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Spanish

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## National specialised courts

Spain

Article 117 of the Spanish Constitution of 1978 establishes the principle of jurisdictional unity based on the organisation and operation of the Courts. Under the Spanish legal system, ordinary jurisdiction is divided into five areas of law: civil, criminal, administrative, social and military. In Spain no system of extraordinary courts exists; however, we can highlight that, from amongst the jurisdictional systems mentioned, special courts have been created based on subject-matter. For example, courts dealing with violence against women, courts with special duties in the matter of criminal sentencing and juvenile courts. These courts fall within ordinary jurisdiction but have a specialisation based on subject-matter.

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### Specialised courts

**The Ley orgánica del Poder Judicial (Organic Law on the Judiciary) provides for the existence of the following specialised courts:**

#### COMMERCIAL COURTS

The Commercial Courts, which have been in operation since 1 September 2004, are specialised legal bodies. They form part of the civil legal system.

#### TERRITORIAL SCOPE

Generally speaking, in each province, with jurisdiction throughout the province and its base in the provincial capital, there will be one or more commercial courts.

They may also be set up in towns other than the provincial capital where the needs of the people, the existence of industrial or commercial centres and economic activity so require, with the extent of their jurisdiction being established in each case.

Commercial courts may be established which extend their jurisdiction to two or more provinces within the same autonomous community.

#### AREAS OF JURISDICTION

Commercial courts hear cases arising in connection with **insolvency issues**, in the conditions specified in their governing law.

**Commercial courts also hear matters which fall within the area of jurisdiction of the civil jurisdictional system, with regard, *inter alia*, to claims in which rights of action are exercised relating to unfair competition, industrial property, intellectual property and advertising, as well as all those matters which, within this jurisdictional system, promote the scope of the regulatory rules of commercial companies and cooperatives.**

The commercial courts have jurisdiction to **recognise and enforce foreign sentences and other legal and arbitration rulings**, where these relate to matters within their area of jurisdiction, unless they should be heard by another court in accordance with international treaties and other rules.

#### APPEALS

The Provincial Courts hear the appeals which the law establishes against rulings handed down at first instance by the commercial courts, with the exception of those issued in insolvency cases which resolve matters relating to employment, for which one or more of its Sections need to be specialised, in accordance with the provisions of Article 98 of the Ley Orgánica del Poder Judicial ('LOPJ') (Organic Law on the Judiciary).

Other appeals may be lodged as established by the LOPJ in those cases set out therein.

#### COMMUNITY TRADEMARK COURTS

The Juzgados de Marca Comunitaria (Community Trade mark Courts) are the Commercial Courts for the area of Alicante insofar as they exercise their jurisdiction to hear exclusively and at first instance all those cases which are brought within the provisions of Council Regulation No 40/94 of 20 December 1993 on the Community trade mark, and Council Regulation No 6/2002 of 12 December 2001 on Community Designs.

In exercising this jurisdiction, the said courts extend their jurisdiction to the whole of the national territory.

They are part of the civil jurisdictional system.

Furthermore, the specialist Section or Sections of the Alicante Higher National Court also hears, exclusively and at second instance, all those appeals referred to in Article 101 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, and Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs. In exercising this jurisdiction, they extend their jurisdiction to the whole of the national territory and for these purposes only are called Community Trade mark Courts.

#### COURTS WITH SPECIAL DUTIES IN THE MATTER OF CRIMINAL SENTENCING:

Juzgados de Vigilancia Penitenciaria (courts with special duties in the matter of criminal sentencing) have the jurisdictional roles set out in the Ley General Penitenciaria (general law on criminal sentencing) in the matter of enforcing custodial sentences and security measures, jurisdictional control over the disciplinary power of the criminal sentencing authorities, covering the rights and benefits of the inmates of prisons and other matters as specified by the law.

They are part of the criminal jurisdictional system.

#### TERRITORIAL LIMITS

In each province, and within the criminal jurisdictional system, there are one or more courts with special duties in the matter of criminal sentencing.

In the city of Madrid, with jurisdiction for the whole of Spain, there are one or more Juzgados Centrales de Vigilancia Penitenciaria (central courts with special duties in the matter of criminal sentencing).

#### AREAS OF JURISDICTION

The courts with special duties in the matter of criminal sentencing have the jurisdictional roles set out in the general law on criminal sentencing in the matter of enforcing custodial sentences and security measures, jurisdictional control over the disciplinary power of the sentencing authorities, covering the rights and benefits of the inmates of prisons and other matters as specified by the law.

#### **APPEALS**

The Provincial Courts hear the appeals established by the law against decisions handed down by the provincial courts with special duties in the matter of criminal sentencing.

