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Accountability, transparency and court organization in Spanish civil justice[1-2]

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Abstract: The article essentially reproduces the Spanish national report for the session on accountability and transparency in civil justice held at the XVI World Congress on Procedural Law, held in Japan in 2019. As such, its main aim was and is to facilitate comparative scholarship by presenting, in a brief yet accurate manner, the legal framework and practical implications of judicial accountability and transparency in Spanish civil justice, with a reference to relevant aspects of the overall civil court system. An important tenet of judicial independence, in Spain judicial accountability is made effective by means of a comprehensive system of civil, disciplinary, and administrative individual and state responsibility, as well as by a growingly detailed and accessible system to ensure transparency at all levels of the judiciary.

Keywords: Judicial accountability / State responsibility for the administration of justice / Transparency in civil justice / Court management / Court personnel

1 The text reproduces, with a few minor updates, the Spanish national report for Session 2 ('Accountability and transparency in civil justice') of the XVI World Congress on Procedural Law ('Challenges for civil justice as we move beyond globalization and technological change'), held in Kobe (Japan), November 2-5, 2019. Prof. Yulin Fu was the General Reporter for Session 2.

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I. JUDICIAL ACCOUNTABILITY.

A. Basic notions and legal framework.

According to Ulpian,[4] *iuris præcepta sunt hæc*, the precepts of the law are these: *honeste vivere,* to live honestly; *neminem lædere,* to injure no one; *suum cuique tribuere*, to give to everyone his due. The second precept — *neminem lædere,* to injure no one — provides the key to approach the idea of accountability: anyone who has violated a duty of conduct existing in the interest of another subject is bound to repair the damaged caused; is to be held accountable.

In most cases, civil accountability refers to damage caused by the breach of an obligation undertaken by contract (*responsabilidad contractual*). In others, the duty to repair damage arises from negligent conduct, regardless of any obligation entered into between the parties (*responsabilidad extracontractual*). Accountability can also originate in cases of unjustified enrichment (*enriquecimiento injustificado*) or simply by operation of the law. All these possible sources of civil responsibility are generally proclaimed in Article 1089 of the Spanish Civil Code: 'obligations arise from the law, from contracts and quasi-contracts, and from acts and omissions that are unlawful or involve any kind of fault or negligence'

Rooted in the same general notion is the need to make public authorities accountable for any arbitrary actions that cause damage to citizens. Article 9.3 of the Spanish Constitution guarantees 'the accountability of the public authorities, and the prohibition against arbitrary action on the part of the latter.'

When such accountability refers to the executive power, the idea is further specified through the principle of patrimonial responsibility of public administrations (*responsabilidad patrimonial de las administraciones p***úblicas**), also enshrined in our Constitution in Article 106.2: according to which private individuals are 'entitled to compensation for any loss that they may suffer to their property or rights … whenever such loss is the result of the operation of public services.'

The Constitution includes a specific provision to affirm the principle of accountability of public authorities also in the realm of the judiciary power, when it is the

4 Digest, 1.1.10.

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administration of justice itself that has caused damage. In the words of Article 121, 'damages caused by judicial errors, as well as those arising from irregularities in the administration of justice, shall be subject to compensation by the State, in accordance with the law.'

At the same time, rules on the disciplinary consequences of any such conducts are foreseen in Article 117: judges 'are independent, have fixity of tenure, are accountable, and are subject only to the rule of law,' hence they 'may only be dismissed, suspended, transferred or retired on the grounds and subject to the guarantees provided by law.'

These constitutional provisions are developed by the Organic Law of the Judiciary (here simply the Judiciary Law)[5]. Articles 292 ff., 405 to 410, and 414 ff. of the Judiciary Law address this general idea of accountability from two perspectives: (a) the individual accountability of judges, and (b) the responsibility of the state for judicial errors or abnormal functioning of the administration of justice.

1. ***Individual accountability of judges: civil, disciplinary, and criminal***

Individual accountability of judges for their actions is ensured by three different types of responsibility: civil, criminal, and disciplinary.

a) *Civil responsibility*. Traditionally, injured parties had a direct action against any individual judge that had caused damage to them for malpractice or malice in office. This direct civil action was, however, abrogated in 2015.[6] The Law 'eliminates the direct civil liability of judges, which is rarely used in practice,' which 'aligns the responsibility of judges with that of other public employees and complies with the recommendations of the Council of Europe in this area.'[7] Currently, in sum, 'under no circumstances may the injured parties bring actions against judges directly'.[8]

   The direct civil action against judges has been replaced by a general action of civil responsibility against the state. The state will then be free to seek reimbursement from the individual judge having caused the harm — only if there is willful misconduct or gross negligence on the part of the judge — notwithstanding any disciplinary responsibility that might have been incurred.[9]

   The willful misconduct or gross negligence of judges can be acknowledged by a judgment or by a resolution issued by the General Council of the Judiciary (*Consejo General del Poder Judicial*). 'When assessing accountability, the following

5 Organic Law 6/1985, of July 1, on the Judiciary (*Ley Orgánica del Poder Judicial*).

6 Organic Law 7/2015, of July 21, amending the Judiciary Law.

7 Organic Law 7/2015, of July 21, Preamble, Section V.

8 Judiciary Law, Article 296.1.

9 Judiciary Law, Article 296.2.

criteria, amongst others, will be considered: the detrimental result occasioned and whether intent existed.'[10]

b) *Disciplinary responsibility*. This possible monetary reimbursement of the judge to the state does not prevent the state from declaring and sanctioning any disciplinary responsibility the judge may have incurred as a consequence of his fraudulent or negligent behavior.

Disciplinary responsibility is regulated under Articles 414 to 427 of the Judiciary Law, which enumerate a list of infractions (minor, major, very serious) and corresponding sanctions (from verbal warning to removal from office).

It can be sought solely by the competent authority, the General Council of the Judiciary, the constitutional body created for the self-governing of the judiciary.[11]

c) *Criminal responsibility*. Some of those actions may have also be serious enough to warrant that the state's *ius puniendi* is set in motion to impose criminal penalties.

Articles 405 to 410 of the Judiciary Law establish the basis for judicial criminal responsibility, which is however only specifically regulated in the Spanish Criminal Code following the deeply engrained principle that criminal law needs to be strictly codified.

Articles 446 to 449 of the Criminal Code sanction judicial malfeasance (defined as knowingly or recklessly rendering an unjust decision, refusing to adjudicate, or maliciously delaying justice) with penalties of imprisonment up to six years and disqualification up to twenty years.[12]

Since judges are public authorities for the purposes of criminal responsibility,[13] all crimes that affect the public administration, regulated under Articles 407 to 445 of the Criminal Code, are also applicable to them, including omission to prosecute crimes, infidelity in the custody of documents, violation of secrets, bribery, influence peddling, embezzlement of public funds, and others.[14]

2. ***State responsibility for judicial error, pre-trial detention, or abnormal functioning of the administration of justice***

As mentioned above, state is responsible for any judicial errors or other cases of abnormal functioning of the administration of justice. This regime of patrimonial responsibility of the state in the administration of justice (*responsabilidad patrimonial*

10 Judiciary Law, Article 296.2 *in fine*.

11 Judiciary Law, Articles 421 to 427.

12 Criminal Code, Title XX ('On felonies against the Judiciary'), Chapter I ('On judicial malfeasance).'

13 Criminal Code, Article 24.1.

14 Criminal Code, Articles 407 to 445.

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del Estado por el funcionamiento de la Administración de Justicia) is developed by Articles 292 to 296 of the Judiciary Law.

As explained, since 2015 only the state, not the individual judge, is to be held directly accountable for damage caused by judicial error or misconduct. In words of Article 296.1 of the Judiciary Law, 'damages occasioned by judges in the exercise of their duties will give rise, where applicable, to state responsibility for a judicial error or the abnormal functioning of the administration of justice; however, under no circumstances may the injured parties bring actions against them directly.' The action is thus brought against the state, which will then be free to seek reimbursement from the individual judge.

This form of state responsibility does not require malice or malpractice but just proof of the actual harm suffered ('in all cases the loss sustained must be real, ascertained in financial terms, and sustained effectively by a person or a group')[15] as well as a causal link with a judicial error or an otherwise abnormal functioning of the administration of justice ('damages caused to property or to rights due to judicial errors as well as those arising from an abnormal functioning of the administration of justice will entitle the aggrieved parties to claim compensation from the state')[16]. It is therefore an example of strict liability of the state. Of course, 'revocation or annulment of judicial decisions does not entail per se a right to compensation.'[17]

Two standards of responsibility therefore coexist: on the one hand, the strict liability of the state for judicial error, pre-trial detention in cases in which the accused is eventually acquitted, or an otherwise abnormal functioning of the administration of justice; on the other hand, the state's action for reimbursement against the judge that caused the harm only where willful misconduct or gross negligence on his part have been established.

