanish legal system would be interpreted in conformity with the Constitution, and by application Article 10(2) of the Constitution, also in conformity with international Human Rights instruments, something almost revolutionary for the judges of the time. Judges would furthermore set aside and remove those norms which clearly and directly contradicted the Constitution or which could not be interpreted away. This was the assumption for the whole of the judiciary; some judges adjusted to the new ethos, others not so, but nothing was done about the latter (Rusiñol 2010). The technique of conforming or adapting a legal order to new constitutional principles was later transplanted by the most advanced judges into Community conform interpretation and it is not surprising that such principle of conform interpretation of EU law should have been forcefully elaborated by the European Court of Justice in a ruling on a preliminary reference from Spain, *Marleasing*, after the first formulation in *von Colson and Calman*.

Serious doubts relating to the continuity of judicial institutions that had played a key repressive role in the dictatorship like the Audiencia Nacional were soon discarded; this special court was considered necessary for the centralised investigation of prosecution of terrorism and other forms of organised delinquency, for which it gives exceptional prerogatives. As a paradox, a case concerning street violence like burning a cash-desk, a garbage container or some forms of hooliganism in the Basque Country (including Navarre for this matter) could, if considered to be linked to terrorism, be tried before the Audiencia Nacional and receive much more severe sentence than if the same deed occurred in Madrid or in Cáceres and was tried before the local courts of Madrid or Cáceres because it would be considered e.g. street violence. On the other hand a complaint that the police resorted to torture or degrading treatment in the course of the arrest and detentions of those accused of terrorism, would not be tried by the Audiencia Nacional but in the local courts. Margarita Robles, a member of the General Council of the Judiciary and former deputy minister in the Justice and Home Affairs Ministry, interestingly declared (16 June 2010, see press reports) that she believed it was time to abolish this "special" Court.

Only a few changes were introduced in the Judiciary, notably:

(1) the Constitutional Court, not strictly speaking part of the Judiciary but formally a distinct power, was created and on top of the classical constitutional review functions it was further entrusted with special fundamental rights' protection mechanism (*amparo*). Awaiting new democratic laws and new judges, the Constitutional Court had a Herculean task. Accession to the European Convention of Human Rights and conform interpretation has largely secured uniformity of democratic and rule of law criteria over the legal system whenever the Constitutional Court has failed to detect important shortcomings, as was the case when Spain was found in breach of Article 6 of the Convention for its failure to provide a right to appeal in second instance in some jurisdictions like the Audiencia Nacional (incidentally also in the Supreme Court for cases of *aforado* accused like Garzón who has successfully (July 2011) recused several of the judges of the Court that will hear his case because some of them had intervened in the pre-examination of the case leading to the decision to open proceedings in the case concerning the Crimes Against Humanity);

(2) the General Council of the Judicial Power was set up for the self-governance of the judiciary, thus protected from interference by the Administration, which was the normal state of affairs during the dictatorship;

(3) a further interesting reform concerned the introduction of the jury, which is seen as facilitating popular participation in the administration of justice, together with the popular prosecution and other more traditional forms of lay or non-professional justice like the justices of the peace (other forms like magistrates or professional boards and tribunals are not common in Spain).

3. Third thesis: Bifurcation and Duality of Justice

There is a bifurcation, polarity or duality of Spanish Justice and its Judiciary. The larger majority of judges (*jueces*) in first or second posts together with some *magistrados* in higher judicial positions are now for their most part trained under the constitutional order and have followed the judicial school. Others have accessed as experienced jurists or law professors. Amongst the smaller number of judges (*magistrados*) involved in the highest posts some, those over 55, were trained under the pre-constitutional order but developed their careers under the constitutional system. A few older judges did the initial part of their careers under the Franco *regime*. But enough time has lapsed to consider there are no "pre-constitutional" judges left at least from a biological point of view. Transition is over, normality is installed (Rusiñol 2010).

The duality at the time of democratic transition was between existing judges (mostly male and over 45) and the judicial appointments made to the CC and highest jurisdictions to ensure interpretations in conformity with the constitution. With time, it was probably thought, the incoming judges, younger and progressively more gender balanced, the ones in closest contact with the citizens, would bring in their constitutional culture. The Judicial School has generally been instrumental in this process. However access to the judicial school is still done on the basis of a "perverse" system of study under semi-official mentors and a memory-based exam that does not seek to assess the "judicial virtues" of the candidates – e.g. neutrality, independence, impartiality, experience or common sense, competence, constitutional ethos, European Community and ECHR sensitivity. There is an awareness at the School that the system of training needs to change; see their programme for the 2010-2012 promotion, in order to acquire new skills on top of learning by heart.

