

[Home](#) > ... > [Taking Legal Action](#) > [Legal Systems - EU and National](#) > [National Ordinary Courts](#) > [Spain](#)

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Spain



# National ordinary courts

Spain

Article 117 of the Spanish Constitution of 1978 states that the principle of the unity of the judicial power is the basis for the organisation and operation of the courts. This principle results in the existence of a single judiciary making up the ordinary courts. Numerous courts exist, among which the work is distributed according to criteria determining jurisdiction – subject matter, amount, person, function or region – since the unity of the judicial power does not preclude the existence of different courts with different areas of jurisdiction.

The Constitution of 1978 affirms that Spain is a social and democratic state subject to the rule of law that advocates liberty, justice, equality and political pluralism as the overriding values of its legal system. Title VI of the Constitution is given over to the judiciary, with Article 117 laying down that the principle of the unity of the judicial power (*unidad jurisdiccional*) is the basis for the organisation and operation of the courts.

These principles inform the organisation of the courts in Spain, resulting in the existence of a single body of judges who form the judiciary and who are independent, irremovable, responsible and subject only to the Constitution and the rule of law.

The courts determined by law and international treaty are exclusively responsible for exercising jurisdictional power by passing and enforcing judgments.

## Ordinary courts - introduction

Numerous courts exist, among which the work is distributed according to the various criteria for determining jurisdiction established by law – subject matter, amount, person, function or region – since the unity of the judicial power does not preclude the existence of different courts with different areas of jurisdiction. The courts exercise their judicial power exclusively in the cases where this is attributed to them by law.

The Organic Law on the Judiciary provided for in Article 122 of the 1978 Constitution determines the formation, operation and governance of the courts.

A distinction must be made between three fundamental aspects:

- the territorial aspect;
- whether it is a single judge or a bench of judges who sit in the court;
- jurisdiction.

### The territorial aspect

In accordance with the explanatory memorandum to Organic Law 6/1985 of 1 July 1985 on the Judiciary, the State is divided territorially, for judicial purposes, into municipalities, districts (*partidos*), provinces and autonomous communities.

The exercise of judicial power is attributed to the following courts: magistrates courts (*Juzgados de Paz*), courts

of first instance and preliminary investigations (*Juzgados de Primera Instancia e Instrucción*), commercial courts (*Juzgados de lo Mercantil*), courts for dealing with violence against women (*Juzgados de Violencia sobre la Mujer*), criminal courts (*Juzgados de lo Penal*), courts for contentious administrative proceedings (*Juzgados de lo Contencioso-Administrativo*), social courts (*Juzgados de lo Social*), juvenile courts (*Juzgados de Menores*), courts with special duties in the matter of criminal sentences (*Juzgados de Vigilancia Penitenciaria*), provincial courts (*Audiencias Provinciales*), high courts of justice in the autonomous communities (*Tribunales Superiores de Justicia*), the National High Court (*Audiencia Nacional*) and the Supreme Court (*Tribunal Supremo*).

The National High Court, the Supreme Court, the central criminal courts (*Juzgados Centrales de Instrucción*) and the central courts for contentious administrative proceedings (*Juzgados Centrales de lo Contencioso-administrativo*) have nationwide jurisdiction.

### Single judge or a bench of judges

A single judge sits in all the courts with the exception of the Supreme Court, the National High Court, the high courts of justice and the provincial courts.

The Supreme Court, with its seat in Madrid, is the highest judicial body in all divisions of the legal system, subject to the provisions as regards constitutional guarantees. It comprises its president, the presidents of the chambers (*presidentes de sala*) and the judges (*magistrados*) assigned by the law to each of its chambers and sections.

The Supreme Court is made up of the following chambers:

First: for Civil Matters.

Second: for Criminal Matters.

Third: for Contentious Administrative Proceedings.

Fourth: for Labour Matters.

Fifth: for Military Matters, which is governed by its specific legislation and on a supplementary basis by the Organic Law on the Judiciary and the regulations shared by the other chambers of the Supreme Court.

The National High Court, with its seat in Madrid, has nationwide jurisdiction. It comprises its president, the presidents of the chambers and the judges assigned by the law to each of its chambers and sections (appeals, criminal matters, contentious administrative proceedings and labour matters).

There is one high court of justice in each autonomous community that is the highest court within the territorial scope of that community, without prejudice to the jurisdiction of the Supreme Court. The high court of justice takes the name of the autonomous community in question and its jurisdiction extends to the territorial scope of that community.