B. Spanish stance on judicial accountability.

Judicial accountability is a natural consequence of judicial independence: judges are independent, *hence* accountable — in a delicate equilibrium to prevent any of the two terms from stifling the other. This close interconnection manifests itself already in the Constitution.

The entire legal status of judges is built on the independence of the judiciary power and of each individual judge. Jurisdictional authority in the hands of each individual judge 'emanates from the people' and is 'administered in the name of the King,' 'subject only to the rule of law' (Article 117.1 of the Constitution). No hierarchy whatsoever exists when dealing with the application of the law.

15 Judiciary Law, Article 292.2.

16 Judiciary Law, Article 292.1.

17 Judiciary Law, Article 292.3.

To guarantee independence, the Constitution took the main administrative aspects of the judiciary out of the Ministry of Justice to vest in on a General Council of the Judiciary, the constitutional body through which the judiciary is self-governing.

Also, in order to ensure compliance with the 'obligation placed on all public authorities and individuals to respect the independence of the judiciary and the total shielding of the legal status for judges against any possible interference from other state powers,'[18] judges enjoy fixity of tenure: they 'may only be dismissed, suspended, transferred or retired on the grounds, and subject to the guarantees provided by law' — by an organic and not an ordinary law (an organic law requires a qualified majority in Parliament), namely the Judiciary Law. With the same goal of avoiding indirect pressures from the executive, the economic retribution of judges is regulated by law.

In order to ensure the independence of each particular judge in each particular case, parties may challenge a judge for lack of independence or impartiality (*recusación*)[19] if the judge himself did not abstain in the first place (*abstención*).[20]

Accountability is the necessary counterpart to the power that is placed in the hands of each judge, a power that — as stated — 'emanates from the people' and which exercise is 'subject only to the rule of law' (Article 117.1 of the Constitution). Unsurprisingly, the majority of disciplinary infractions for which judges can be held accountable is related to their independence. For instance, Article 417 of the Judiciary Law classifies as serious infractions the 'affiliation to political parties or trade unions, or performing duties or services for them,' 'unwarranted interference by means of orders or pressure in any sense in the exercise of the judicial functions of any other judge' or the lack of his own abstention 'in spite of being aware that he is under any of the legal circumstances' that may hinder his independence or impartiality. Similarly, the most common crimes for which a judge can be convicted are those related to acts of bribery or malfeasance (Articles 419 and 446 of the Spanish Criminal Code), both punishing lack of independence. Finally, as we know already, each individual judge remains personally liable towards the state for errors stemming from willful misconduct or gross negligence.

C. Remedies and procedure.

The legal standing and the procedure to make effective these instances of judicial accountability depend on whether the case involves (1) individual judicial accountability — and then whether it is of a civil, disciplinary, or criminal nature — or (2) state responsibility.

18 Judiciary Law, Preamble, Section III.

19 Judiciary Law, Articles 223 to 228.

20 Judiciary Law, Articles 219, 221, and 222.

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3. Individual accountability of judges.

a) *Civil responsibility*. As we know, since 2015 private parties only have a general action of civil responsibility against the state. The state is then free to seek reimbursement from the individual judge having caused the harm if there was willful misconduct or gross negligence.[21] The link between the injured party and the judge causing the harm was then severed.

b) *Disciplinary responsibility*. Monetary reimbursement of the judge to the state is, as mentioned, without prejudice to the disciplinary responsibility the judge may have incurred because of his fraudulent or negligent behavior.

Only the competent authority, which is the General Council of the Judiciary as a general rule, has the power to impose disciplinary sanctions. The Judiciary Law distinguishes between very serious, major, and minor offences.[22] All of them are described in detail: warning, a fine, forced transfer to a specific court or tribunal, suspension of up to three years, or the most serious of all: removal from the judicial career.

The disciplinary sanctioning procedure is regulated in Articles 423 ff. of the Judiciary Law:

i. As a general rule, the proceeding may not last more than a year.

ii. It is initiated either *ex officio*, or at the request of the injured party, or by the public prosecutor (*ministerio fiscal*).

iii. Once initiated, the parties involved are notified and the proceeding will move forward *ex officio*.

iv. An examining judge is appointed by the General Council of the Judiciary in order to conduct the taking of evidence and carry out all actions required to establish the facts.

v. During the disciplinary proceedings, precautionary measures may be taken, including provisional suspension from office for a maximum of six months, when *prima facie* evidence of the infraction so warrants.

vi. In view of the evidence gathered and the investigations carried out, the examining judge drafts a statement of counts with the findings of fact, the infraction allegedly committed and the applicable sanctions.

vii. The statement of counts is notified to the indicted judge, so that in the term of eight days he may file a statement of defense and offer additional evidence, which may or may not be accepted by the examining judge.

viii. Following the statement of defense, or once the term for that purpose has elapsed, and having heard the public prosecutor, the examining judge

21 Judiciary Law, Article 296.2.

22 Judiciary Law, Articles 417, 418, and 419, respectively.

submits a draft resolution clearly determining the facts, the legal considerations and the appropriate sanction to be imposed.

ix. The indicted judge can make any defense allegations to the draft resolution.

x. The file is then dispatched for resolution with the authority within the General Council of the Judiciary that decreed the opening of proceedings.

xi. The resolution must state the legal grounds for the decision rendered and may not take into account other facts than those ones which have been considered for the resolution given.

xii. The resolution is notified to both the indicted party and the public prosecutor. The public prosecutor may file either an administrative appeal or an appeal directly before the contentious-administrative jurisdiction. The indicted judge may only appeal before the contentious-administrative courts.

xiii. The sanction ruling will be enforceable when the administrative channels have been exhausted, despite the fact that a contentious-administrative appeal may have been lodged — unless the court orders its suspension.

c) *Criminal responsibility*. As we saw, judges are subject to criminal responsibility not only for judicial malfeasance but also, as public authorities, for all other crimes affecting the public administration.[23]

The criminal proceeding to determine such liability may be initiated in one of the following ways: *ex officio* by the competent court; by an action brought by the public prosecutor (*ministerio fiscal*); by an action brought by the victim; or through the exercise of a popular action.[24]

The procedure then follows the relevant particularities in each case, in accordance to Spanish criminal procedural law. The competent investigating court shall carry out investigations to obtain information, evidence, and documentation, and then determine whether the action shall be brought to trial.

The criminal action may incorporate, if applicable, the civil liability action for the damage caused by the facts giving rise to criminal liability.

4. State patrimonial responsibility in the administration of justice

As previously mentioned, injured parties can seek damages from the state for harm caused by the judiciary following the provisions contained in Articles 292 to 296 of the Judiciary Law.

23 Criminal Code, Articles 407 to 449.

24 This institution, peculiar to the Spanish legal system and enshrined in Article 125 of the Constitution, allows Spanish natural or legal persons to bring a criminal action and be a party to the proceedings without having been offended or harmed by the crime.

A procedural distinction is made between damages caused by judicial errors, damages caused by pre-trial detention in cases in which the accused is eventually acquitted, and damages arising from an abnormal functioning of the administration of justice.[25] Among the differences, let us just highlight that the action for judicial error requires a final judgment declaring the existence of the error before claiming compensation, whereas responsibility for pre-trial detention in cases in which the accused is eventually acquitted and for abnormal functioning of the administration of justice arise directly from the allegedly harmful conduct.

It is the state administration — the Ministry of Justice — that grants or denies indemnity according to the general administrative procedural regulations — subject to general court review in the contentious-administrative jurisdictional order. The time limit to file the claim is one year from the date on which the relevant event occurred or became known. Quantum follows the full compensation principle: it must leave the victim unharmed, including not only actual damage (*daño emergente*) but also lost profits (*lucro cesante*).

a) *Action for judicial error*. Neither the Spanish Constitution[26] nor the Judiciary Law[27] provide a specific definition of judicial error. According to the Supreme Court, the idea of judicial error refers to a decision by the courts that makes a gross, undisputable, objectively perceptible mistake. It can consist of a manifest confusion of the facts adjudicated; a negligently and patently mistaken application of a rule or law; or a decision that patently does not follow from the reasoning.[28]

   Judicial errors stem only from legal acts of judges — judgments, procedural decisions, interlocutory orders — in the exercise of jurisdiction, at any stage of the proceeding. Errors can be *in procedendo* or *in iudicando*. An *error in iudicando* can be an *error facti* (by assessing facts contrary to reality) or an *error iuris* (by misinterpreting or misapplying legal rules).