The legislative changes made to the General Council (1985) and the increasing bipolarity of Spanish politics since the mid-80s brought about a change in the previous dichotomy: instead of a consensus on key judicial appointments with democratic, Human Rights, rule of law outlooks, and judicial virtues there was a sort of party political power sharing concerning the Constitutional Court appointments and the highest appointments at the judiciary: parliamentary appointment by a 3/5 majority of 8 jurists and of 12 professional judges out of a total 21 Council members from a list of 36 judges proposed by the judicial associations - plus the appointments the Council makes to Supreme Court, the Audiencia Nacional, the Higher Courts of Justice of the Autonomous Communities. As an anecdote, former president Rodríguez Zapatero announced the appointment of the president of the judicial Council before he was had even been elected by the organ. The two larger parties had reached an agreement on a conservative judge, Divar, president of the Supreme Court and the Council. The 1985 reform of the method of nomination and selection to the Council have had a very negative impact on the image of Justice: unless the major parties act loyally and responsibly, the risk of abuse, horse-trading, "clientele"-orientation, corporatism and politicisation is enormous and embarrassing.

One aspect of the bifurcation of judges is hierarchical. Whereas an elite judiciary enjoying lighter workload, better working conditions, clerks or legal assistants, higher salaries and prestige, is immersed or at least indirectly implicated in the party political and professional association struggle (corporatism), which in theory judges must not engage in, a majority are overworked (4000 judges producing some 1,6 million judgments in 2009), consider themselves to be under-paid and are not involved in power struggles. There are obviously exceptions in both categories. Most judges see themselves, following the Constitution, as a "Power" of the state and those in the elite positions see themselves as the holders of that power, not as a countervailing power; few see their role as primarily delivering a public service to the citizens and as ensuring the protection and guarantee of their

fundamental rights, a self-perception that would enhance the independence of the judiciary vis-à-vis the powers that be – formal and informal – which are the source of the challenges to citizens' rights. The justice system – administration of justice – seems to be focused more on justice operators rather than on citizens' needs and more on the authoritative application of the law in a given case than on the effective resolution of disputes.

This thesis of bifurcation or dichotomy splits in two further sub-theses: one concerns routine, ordinary justice where the attempts to modernise and professionalize is notable in a majority of the judiciary; the other theses concern the highest jurisdictions, and numerically exceptional and extraordinary cases, but much more visible and notorious and it concerns the politicisation and corporatism of (the higher) judiciary and the self-government of judges and its concomitant, the judicialisation of politics. The theoretical and methodological question is how to deal with this duality of Spanish Justice? We shall return to this question below.

4. Fourth thesis: Modernisation of Justice

Modernisation of Justice in Spain is progressing. Nowadays, the larger majority of the judiciary shares many symptoms with Southern European systems of justice – structure, age, gender, profession and vocation, career, case load, overwork, types of cases and specialisations, mass media misrepresentation generally and especially in cases of miscarriages of justice and corruption scandals, populist demands for retribution, again backed by the media, and criticism of guarantee-oriented judges, challenges to dispute resolution posed by a culturally and socially plural society, transnational business transactions and complexity in conflict of laws situations – and offers some interesting contrasts – relatively greater efficiency and productivity, special gender violence jurisdiction.

Within Spain there are some regional differences in spite of the scant and scarce regional competences in the administration of justice. In some cases, like the Basque Country, these limited competences have been put to relatively good use where the issues were "neutral" like material resources – buildings and computers – but they have often been truncated or trimmed by an excessively centralistic interpretation by the Constitutional Court or the Council when the issues became more sensitive – promotion of the Basque language in the administration of justice or organisation of certain professional groups within the Administration of Justice later declared to be "national" (meaning Spanish) organs ("*cueros nacionales*").

Spanish Justice, contrary to popular opinion, is not so slow: an average case takes 240 days in Spain compared to 420 days in France or 520 days in Italy. In the context of this process of modernisation, the new Judicial Office will be an added value for the processing of cases and maximising the time of the secretary and judge (again, Euskadi is a pioneer in the direction of Justice Quality protocols and the Judicial Office, as the paper by Izaskun Iriarte in this volume shows). Some judges have reacted in a corporatist fashion against these proposals but the majority welcomes the efforts in rationalisation. Obvious benefits will also follow for the other legal professions like lawyers and procurators.

