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National case law

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Spain



Spain

In Spain, case-law is not considered to be a source of law, on the basis that Article 1(1) of the Spanish Civil Code (Código Civil) establishes the law, custom and the general principles of law as such sources (Article 1(1) of the Spanish Civil Code). However, Article 1(6) of the Spanish Civil Code lays down that case-law «shall complement the legal order with the doctrine established over time by the Supreme Court (Tribunal Supremo) in its interpretation and application of the law, custom and the general principles of law». Moreover, the right of access to public information is specifically recognised in Article 105(b) of the Spanish Constitution (Constitución Española).

Access to case-law

Article 560(1)(10) of the Organic Law on the Judiciary (*Ley Orgánica del Poder Judicial*) establishes the following as one of the powers of the General Council of the Judiciary (*Consejo General del Poder Judicial*): “the official publication of judgments and other decisions issued by the Supreme Court and the other judicial bodies.

To that end, the General Council of the Judiciary shall, subject to a report from the competent authorities, lay down rules on how the electronic court records are to be drawn up, compiled, processed, disseminated and certified, in order to guarantee access to them, ensure their integrity and authenticity, and ensure that they comply with the legislation on the protection of personal data”.

Likewise, Article 560(1)(16)(e) of the Organic Law on the Judiciary grants the General Council of the Judiciary the regulatory power to publish and re-use judicial decisions strictly within the framework of the implementation of the provisions of the Organic Law on the Judiciary.

To guarantee compliance with the law, the General Council of the Judiciary created the Centre for Judicial Documentation (*Centro de Documentación Judicial*, CENDOJ), headquartered in San Sebastian, in 1997. In accordance with the provisions of Article 619 of the Organic Law on the Judiciary, this technical body within the General Council of the Judiciary is responsible for selecting, managing, processing, disseminating and publishing legal information on legislation, case-law and doctrine.

This new public service for accessing case-law produced in the various judicial bodies under the best technical conditions, with special protection of individuals with regard to the processing of automated data and establishing appropriate mechanisms to facilitate the accessibility, interoperability, quality and re-use of the information published, is organised on the basis of the legal mandates contained in Organic Law 6/1985 of 1 July 1985 on the Judiciary, Law 19/2013 of 9 December 2013 on transparency, access to public information and good governance, Regulation 1/1997 on the Centre for Judicial Documentation, and Law 18/2015 of 9 July 2015 amending Law 37/2007 of 16 November 2007, on re-using public-sector information, transposing Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013.

In order to comply with the above, the Centre for Judicial Documentation implements a system for the

dissemination of judgments and other judicial decisions by means of the official publication of the judgments and other decisions of the Supreme Court and other judicial bodies, a) available to the general public through an online search engine, freely accessible and free of charge, following removal of personal data; b) within an environment restricted to the Judiciary with additional features (links to national and foreign case-law and legislation, as well as the judgments of the Constitutional Court (*Tribunal Constitucional*)) within the functions inherent to the General Council of the Judiciary as the governing body of Spanish judges and courts; c) the international dissemination of decisions of the Spanish courts published by CENDOJ via the website www.poderjudicial.es, for the shared knowledge of the legal systems and case-law of the Member States of the European Union, in accordance with Council conclusions (2011/C 127/01) on the «European e-Justice» portal and via the Iberian-American Network of Judicial Information and Documentation (*Red Iberoamericana de Información y Documentación Judicial, Iberius*), and the provision of information to the various re-users, as well as other users (who are not re-users) in accordance with the provisions of the aforementioned legal standards.

The CENDOJ database should also be supplemented by the database of the [Constitutional Court](#), which contains information on judgments handed down by that High Court.

There are also private databases, with access granted on payment of a fee.

Presentation of the case-law

In relation to the case-law of the Supreme Court, CENDOJ has created a technological platform structured in the form of a tab-based navigation system.

When consulting this platform, a tab will open called 'RESULTADOS' [results] (which lists the results obtained) and another called 'BÚSQUEDA' [search] (which allows you to access the form at any time).

The search engine gives you rapid, secure access to all the judicial decisions issued by the Supreme Court. You can search for decisions using selection fields, which identify or categorise those decisions, and/or free text fields.