   The aggrieved party must have exhausted the ordinary and extraordinary appeal remedies against the decision considered erroneous before entering in a procedure of judicial error.

   The legal action for a judicial error to be declared must be brought within three months from the day in which such action could have been filed — a term not capable of being interrupted. The Supreme Court has jurisdiction to hear such claims: either the Division corresponding to the jurisdictional order in which the error was made, or a special, mixed chamber if the error was made by one of the Supreme Court Divisions.[29]

25 A mistake in the legal qualification of the claim results in the claim being dismissed: see Judgment of the Supreme Court, Civil Division, of April 8, 2016.

26 Judiciary Law, Article 121.

27 Judiciary Law, Articles 292-297.

28 See, among others, Judgment of the Supreme Court, Civil Division, of December 30, 1995.

29 Judiciary Law, Article 61.

The procedure to substantiate this claim follows the procedure foreseen for judgment review (an action that allows to challenge final judgments that have become *res iudicata* in the presence of fraud or new evidence previously not available). Both the public prosecutor and the general state administration are parties to this proceeding.

Once the declaration of the judicial error has been obtained, the injured party can seek compensation with the Ministry of Justice, as mentioned above, and eventually with the courts of the contentious-administrative jurisdictional order.

b) *Damages caused by pre-trial detention in cases in which the accused is eventually acquitted*. Article 294 of the Judiciary Law acknowledge an accused's entitlement to compensation if, after having been remanded in custody, he is acquitted, or the investigation is shelved. Damages must, of course, be duly established.

c) *Abnormal functioning of the administration of justice*. Patrimonial responsibility of the state in the administration of justice is legally shaped as a case of strict liability: any damage arising from the functioning of public services must be compensated regardless of whether there is malpractice, malice, or negligence. The loss sustained must be real, ascertained in financial terms and sustained effectively by a person or a group. And there has to be a causal link between the functioning of the administration of justice and the damage or injury sustained. The causal relation is broken where the conduct of the injured party or a third party has been decisive in producing the damage, even though the functioning of the administration has been deficient.[30]

Table 1. Cases of state responsibility upheld by the Ministry of Justice, 2017-2021.[31]

EXPEDIENTES DE RESPONSABILIDAD PATRIMONIAL ESTIMADOS EN VÍA ADMINISTRATIVA CLASIFICADOS POR CAUSAS						
	TIPO DE RESOLUCIÓN					
			Estimatorias			
	Total	Desestimatorias	Funcionamiento anormal	Prisión preventiva	Error judicial	Total
2017	525	364	148	7	6	161
2018	523	419	102	1	1	104
2019	1.139	1.056	79	2	2	83
2020	195	166	29	0	0	29
2021	433	320	131	0	2	113

30 Judiciary Law, Article 295.

31 Consejo General del Poder Judicial, 'Justicia Dato a Dato' (2021), available at http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Justicia-Dato-a-Dato/.

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Table 2. Amounts paid for state responsibility by the Ministry of Justice and the contentious-administrative courts, 2017-2021.[32]

IMPORTE PAGADO EN CONCEPTO DE RESPONSABILIDAD PATRIMONIAL			
	Importe pagado en vía administrativa	**Importe pagado en vía contencioso-administrativa**	**Total**
2017	1.318.122 €	1.089.147 €	2.407.269 €
2018	722.888 €	1.210.585 €	1.933.473 €
2019	3.484.896 €	934.492 €	4.419.388 €
2020	124.368 €	445.491 €	569.859 €
2021	802.735 €	1.486.968 €	2.289.703 €

II. Transparency in civil justice.

A. BASIC NOTIONS AND LEGAL FRAMEWORK.

The standards of accountability and transparency are among the most relevant factors to be considered when measuring the quality of any given justice system.

The relationship between accountability and transparency is eloquently explained — referring to any political or generally public activity — by the Preamble of the Spanish Law on Transparency:[33]

> Transparency, access to public information and standards of good governance must be the cornerstones of all political action. Only when the actions of public decision-makers are subjected to scrutiny, when citizens can know how the decisions that affect them are made, how public funds are managed, or under what criteria our institutions act, can we speak of the beginning of a process in which public authorities start to respond to a society that is critical, demanding, and that calls for the participation of public authorities.
>
> Countries with higher levels of transparency and standards of good governance have stronger institutions that promote economic growth and social development. In these countries, citizens can better and more judiciously judge the capacity of their public decision-makers and decide accordingly. Allowing better oversight of public activity contributes to the necessary democratic regeneration, promotes the efficiency and effectiveness of the State, and favors economic growth.
>
> The idea is that only when the citizens are well informed — thanks to the transparency of the institutions — can public authorities be held effectively accountable. Accountability needs and presupposes transparency.

32 Consejo General del Poder Judicial, 'Justicia Dato a Dato' (2021) , available at http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Justicia-Dato-a-Dato/.

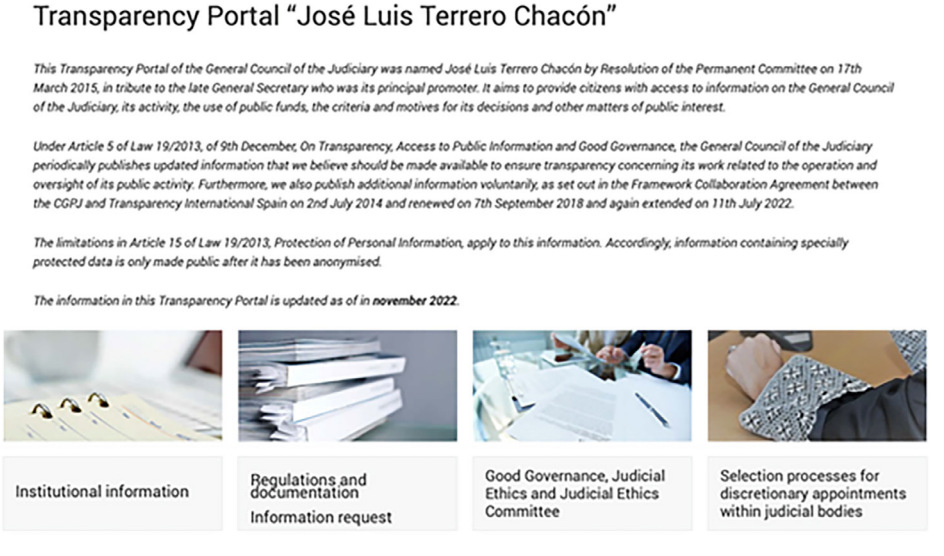
33 Law 19/2013, of December 9, on transparency, access to public information, and good governance; Section I.

Legislation on transparency in the context of civil justice has not been specifically enacted in Spain. At the national level, the statute in force is the Law on Transparency; at the EU level, Article 11, para. 2, of the Treaty on European Union foresee that 'the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.'

Rather than on specific legislation regulating transparency in the context of civil justice, the effort has focused on the development of judicial statistics, which has grown in recent years to provide a growingly detailed and comprehensive picture of the functioning of civil justice.

As part of this effort at transparency, since 2015 the General Council of the Judiciary runs the 'José Luis Terrero Chacón Transparency Portal'[34] — after the name of its founder and main promoter — with an aim at providing citizens with access to information on the General Council of the Judiciary, its activities, the use of public funds, the criteria and motives for its decisions, and other matters of public interest. Information in this webpage includes directory of judicial organs; estimation of average duration of judicial proceedings; compatibilities; data repository on corruption proceedings. It also includes comprehensive economic and financial information such as budgetary management; real estate assets; contracting; subsidies and agreements entailing economic obligations; remuneration and severance pay of judges and staff; declarations of assets of senior judicial posts, etc.

Table 3. General view of the 'José Luis Terrero Chacón Transparency Portal' of the Spanish General Council of the Judiciary.



34 See http://www.poderjudicial.es/portal/site/cgpj/menuitem.e3861fbe34a12841eabae273c684caa0/?vgnextoid=be82be46c7416410VgnVCM1000006f48ac0aRCRD&vgnextlocale=en&vgnextfmt=default&lang_choosen=en.

