

# **KINGDOM OF SPAIN**

(REINO DE ESPANA)



## **BACKGROUND AND LEGAL SYSTEM**

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LEGAL SYSTEM      Civil law system.

POLITICAL SYSTEM      Parliamentary Monarchy.

HEAD OF STATE      Monarch, passed down by heredity.

HEAD OF GOVERNMENT      President of the Government (also known as the Prime Minister), nominated by the Monarch and elected by the Congress of Deputies.

SUBNATIONAL ENTITIES      There are 19 autonomous communities (*comunidad autonoma*): Andalusia, Aragon, Principality of Asturias, Balearic Islands, Basque Country, Canary Islands, Cantabria, Castile-La Mancha, Castile and Leon, Catalonia, Ceuta (autonomous city), Extremadura, Galicia, La Rioja, Madrid, Melilla (autonomous city), Region of Murcia, Foral Community of Navarre, Land of Valencia.

The capital is Madrid.

There are also three small Spanish possessions located off the coast of Morocco: Islas Chafarinas, Penon de Alhucemas, and Penon de Velez de la Gomera.

SUBLOCAL ENTITIES	Within the autonomous communities there are 47 peninsular and three island provinces. There are two enclaves and three island groups on the Mediterranean coast of Morocco.
TRANSLITERATION SYSTEM	None.
LANGUAGES	Castilian Spanish (official language nationwide), but other languages are regionally recognized as official languages: Catalan (17%), Galician (7%), and Basque (2%).

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## CONSTITUTION

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OFFICIAL NAME	la Constitución española de 1978
ENACTMENT	Ratified on December 6, 1978 and became effective December 29, 1978.
CITATION FORMAT	ESP. CONST. art. <article>.
<i>Example</i>	CONST. ESP. art. 161.

## STATUTES

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### GOVERNMENT STRUCTURE

Spain contains three branches of government:

- 1) Spain has a bicameral legislature known as the National Assembly (*Las Cortes Generales*). It is made up of the Senate and the Congress of Deputies.
  - The Senate (*Senado*) contains 259 seats, of which 208 members are directly elected by popular vote and the other 51 are appointed by the self-governing Communities to serve four-year terms.
  - Congress of Deputies (*Congreso de los Diputados*) contains 350 seats, of which all members are elected to the seats by popular vote on block lists by proportional representation to serve four-year terms.
- 2) The Government is the executive division and consists of the President, Vice President(s), Ministers, and other members established by law. The vice president is appointed by the king upon nomination by the president. The president designates the Council of Ministers.
- 3) Judicial system. The autonomous communities do not have separate courts; their courts are also courts of the State. The judicial power extends to all in the territory except the king, who has special immunity. The judicial system is governed by the General Council of the Judiciary (*Consejo General del Poder Judicial, CGPJ*), which consists of 20 members and the President, who is also appointed the president of the Supreme Court. Twelve members are judges and magistrates while the other eight are lawyers and jurists that have 15 years or more of professional practice.

LEGISLATIVE PROCESS	<p>A bill (<i>Proyecto de Ley</i>) is proposed by the Government and approved in the Council of Ministers (<i>Consejo de Ministros</i>). Then the bill is passed onto Congress for approval.</p> <p>A proposal of law (<i>Proposición de Ley</i>) can be proposed by Congress or Senate.</p> <p>A proposal from the Senate or a bill from the Government is passed to Congress for discussion in a Plenary Session. Proposals of law from the Congress and from popular initiative pass directly onto the next step.</p> <p>The bill or the proposal of law then passes to the study of a Commission, where the Commission studies the text of the bill or proposal by sections and prepares a brief about the text. The text will then be discussed and voted on in a Plenary Session.</p> <p>Once the text is approved by the Congress the bill or proposal of law is submitted to the Senate, where the Senate approves, amends or rejects the bill or proposal.</p> <p>If the Senate rejects the text (by an absolute majority), Congress may override the Senate's veto by approving the text with an absolute majority. The Congress must accept or reject any amendments made by the Senate by a simple majority. Congress has greater power than the Senate in the legislative process.</p> <p>The approved text is sent onto the King, who must approve the law within 15 days then promulgate it and order its publication. This is a formal, and not substantive, requirement.</p>
REPORTER	<p>Boletín Oficial del Estado (B.O.E.) (1661-) (Government Reporter of the State)</p> <p>- <i>Repertorio Cronológico de Legislación Aranzadi</i> (R.C.L.) (1930-) (Aranzadi: Chronological repertoire of Legislation)</p>
CITATION FORMAT	<English translation>, <reporter abbreviation> <year>, <law number>, <subsection>.
<i>Example</i>	Labor Procedure Law, R.C.L. 1990, 922, Art. 3.