Other modernisation challenges like the number of judges per population (1 judge every 10 000 citizens, 4000 judges in 2008, 4800 in 2010, compared to an average of 2 judges per 10 000 inhabitants in the EU-27) or the budgetary efforts concerning justice, not only the salary of judges, have been important claims of the 8th October movement of Spanish judges. By comparison with similar countries in the EU Spain's larger part of the judiciary is quite modern, although much progress is still to be made⁶.

⁶ See the report of the Council for 2010 in English (Spain. General Council of the Judiciary 2010).

Because of this and other factors in the Spanish litigating culture, alternative dispute resolution mechanisms have not really proliferated. Only recently in family and commercial disputes and, more timidly in minor criminal offences, is there any progress of ADR. Lawyers, of which there are comparatively many more than in similar EU countries like France or Italy, have also preferred judicial litigation over alternative solutions. There is a lot of litigation, approximately 6 million cases before the Courts in 2010 according to the report of the CGPJ for 2010⁷. As the Council recognises, Alternative Dispute Resolution is still to be explored from the point of view of the Administration of Justice, the Legal Profession, the Law Schools, the many organisations involved in conflict resolution and management. Such a development would also take account of the new challenges posed by the modern plurality of normative claims related to social and cultural complexity, diversity and plurality (migrant populations, minorities).

5. Fifth thesis: Politicisation of Justice

Spanish Justice, as a self-governed Power, is still to demonstrate independence from the major political parties. Politicisation infects the Council to such an extent that 65% of the Spaniards, according to an opinion poll carried out by Metroscopia in 2010 believe that judges are under political party influence. The blame is largely on the two dominant political parties and their approach to justice, but the "appointed" judges have not had a clear view of their constitutional model or lived up to it. The attitude of the two dominant judicial associations or groupings, the conservative Asociación Profesional de la Magistratura (APM, the largest) and the progressive Jueces para la Democracia (JpD, the third largest) has not really helped; they seem to function as a cartel. Although the greatest number of judges are either non aligned or associated in the one association which is not politically salient, Francisco de Vitoria (FdV, the second largest), they have almost no representation amongst the highest judicial posts and one of possible explanations is that they have neither a clear political correlation nor a marked ideological affinity with any of the two largest political parties of Spain.

Failure to renew the Constitutional Court, partial impeachment (*recusación*) of judges for certain cases for very remote reasons, and the fact that the media think they know exactly how each judge is going to vote or at least to lean, not simply because of the recurring and frequent, unpunished, leaks of privileged information, are all relevant symptoms. Renewal of the Council also took two long years for lack of political party agreement. The consequence of this public impression of horse-trading in the key appointments is an erosion of the image of Justice. The Council formally complains whenever charges are made concerning its politicisation but it has done little to disprove those criticisms. The appointments it has made in the recent past have often lacked motivation (according to judgments of the Supreme Court itself). The Metroscopia poll found that only 11% of Spaniards believed judicial appointments were based on merit and 73% perceived such appointments as political or nepotistic. Merit is seen as coming only second to personal connections and corporatist affiliation.

The Audiencia Nacional, again, is another worrying case, a remnant of the "transition", as we have seen in thesis 2, its jurisdiction seems to counter the principle of local, natural, justice of proximity. Its powers of instruction and

⁷ "El Consejo General del Poder Judicial (CGPJ) prevé que a finales de este año [2011] los tribunales acumularán 3.149.548 procedimientos en trámite (un 0,5% más que el pasado año), si bien habrán resuelto 9.459.548 millones de asuntos (2,7% más) y dictado 1.722.584 sentencias (lo que supone un aumento del 3,8%) ... Por lo que se refiere a número de asuntos ingresados, también es la jurisdicción Penal la que podría acumular un mayor número al cierre de este año, con 6.687.137 asuntos, seguida de la Civil (1.972.170), la Social (432.174), la Contenciosa (292.675) y la Militar (233). ...se espera que los tribunales españoles hayan resuelto a lo largo del presente año [2011] 6,7 millones en Penal, 2 millones de procedimientos civiles, 402.000 en la jurisdicción Social, 301.296 en la Contencioso-Administrativa y 288 en la Militar." El Mundo (2011).

investigation are enormous and this explains why some of its judges have acquired such media notoriety as Grande Marlaska or Garzón. This also explains Thesis 7.

