

## THE SPANISH JUDICIARY: STRUCTURE, ORGANIZATION, GOVERNMENT

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This presentation refers to the structure, organization and governance of the Spanish judiciary with a special focus on the criminal jurisdiction.

Before examining these items, it is necessary to describe the territorial structure of Spain, as the judicial organization follows it. Spain is divided, since the adoption of the 1978 Constitution, in Autonomous Communities – *comunidades autónomas* – (17 and two autonomous cities), formed by one or more provinces (*provincias*). The provincial division of Spain precedes the Constitution (it was adopted in 1832), and there are fifty provinces. Each province is composed of a number of municipalities, which are the base of the administrative organization. In the judicial structure, provinces are divided into judicial districts (*partidos judiciales*), usually following historical or population criteria in the surroundings of the bigger cities.

### Judiciary governance

According to article 117.1 of the Spanish Constitution, justice is administered only by judges and magistrates and the exercise of judicial authority in any kind of action is vested exclusively in the courts and tribunals laid down by the law.

Although Spain is divided into Autonomous Communities, the judicial power (*Poder Judicial*) is unitary. The Autonomous Communities do not have their own judiciary and their courts are courts of the State.

The judiciary is an autonomous power and it is governed by the **General Council of the Judiciary** (*Consejo General del Poder Judicial, CGPJ*). The Judiciary Organic Law of 1985 regulates the Council. This Organic Law provides for the operation and internal administration of courts and tribunals as well as the legal status of professional judges and magistrates.

The General Council of the Judiciary is a constitutional body composed of 20 members and a President who is also appointed as the President of the Supreme Court. The Congress and the Senate propose the members. Twelve of the Council's members must be judges and magistrates of all levels of the judiciary and eight members are chosen amongst lawyers of acknowledged competence with more than fifteen years of professional practice. The members of the Council are appointed for a five-year period and they cannot be reelected with the exception of the President.

Though it is the governing body of the judiciary, it is not a part of the courts system and its **functions** are merely governmental or administrative. The CGPJ selects and trains judges and magistrates (Judicial Training School depends on it), investigates and imposes disciplinary measures against judges, decides about promotion, transfers, suspension or retirement, and all the other topics related to the judicial career. Likewise, it has functions in internal organization of the

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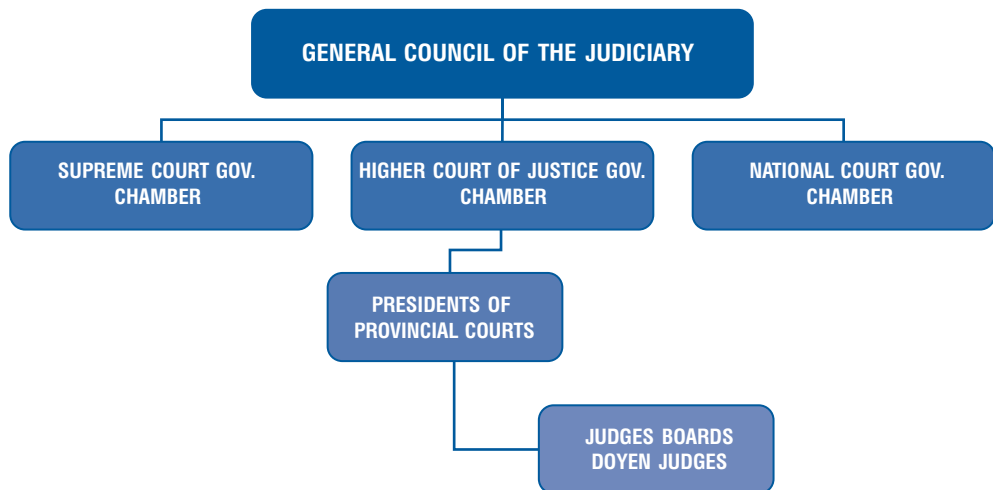
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courts, inspection and statistics, and it has to inform the government about any legislation referring to judicial organization, to procedural rules affecting fundamental rights, or to criminal and penitentiary rules.

In some cases, the CGPJ delegates its powers to other governing bodies, which are called Governance Chambers (*Salas de Gobierno*). There is one chamber in the Supreme Court, one in the National Court, and one in each Higher Court of Justice.

Under these chambers, the presidents of the provincial courts have been delegated governing functions in their provinces; and finally, in each judicial district there are the Judges Boards (*juntas de jueces*) and the Doyen Judges (*jueces decanos*), with organizational functions within their districts.

As their competences are governmental and not judicial, these institutions are hierarchically organized, so the superior governing bodies can give compulsory instructions or orders to the inferior.