The other appeals provided for in the LOPJ can be brought in those cases established in the LOPJ.

#### **JUZGADOS DE MENORES (JUVENILE COURTS)**

##### **TERRITORIAL LIMITS**

In each province, with jurisdiction throughout the province and its base in the provincial capital, there are one or more Juvenile Courts.

In the city of Madrid, with jurisdiction for the whole of Spain, there is a Juzgado Central de Menores (Central Juvenile Court), which hears those cases attributed to it by the legislation governing the criminal liability of minors.

##### **AREAS OF JURISDICTION**

Juvenile Courts have jurisdiction to hear crimes and petty offences committed by persons aged between 14 and 18.

Judges in Juvenile Courts have to carry out the roles set out in the laws relating to minors who have committed actions classified by law as a crime or petty offence and such other actions as, in relation to minors, are attributed to them by law.

#### **APPEALS**

The Provincial Courts hear the appeals established by the Law against decisions handed down by the provincial Juvenile Courts.

The other appeals provided for in the LOPJ can be brought in those cases established in the LOPJ.

#### **COURTS DEALING WITH VIOLENCE AGAINST WOMEN**

##### **TERRITORIAL LIMITS**

In each district there are one or more Juzgados de Violencia sobre la Mujer (Courts dealing with Violence against Women), based in the capital of the district and with jurisdiction throughout the territory. They take their name from the name of the municipality where they are based.

In legal districts where there is only a Juzgado de Primera Instancia e Instrucción (Court of First Instance and Preliminary Investigation), it will be this court which hears matters falling to the jurisdiction of the courts dealing with violence against women.

They are part of the criminal jurisdictional system.

##### **AREAS OF JURISDICTION**

Courts dealing with violence against women hear, under the criminal system, in accordance in each case with the procedures and appeals provided for in the Ley de Enjuiciamiento Criminal (Code of Criminal Procedure), the following matters, inter alia:

Investigation of criminal liability claims arising out of offences contained in the titles of the Criminal Code relating to homicide, abortion, injury, injury to a foetus, deprivation of freedom, offences against moral integrity, sexual offences or any other offence committed with violence or intimidation, where they have been committed against someone who is or has been their wife, or a woman who is or has been linked to the offender by a comparable emotional relationship, even without living together, as well as those committed to the descendants, of the offender or of the wife or cohabiting partner, or to minors or the disabled living with the offender or subject to the de facto power, protection, guardianship, care or safekeeping of the wife or cohabiting partner, including where an act of gender-based violence has occurred.

Investigation of criminal liability claims arising out of any offence against the rights and duties of the family, when the victim is any of the persons stated as such in the preceding paragraph.

Issuing the relevant protection orders to the victims, without prejudice to the areas of jurisdiction attributed to the Duty Court.

Courts dealing with violence against women may hear under the civil system, in accordance in each case with the procedures and appeals provided for in the Code of Criminal Procedure, the following matters, inter alia:

Parentage, maternity and paternity.

Annulment of marriage, separation and divorce.

Those relating to father/child relationships.

Those relating to the need for approvals of adoptions.

Courts dealing with violence against women have exclusive and exclusionary jurisdiction under the civil system when the following conditions occur at the same time:

In the case of a civil process relating to any of the subjects specified in the previous paragraph.

Where any of the parties in the civil proceedings is the victim of acts of gender-based violence.

Where any of the parties in the civil proceedings is charged with being the perpetrator, instigator or accomplice necessary for carrying out acts of gender-based violence.

Where criminal actions have been brought before the courts dealing with violence against women in respect of crimes or petty offences resulting from an act of violence against women, or a protection order has been issued in respect of a victim of genderbased violence.

When the Judge holds that the actions made known to him, in public, do not constitute an expression of gender-based violence, he may reject the claim, referring it to the relevant legal body.

In these cases mediation is not permitted.

#### **APPEALS**

The Provincial Courts hear the appeals provided for by Law against rulings handed down by provincial courts dealing with violence against women.

Other appeals may be lodged as provided for by the LOPJ in those cases set out therein.

#### **SPECIALIST BODIES BY AGREEMENT OF THE GENERAL COUNCIL OF THE JUDICIARY**

In Spain, without any effect on the principle of jurisdictional unity by being part of the five jurisdictional systems, specialist courts can be set up not only by being specifically created by the Organic Law on the Judiciary, as is the case with the Commercial Courts, Juvenile Courts or Courts dealing with violence against women, but can also be the result of the specialisation made by the General Council of the Judiciary pursuant to Article 98 thereof, as is the case with Juzgados de Familia (family courts), Juzgados de Ejecución Hipotecaria (mortgage enforcement courts) or Juzgados de Ejecutorias (enforcement courts).