The executive is not free from these political excesses, and not only because the procurator general is functionally linked to the Government and doubts as to its impartiality and especially political neutrality and independence can be easily nourished. One major problem is when the executive resorts to the press to put pressure on some case or court before decision is made. The "administration of the Justice administration" is mostly a competence of the executive, and has been exercised with centralist zeal by the successive Spanish governments. This zeal goes even beyond the model of the Constitution, which, by far, falls short of being quasi-federal on this point: the decentralisation of the State has not been extended to the judiciary in the Spanish Constitution and the judicial power is modelled on a unitary state. The self-conception of the judiciary as a power, a unitary power, does not contribute to a more decentralised trend, against demands made by some Autonomous Communities. The judgment of the CC on the Catalan Council of the Judiciary in the new *Estatut* has made it clear that regional councils are unconstitutional, a staunch unionist conception of the Judiciary.

6. Sixth thesis: the Judicialisation of Politics

The interference of politics in the judicial power does not mean that the judiciary takes instructions from the political establishment (political parties, governments, leaders) as to how to decide their cases. Cases of corruption and bribery are rare. But a worrying symptom of the politicisation dynamics is where political parties take political disputes to the judicial arena and unfortunately this has been common practice in Spain, especially as regards the Constitutional Court, but also the Audiencia Nacional and the Supreme Court. If war was for von Clausewitz politics carried by other means, some judicial cases are political struggles carried out by other means.

The Constitutional Court is in part designed precisely to resolve political disputes to the extent that the Constitution is thought to contain basic rules concerning fundamental rights, the minimum content of those rights and their balancing with other rights and prerogatives, the separation of powers, the prerogatives of the institutions and the distribution of competences. To the extent that a political party or an institution of the state might disagree fundamentally about laws adopted by a majority, constitutional review is indeed a means of controlling whether basic norms have been stretched too far. The action brought by the Popular Party against the new abortion law is an example at hand. It is a straightforward constitutional review of legislation. But when the Constitutional Court is systematically used in order to favour particular centralist interpretations that will be followed by a large majority in the Court (e.g. federal, subsidiarity disputes), where no member is elected to represent Autonomous Communities, the risk of abuse is obvious. The Catalan *Estatut* is an example. The Constitutional Court took seven attempts to find a consensus draft, with a block of 5-5. Another example was the proposal for a consultation approved by the Basque Parliament (Law 9/2008) declared unconstitutional in 11/9/2008 by a unanimous decision. In other legal cultures advocating comity and self-restraint in favour of the political arena it might seem odd to close political disputes by the highest Courts⁸.

Besides the Constitutional Court, many judicial cases regarding Basque politics, not only those concerning the members of the terrorist group ETA (judgments in cases Henry Parot and De Juana Chaos have been very controversial) are further examples of judicializing politics. Organic law 6/2002 on political parties has led to the banning of the parties or electoral platforms linked to Batasuna, and thus,

⁸ See the contribution by Ditlev Tamm in this issue. By legal cultures, we understand a relatively stable pattern of legally oriented behaviour that derives from shared attitudes, social expectations and established ways of thinking in a society or in a given professional group (Nelken, 2006)

according to the courts, to the "ETA terrorist network" (Herri Batasuna, Euskal Herritarrok, the PCTV and ANV parties, and even more tellingly, Sortu, March 2011, with a 9 to 7 vote at the Supreme Court, judgment on *amparo* pending before the Constitutional Court. On a judgment of 5 May 2011 the Constitutional Court ruled, by six votes to five, that Bildu, a coalition of Basque national parties and independent candidates linked to the former Batasuna movement, could stand before local and provincial elections of May 2011).

In 1998, the Egin newspaper was closed down. Next, the so-called 18/98 prosecutions followed against a large number of organisations on both sides of the contours of the "socio-political" network supporting Batasuna and ETA. With the banning of Batasuna by the Supreme Court, the Basque Parliament was required to dissolve its correlative parliamentary group, something it had no power to do according to its own regulations, and in a truly Antigona case⁹, the President of the Basque Parliament and two vice-presidents were prosecuted and ultimately condemned by the Supreme Court (impeachment from public office, 2007). The banning of Batasuna was ultimately found not to be in breach of the European Convention of Human Rights (30 June 2009) and the banning of ANV in December 2010. But many offshoots of this process, the prohibition of most of the electoral platforms presented under different names by the same political movements (2002-2009), was performed on the basis of detailed and capricious distinctions where some lists were allowed to contest and others were declared "polluted" by the presence of ETA supporters, based on the reports prepared by the police following vague, ambiguous or uncertain criteria that, in my contention, could ultimately be decided to be discriminatory and unfair by the Strasbourg Court.