It is made up of three chambers: for civil and criminal matters, for contentious administrative proceedings and for labour matters.

It comprises a president, who will also be president of the chamber for civil and criminal matters, as well as the presidents of the chambers and the judges assigned by the law to each chamber and, where applicable, to any sections that may be created within them.

The provincial courts have their seats in the provincial capitals, from which they take their names, and their jurisdiction, as a rule, extends to the entire province. They comprise one president and two or more judges. They may also comprise two or more sections with the same composition, in which case the president of the court will preside over one of the sections.

They hear civil and criminal cases.

## The Courts Office (*Oficina Judicial*)

The Organic Law on the Judiciary describes the Courts Office as the administrative organisation that acts as a support for the judicial work of judges and courts.

It was designed to improve the efficiency and effectiveness of judicial bodies and the transparency of judicial proceedings, to streamline the resolution of cases, and to encourage cooperation and coordination between the various services and units that make up the Courts Office. The launch of this Office is thus a response to the undertaking to ensure a high-quality, accessible public service that complies with constitutional values and is in keeping with the actual needs of citizens.

It is a new organisational model that introduces modern management techniques based on a combination of different administrative units: units providing direct support for judicial procedures, equivalent to the old courthouses (*juzgados*), which support judges in their judicial duties, and common procedural services headed by court clerks (*Letrados de la Administración de Justicia*), who carry out and handle all the tasks that are not strictly judicial, such as receiving documents, handling summonses, enforcing decisions, non-judicial proceedings, admission of a petition for trial, notification of parties, remedying of procedural shortcomings, etc.

There are three types of common procedural services:

- Common General Service;
- Common Case Management Service;
- Common Enforcement Service.

## Jurisdiction

Besides the territorial aspect, the matters or issues that can come before the courts are of different kinds and are dealt with by four systems of courts:

Civil courts: deal with disputes not explicitly assigned to another class of court, in addition to matters falling under their jurisdiction. They can therefore be described as ordinary courts.

Criminal courts: criminal cases and proceedings must be dealt with in the criminal system, with the exception of those falling under military jurisdiction. In Spanish law, however, civil action arising out of a criminal offence can be brought at the same time as the criminal action. In such a case, the appropriate damages to be paid in order to make good the loss caused by the offence will be determined by the criminal court.

Courts for contentious administrative proceedings: the Constitution states that the courts control regulatory authority and the legality of administrative action, as well as the compliance of this administrative action with the aims that justify it. Courts for contentious administrative proceedings examine the legality of acts carried out by the authorities, including financial claims made against them. This is because, under the terms established by the law, individuals have the right to be compensated for any loss they may suffer in respect of any of their assets and rights, except in cases of force majeure, provided that the loss is a result of the functioning of public services.

Social courts: deal with claims made under the social area of law, both in individual and collective disputes, as well as social security claims or claims against the State when it bears liability under employment legislation.

In addition to these four court systems, there are also military courts in Spain.

The military courts are an exception to the principle of the unity of the judicial power.

The Constitution lays down the principles governing judicial activities and provides for the unity of the State judiciary. The organisation and operation of the military courts, forming part of the State judiciary, are based on the principle of unity of the judicial power. They administer justice within the strictly military sphere and, where applicable, in matters established by the declaration of a state of siege, in accordance with the Constitution and the provisions of criminal, procedural and disciplinary military laws.

In peacetime, the jurisdiction of the military courts is confined to the strictly military sphere, namely hearing cases relating to conduct classified as an offence in the military criminal code, with this jurisdiction being

extended to any kind of offence in the case of troops stationed abroad. In times of war, Organic Law 4/1987 on the Jurisdiction and Organisation of Military Courts permits a change in scope, although that decision has to be taken by Parliament (*Cortes Generales*) or, if it is so authorised, by the Government.

In the civil system, the military courts are responsible for preparing testate or intestate succession proceedings for members of the armed forces who, in times of war, died in battle or at sea, this being limited to providing the essential assistance to enable burial of the deceased and the creation of the inventory and provisional securing of their assets, always informing the competent civil judicial authority.

The military courts are made up of professional military personnel, members of the armed forces and representatives of the Ministry of Defence.