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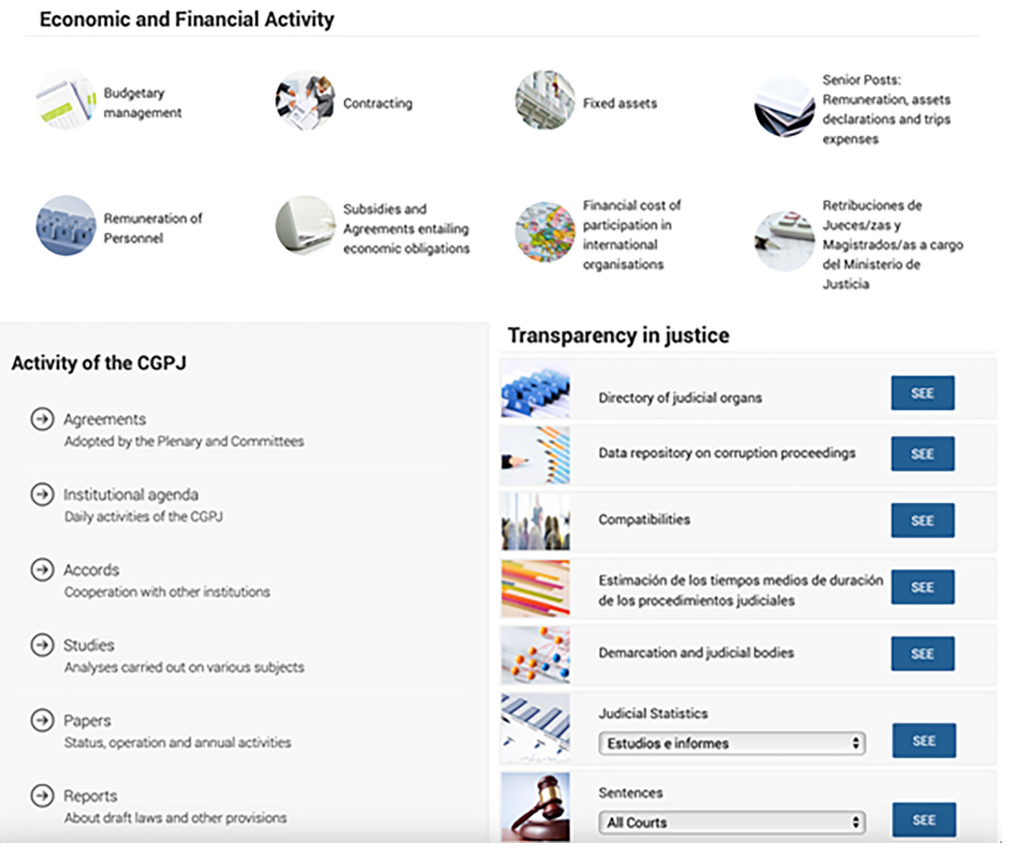

The General Council of the Judiciary also publishes every year a comprehensive annual report[35] and a useful synthesis titled *Justice to Date*,[36] an annual summary publication, in Spanish and English, that offers a brief summary of available data on the status of the judicial system in the year, including: organization and means; workload and resolution; and quality of justice, adding as an appendix the key indicators of the year and even historical information about justice data and indicators available regarding 100 years earlier.

In addition, although not a normative instrument, the studies elaborated by CEPEJ (European Comission for the Efficiency of Justice, a body of the Council of Europe) are worth highlighting. CEPEJ was set up in 2002 at the initiative of the European ministers of Justice as an innovative body for improving the quality and efficiency of the European judicial systems and strengthening the court users' confidence in such systems.

35 See https://www.poderjudicial.es/cgpj/en/Judiciary/General-Council-of-the-Judiciary/Activity-of-the-CGPJ/Papers/.

36 See https://www.poderjudicial.es/portal/site/cgpj/menuitem.52faf2c47434aea9ace1b3d7c684caa0/?vgnextoid=2d58e95785108510VgnVCM1000006f48ac0aRCRD&vgnextlocale=en&vgnextfmt=default&lang_choosen=en.

CEPEJ develops concrete measures and tools aimed at policy makers and judicial practitioners in order to (i) analyze the functioning of judicial systems and orientate public policies of justice; (ii) have a better knowledge of judicial timeframes and optimize judicial time management; (iii) promote the quality of the public service of justice; (iv) facilitate the implementation of European standards in the field of justice; and (v) support member states in their reforms on court organizations. CEPEJ also contributes with specific expertise to debates about the functioning of the justice system in order to provide a forum for discussion and proposals and bring the users closer to their justice system.[37]

B. Transparency duties.

Sectorial rules contain specific obligations of transparency in terms of contracts, subsidies, budgets, or activities of senior officials.

However, there are not specific rules regarding transparency in the judicial system as such. In the judicial accountability regime, for instance, the use of resources and transparency in judicial procedures is absent from the list of infractions giving rise to disciplinary responsibility.

The above-mentioned Law on Transparency entered into force in 2013 with the aim of promoting active publicity obligations:[38]

> Regarding institutional, organizational, and planning information, it [the Law on Transparency] requires the subjects within its scope of application to publish information regarding the functions they perform, the regulations applicable to them and their organizational structure, as well as their planning instruments and the assessment of their degree of compliance. As regards information of legal relevance that directly affects the scope of relations between the Administration and citizens, the law contains a wide repertoire of documents that, when published, will provide greater legal certainty. Likewise, regarding information of economic, budgetary, and statistical relevance, a broad catalogue is established that must be accessible and understandable for citizens, given its character as an optimum instrument for the control of the management and use of public resources.

The main practical consequence of this Law (and generally the trend towards greater transparency) in the judicial system is a greater consciousness of the importance of comprehensive data collection, processing, and publication. Practical outcomes are, within the competence of the General Council of the Judiciary, more comprehensive and refined annual reports[39]; the elaboration of the useful synthesis titled *Justice to*

37 See https://www.coe.int/en/web/cepej/about-cepej.

38 Law 19/2013, of December 9, on transparency, access to public information, and good governance, Preamble; Section I.

39 See https://www.poderjudicial.es/cgpj/en/Judiciary/General-Council-of-the-Judiciary/Activity-of-the-CGPJ/Papers/.

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Date;[40] and the launching in 2015 of the 'José Luis Terrero Chacón Transparency Portal,'[41] with an aim at providing access to detailed information on the justice system.

Besides, individuals and companies may at all times exercise their right to access to information. Article 12 of the Law on Transparency provides, in effect, that 'all persons have the right to access public information, in the terms provided for in Article 105.b) of the Spanish Constitution, developed by this Law.' Exercise of this right is free and can only be limited in very specific situations (i.e., national security).

The specific procedure to exercise this right is regulated by Article 17 of the Law on Transparency:

> Article 17. Request for access to information.
>
> 1. The procedure for exercising the right of access shall begin with the filing of the corresponding request, which shall be addressed to the owner of the administrative body or entity that holds the information. In the case of information held by natural or legal persons providing public services or exercising administrative powers, the request shall be addressed to the Administration, body or entity referred to in Article 2.1 to which they are linked.
>
> 2. The request may be presented by any means that allows for proof of: a) the identity of the applicant, b) the information requested, c) a contact address, preferably electronic, for communication purposes, d) where applicable, the preferred method for accessing the information requested.
>
> 3. The applicant is not obliged to motivate his request for access to the information. However, he may state the reasons why he requests the information, which may be taken into account when the decision is issued. However, the absence of a statement of reasons shall not in itself be a reason for the rejection of the request.
>
> 4. Requests for information may be addressed to the Public Administrations in any of the co-official languages of the State in the territory in which the Administration at stake is located.

Finally, the Law on Transparency also created the Council for Transparency and Good Governance (*Consejo de Transparencia y Buen Gobierno*), with full legal personality and capacity to act.[42] The purpose of this administrative body is to promote the transparency of public activity, ensure compliance with publicity obligations, safeguard the exercise of the right of access to public information, and ensure compliance with good governance

40 See http://www.poderjudicial.es/portal/site/cgpj/menuitem.52faf2c47434aea9ace1b3d7c684caa0/?vgnextoid=-2d58e95785108510VgnVCM1000006f48ac0aRCRD&vgnextlocale=en&vgnextfmt=default&lang_choosen=en.

41 See http://www.poderjudicial.es/portal/site/cgpj/menuitem.e3861fbe34a12841eabae273c684caa0/?vgnextoid=be82be46c7416410VgnVCM1000006f48ac0aRCRD&vgnextlocale=en&vgnextfmt=default&lang_choosen=en.

42 Law on Transparency, Article 33.

provisions (Article 34). Among its functions, the Council will adopt recommendations for better compliance with the obligations contained in this Law, advice on transparency, access to public information, and evaluate the degree of application of the Law.[43] To this end, it will draw up an annual report containing information on compliance with the envisaged obligations, which will be submitted to the Parliament (*Cortes Generales*).