## ADMINISTRATIVE REGULATIONS

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ADMINISTRATIVE  
SOURCES

The Government is granted regulatory power by article 97 of the Spanish Constitution. Any general rule that the Government issues is a regulation (*Reglamento*). However, other constitutional organs such as the Parliament and the Judiciary are granted certain powers to regulate their own functions. Examples of these certain regulatory powers include development of existing law or matters without legislative coverage.

Council of Ministers may issue a decree (*Decreto*). Ministers or Delegate Commissions may issue an order (*Orden*). Inferior authorities and public administration may issue an Instruction (*Instruccion*) or Orders of Regulation (*Circulares*).

REPORTER

Boletin Oficial del Estado (B.O.E.) (1661-)  
(Government Reporter of the State)

- *Repertorio Cronologico de Legislacion Aranzadi* (R.C.L.)  
(1930-)  
(Aranzadi: Chronological repertoire of Legislation)

CITATION FORMAT

<regulation type>, <title>, <regulation number>, <date>.

*Example*

Instruction, Organization and Operation of the General Council of the Judiciary, 1/1986, April 22, 1986.

**CODES**

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<i>Código Civil</i> (CIVIL CODE)	In force on July 29, 1889. Abbreviation: C.C.
<i>Código de Comercio</i> (CODE OF COMMERCE)	In force on August 22, 1885. Abbreviation: C.COM.
<i>Código Pena</i> (PENAL CODE)	In force on November 23, 1995 (Law 10/1995) Abbreviation: C.P.
<i>Ley de Enjuiciamiento Civil</i> (LAW OF CIVIL PROCEDURE)	In force on January 7, 2000 (Law 1/2000) Abbreviation: L.E. Civ.
<i>Ley de Enjuiciamiento Criminal</i> (LAW OF CRIMINAL PROCEDURE)	In force on September 14, 1882. Abbreviation: L.E. Crim.
<i>Código del Trabajo</i> (LABOUR CODE)	Abbreviation: C.T.
<i>Leyes Civiles Forales</i> (CIVIL LAW OF THE PROVINCES)	Abbreviation: C.F.
<i>Ley Organica del Tribunal Constitucional</i> (ORGANIC LAW OF THE CONSTITUTIONAL COURT)	In force on October 3, 1979 (Law 2/1979, amended by Law 8/1984, 4/1985, 6/1988, 7/1999 and 1/2000) Abbreviation: L.O.T.C.
CITATION FORMAT	<code abbreviation>, art. <article number>.
<i>Examples</i>	C.C. art. 3 L.O.P.J. art. 5.2.

## CASE LAW

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### JUDICIAL OVERVIEW

The judicial system consists of a Constitutional Court, the Supreme Court, the National Court, regional High Courts, Provincial Courts, and lower Tribunal Courts. There are four jurisdictional territories. The lower court decision may be appealed to a higher court and, ultimately, to the Supreme Court.

#### **The Constitutional Court:**

The Constitutional Court (*Tribunal Constitucional*), the supreme interpreter of the Constitution, is established by Title IX of the Spanish Constitution of 1978. It is separate from the court system, and has jurisdiction over the national territory. It governs conflicts between the State and Autonomous Communities, as well as cases of individual constitutional protection. It is an independent institution and has its own rules, rights, and regulations.

The Constitutional Court consists of twelve members appointed by the King for one nine-year term. A third of the seats are renewed every three years.

#### **Non-Constitutional Courts:**

The Supreme Court (*Tribunal Supremo*) is the highest court in the Spanish court system. It has jurisdiction over all of the nation's territory. It has five chambers: civil, criminal, administrative, social and military.

Below the Supreme Court is the National Court (*Audiencia Nacional*). Created in 1977, it also has jurisdiction over all of the nation's territory. It tries criminal cases that transgress regional boundaries, appeals against central administration, as well as certain labor cases.