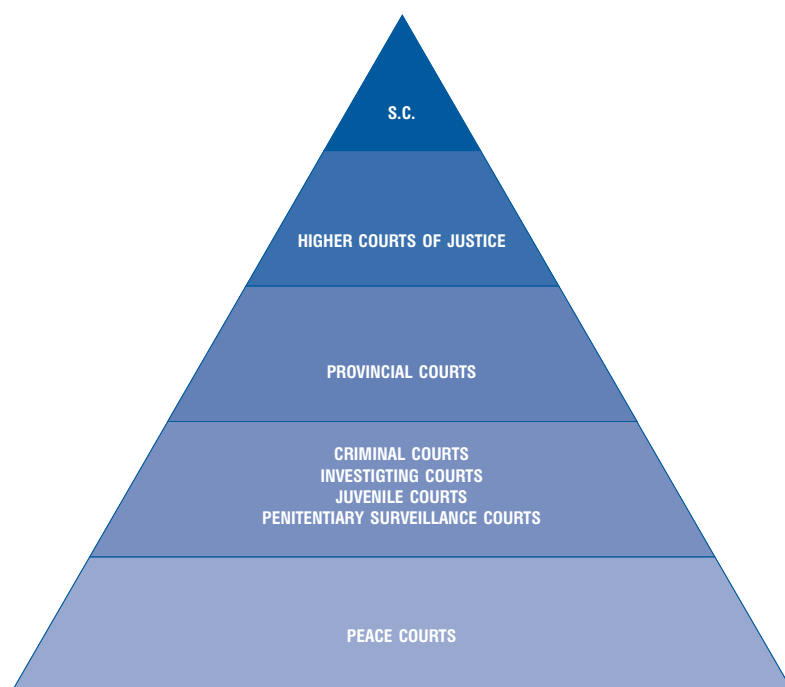


**Structure and organization**

Courts in Spain are divided in five different jurisdictions: civil, criminal, administrative, labor, and military (this one just for military offences committed by military staff in military facilities, or in cases of siege). Each one of these jurisdictions has a specific organization.

The jurisdiction is classified into different levels, from the base to the top, like a pyramid, as follows:

1. On the **first level**, there are the courts of peace (*Juzgados de Paz*) served by lay judges. There is one in each municipality where there is no investigating court. The competence of this court is to judge less important offences – *faltas* – such as insults or trivial threats.



2. On the **second level**, there are investigating courts (*juzgados de instrucción*), criminal courts (*juzgados de lo penal*), juvenile courts (*juzgados de menores*), and penitentiary surveillance courts (*juzgados de vigilancia penitenciaria*). From this stage upwards professional judges serve all the courts.
- I. In each judicial district there is one or several (depending on the population) **investigating courts**. The investigating judge has four different functions:
- He hears the appeals against judgments of the courts of peace.
  - He tries all the minor offences committed in the town where the court is located and all the minor offences committed in the judicial district that are not in the competence of the lay judge.
  - He is the judge of constitutional guarantees. The investigating judge permits actions that affect constitutional rights (free movement, privacy, etc.). In this capacity he issues arrest warrants or search and seizure warrants, he decides about interceptions of communications or entering in private premises. He also decides on the situation of arrested people, keeping them in custody or setting them free, with or without bail.
  - Finally, he is the one who conducts criminal investigations. In Spain, following the French legal system, criminal investigation is run by the investigating judge, who orders investigations that he thinks are necessary and controls the activities of police investigators, who are functionally under his command. Of course, at this stage, the prosecution and the defense counsel can participate in the proceedings (in fact participation of public prosecution is obligatory).
- II. **Criminal courts** are single-judge courts with provincial jurisdiction. Each province can have one or more, depending on the population, as it happens

with the other courts at this stage. Their competence is to try offences with punishment up to five years of imprisonment (driving while intoxicated, less serious frauds, thefts over 300 €, robbery or burglary, professional negligence, inflicting bodily injuries, etc.)

- III. **Juvenile courts** have provincial jurisdiction, too. Their competence is to try any kind of offences committed by people over fourteen and under eighteen years of age. In the special proceedings for young people and as an exception to the general rule, investigations are conducted by the public prosecution.
  - IV. Finally, **penitentiary surveillance courts** have the function of controlling the execution of sentences and supervising decisions of the prison services relating to the inmates. Their jurisdiction covers one or several provinces, depending on the number of prisons and their capacity.
3. The **third level** is composed of the **provincial courts** (*audiencias provinciales*), one in each province. They have both civil and criminal jurisdiction and depending on the population of the province and the number of inferior courts, they can be divided into sections. The sections are three-judge courts that judge and decide together. Provincial courts have three functions in criminal proceedings:
    - a) To hear appeals against judgments of the inferior courts (*juzgados*) of its province.
    - b) To try at first instance serious offences with punishment over five years of imprisonment (murder, manslaughter, serious fraud, drug trafficking, rape, grievous bodily harm, etc.).
    - c) To judge under the proceedings of jury trial. In this case (criminal law establishes the offences triable with this proceedings) a single judge of the provincial court presides over the court and passes the sentence after the nine-juror jury pronounces the verdict.
  4. A **fourth level** includes the **Higher Court of Justice** (*Tribunal Superior de Justicia*). Each Autonomous Community has one of these courts at the top of the judiciary in the community. The courts are divided into Chambers (*Salas*), one for civil and criminal affairs, other for administrative affairs and a third for labor affairs. There is a fourth chamber, the Chamber of Governance (*Sala de Gobierno*), whose functions are not judicial but managerial.