The next episode in the saga continued when the President of the Basque Autonomous Community (Lehendakari Ibarretxe) and the leader of the Basque section of the PSOE and current Basque president) were prosecuted for having, separately, held political meetings and talks with leaders of the banned Batasuna party. They were finally acquitted, on different legal grounds, in both the Higher Court of Justice of the Basque Country (on procedural grounds) and the Supreme Court on appeal (on substantive grounds). But perhaps the political and public order situation in the Basque Country is exceptional and justifies exceptional measures and exceptional justice.

This problem of the judicialization of politics was enhanced by the abuse that has been made of an institution which is peculiar, if not exclusive, to Spanish criminal procedure: the possibility to open a 'popular prosecution' when the public prosecution (semi-dependent on the Executive) is deciding not to prosecute or is prosecuting on some specific grounds. This can happen when there is a hidden plea-bargaining, or when the law is interpreted in a different way, or when the alleged facts are qualified differently, or when the public prosecutor is under executive instructions to refrain. But it can also be done for political motives, and the difficult question then is whether it is for the judges to discriminate according to the possible motivations of the popular prosecutors. There are a number of organisations in the Spanish nationalist right wing spectrum that can be considered "repeat players" or even "cause-lawyers" concerning political disputes with the Basque nationalists: Falange, Dignidad y Justicia (cases Jarrai-Haika-Segi, 18/98, Gestoras-Askatasuna, Batasuna-ANV-PCTV-Herriko Taberna, Egunkaria, Udalbiltza, Ibarretxe and Lopez, ...), Manos Limpias (linked to the Spanish police and other civil servants groups and prosecutors in the Atutxa case or in previous failed attempts against Garzón), Foro de Ermua, AVT. The stated aim of many of these organisations is precisely to operate popular prosecutions in order to further their own "interpretation" of the rule of law and to persecute all persons and organisations that have any sort of link with what they call ETA terrorism understood in a way that expands well beyond its criminal activities and its activists

⁹ On Antigona's predicament in the law see Etxabe (2011).

to embrace sympathisers or even by-standing cultural or social groups according to their thesis that "everything is ETA", a thesis which was judicially developed and refined by judge Garzón himself.

Although some of these cases concerning Basque politics seem absurd, they have not gained widespread international attention probably because they are seen as "exceptional" cases ultimately justified or explained away by the local and global fight against terrorism. But, as the next point shows, Basque exceptionalism does not explain everything that is odd in this extraordinary justice chapter.

7. Seventh thesis: Paroxysm in the Garzón Case

Paroxysm is a sudden recurrence of a disease. Most of the previous theses converge in Judge Garzón's prosecution, a legal theoretical, constitutional, penal, criminological and even procedural test case. Popular movements and protests have been organised, campaigns have been launched, opinions and articles published by the thousands by jurists in Spain (some having held key positions like former Anti-corruption Prosecutor Jiménez Villarejo who considered the prosecution as a "deadly blow to democracy") and Worldwide. Garzón has been part of the judicial elite for the last twenty years, in charge of the Juzgado Central nº 5 of the Audiencia Nacional. The exorbitant powers of its instructing judges have already been mentioned. It is interesting to add, however, that these powers were sometimes unscrupulously used with little concern for the consequences or for the types of rights involved – fundamental rights are involved in the closure of newspapers or in the banning of political parties or prosecution of NGOs like in the 18/98 proceedings - and with scant consideration for the actions and prosecutions that were being heard simultaneously at other courts. Two examples can be mentioned. Garzón suspended all functions and activities and froze the accounts of Batasuna and later ANV while the case was still being heard by the Supreme Court Criminal Chamber. Some excesses in his instruction zeal also led to the release of suspects that had high risk of evasion in some notorious drug trafficking cases.

Judge Baltasar Garzón now falls from "starlet" judge, Nobel peace prize nominee, a quixotic character determined to fight dictators like Pinochet, to fight ETA or Al Qaeda terrorists or para-state involvement in counter-terrorist commandos like the GAL, and to transform International Human Rights Law, to the position of a seeming victim of an obscure plot, provisionally discharged from his functions by the Council (CGPJ in mid-May 2010 following the opening of the hearings in the Franco's regime Crimes Against Humanity and 19 April 2011 following the opening of proceedings by the SC on the Gurtel case) pending the decision on his case by the Supreme Court (this disciplinary discharge measure by the Council is automatic once the prosecution case has been opened). He was "rescued" internationally to become attaché to Moreno Ocampo, prosecutor of the International Criminal Court, on special leave of 7 months granted by the CGPJ. The charge before the Supreme Court is *prevarication* i.e. to have knowingly and intentionally adopted an unjust judicial decision (Article 446, 3 of the Penal Code), in this case to have declared universal and retroactive jurisdiction and misapplied the Amnesty law of 1977, by investigating some crimes against Humanity committed by the rebels who led the coup d'état against the Republic, against the form of government and highest organs of the state, and the forceful disappearances and actually imputing them to actors known to be dead, considering these to be crimes against Humanity which do not prescribe and cannot be condoned by the Amnesty law. Garzón later, soon after assuming jurisdiction, declined jurisdiction in favour of the Courts located in the judicial districts where the mass "graves" were located.