The Regional High Court (*Tribunal Superior de Justicia de las Comunidades Autónomas*) is the highest court within each autonomous region. It has four chambers: criminal, administrative, labor and civil.

The Provincial Court (*Audiencia Provincial*) has jurisdiction over a province. It tries criminal and civil cases in each province.

Juvenile courts (*Juzgados de Menores*) may have jurisdiction over several provinces in an Autonomous Community.

Courts of Prison Vigilance (*Juzgados de Vigilancia Penitenciaria*) has jurisdiction over prisons and detainees.

Labour Courts (*Juzgados de lo Social*) have jurisdiction over work-related cases.

Administrative Courts (*Juzgados de lo Contencioso-Administrativo*) hear administrative appeals.

Criminal Courts (*Juzgados de lo Penal*) try crimes prepared and investigated by the Court of the First Instance.

Courts of the First Instance (*Juzgados de Primera Instancia*) hear civil cases that are not designated by law to be heard by a higher court and hear appeals of judgments made by Justice of Peace.

Examining Courts (*Juzgados de Instrucción*) investigate and prepare criminal cases for other courts. They also hear misdemeanor cases.

The Justice of Peace (*Juzgados de Paz*) hears minor civil cases.

Spain is divided into four jurisdictional territories: municipalities (*municipios*), judicial districts (*partidos judiciales*), provinces (*provincias*) and autonomous communities (*Comunidades Autonomas*). Each of these territories has its own specific types of court.

REPORTER

Constitutional Court:  
Botelin de Jurisprudencia Constitucional (B.J.C.)

Repertorio Aranzadi del Tribunal Constitucional (R.T.C.)

Sentencias del Tribunal Constitucional Sistematizadas y Comentadas (S.T.C.)

Non-Constitutional Courts:



Jurisprudencia del Tribunal Supremo (J.T.S.)

Repertorio Aranzadi de Jurisprudencia (R.J.)

Revista General de Derecho (R.G.D.)

CITATION FORMAT  
CONSTITUTIONAL COURT

Judgment of <date>, <court name>, <chamber>, <reporter>  
<number>, <page—sometimes omitted>.

*Example*

Judgment of September 26, 2005, Constitutional Court, Second Chamber, STC 237/2005.

CITATION FORMAT  
ORDINARY COURTS

Judgment of <Date>, <Court name>, <Reporter>, No.  
<number>, <page—sometimes omitted>.

*Example*

Judgment of Feb. 5, 1993, Audiencia Nacional, R.J., No. 876, 1135.

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**SOURCES**

The CIA Factbook

<https://www.cia.gov/cia/publications/factbook/index.html>

U.S. State Department Country Background Information website

<http://www.state.gov/r/pa/ei/bgn/2878.htm>

“A Guide to the Spanish Legal System” by Olga Cabrer, available at

<http://www.llrx.com/features/spain.htm#sources>

The Senate of Spain website

[http://www.senado.es/index\\_i.html](http://www.senado.es/index_i.html)

Government Reporter of the State

[www.boe.es](http://www.boe.es)

The Constitutional Court

[www.tribunalconstitucional.es](http://www.tribunalconstitucional.es)

Universidad Carlos III de Madrid

<http://www.uc3m.es/uc3m/serv/BIB/GUIA/leg-est.htm#RCLA>

IALS Library Research Guide: Spain:

[http://ials.sas.ac.uk/library/guides/research/res\\_spain.htm](http://ials.sas.ac.uk/library/guides/research/res_spain.htm)

Noticias Juridicas

[noticias.juridicas.com](http://noticias.juridicas.com)

*Ley de Enjuiciamiento Criminal*, available at:

<http://www.unifr.ch/derechopenal/legislacion/es/Leyenjuiciamiento.pdf#search=%22Ley%20de%20Enjuiciamiento%20Criminal%22>

“Spain Politics and Public Administration,” Si Spain

<http://www.sispain.org/english/politics/>

Jurist Legal Intelligence

<http://jurist.law.pitt.edu/world/spain.htm>

“Spanish Courts and Arbitration” guide, iAbogado.com

<http://www.spainlawyer.com/guialegal/guialegal.cfm?IDCAPITULO=14010000#14010201000000>

[http://hrw.org/reports/2006/ij0606/12.htm#\\_ftn390](http://hrw.org/reports/2006/ij0606/12.htm#_ftn390)

<http://www.findlaw.com/12international/countries/es.html>

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