C. Remedies and procedure.

Only the competent authority has the power to monitor compliance with the state's transparency obligations. Thus, if an individual wants to remedy a situation of non-compliance, he must bring the issue with the Council of Transparency and Good Governance. As stated in Article 24 of the Law on Transparency:

> 1. Any express or presumed resolution regarding access may be appealed to the Council on Transparency and Good Governance, on an optional basis and prior to its contentious-administrative challenge.
>
> 2. The claim shall be filed within one month from the day following the notification of the challenged act or from the day following that on which the effects of administrative silence occur.
>
> 3. The processing of the claim shall be in accordance with the provisions on appeals in Law 30/1992, of November 26, on the Legal System for the Public Administrations and Common Administrative Procedure.
>
> When the denial of access to information is based on the protection of the rights or interests of third parties, prior to the resolution of the claim, a hearing procedure shall be granted to the persons who may be affected so that they may assert what their right agrees.
>
> 4. The maximum period for resolving and notifying the resolution shall be three months, after which the claim shall be deemed rejected. …

III. COURT ORGANIZATION.

A. Court structure in civil justice.

All Spanish courts form part of the same and only organization and exercise the same jurisdictional power. In the words of the Constitution:

> Article 117.1
>
> Justice emanates from the people and is administered on behalf of the King by judges and magistrates, members of the Judicial Power and who are independent, have fixity of tenure, are accountable, and are subject only to the rule of law.

43 Law on Transparency, Article 38.

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Since justice is rooted in indivisible national sovereignty,[44] Article 117.5 proclaims that 'the principle of jurisdictional unity is the basis of the organization and operation of the courts.'

This principle of unity of the judiciary is compatible with the functional organization of the judicial system *horizontally* in branches or jurisdictional orders and *vertically* in courts of first instance and appeal. Both functional divisions reunite at the Supreme Court, the peak of the judicial pyramid. According to Article 123.1 of the Constitution, 'the Supreme Court, with jurisdiction over the whole of Spain, is the highest judicial body in all branches of justice, except with regard to the provisions concerning constitutional guarantees.'

The decisions about how to establish and organize the different jurisdictional orders and actual courts rests with the legislator. At present, in accordance with Article 9 of the Judiciary Law, Spain has four different jurisdictional orders: civil, criminal, administrative, and labor.

Focusing on civil justice, courts of the civil jurisdictional order will hear all civil and commercial matters as well as all others not assigned to a specific jurisdictional order. Regarding court structure and hierarchy, the civil order has both single-judge (*juzgados*) and collegiate courts (*tribunales*). The hierarchy is presented as follows (in ascending order):[45]

1. Single-judge courts

a) Justices of the Peace (*Juzgados de Paz*). These courts exist only in very small towns; they do not exist where there is a First Instance Court. Their subject-matter jurisdiction is extremely limited.

b) First Instance Courts (*Juzgados de Primera Instancia*). In each judicial district there are one or more First Instance Courts — in small districts acting also as Criminal Investigating Courts. They are referred to by the name of the district and numbered consecutively (i.e., Juzgado de Primera Instancia № 7 de Madrid). First Instance Courts hear all civil and commercial matters that are not specifically vested in other courts. They have specific competences as well, such as — among many others — requests for the recognition and enforcement of foreign judgments. They act also as courts of appeal from decisions of the Justices of the Peace of their judicial district.

c) Commercial Courts (*Juzgados de lo Mercantil*). These courts were created in 2003 to hear bankruptcy proceedings and certain additional matters expressly indicated by law (unfair competition, industrial property, trademarks, and general conditions of contract, among others).

44 Spanish Constitution, Article 2.

45 The specification of the courts that form each jurisdictional order is governed by Articles 53 to 103 of the Judiciary Law.

2. ***Collegiate courts***

d) Provincial Courts (*Audiencias Provinciales*). Provincial Courts have jurisdiction over the territory of a province. Normally they have their seat in the capital of the province, but divisions are possible to serve certain districts. The Provincial Courts' most important competence within the sphere of civil matters is to hear appeals against the rulings given by the First Instance Courts within the province.

e) High Courts of Justice (*Tribunales Superiores de Justicia*). The High Courts of Justice, or more precisely their Civil and Criminal Divisions, have jurisdiction over their respective regions. They are competent to hear cassation appeals against judicial decisions made in the territory of the region in application of their regional law, where this exists. In addition to this, they hear, in a sole instance, civil liability suits for actions carried out by specific individuals — members of the government and the parliament of that region — in their discharge of office. They are also competent to deal with specific issues, e.g. the setting aside of arbitral awards given in the region.

f) Supreme Court (*Tribunal Supremo*). The Supreme Court has its seat in Madrid, has jurisdiction over the entire Spanish territory, and is the highest court in all jurisdictional orders, except with regard to constitutional guarantees. It is composed of five ordinary Divisions (*Salas*): First Division, Civil; Second Division, Criminal; Third Division, Administrative; Fourth Division, Labor; and a Fifth Division, Military.

The First, Civil Division (*Sala Primera, de lo Civil*) of the Supreme Court has ten justices or *Magistrados*. The justices ordinarily through two chambers or sections (*Secciones*) made up of five judges, without any separate functions. In important cases, the justices gather en banc, in plenary session (*Pleno*).

The Civil Division of the Supreme Court is competent over cassation appeals and extraordinary appeals for procedural infringements. It also hears cases of liability in tort arising from actions carried out in office by some specific individuals (among others, the presidents of the Government, both Houses, the Supreme Court, the General Council of the Judiciary, the Constitutional Court).

Important for the purposes of this study is Article 61.1, para. 5, which sets up a special chamber in the Supreme Court — common to all jurisdictional orders — to hear claims for the declaration of a judicial error.

3. ***The Constitutional Court***

g) Constitutional Court (*Tribunal Constitucional*). The 1978 Constitution, currently in force, created the Constitutional Court,[46] which private parties can directly

46 The Constitutional Court is regulated in Articles 159 to 165 of the Spanish Constitution and also in the Organic Law 2/1979, of October 3, of the Constitutional Court.

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access for the protection of their rights through the constitutional protection appeal (*recurso de amparo*).

The Constitutional Court is not, strictly speaking, part of the judicial system. However, since fundamental rights permeate private law and civil litigation, the doctrine arising from the Supreme Court judgments no longer suffices to provide a complete, accurate picture of the interpretation of the law on a given subject; the case law of the Constitutional Court needs to be taken into consideration as well. In a way, and within its scope, *amparo* operates like a cassation's cassation, which means four instances: two ordinary and two extraordinary instances.

However, as mentioned, constitutional jurisdiction is special (thus contravening, to some extent, the principle of the unity of jurisdiction). The Constitutional Court does not fully enjoy the guarantees for independence of ordinary courts, including the Supreme Court: there is more room for political discretion in the selection of the members of the Constitutional Court than in the selection of the Supreme Court judges. Out of its twelve members — who do not need to be judges but, more generally, jurists —, four are selected by the Congress (*Congreso de los Diputados*), four by the Senate (*Senado*), two at the proposal of the Government and two at the proposal of the General Council of the Judiciary.

B. Civil procedure.

The Spanish Civil Procedure Law[47] articulates two different channels for civil litigation: the so-called 'ordinary' and 'oral' proceedings. Ordinary proceedings constitute the procedural channel by default; oral proceedings are reserved for certain special cases *ratione valoris* (claims of up to euro 6,000) but also sometimes *ratione materiæ* (thirteen types of claims, such as eviction for non-payment of rent).

The ordinary proceeding, nonetheless, is the main type of civil procedure, which draws the main pattern of civil litigation in Spain. Let us summarize its structure.

The proceeding is initiated by a statement of claim (*demanda*), which needs to be signed by both an attorney (*abogado*) and a court agent and representative (*procurador de los tribunales*). The claim must contain all the basic procedural requirements stated by law and particularly to set precisely the relief that is being sought (Article 399 of the Code of Civil Procedure). This is particularly important as the relief sought cannot be substantially altered at a subsequent stage, without prejudice to clarifications and supplementary allegations.

Once the claim has been filed, the *letrado de la administración de justicia* (the civil servant in charge of procedural activity as distinguished from the exercise of jurisdic-

47 Law 1/2000, of January 7, on Civil Procedure (*Ley de Enjuiciamiento Civil*).

tional authority) reviews whether it complies with all necessary procedural requirements and, if that is the case, declares it admissible and serves notice to the defendant.

The defendant has 20 business days to file an answer to the claim (*contestación a la demanda*), drafted in the same manner as provided by law for the claim. The defendant is expected to clearly admit or deny the facts and put forward the defenses, including any affirmative defenses. The defendant can also file a counterclaim, which the plaintiff will be given the opportunity of responding.

If the defendant wishes to challenge jurisdiction, they need to formulate a declinatory plea (*declinatoria*) within 10 days following the notification of the claim.