Two other charges against Garzón are one of corruption, in that he received sums of money from Santander banker Emilio Botín for the organisation of some courses about terrorism in New York and incidentally adopted a decision that cleared some executives of Santander, and, perhaps the most dangerous of his moves, another

charge of prevarication in that he is said to have breached the law by authorising recordings of lawyers' conversations with their imprisoned clients in the famous Gürtel case (Gürtel is the code name given by police detectives to the corruption cases involving the Popular Party (at national level, and especially in Valencia¹⁰) with businessman Mr Correa¹¹. It involves millions of euros.

One possible reaction to the Garzón case would be to dismiss its importance by assuming that the Supreme Court will not let itself be led to such an absurd situation. But one cannot forget the constitutional crisis that this Supreme Court brought about in 2004 (judgment 51/2004 of 23 January) by declaring that eleven of the twelve judges of the Constitutional Court were liable for negligence in their "absolutely unlawful conduct" and were ordered to pay 500€ each to the plaintiff who had attempted to obtain a declaration suspending a call for nominees to be appointed as legal clerks to the Constitutional Court without a public exam. This action was declared inadmissible by the Administrative Chamber of the Supreme Court, and then refused by the Constitutional Court on *amparo* because the plaintiff pretended that the Constitutional Court should remove itself from the case and create a special *ad hoc* court to examine the *amparo*. This absurd situation had been considered as a sort of judicial coup d'Etat by Rubio Llorente (president of the Consejo de Estado, Rubio Llorente: 2004)

Of the three, the charges that have aroused international awe is that concerning his willing violation (*mens rea*) of the Amnesty law. These charges will be examined in relation to the autonomy and heteronomy of the Judiciary: (1) who is prosecuting Garzón and why; (2) how does the issue of conform interpretation become relevant and (3) what are the consequences or implications for Justice of confusing a judicial error or mistake and a judicial offence prevarication following from an unjust decision?

- (1) Procedurally, Judge Garzón is being prosecuted on the basis of the institution of the popular prosecution brought, initially, by two associations that are ideologically close to the alleged perpetrators of the crimes he intended to investigate, in the extreme Spanish nationalist right wing. There has been some debate as to whether such prosecution can proceed in the absence of a victim's prosecution or public prosecution. There are two Supreme Court judgements in different directions: the Botin case, after the aforementioned president of Santander bank, excluding the possibility of a prosecution based exclusively on popular accusation, and the Atutxa case allowing prosecution in the absence of other victim or state prosecution, a precedent provisionally settled with the Ibarretxe case in favour of allowing the prosecution based on only popular accusation. Garzón's prosecution was heard and initially accepted by judge Varela, a former colleague of Garzón at the Spanish Government, another of the elite, competent judges linked to the progressive judicial association *Jueces para la Democracia*. Judge Garzón tried, unsuccessfully, to impeach Judge Varela in the current case because he had instructed the popular prosecutions in this case on the proper way to present charges based on facts rather than on ideological assumptions. In other words, Varela had assisted the prosecution. The Falange has actually been removed for failure to substantiate this formal impediment of basing the prosecution on ideological grounds.

In the instruction phase, Garzón's defence lawyer called for expert witnesses – prestigious international criminal jurists – to declare on universal jurisdiction and on the issue whether the alleged crimes Garzón intended to investigate might have prescribed or whether Amnesty laws can extend as far as condoning such crimes and violations of Human Rights. Animosity

¹⁰ Francisco Camps, former president of the Valencia Autonomous Community, is being prosecuted for corruption (technically *delito continuado de cohecho*).

¹¹ "Gürtel" in German or "belt" in English is a possible translation of the Spanish word and name *correa*,

between the judges or generally against Garzón is not, formally, a relevant factor, but it could perhaps explain some of the reactions from the right-wing and the sympathetic reactions from more progressive circles, in a spiral widely reinforced by the right-wing press. One plausible reason to prosecute the judge lies in his attempt to prosecute perpetrators who are known to be dead, which is an absolute procedural impediment. How can a judge actually prosecute someone who is clearly dead, or how can he prosecute a whole regime? But the investigation could have focused on the prior identification of the victims instead of the perpetrators. At any rate, if any mistake had been made in this sense, it was soon corrected by Garzón himself, for he soon, in a rather erratic move, declined jurisdiction in favour of the local "natural" courts where the bodies were to be unearthed.

