

## Legal professions - Spain

In Spain, a legal profession means a profession that can only be practised by someone who has undergone special legal training, given that their work has to do with applying the law.

Judges and senior judges

Public prosecutors

Court registrars

Lawyers

Legal advisers

Notaries

Registrars

Legal representatives

Advisers on labour law and social security matters



### Legal professions - introduction

In Spain, a legal profession means a profession that can only be practised by someone who has undergone special legal training, given that their work has to do with applying the law.

The main legal professions in Spain are public prosecutors (*fiscales*), judges (*jueces*) and senior judges (*magistrados*), lawyers (*abogados*), notaries (*notarios*), court registrars (*letrados de la administración de justicia*), land and business registrars and legal representatives (*procuradores*).

### Judges and senior judges

#### Organisation

Justice emanates from the people and is dispensed on behalf of the monarch by the judges and senior judges constituting the judiciary. Only judges can dispense justice, i.e. only they can hand down judgments and have them enforced.

Judges are independent of the other powers of the state and are subject only to the constitution and the law.

Admission to careers in the judiciary is based on the **principles of merit and ability**. The selection process is objective and transparent, guaranteeing equal opportunity for everyone who meets the criteria and who has the necessary skills, professional competence and qualifications to serve as a judge.

The Organic Law on the Judiciary lays down three career categories:

- Supreme Court judge (*magistrado del Tribunal Supremo*),
- Senior judge (*magistrado*),
- Judge (*juez*).

The category for which there are most candidates is that of judge. Under the Organic Law on the Judiciary, in order to become a judge, candidates must pass a competitive examination for law graduates and take a course at law school (*Escuela Judicial*).

A smaller number of candidates also enter the judiciary via the senior judge and Supreme Court judge route.

Finally, Supreme Court judges are appointed by the General Council of the Judiciary (*Consejo General del Poder Judicial*) from senior judges with at least 15 years' service, including 10 years as a senior judge, while one fifth of Supreme Court judges are appointed from lawyers of recognised ability with at least 15 years' experience

### **Functions and tasks**

The courts and tribunals will only hear cases where jurisdiction is conferred on them by the Organic Law on the Judiciary or some other law.

To find out more about the various jurisdictions, see 'Courts in Spain'.

Judges and senior judges exercise their judicial power independently of all the judiciary's judicial and governing bodies.

Judges and senior judges may be liable under criminal or civil law in the cases and in the manner laid down by law, and are liable to disciplinary action in accordance with the Organic Law on the Judiciary.

For more information, see the website of the [General Council of the Judiciary](#).

### **Public prosecutors**

#### **Organisation**

The Public Prosecutor's Office (*Ministerio Fiscal*) is a constitutionally important body with its own legal personality, which has functional autonomy within the judiciary. It exercises its functions through its own structures, in accordance with the principles of unity of action and hierarchical subordination, and subject in all cases to the principles of legality and impartiality.

The Prosecutor General (*Fiscal General del Estado*) is the head of the Public Prosecutor's Office and represents it throughout Spain. He is responsible for issuing the necessary orders and instructions concerning the Office and its internal workings, and for its general management and supervision.

Public prosecutors are civil servants selected by a competitive examination for holders of law degrees and doctorates. In organisational terms they come under the Prosecutor General's Office and the respective Public Prosecutor's Offices of the autonomous communities.

#### **Functions and tasks**

Article 124 of the Spanish Constitution of 1978 states that the Public Prosecutor's Office 'without prejudice to functions entrusted to other bodies, has the task of promoting the operation of justice in defence of the rule of law, citizens' rights, and the public interest as safeguarded by the law, whether *ex officio* or at the request of interested parties, as well as that of protecting the independence of the courts and securing before them the satisfaction of social interest'.

Its functions include:

- ensuring that the judicial function is performed effectively in accordance with the laws and within the stipulated time limits through the necessary actions, appeal procedures and other measures;
- acting in the criminal process by ensuring that the judicial authority takes the appropriate precautionary measures and carries out investigations aimed at establishing the facts;

- acting in civil proceedings specified by law that affect the public interest or the interests of minors, the disabled or the underprivileged until the normal representation mechanisms are provided;
- performing the functions assigned to them by the relevant legislation in cases involving the criminal liability of minors, in order to serve the best interests of the minor.