Once the answer to the claim — or, if applicable, to the counterclaim — has been filed, the parties are summoned to a preliminary hearing (*audiencia previa al juicio*).[48]

In the preliminary hearing, the parties — or, as it more frequently happens, their court representatives — and their attorneys discuss important procedural questions orally in front of the judge. Firstly, procedural issues — regarding, e.g., legal capacity, joinder of parties, *res iudicata* or *lis pendens*, etc. — are discussed and cured if possible. Then the terms of the debate are definitively fixed by precisely identifying disputed facts, allowing clarifications, supplementary allegations, additional documents, etc. Finally, if there are disputed facts, evidence is offered by the parties and accepted or denied by the judge, and a date is set for trial.

In the trial, evidence is taken — parties, witnesses, experts are examined by counsel and the judge — following the principles of concentration, orality, and immediacy, always respecting the principles of equality of arms and bilateral hearing.[49] Once the evidence has been taken, counsel formulate their conclusions orally and the case is remitted for decision.

The judgment is given in written form, setting with precision what is awarded and what is denied and stating the reasons for the decision.

The judgment is immediately and provisionally enforceable even if an appeal has been lodged.

C. Judges and administrative personnel.

Both judges and administrative personnel work in each court.

1. ***Judges***

According to Article 298.1 of the Judiciary Law,

48 Code of Civil Procedure, Articles 414 ff.

49 Code of Civil Procedure, Articles 431 ff.

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> 1. Jurisdictional functions in courts of any nature contemplated in this Law will be solely exercised by professional judges which are members of the judicial career.
>
> 2. Alternate magistrates, surrogate judges and justices of the peace also perform jurisdictional functions although they do not belong to the judicial career, and they will discharge their duties in compliance with this Law, although not as tenured judges but as provisional offices.

Therefore, with exceptions such as the justices of the peace, the jurisdictional function is only exercised by professional judges who are members of the judicial career.

The access to the judicial career in Spain[50] is based on the principles of merit and capacity. The governing body is the General Council of the Judiciary. The selection process guarantees objectivity, transparency, and equal access to all citizens who meet the necessary capacity, academic background, and professional suitability.

Access may take place in any of the three categories that make up the judicial career, namely (in ascending order): judge (*juez*), magistrate (*magistrado*), and Supreme Court justice (*magistrado del Tribunal Supremo*).

Candidates sit a rigorous public state examination (*oposición*) and, if they succeed, a practical course at the Judiciary School (a center of studies dependent from the General Council of the Judiciary). Notice of the exam —which is common to access judicial and public prosecutor positions — refers to all existing vacancies at that time and an additional number in order to cover the ones which may foreseeably occur until the next public exam is held. The selection committee includes a member of the General Council of the Judiciary and a senior public prosecutor, who will preside the committee annually by turns. The other members include a judge, a prosecutor, the director of the Judicial School, the director of legal studies of the administration of justice, a member of the technical bodies of the General Council of the Judiciary, and a senior officer of the Ministry of Justice. One of the latter two acts alternatively as secretary to the committee.

According to the CEPEJ report, a competitive exam is the most common way of recruiting judges, chosen by 34 European states and entities: 16 as the exclusive way (Albania, Andorra, Armenia, Austria, Bulgaria, Czech Republic, France, Germany, Greece, Italy, Republic of Moldova, Monaco, Romania, Serbia, Spain, Turkey) and 18 in combination with another procedure that hires legal professionals with long term experience.

Successful candidates, in the order of their score in the state exam, choose for either the judicial or the prosecutors' career.

Besides this selection process based on a state exam, the law also allows for legal practitioners of acknowledged reputation to access the judicial career as senior judges, including Supreme Court justices, in the manner and number established by law.

50 Judiciary Law, Articles 301 ff.

2. ***Administrative personnel***

The new procedural and organizational model of civil justice gravitates around a new provincially centralized bureaucratic office, the *servicio común*, set up by the state or regional executives to handle cases. The *servicio común* is headed and staffed mainly by members of a new state corps of civil servants that has replaced the old state corps of court secretaries: the *letrados de la administración de justicia*. With the only exception of hearings and major decisions, the *servicio común* and its *letrados* handle the entire procedure autonomously and liaise directly with the parties' attorneys largely without judicial supervision, as clarified below.

Special bodies such as forensic, toxicologists, laboratory assistants, and the judicial police must be mentioned as well.

D. COURT MANAGEMENT.

We must describe, even in big strokes, the radical transformation that Spanish justice is undergoing regarding case and court management and generally judicial administration.[51]

The traditional first instance court model was unipersonal. A judge led and presided over the court's office (*juzgado*) and worked with the assistance of the relevant staff: a court secretary (*secretario judicial*, broadly equivalent to the French *greffier*) and other assistant officials. No such thing as a provincial *First Instance Court of Seville* existed, but rather the different Seville First Instance Courts № 1, № 2, № 3, etc. These courts were specialized according to their jurisdictional order (civil, criminal, administrative, labor) and sub-specialized in different ways (insolvency, family, etc.), as provided by law or decided by one of those courts acting as the provincial coordinating authority. The different courts of appeal (up to the Supreme Court) were the only truly *collective* entities.

Organic reforms dated 2003, 2009, and 2015 profoundly altered this model and designed an entirely new organization, still in the process of being implemented. The new model distinguishes three types of activity: (a) 'procedural' activity: the handling of lawsuits in everything except judgments and other important decisions; (b) 'jurisdictional' activity: the power to make judgments and other important decisions; and (c) 'administrative' activity: the management of human resources, buildings, computer media, and other material means.

The procedural cornerstone of the new model is (a): the so-called 'procedural' activity. A provincially centralized office (*servicio común procesal*) now handles the law-

51 For a detailed analysis of this process and its constitutional implications, with a comparative study with France, Germany, and England and Wales, see De Benito, M., *Justicia o burocracia*, Civitas Thomson Reuters: Cizur Menor, 2017 (foreword by Taruffo, M.), partially available at https://www.academia.edu/35315834/JUSTICIA_O_BUROCRACIA.

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suits. This new office does not include judges. In fact, it is physically separate from the old courts, where judges remain. The *servicio común* is staffed with a new state corps of civil servants that has replaced the old state corps of court secretaries: the *letrados de la administración de justicia*.

With the only exception of hearings and major decisions, as mentioned, the *servicio común* and its *letrados* handle the entire procedure autonomously and liaise directly with the parties' attorneys without judicial supervision — notwithstanding the possible appeal from the *letrados*' decisions. The structure of the new corps is strongly hierarchic and based on the discretional appointment of all members holding directive positions. The *letrados* are assisted by inferior categories of civil servants.

With the only exception of hearings and major decisions, the *servicio común* handles the entire procedure autonomously and liaises directly with the parties' attorneys without judicial supervision (apart from the possible appeal from the *letrados'* decisions).

The structure of the new corps is strongly hierarchical and based on the discretional appointment of all members holding directive responsibilities. The *letrados* are assisted by lesser categories of civil servants.

Once 'processed,' the file is sent to the judge, who will hold the hearing or make the decision, assisted by a narrower group of civil servants (*unidad procesal de apoyo directo*). This decision-making power — in the strict sense — constitutes the new narrow meaning of (b): 'jurisdictional' activity.

Beside these two basic units, a third one (*unidad administrativa*) manages human resources, buildings, computer media, and material means; in a word, this unit carries out (c): 'administrative' activity as such.

The idea of 'court' has therefore been dramatically altered over the last two decades. The complete disappearance of the old unipersonal courts seems to be only a matter of time, as the new model continues to be implemented — at different speeds depending on the regions.

Three constitutional or political entities share the responsibility for those activities:

a) The General Council of the Judiciary (*Consejo General del Poder Judicial*) was created by the 1978 Constitution, currently in force, in order to reinforce judicial independence:

Article 122

1 The Organic Law of the Judiciary shall determine the setting up, operation and control of the Courts and Tribunals as well as the legal status of professional Judges and Magistrates, who shall form a single body, and of the staff serving in the administration of justice.

2 The General Council of the Judiciary is its governing body. An organic law shall set up its statutes and the system of incompatibilities applicable to its members and their functions, especially in connection with appointments, promotions, inspection and the disciplinary system.

3 The General Council of the Judiciary shall consist of the President of the Supreme Court, who shall preside it, and of twenty members appointed by the King for a five-year term, amongst whom shall be twelve judges and magistrates of all judicial categories, under the terms established by the organic law; four nominated by the Congress of Deputies and four by the Senate, elected in both cases by three-fifths of their members from amongst lawyers and other jurists of acknowledged competence and over fifteen years of professional experience.

b) The Ministry of Justice (*Ministerio de Justicia*) discretionally appoints the *letrados* that will preside over the different *servicios comunes*, in consultation with the Regional Secretary of Justice — if there is one — where the office is located. The Ministry of Justice also manages the budget together with the regions with the relevant competences.

c) The Regional Secretaries of Justice (*Consejeros de Justicia de las Comunidades Autónomas*). Even though justice is constitutionally declared to be an exclusive competence of the central state, the Constitutional Court allowed for the regions to have competence over the 'administration of the administration of justice' — the expression was coined precisely to *qualify* the constitutional declaration of justice as an exclusive competence of the central state and allow the transfer to take place. Not all regions have assumed competences over justice (*rectius*, the 'administration of the administration of justice'). As a result, some regions have competences over justice, and some do not — and the scope of the competences differs from region to region. This can be graphically seen in Table 2.