In addition, you also have the option to go straight to the 50 most recent decisions for each jurisdiction by clicking on the buttons displayed at the bottom of the interface. This allows you to access the latest judgments that have been received and incorporated into the database that forms the basis of case-law.

The system also features a tag cloud with the most popular search subjects; clicking on one of these gives you judgments relating to that subject.

Searches by selection fields

Some of the information fields for the decisions may be limited by a set of possible values. For example:

- The Jurisdiction ['Jurisdicción'] box has a selection of areas of law: civil, criminal, administrative appeal, labour, military.
- The Type of decision ['Tipo de Resolución'] box allows you to select either Judgments, Orders or Agreements of the Supreme Court
- Date of decision: the calendar ['Calendario'] button allows you to restrict your search by entering dates
- Language: drop-down list allowing you to select the language of the decisions you want to retrieve.

Searches using free text fields

In addition to the selection fields, there are also other fields for the decision search, which do not have restricted sets of values but may contain any text string, used to perform free searches.

RESULTS

Once a search has been carried out, the results are presented, by default, with 10 results per page.

The results are shown as follows:

RELATED TERMS - the system automatically provides terms associated with the search performed, but only within the restricted environment.

TITLE - the Spanish Official Case-Law Repository (*Repositorio Oficial de Jurisprudencia*, ROJ) number of the retrieved case-law and the European Case Law Identifier (ECLI) are shown here.

SUBTITLES - the following information fields are shown here:

- Type of body: for example, Supreme Court.
- Municipality: for example, Madrid -- Section: 1
- Rapporteur: for example, name... surname(s)...
- Action No: for example 88/2007 -- Date: 26/06/2008
- Decision type: for example, Judgment
- Body, alphabetical order

Lastly, clicking on the title of the desired result opens up a new page showing the full content of the document retrieved. This document is accessible to the public in PDF format.

Format

Judgments are usually available in the databases in PDF format (to the public), and RTF and HTML formats (in the environment restricted to the judiciary).

Judgments and orders available

• Supreme Court

Supreme Court: Supreme Court case-law is published in full, freely and free of charge, on the internet, for your information. The full texts, with any personal data removed (anonymised) and with an efficient search engine that removes these data, especially from the text of decisions. You can access this database via the [CENDOJ Supreme Court search function](#).

• Other courts

In addition to the decisions and agreements of the Supreme Court, the CENDOJ database also gives the public free-of-charge access to the judgments issued by the Spanish National High Court (*Audiencia Nacional*), the High Courts of Justice (*Tribunales Superiores de Justicia*) and Provincial Courts (*Audiencias Provinciales*), as well as a selection of orders from those collegial courts and of judgments and orders issued by the Central Military Court (*Tribunal Militar Central*), Regional Military Courts (*Tribunales Militares Territoriales*) and single judges.

Other procedures

Is information available...

- about the actions?
- about whether the case has been resolved?
- about the outcome of actions?
- about whether the decision is irrevocable?
- about other procedures?

The information open to the public contains the full text of the judgments without additional features, without prejudice to the fact that, in many cases, the decision itself contains information about whether or not it is final (irrevocable). Moreover, those decisions also include the dissenting opinions issued, if any. Notwithstanding the above, the database provided in the environment restricted to the Judiciary (CENDOJ Document Base) includes links connecting the decision being challenged with that issued by the High Court (*Tribunal Superior*),

summaries, the meaning of the judgment, reference to judgments cited in favour or against; case-law cited, applied or interpreted; description of the judgment: implements general concepts, consolidates an innovative judgment or case-law and classification of the decision in accordance with the terms used in the CENDOJ legal thesaurus.

Publication Rules

Are there any binding rules for the publication of case-law at national level or depending on the type of Court?

These are laid down in Article 560(1)(10) of the Organic Law on the Judiciary, which specifies that the General Council of the Judiciary shall be competent in matters of the official publication of judgments and other decisions issued by the Supreme Court and other judicial bodies.

There are also publication rules in the Regulation creating the Centre for Judicial Documentation.

Is the judgment or just a selection of the text published? In the latter case, what criteria are applied?

Judgments are published in full, not as extracts, and all judgments issued by the collegiate courts and a selection of those issued by single judges are published under the terms set out above.

Related links

Centre for Judicial Information case-law search engine:

<http://www.poderjudicial.es/search/indexAN.jsp>

■ Last update: 29/06/2022

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