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Agenda item 3 (d): Development of principles of effective governance

Three relevant organizations, rating social and democratic development worldwide, score Spain as follows: World Bank on its Worldwide Governance Indicators assigns position 63 among 209 countries and percentile 70; Transparency International, position 36 among 168 countries with 58 points (maximum 100); and Word Justice Project, position 26 among 102 countries and 0,68 points (maximum 1). These apparently dispersed results show exceedingly high consistency after an in depth analysis.

This evidence allows to assert that Spain is positioned worldwide at a medium/high level as far as its social and democratic development is concerned. As these rankings are not for free, some sound strengths should back this positioning.

This fact notwithstanding, Spain ranks at the very bottom among the countries of the Organization for Economic Cooperation and Development at three relevant Sustainable Development Goals: unemployment (especially youth unemployment) poverty (especially children poverty), and inequality.

In this paper we intend to identify relevant issues that can explain the root causes that lead to the abovementioned not so positive outcomes. The final purpose being to identify areas for improvement that could lead to action redressing this situation. For this purpose we put the focus on the governance practices currently implemented in Spain and confront them against appropriate standards and methodology.

For this purpose we will stick to World Bank's methodology as formulated on its Worldwide Governance Indicators.

To build Worldwide Governance Indicators, World Bank captures six key dimensions of governance: 1.-Voice & Accountability, 2.-Political Stability and Lack of Violence, 3.-Government Effectiveness, 4.-Regulatory Quality, 5.-Rule of Law, and 5.-Control of Corruption. Combining all of them, they build a worldwide nations ranking. Additionally, they assign a percentile position to each country.

Referring to Spain, from these six dimensions evidence shows than number one and two are properly addressed by the Spanish governance system.

This is not the case for the other four key dimensions.

Government Effectiveness reflects perceptions of the quality of the civil service and the degree of its independence from political pressures.

Concerning this point, Sweden (ranking number 4 worldwide and positioned in percentile 98 in the Worldwide Governance Indicators, when formulating its central government's common basic values states: "appointments to posts in public administration are an important

issue of democracy. When appointing central government officials, only objective grounds such as merit and competence are to be taken into account. Competence must be the primary consideration. No irrelevant factors or private interests are to have any influence on employment decisions”.

Spanish practice differs radically from this approach as merit and competence are irrelevant when appointing higher ranking government officials.

Appointments to high management posts at the public sector are carried out unchallenged and unilaterally by the party or parties in power and take only into account affinity and submission to the party directives. No merit or competence are considered. No accountability procedures are in place. The system is backed with appropriate legislation and legally operates under the labels: “absolutely discretionary appointments” with no limits at all and “discretionary appointments restricted to public servants” with the restriction that the appointee should currently be holding a position as a public employee.

Relying only on political criteria, disregarding competence and merit, when appointing high level public servants conveys pernicious effects: 1) the public sector is poorly managed; short sighted and politically motivated decisions are only too frequent. More than 60.000 € of public money have been poured to rescue the public financial system; 2) no meritocratic career exists for the public servants working in Public Service; appointments, promotions or demotions are not linked to performance or deontology but to political convenience; 3) public servants politically appointed owe allegiance to their patrons; this obliterates deontology and leads to corruption; in fact nearly all the corruption cases are provoked by politicians or their appointees.

There is a clear area for improving governance in this dimension by progressively substituting the current system by one based only on merit and competence.

Regulatory Quality determines the perception of the quality of policy formulation and implementation, independence of the regulatory bodies from political influence and the credibility of the government's commitment to such policies.

Regulatory Bodies are governmental agencies that are created to oversee specific industries and practices, specifically oriented to promote freedom of market and to avoid monopolistic practices.

Regulatory bodies operate outside the jurisdiction of the executive branch of the government in order to give them complete power over regulating their respective field. To preserve their independence and credibility in front of the citizens and represent the voice of legitimate stakeholders, more and more prominent professionals independent of political influence are incorporated into these bodies.

The Regulatory Bodies operating in Spain are: National Commission for the Security Market, Spanish Agency for Data Protection, Commission for the Market of Telecommunications, National Commission for Energy, National Commission for Competence, National Commission for Postal Services, National Commission for Audio and Video Media, National Commission for Game and National Council for Atomic Energy.

All these bodies have their own Board of Directors and Managing Team. With no exception the appointments for all these posts are carried out by the political parties and among their supporters. Competence and merit are not taken into account.

The consequence is that the Spanish Regulatory Bodies are managed neither by the best nor the most independent professionals. This leads to a poor decision making process and too many decisions in favour of extractive elites. In addition, this bars the presence of legitimate stakeholders with a relevant repository of knowledge and experience, representing the interests of the society at large.

In this dimension there is a clear area for improving governance by changing the appointing system to one based only on merit and competence.

Rule of Law reflects perceptions of the extent to which agents have confidence in and abide by the rules of society, in particular the quality of contract enforcement, property rights, police and courts, as well as the likelihood of crime and violence.

To assess the degree of governance development in this dimension we resort to data published in 2016 by the European Network of Councils for the Judiciary on its report "Independence and Accountability of the Judiciary and of the Prosecution". The survey puts a number of questions to judges at every country, covers the last two years and includes 22 European countries.

To the question if "bribes are regularly accepted to bias the court ruling", the answer of Spanish judges rank Spain 19 among the 22 countries (at 15 other countries judges consider this not to be a regular practice). Number 20 at "having experienced pressures" or "disciplinary threats to decide upon a case". Number 22 at "some cases are allocated to specific judges, in favour of the system, to influence the outcome of the court ruling". Number 22 at "neither merit nor competence have any influence in order to be promoted to upper levels".

Experts consider the Spanish Procedural Law to be obsolete, labyrinthine and prone to manipulative practices. Prosecutions may need seven years before getting a court ruling. Corruption trials are especially lengthy as important amount of money is involved and very experienced lawyers are hired by the offenders.

Concerning the Rule of Law governance dimension, political influence permeates the judiciary system in Spain, greatly reducing the quality of the governance in this area.

Fostering professionalism and independence at the judiciary is a clear area for improvement. Updating the Procedural Law to reduce the length of the prosecution process would be welcome too.

Control of Corruption reflects perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.

The Sociological Research Centre, a governmental body, carries out the most credible opinion polls in Spain. In one of them citizens are requested to identify their first, second and third major concerns. Adding the three figures together they obtain a unique composite index. The February 2017 survey ranks the main concerns of the Spanish citizens as follows: 1st) Unemployment 72%; 2nd) Corruption 37%; 3rd) Economic problems 27%; 4th) Politics, politicians and political parties 23%; 5th) Social Problems 10%; 6th) Education 10%.

The results of this poll correlate with the evidence offered along this paper: politics and politicians, by disregarding merit and competence and relying only on political convenience

for appointing higher ranking officer for managing public activities have a negative influence upon the quality of governance in Spain.

This leads to a high level of corruption among politicians and their direct environment which is deeply rejected by the Spanish citizens.

This situation can be redressed if politicians reduce their influence on appointing higher ranking public officers based only on political convenience, stop interfering with justice and establish efficient proactive measures, including updating Procedural Law, to cope with political corruption.

Following best practices implemented in the most advanced democracies, competence and merit should instead become progressively the building blocks for appointing higher ranking officers for the public management system as well as at the Judiciary.