The regions that have assumed those competences have notably increased their powers in the new model, as they are responsible for the design, creation, and organization of both the centralized procedural offices (*servicios comunes procesales*) and the administrative units (*unidades administrativas*), as well as the working hours, organization, management, inspection, and management of personnel serving these units.

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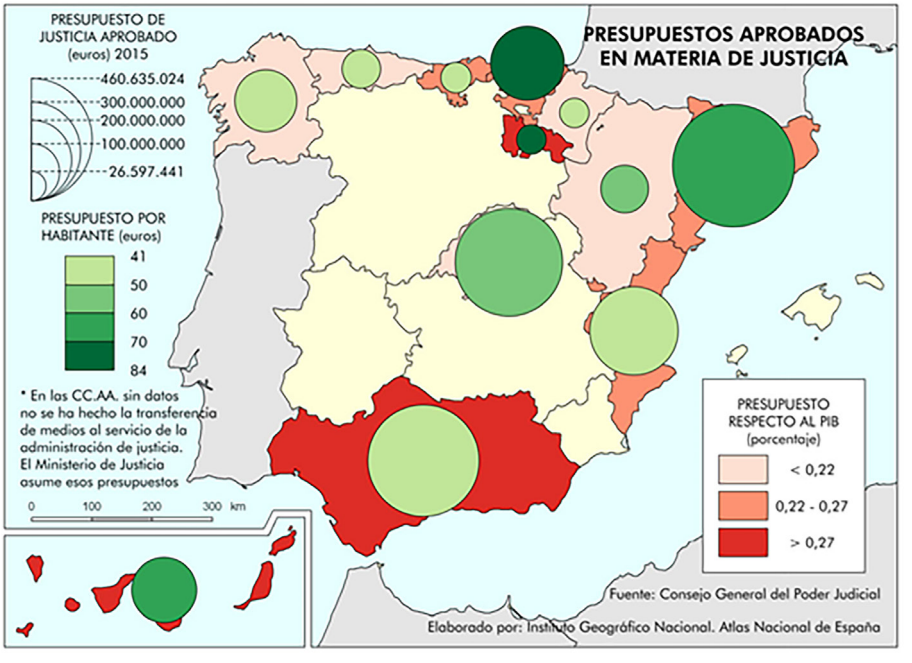
Table 4. Regions with competences over justice
(with a green circle indicating the justice budget per capita in those regions).[52]



In the new model, the role of the executive branch in the administration of justice — both the Ministry of Justice and the Regional Secretaries of Justice — has been strongly reinforced. The decisions regarding human, electronic, and material resources are now essentially made on a political level:

a) By consensus between *both* the Ministry of Justice *and* the Regional Secretaries of Justice in the most important matters, which decisions will then be implemented by the hierarchical, discretionally appointed *letrados*; or

b) By *either* the Ministry of Justice *or* the Regional Secretaries of Justice in their respective territorial areas of influence, which decisions will then be implemented by the *letrados*, one of whose functions is precisely to coordinate the instructions coming from the two political entities; or

c) By the administrative units (*unidades administrativas*) themselves, concerning the day-to-day management, these units being created by either the Ministry of Justice or the Regional Secretaries of Justice in their respective territorial areas of influence, and presided by a *letrado*.

52 Source: Centro Nacional de Información Geográfica (with data from the General Council of the Judiciary), available at http://centrodedescargas.cnig.es/CentroDescargas/busquedaRedirigida.do?ruta=PUBLICACION_CNIG_DATOS_VARIOS/aneTematico/Espana_Presupuestos-aprobados-en-materia-de-justicia_2015_mapa_16148_spa.zip.

For instance, the transition to a paperless justice has been one of the most important and expensive undertakings in the sector. As such, it is being led by the Ministry of Justice, which offers assistance to those regions with justice administration competences. Some regions have adopted the same system as the Ministry; some have preferred a system of their own.

E. The judiciary in the constitutional system.

The judiciary in Spain has a central role in both the legal and political structure.

The constitutional structure is marked by the principle of separation of powers (*división de poderes*). The Congress and the Senate exercise the legislative power of the State.[53] The Government exercises executive and statutory authority in accordance with the Constitution and the law.[54] The judiciary is proclaimed as a truly third power of the state, separate from the rest.

A good example of the strength of the judiciary in Spanish social, economic, and political life is the constitutional protection appeal (*recurso de amparo*) that any injured party can bring directly before the Constitutional Court. The Court is therefore not limited to analyzing the constitutionality of laws — *principaliter* through unconstitutionality recourses and *incidenter* through questions of constitutionality —, but also is open to litigating parties through the *recurso de amparo*. Indeed, constitutional protection appeals soon became the main source of work of the newly created Constitutional Court. In 2006, constitutional protection appeals made up 11,471 out of the 11,741 incoming matters (i.e., 97.7 per cent). The workload problem was so pressing that in 2007 *amparo* was reformed to grant the Court power to grant or deny leave by assessing whether the case presents special constitutional importance (*especial trascendencia constitucional*, defined by reference to the interpretation and application of the Constitution or to the determination of the contents and scope of fundamental rights)[55] discretionally and essentially without providing reasons.[56] The fact remains that the role of the Spanish Constitutional Court is not limited to analyzing the constitutionality of laws, but actually partakes in the administration of justice.

The vitality of the Spanish judiciary is further reflected in the so-called popular action (*acción popular*), which recognizes all citizens — and not only the injured party and the public prosecutor — legal standing to bring criminal actions.[57] The *acción popular* allows a criminal accusation to be brought even if political pressures reached the point of preventing a public prosecutor from exercising its legal function to prosecute crimes.

53 Spanish Constitution, Article 66.2.

54 Spanish Constitution, Article 97.

55 Organic Law 2/1979, of October 3, of the Constitutional Court, Article 50.1.b).

56 Organic Law 2/1979, of October 3, of the Constitutional Court, Article 50.3.

57 Spanish Constitution, Article 125; Royal Decree of September 14, 1882, whereby the Criminal Procedure Code (*Ley de Enjuiciamiento Criminal*) is approved.

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The judiciary also plays a noteworthy role in the political structure. In our legal system there are not, in theory, any areas that are exempt from judicial scrutiny. Indeed, there are significant examples of independent judicial investigations of criminal cases in relation to political parties being in government — both at the central and regional levels, and in all areas of the political spectrum —, sometimes with far-reaching political effects.

F. FUNDING.

The complex organization of Spanish justice hinders the accounting of expenditure. The public justice budget in Spain is made up of the sum of the budgets of the central administration (including the Ministry of Justice and the General Council of the Judiciary) and the regions with competences over justice. However, there is no single consolidated national initial budget covering all justice administrations. There are not even uniform criteria to determine what expenses should be accounted to justice. Regional justice budgets appear often combined with non-justice items.

With these caveats, the General Council of the Judiciary gathers every year the scattered information existing in the matter to offer the most approximate picture of the Spanish aggregate justice budget. Table 5 summarizes these figures and Table 6 shows the proportion of the aggregate budget that corresponds to the General Council of the Judiciary, the Ministry of Justice, and the Regional Secretaries of Justice.