The Civil and Criminal Chamber, in criminal justice, is competent in three subjects:

- a) To investigate and try at first instance offences committed by members of the regional (Autonomous Community) legislative assembly or the regional government, as well as judges serving in the Autonomous Community for office-related offences.
- b) To judge the appeals against judgments of the jury trials that, as we have just seen, are carried out at first instance by the provincial courts.

- c) To judge the appeals against judgments of the provincial courts. This competence has been recently introduced by an amendment to the Judiciary Organic Law, but it is not in force yet, as implementation of the new function is required, because the present chamber does not have the capacity to deal with such number of new proceedings. Nowadays, in order to fulfill the European Convention for Human Rights standards about the second instance, the special revision appeal (*recurso de casación*) held before the Supreme Court is widely admitted, so that in fact it is almost as popular as an ordinary appeal.
5. The **fifth and last level**, and the apex of the judicial pyramid, is the **Supreme Court** (*Tribunal Supremo*). The Supreme Court is situated in Madrid, and it is divided into five chambers, one for each jurisdiction (civil, criminal, administrative, labor and military). There are fifteen judges in the Criminal Chamber (or Second Chamber – *Sala Segunda*), but the courts are of three or five members (depending on the gravity of the appealed sentence). The plenary court is an exception and convoked by the president of the chamber.

The second Chamber has the following functions:

- a) To investigate and try offences committed by the presidents and members of the government, Congress, Senate, Supreme Court, Constitutional Court, judges serving at the National Court and Higher Courts of Justice, and other higher officials, except HM the King, who does not bear any constitutional responsibility.
- b) To hear the special revision appeals (*recurso de casación*) against judgments of provincial courts at first instance and judgments of the Higher Court of Justice at first or second instance. Following the system of the French “cassation”, this appeal can only be held for specific reasons established in the Criminal Proceedings Law that makes it different from an ordinary appeal. These reasons might be infraction of law and infraction of proceedings. The lack of appeal against judgments of the provincial courts at first instance (until the amendment enters into force) compels to interpret those specific reasons in a wider way.
- c) To revise final sentences (*recurso de revisión*), if new elements or evidence that could prove the innocence of the convicted appear. This is the only court empowered for such revision as it is an exception to the principle of irreversibility of final judgments.
6. Inside the judicial pyramid, but with jurisdiction over the whole Spanish territory, is the **National Court** (*Audiencia Nacional*). This court, whose seat is in Madrid, has in criminal justice a similar composition to the judiciary of a province, but extended to all the territory. It has six Investigating Courts (*juzgados centrales de instrucción*), one Criminal Court, one Juvenile Court and one Penitentiary Surveillance Court, at the lower level, and a Criminal Chamber divided into four sections.

The competence of the National Court is not only conferred for territorial reasons, but also for the kind of offences. As to territorial reasons, it is competent

to try offences committed outside Spanish territory, and serious offences, such as fraud or drug trafficking committed by an organization, which affect several provinces. For the kind of offences it is competent to try terrorism, offences against the Crown, against the constitutional way of governance and higher bodies of the nation, and counterfeiting offences.

After the amendment of the Judiciary Organic Law, an Appeal Chamber has been created to hear the appeals against judgments of the Criminal Chamber.

7. The **Constitutional Court** (*Tribunal Constitucional*) is not a part of the court system. It is a politically independent institution with its own rules and rights. It is the supreme interpreter of the Spanish Constitution.

It is composed of twelve members: four nominated by the Congress, four nominated by the Senate by a majority of three-fifths, two by the Government and two by the General Council of the Judiciary. Constitutional Court members are elected among magistrates and prosecutors, university professors, public officials and lawyers, all of them with at least fifteen years of practice in their profession. Their term of office is nine years and they are renewed every three years by thirds.

The Constitutional Court has jurisdiction over the whole territory and its functions include control of the compliance with the Constitution of the laws, the protection of fundamental rights recognized in Part I, Chapter II, articles 15 to 29 of the Spanish Constitution (Fundamental Rights and Public Liberties); the disputes between the state and Autonomous Communities or among Autonomous Communities themselves; and the control of the compliance with the Constitution of the legislation of the Autonomous Communities.

However, a natural person can appeal to the Constitutional Court when he considers that a final judgment violates fundamental rights, because a special appeal called "*recurso de amparo*" is established, which allows individual citizens to ask for protection of this high court.

8. Finally, as Spain is party under the European Convention on Human Rights, defendants can bring their case before the **European Court of Human Rights** in Strasbourg.