For more information, see the website of the [Public Prosecutor's Office](#).

## Court registrars

### Organisation

Court registrars constitute a senior body in the justice administration system. They are civil servants who come under the Ministry of Justice, and they act as an authority in their own right.

Court registrars must hold a law degree and pass a competitive examination followed by a course at the Centre for Legal Studies (*Centro de Estudios Judiciales*), entry to which is also by competitive examination.

Court registrars form a hierarchical body under the Ministry of Justice and the Court Administrators (*Secretarios de Gobierno*) of each of the high courts, and they are subject to practically the same rules on incompatibilities and prohibitions as judges.

### Functions and tasks

The functions of court registrars include ensuring that all decisions of the judges or courts for which they are responsible. They must at all times observe the principles of legality and impartiality, of autonomy and independence in authenticating judicial instruments, and of unity of action and hierarchical subordination when exercising all their other functions.

Court registrars are responsible for documentation and record-keeping. They must keep a record of court decisions and are responsible for initiating and ensuring the proper conduct of legal proceedings and for managing court staff. They are also responsible for cooperating with other bodies and public administrations, and for drawing up court statistics.

For more information on court staff in Spain, go to:

- [Court registrars \(\*letrados de administración de justicia\*\)](#)
- [Procedural agents \(\*gestores procesales\*\)](#)
- [Legal documentalists \(\*tramitadores procesales\*\)](#)
- [Court assistants \(\*auxilio judicial\*\)](#)

## Organisation of the legal professions

### Lawyers

Lawyers are independent members of a liberal profession who provide a service to society. They are not civil servants and practise on the basis of free and fair competition (Article 1 of the General Statute of Spanish Lawyers —*Estatuto General de la Abogacía Española*).

The role of lawyers is basically to direct and defend parties in all kinds of legal proceedings, to provide legal advice and to represent their clients unless this task is reserved by law to other professions.

### In order to practise as a lawyer, a person must:

- be a Spanish national or a national of a Member State of the European Union or of a country that is a party to the Agreement on the European Economic Area of 2 May 1992;
- be of age and must not be disqualified from practising as a lawyer for any reason;
- be a qualified lawyer or hold a Spanish law degree (in cases not regulated by Law 30/2006 of 30 October 2006 on admission to the professions of lawyer or legal representative and related implementing regulations) or an equivalent foreign degree that has been officially approved under the rules in force;
- be a member of the bar (*Colegio de Abogados*) for the district in which the sole or main professional domicile is located, in order to practise anywhere in Spain.

Lawyers charge **fees** for the services they provide, in the form of a fixed fee, hourly fee, or periodic payments. The amount of the fee can be agreed freely between the client and the lawyer provided it does not go against the professional code of ethics or the rules of fair competition.

For more information, see the website on the [General Council of Lawyers in Spain](#).

### Legal databases

- For legislation: [Official State Gazette](#).
- For case-law: [Legal Documentation Centre](#).

### Is access to these databases free of charge?

Yes, access is free of charge.

### Legal advisers

See the section on 'lawyers'.

### Notaries

#### Organisation, functions and tasks

Notaries have two indissociable roles: they are public officers and legal professionals whose main public function is to witness legal instruments and other extrajudicial documents; they must draw up these documents in accordance with the wishes of the parties and in line with the law, which they must check and interpret, while informing the parties of its effects.

The notary's role as a public officer means that documents authorised or certified by him/her (notarial acts – *escrituras publicas*; commercial agreements – *pólizas mercantiles*; or authenticated copies – *testimonios*) have special judicial or extrajudicial effects, depending on the type of document.

All aspects of the role of notaries in Spain are strictly regulated (appointment by the Ministry of Justice; admission through competitive examinations; limited number of places; remuneration in the form of fees fixed by the government; retirement; disciplinary measures). Promotions are based on seniority or on competitions for notaries organised by the Ministry of Justice.

Only law graduates or postgraduates may take part in competitions for admission as notaries.