##### **Other special courts**

Article 117 of the Spanish Constitution of 1978 establishes the principle of jurisdictional unity that is the basis for the organisation and operation of the Courts.

This principle is reflected in the existence of a single jurisdiction, made up of a single body of judges and magistrates who comprise the ordinary courts.

Nevertheless, the Constitution itself provides for the existence of a series of special Courts. These are bodies which enjoy full independence and impartiality and are fully subject to the rule of law.

These Courts are:

#### **THE CONSTITUTIONAL COURT**

The Spanish Constitutional Court is set out as a body located outside of the ordinary Judiciary, but endowed with jurisdictional characteristics (Article 159 of the Spanish Constitution of 1978).

It is the supreme interpreter of the Constitution, independent, unique in its system and its jurisdiction extends to the whole of the national territory.

#### **COMPOSITION**

It comprises twelve magistrates appointed by the King, four of whom are proposed by the Congress, by a three-fifths majority of its members; four are proposed by the Senate, with the same majority; two are proposed by the Government and two by the General Council of the Judiciary, and they elect a president and a vice-president from among their ranks.

#### **AREAS OF JURISDICTION**

The Constitutional Court hears cases in the manner and as determined by the law, including:

Appeals on matters of unconstitutionality against laws, regulatory provisions or acts with the force of law.

Appeals relating to violation of civil rights and liberties as listed in Article 53.2 of the Constitution.

Constitutional disputes about competition between the State and the Autonomous Communities or disputes between the Autonomous Communities themselves.

Disputes between the constitutional bodies of the State.

Declarations on the constitutionality of International Treaties.

For more information: [The Constitutional Court](#)

#### **COURT OF AUDIT**

The Tribunal de Cuentas (Court of Audit) is the supreme fiscal body for the accounts and economic management of the State and the Public Sector.

Without prejudice to its own jurisdiction, the Court of Audit lies within the sphere of legislative power and comes directly under the Cortes Generales.

#### **COMPOSITION**

It comprises twelve members, Consejeros de Cuentas (auditors), six of whom are appointed by the Congress of Deputies and six by the Senate, and they enjoy the principles of independence, fixity of tenure and incompatibilities, in the same way as judges.

#### **FUNCTIONS**

Two functions are assigned to the Court of Audit:

The fiscal function, characterised by being external, permanent and consumptive, consists of checking whether the economic-financial activity of the public sector meets the criteria of legality, efficiency and economy.

The jurisdictional function is nothing other than the process of fiscal liability assumed by those who are in charge of the handling of public property, wealth or effects, and is intended to compensate public funds damaged by embezzlement, incorrect, incomplete or non-justification, or by other causes or actions.

For more information: [Audit Court](#).

#### **COURTS OF CUSTOMARY LAW**

Article 125 of the Constitution recognises these as one of the means of public participation in the Administration of Justice.

Article 19 of the Organic Law on the Judiciary recognises as Courts of customary law the Tribunal de las Aguas de la Vega Valencia (court governing water in the lowland area of Valencia) and the Consejo de Hombres Buenos de Murcia (council of the good men of Murcia).

#### **TRIBUNAL DE LAS AGUAS DE LA VEGA VALENCIA**

Acts within the territorial limits of Valencia.

It consists of eight syndicates of farm workers elected democratically by the managers of the Huerta Valenciana (a fertile region of Valencia) and its areas of jurisdiction are the equitable distribution of water between the various owners of the agricultural lands, the resolution of factual matters arising between the managers themselves and the imposition of the relevant sanctions for breaches of the Irrigation Regulations.

#### **CONSEJO DE HOMBRES BUENOS DE MURCIA**

The Consejo de Hombres Buenos de Murcia has been institutionalised and regulated since 1849 as the supreme body for Justice in the fertile area of Murcia. The council consists of a President, a Secretary and five Members.

The Consejo de Hombres Buenos de Murcia holds its hearings publicly every Thursday at the meeting hall at the Town Hall and resolves each case at that day's session or by no later than the following hearing. Rulings are issued in full and on a majority vote basis, although in the event of a tie the president has the casting vote. The sanctions resulting from justice in the Consejo de Hombres Buenos de Murcia are exclusively monetary in nature. Decisions issued by this court are final, fixed and enforceable.

For more information: [Consejo de Hombres Buenos](#).

#### **Related Links**

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

[SPANISH CONSTITUTIONAL COURT](#)

[SPANISH AUDIT COURT](#)

[COURTS OF CUSTOMARY LAW](#)

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