The system of military courts consists of: the regional military courts (*Juzgados Togados Territoriales*), the central military courts (*Juzgados Togados Centrales*), the higher regional military courts (*Tribunales Militares Territoriales*) and the Central Military Court (*Tribunal Militar Central*). Nevertheless, at the pinnacle of the military court system is the Fifth Chamber of the Supreme Court.

The Central Military Court has its seat in Madrid and nationwide jurisdiction, and forms a centralised court for dealing with the matters attributed by Organic Law 4/1987 of 15 July 1987 on the Jurisdiction and Organisation of Military Courts.

The regional military courts are responsible for investigating military criminal proceedings in cases occurring within the area of their jurisdiction, whilst the hearing of these proceedings falls to the respective higher regional military court; the regional military courts also supervise the application of criminal sentences in relation to military correctional facilities and their inmates, among other functions.

The creation of a Chamber for Military Matters in the Supreme Court, subject in terms of its procedures and the status of its members to the same rules as the other chambers, means that there is unity at the apex of the two court structures that make up the State judiciary.

This chamber comprises judges from both the ordinary and the military courts, which is a guarantee of balance in judicial proceedings at the highest level: the chamber is usually called upon to act in assessing appeals on points of law and reviews, though of course it may also have jurisdiction in particular cases involving personnel who hold high military office.

In Spain no system of extraordinary courts exists; however, in the context of the judicial systems mentioned, special courts have been created for specific matters, for example courts dealing with violence against women, courts with special duties in the matter of criminal sentences and juvenile courts. These are ordinary courts but are specialised in a particular area. For more information, see the factsheet on specialised courts in Spain.

In the analysis below of the four judicial systems in Spain, we will look at the jurisdiction of the various courts concerned.

## Civil justice system

The First Chamber of the Supreme Court (*Sala I del Tribunal Supremo*), the chamber for civil and criminal matters of the high courts of justice (*Sala de lo Civil y Penal de los Tribunales Superiores de Justicia*), the civil sections of the provincial courts (*Secciones Civiles de las Audiencias Provinciales*), the courts of first instance (*Juzgados de Primera Instancia*), magistrates courts and certain specialist courts (family courts (*Juzgados de Familia*), commercial courts, community trademark courts (*Juzgados de Marca Comunitaria*), courts for dealing with violence against women) all have jurisdiction in the civil justice system.

Commercial courts, community trademark courts and courts for dealing with violence against women are examined in detail on the factsheet on specialised courts in Spain.

## Criminal justice system

The Second Chamber of the Supreme Court (*Sala 2ª del Tribunal Supremo*), the Chamber for Criminal Matters of the National High Court (*Sala de lo Penal de la Audiencia Nacional*), the chamber for civil and criminal matters of the high courts of justice (*Sala de lo Civil y Penal de los Tribunales Superiores de Justicia*), the criminal sections

of the provincial courts (*Secciones Penales de las Audiencias Provinciales*), the criminal courts, the local criminal courts (*Juzgados de Instrucción*), the juvenile courts, the courts with special duties in the matter of criminal sentences, the courts for dealing with violence against women and magistrates courts all have jurisdiction in the criminal justice system.

Juvenile courts, courts with special duties in the matter of criminal sentences and courts for dealing with violence against women are examined in detail in the factsheet on specialised courts in Spain.

### Administrative justice system

The courts with jurisdiction in the administrative justice system are the Third Chamber of the Supreme Court (*Sala 3ª del Tribunal Supremo*), the Chamber for Contentious Administrative Proceedings of the National High Court (*Sala de lo Contencioso-Administrativo de la Audiencia Nacional*), the chamber for contentious administrative proceedings of the high courts of justice (*Sala de lo Contencioso-Administrativo de los Tribunales Superiores de Justicia*), the central courts for contentious administrative proceedings and the courts for contentious administrative proceedings.

### Social and labour justice system

The social and labour justice system is made up of the Fourth Chamber of the Supreme Court (*Sala 4ª del Tribunal Supremo*), the Chamber for Labour Matters of the National High Court (*Sala de lo Social de la Audiencia Nacional*), the chamber for labour matters of the high courts of justice (*Sala de lo Social de los Tribunales Superiores de Justicia*) and the social courts.

The jurisdictions of all the above-mentioned courts are laid down in the [Organic Law on the Judiciary](#).

### Related links

[General Council of the Judiciary \(\*Consejo General del Poder Judicial\*\)](#)

[Organic Law on the Judiciary](#)

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