Notaries are grouped into Associations of Notaries (*Colegios Notariales*), with one for each autonomous community, and these are coordinated by the General Council of Notaries (*Consejo General del Notariado*), which has been assigned certain supervisory powers by the State.

Notaries come under the direct authority of the Ministry of Justice in the shape of the Directorate-General of Registers and Notaries (*Dirección General de los Registros y del Notariado*), which is in charge of inspecting and monitoring notary services.

For more information, see the website of the General Council of Notaries ([www.notariado.org](http://www.notariado.org)).

### Other legal professions

#### Registrars

The land, business and moveable property registers serve as public records of certain legal rights, instruments or acts with substantive effect *erga omnes*, which permits a presumption of legitimacy, correctness, completeness and accuracy. This means that no other guarantees are required (title deeds, guarantees, etc.) to prove that such rights are held; it thus constitutes a more secure and cost-effective system, since there is only a one-off registration fee and it has immediate and permanent effect.

Land, business and moveable property registrars are public officers in charge of keeping the land, business and property registers in Spain. They are both public officers and legal professionals: acting on their own responsibility, they perform certain public functions assigned to them by law, in particular by mortgage, business and administrative law; and in their capacity as public officers under the Mortgage Act (*Ley Hipotecaria*), they exercise the powers conferred on them by administrative law.

The government regulates all matters relating to their admission, the number of places, remuneration, disciplinary measures and retirement. To become registrars, law graduates or postgraduates must take part in competitions organised by the State.

Their remuneration is in the form of fees fixed by the government.

Land, business or moveable property registrars are members of the National Association of Registrars in Spain (*Colegio Nacional de Registradores de España*), which has been assigned certain supervisory powers by the State.

They come under the direct authority of the Ministry of Justice in the shape of the Directorate-General of Registers and Notaries (*Dirección General de los Registros y del Notariado*), which is in charge of inspecting and monitoring the registers.

Registrars' functions are: classifying the documents submitted for entry in the registers for which they are responsible; advising the public on matters relating to registers and providing public access to the information entered; checking, where necessary, that persons requesting access have a legitimate interest and duly protecting sensitive data.

For more information, see the website of [National Association of Registrars in Spain](#).

### **Legal representatives**

Legal representatives (*procuradores*) represent the rights and interests of parties before the courts through a power of attorney granted for this purpose, ensure that communications between the courts and the parties are duly authenticated, and perform any other duties required by law.

To practise as a legal representative, a person must hold a qualification as legal representative or court legal representative (the latter in accordance with Law 34/2006 of 30 October 2006 on admission to the professions of lawyer or legal representative), must be registered with the Association of Legal Representatives (*Colegio de Procuradores*), must provide security and must swear an oath or make an affirmation.

Legal representatives come under the authority of the Association of Legal Representatives, whose governing body ensures that members perform their duties properly.

Their remuneration is in the form of fees fixed in advance by the Ministry of Justice.

For more information, see the website of the [General Council of Legal Representatives in Spain](#).

### **Advisers on labour law and social security matters**

Advisers on labour law and social security matters (*graduados sociales*) are specialists who can act in labour and social security proceedings before the courts.

They may appear in proceedings before the lower and higher courts, and may lodge appeals. However, to lodge an appeal with the Supreme Court, the presence of a lawyer is necessary.

In Spain, there are over 25 000 advisers in this area assisting both businesses and employees.

### **Related links**

[MINISTRY OF JUSTICE IN SPAIN](#)

[GENERAL COUNCIL OF THE JUDICIARY IN SPAIN](#)

[PUBLIC PROSECUTOR'S OFFICE IN SPAIN](#)

[NATIONAL ASSOCIATION OF COURT REGISTRARS IN SPAIN](#)

[GENERAL COUNCIL OF LAWYERS IN SPAIN](#)

[GENERAL COUNCIL OF LEGAL REPRESENTATIVES IN SPAIN](#)

[GENERAL COUNCIL OF NOTARIES IN SPAIN](#)

[NATIONAL ASSOCIATION OF REGISTRARS IN SPAIN](#)

[GENERAL COUNCIL OF ADVISER ASSOCIATIONS IN SPAIN](#)

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