- (2) Conform interpretation is an important issue for any legal system which is seen as linked with other legal systems under the umbrella of a higher or superior law. Such would be the case for International Human Rights law. According to the Spanish Constitution (Art 10, 2) Spanish law is to be interpreted in conformity with such instruments. There have been previous attempts to explore the notion of universal jurisdiction under the Rome Statute of the International Criminal Court and general principles of international Human Rights law, and Garzón has pushed in that direction, but the Supreme Court decided that jurisdiction could only be claimed where there was a point of connection – victim, perpetrators, locus – with Spain. The main point of conform interpretation is to develop a flexible concept of interpretation of domestic law and to abide by (interpretation of) higher law, thereby setting aside, if necessary, domestic conceptions which might impede the realisation of the goals, concepts and purposes (the *telos*) of the higher law. It implies a challenge to sovereignty of the domestic judicial hierarchy if necessary, a switch of loyalties from the domestic sovereign to the international or supranational sovereign and therefore an exercise of Kantian autonomy on the part of the judge, in order to accept higher law; a fine balance between autonomy and heteronomy. Judge Garzón has often placed himself in that predicament, disdainful of the possible implications of such exercises in autonomy, and might have upset judicial colleagues and superiors as well as Governments and diplomats. On the other hand, if the debate bears on the possibility of prosecuting persons who are notoriously dead, it might be a matter of interpretation to what extent this is at all possible under Spanish criminal law. If it is clearly against the law to do so, judge Garzón was either "prevaricating" or he was trying to achieve a different, arguably legitimate, aim, possibly to accelerate an investigation that would have otherwise taken a longer and more complex procedure under the Law on Historic Remembrance, an Act that his critics claim he could have used alternatively.
- (3) The charge against Garzón is very serious: knowingly adopting an unjust decision to investigate. But unjust toward whom exactly? In a context where no individual victim of his proceedings can be identified (but only a general unidentified victim of his injustice, one wonders how the popular prosecution might be affected by the alleged misapplication of the law. What exactly is the protected good? Prevarication goes well beyond a judicial mistake, which could be appealed against and eventually corrected by the jurisdictional system – appeals, cassation, revision – on the argument of hierarchy or authority. The charge of prevarication implies wrongness – the decision has to be wrong – but it implies the knowledge of its wrongness and therefore the will to inflict or commit an injustice by making and applying such decision. I shall not discuss, whether there is indeed material wrongness in the instructor's decision to investigate – the main question then switches from investigating *what* to investigating *whom* – or whether the Amnesty law has to be interpreted in conformity with international human rights law to

the effect that the crimes in question have not prescribed, that there are real victims and they might have a right to know. This seems to be the playing field towards which Judge Garzón's many supporters want to move the debate. The question whether the norms concerning crimes against Humanity were created in the Nurnberg trials or discovered as previously and universally valid a-temporal laws is difficult but the opening of the hearing by Judge Varela seems to imply that there is indeed wrongness, for if Garzón's decision to investigate had been right it could not possibly have involved prevarication and the popular prosecution would have been thrown out lacking in *fumus boni iuris*.

Assuming Garzón's decision to investigate was right, i.e. that prosecuting known or unknown perpetrators who are presumably dead is the only way to initiate investigations to find victims; assuming Garzón accepted jurisdiction and started to investigate simply because the charges were initially brought by "victims'" relatives; assuming there is at least a reasonable doubt as to whether international human rights law would allow an Amnesty law that actually condoned crimes against Humanity; and finally assuming that the facts to be discovered attributed to those involved in the forceful disappearances were to be qualified as "crimes against Humanity", then the decision of judge Varela to accept the prosecution of Garzón could itself also be an unjust decision knowingly misapplying the law and subject to the crime of prevarication. Varela must have known there was at least a reasonable doubt of the justness of his decision. We could fold back in circles. Would we know where to stop? In March 2011, judge Garzón has brought a case against Spain before the Strasburg Court. Opening criminal procedures against him for having performed his judicial function is indeed a violation of Article 6 of the Convention; but are domestic remedies exhausted? Garzón now argues that it is the very fact of opening proceedings against him and refusing to accept the witnesses and experts that he had proposed on the issue of Universal Jurisdiction that constitutes a violation of his right to a fair trial.