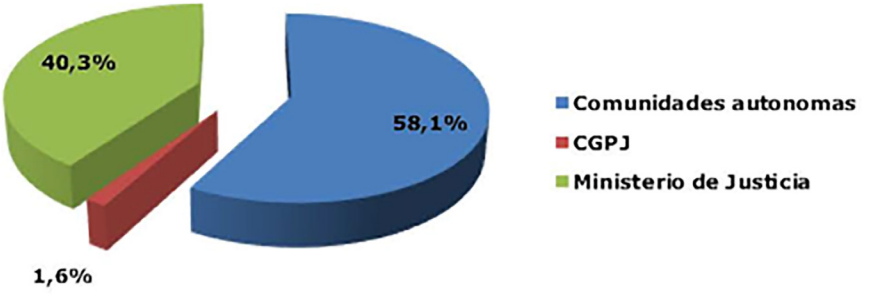
*Table 5. Budget corresponding to the Regional Secretaries of Justice in regions with competences over justice administration (*Comunidades Autónomas*), the General Council of the Judiciary (*Consejo General del Poder Judicial*), and the Ministry of Justice (*Ministerio de Justicia*) (in €).*[58]

PRESUPUESTOS APROBADOS [21]

	2020	2021	Evolución 2020/2021
Andalucía	514.340.652	526.475.509	2,4%
Aragón	76.620.670	81.552.168	6,4%
Asturias, Principado de	57.809.614	61.540.990	6,5%
Canarias	166.247.661	168.472.282	1,3%
Cantabria	34.049.058	34.560.810	1,5%
Cataluña	515.335.790	516.335.790	0,0%
Com. Valenciana	343.915.290	369.927.110	7,6%
Galicia	156.314.058	161.278.080	3,2%
Madrid, Comunidad de	466.016.488	466.016.488	0,0%
Navarra, Com. Foral de	32.982.032	34.385.553	4,3%
País Vasco	189.721.590	199.160.914	5,0%
Rioja, La	20.187.880	21.342.739	5,7%
Total Comunidades Autónomas	**2.573.540.783**	**2.640.048.433**	**2,6%**
Consejo General del Poder Judicial	58.126.140	73.013.820	25,6%
Ministerio de Justicia	1.638.250.450	1.832.645.880	11,9%
TOTAL NACIONAL	**4.269.917.373**	**4.546.708.133**	**6,5%**

58 Consejo General del Poder Judicial, 'Justicia Dato a Dato' (2021), available at https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Justicia-Dato-a-Dato/, page 28.

*Table 6. Proportion of the aggregate budget corresponding to the Regional Secretaries of Justice in regions with competences over court administration (*Comunidades Autónomas*), the General Council of the Judiciary (*CGPJ*), and the Ministry of Justice (*Ministerio de Justicia*).*[59]



Altogether, the justice budget per capita has ranged from € 51.90 in 2004[60] to € 84.4 in 2017 and € 95.5 in 2021.[61]

As a percentage of GDP per capita, the budget in justice per capita represented 0.26% in 2004, 0.34% in 2013,[62] still 0.34% in 2017, and 0.38% in 2021.[63]

Table 7. Overall justice budget in Spain with respect to the GDP.[64]

% Presupuesto en justicia respecto al PIB[22]		Presupuesto en justicia por habitante (euros)
Andalucía	0,35%	62,1
Aragón	0,23%	61,5
Asturias, Principado de	0,29%	60,8
Canarias	0,43%	77,5
Cantabria	0,27%	59,1

59 Consejo General del Poder Judicial, 'Justicia Dato a Dato' (2021), available at https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Justicia-Dato-a-Dato/, page 28.

60 See Gutiérrez López, F., *Gasto público y funcionamiento de la justicia en España entre 2004 y 2013*, doctoral thesis, 2015, available at https://idus.us.es/xmlui/bitstream/handle/11441/39799/Tesis.%20Francisco%20Gutierrez%20López.pdf?sequence=1&isAllowed=y.

61 See Consejo General del Poder Judicial, Consejo General del Poder Judicial, 'Justicia Dato a Dato' (2017, 2021), available at https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Justicia-Dato-a-Dato/.

62 See Gutiérrez López, F., *op. cit.*

63 See Consejo General del Poder Judicial, Consejo General del Poder Judicial, 'Justicia Dato a Dato' (2017, 2021), available at https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Justicia-Dato-a-Dato/.

64 Consejo General del Poder Judicial, 'Justicia Dato a Dato' (2021), available at https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Justicia-Dato-a-Dato/, page 29.

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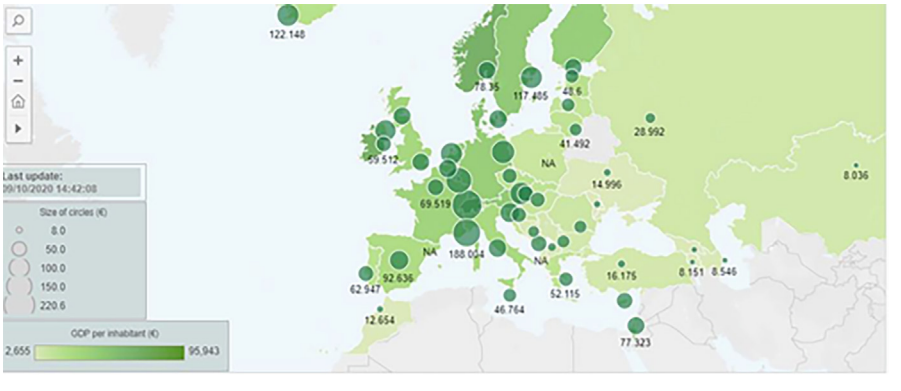
% Presupuesto en justicia respecto al PIB[22]		Presupuesto en justicia por habitante (euros)
Cataluña	0,24%	66,5
Comunitat Valenciana	0,35%	73,1
Galicia	0,27%	59,8
Madrid, Comunidad de	0,22%	69,0
Navarra, Com. Foral de	0,18%	52,0
País Vasco	0,30%	90,0
Rioja, La	0,26%	66,7
TOTAL NACIONAL	0,38%	95,9

There is no directly available information as regards the detailed budget by court, which should consolidate the many different items of expenditure — judicial salaries, salaries of personnel from different administrations, valuations of real estate in ownership, leases, material means, etc. — that come together in a given court.

The latest CEPEJ report[65] offers an accurate view of the resources available in the judicial systems of different European countries.

For instance, regarding the public budgets allocated to the judicial systems in 2018, Spain destined € 95.9 per inhabitant (see Table 7), which is above the European average (€ 72)[66] but far away from countries such as Germany (well above € 100) or Switzerland (above € 200).

Table 8. Judicial system budget in € per inhabitant and GDP per inhabitant.[67]



65 CEPEJ, 'European Judicial Systems. Efficiency and Quality of Justice' (2020), available at https://rm.coe.int/cepej-report-2020-2018-data-wb-003-/1680a04338.

66 CEPEJ, 'European Judicial Systems. Efficiency and Quality of Justice' (2020), available at https://rm.coe.int/cepej-report-2020-2018-data-wb-003-/1680a04338, page 7.

67 CEPEJ, 'European Judicial Systems. Efficiency and Quality of Justice' (2020), available at https://rm.coe.int/cepej-report-2020-2018-data-wb-003-/1680a04338, page 8.

Lastly, Spain has a total of 11.6 judges for each 100,000 inhabitants, which is far from average, that is, 21. This could explain why Spanish courts face problems of congestion, making justice slower than it should as designed in the different procedural laws, and in particular the Civil Procedure Code. There is always the concern for lack of sufficient resources. However, comparatively, Spain is not so far removed from other countries and, in fact, as we saw, has been consistently increasing its resources for decades.

Table 9. Judges per 100,000 inhabitants.[68]

IV. FINAL REMARKS.

It is a fact of life that interests arising from the political struggle are sometimes in contrast with the values and guarantees of judicial independence, transparency, and accountability.

The aforementioned new model of court management is a good example. The reforms have notably increased the presence of the executive branch — both central and regional — in the judiciary. Even though some authors have expressed doubts about

68 Cepej, 'European Judicial Systems. Efficiency and Quality of Justice' (2020), available at https://rm.coe.int/cepej-report-2020-2018-data-wb-003-/1680a04338, page 15.

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the very constitutionality of the new model, the process continues to be implemented with the consensus of all the most relevant political parties in both state and regional levels.

Another example is the debate over the method to select the members of the General Council of the Judiciary. The General Council of the Judiciary is composed of a President — who is also the President of the Supreme Court — and 20 members. Even though the Constitution foresaw that 12 would be elected by the judges themselves, a reform of the of the Judiciary Law in 1985 established that the 20 members would be elected by the Congress and the Senate: 12 among judges and eight among jurists of recognized competence. This led to politization in the selection and functioning of this constitutional body, which risks mirroring political majorities, alliances, and loyalties.

However, all things considered, we can affirm that Spanish judiciary — particularly in the civil order — is as a matter of fact independent and relatively free of corruption and politization.

Let us make an additional effort at synthesizing the main findings of this study. Judicial independence in Spain enjoys full, strong constitutional and legal protection, from the method of recruiting judges up to the self-governing General Council of the Judiciary. Judicial accountability, the other side of the coin of independence, is similarly well developed by means of a comprehensive system of civil, disciplinary, and administrative individual and state responsibility — as well as a growingly detailed and accessible system to ensure transparency at all levels of the judiciary.

LIST OF TABLES.

Table 7. Overall justice budget in Spain with respect to the GDP.

Table 8. Judicial system budget in € per inhabitant and GDP per inhabitant.

Table 9. Judges per 100,000 inhabitants.

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