Accepting to hear the prosecution under such charges has been a huge mistake in legal theory and interpretation and in judicial strategy and has done immense harm to the image of justice in Spain. Is the system being abused to carry a quarrel between judicial colleagues through other means or is it actually being used to protect the reputation of justice at the verge of incurring in the absurd? Or, is it really because Garzón started to investigate the Gürtel case that he has been stopped by judges close to the PP? Indeed, the case on Universal Jurisdiction and crimes against humanity was suspended pending Garzón's recusation of some of the Supreme Court judges who were to judge him but who had also decided to open the hearing. There was a breach of impartiality because the judges have been instructing judges¹². The Supreme Court has accepted the recusation and five judges who had taken part in the investigation phase will not be able to judge him now (Lázaro 2011).

The Gürtel case is also moving on, in fact much faster, and Garzón's decision to record the conversations is the subject of his prosecution before the Supreme Court and suspension by the Council. Two of the judges involved in the Chamber of the Supreme Court that will judge Garzón in the Gürtel case have been recused by Garzón, along with five other judges, one of them is Judge Varela, now at the Supreme Court, but the Supreme Court and the Constitutional Court have rejected the recusation so judge Varela will be allowed to decide on the case (Yoldi 2012)¹³. The recusation has been admitted for five other judges though. On the exhumation

¹² See to this effect the judgment of the European Court of Human Rights of 26 October 2010 declaring that Spain has breached Art 6 for a similar situation.

¹³ In the meantime, the Gürtel case as such is being investigated by the Madrid courts.

of victims of Franquism case where there is enormous international attention, Judge Varela believed prosecuting Garzón was necessary in order to prevent the absurdity of prosecuting dead people. But the Supreme and Constitutional courts have decided that the two cases, the hearings in Gürtel and the exhumations are unrelated and that whatever expressions Varela might have uttered personally against Garzón are not sufficient to remove him from the case. For those who support Garzón the absurdity lies in a situation where you accept criminal prosecutions against a judge simply because you do not like what he is doing or think he is mistaken and acting *ultra vires*. If Garzón is found guilty in this exhumation case, the shadow of a doubt as to his proper, adequate performance of judicial functions in many other cases applauded by the current prosecutors and by Spanish society at large (the ETA and Batasuna cases) would be hard to dissipate. But if Garzón is found guilty on the Gürtel hearings case, he would lose his condition as a judge and the case against him under the exhumation decisions might be heard by ordinary courts. This seems to be one reason why the Supreme Court wants to speed up the Gürtel case, which was lodged considerably later in time. In my view paroxysms is the proper term because there is a background sociological problem with Justice in Spain, which is largely the thesis in this paper, and the Garzón case brings out many things that are rotten in the Kingdom, possibly linked to the way the transition was handled with no genuine transitional justice.

8. Conclusion

Whereas Spanish Justice shares many features with other Southern European countries¹⁴ there are certain traits that make it a very special case. In spite of its efforts at modernisation and the quality of most judges, Spanish Justice is in disrepute due to the politicised practices of the General Council, carried to the highest judicial appointments (including the Constitutional Court) and due to the judicialization of politics, and perhaps also because of the direct link of the procurator with the Government (it is the way this link operates and its consequences on independence rather than the fact that there is an organic link). These features make the Spanish case clearly distinguishable from the Italian case, for example, where corruption is a more widely extended phenomenon. In the case of judge Garzón this disrepute has led to paroxysm of absurdity. This exceptionality of these situations might perhaps be related to explanations of political and sociological theory rather than legalistic explanations or even legal theoretical ones. The absence of a transitional justice in Spain is perhaps an important explanation of the new spheres or spectres of exception, which can be explained on the basis of judicialisation of (Basque and Catalan) politics and politicisation of justice and justices, and which are re-surfacing in the ongoing and intricate Garzón cases.

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¹⁴ It might be interesting to read Judge Garzón (2011) himself on this point: "Los ataques a la justicia en Italia desde las más altas instancias políticas o el bloqueo institucional para la renovación del Tribunal Constitucional en España, atacan a su independencia en forma peligrosa y socavan la confianza de los ciudadanos/os en los mismos, favoreciendo la posición de quienes quieren acabar con su credibilidad. De igual forma, el enfrentamiento entre otros actores judiciales del más alto nivel desconcierta a los destinatario/as de la justicia que se rinden finalmente ante la lentitud y la incomprensibilidad de algunas resoluciones judiciales."

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