



Internship report for the IASAJ Judge Exchange Programme:

Judge :

Name : Aydin
 First name :Suleyman Hilmi
 Nationality :Turkish
 Jurisdiction :Council of State of The Republic of Turkey
 Functions :The Member of Council of State
 Length of service :1993-2022 (as a judge, 18 years); since 2011 (as a member of the Council of State, 11 years)

Exchange :

Hosting jurisdiction : Supreme Court
 Country : Spain
 City :Madrid
 Dates of the exchange : January 18 to 29 2022

I. Introduction – Presentation of the jurisdiction and the progress of the internship:

It was an honor for me to be hosted at the Spanish Supreme Court between 18 - 29 January 2022 on the occasion of the Exchange Program for Judges organized by the International Association of Supreme Administrative Jurisdictions.

Supreme Court Justice Honorable Dimitry Berberoff Ayuda was the person appointed by President of the Third Chamber of the Supreme Court, Mr. César Tolosa Tribiño to personally coordinate and oversee the program. Controversial Technical Cabinet Attorney, Ms. Susana Bokobo Moiche, accompanied me at all the institutions I visited during my training period and acted as a translator if necessary. I would like to thank them for developing a detailed program that enable me to better understand the legal systems in administrative matters.

Ms Clara Barcala, private secretary to the President of the Supreme Court, assisted me with everything I needed during my tenure. In the room assigned to me, Ms. Zulima Maria Collazos connected my phones and made my job easier. Under the guidance of Ms. Pilar Prieto Pérez, I visited Plaza de la Villa de Paris, the building where the Supreme Court is located, which is one of the most impressive buildings in Madrid with its size and architectural richness, and learned about its function and history. During my visits to various institutions outside the Supreme Court, Mr. Victor drove me to my destination just in time. These visits were very interesting because of their links to the field of administrative law.

I would like to thank them for the warm welcome, kindness, support and wonderful guidance I have received. It was a pleasure meeting them.

I had a really successful study visit and I greatly appreciate the knowledge, time and service provided during the two weeks. I was quite impressed with the judicial system in Spain.

a. Programme of the exchange:

Visit to the Supreme Court and the Spanish General Council of the Judiciary on Tuesday, January 18:

- Interview with Mr Juan Manuel San Cristóbal, the Director of the Technical Cabinet of the Supreme Court on the structure and mission of the Supreme Court.

- Reception by the guardian Judge, Controversial-Administrative Judge of the Supreme Court, Mr. Dimitry Berberoff Ayuda.

- Visit in his office to the President of the Third Chamber of the Supreme Court of Appeals, Mr. César Tolosa Tribiño, who is the chief judge of administrative disputes in Spain

- Visit to the Spanish General Council of the Judiciary, Consejo General del Poder Judicial (CGPJ). From the International Relations Department, I had an interview with Mr. Eloy Segura Rico on the Spanish Experience in Judicial Reform.

Guided visit to the Supreme Court building on Wednesday, January 19:

- I visited Plaza de la Villa de París, one of the most impressive buildings in Madrid with its size and architectural richness, where the Supreme Court is located, accompanied by a professional guide, Ms. Pilar Prieto Pérez, and learned about its history.

Visit to the Technical Cabinet of the Supreme Court on Thursday, January 20:

- Interview with the Chief Justice of the Lawyers Coordinators of the Contested Technical Cabinet, Mr. Pedro Escribano Testaut.

Visit to the Council of State on Friday, January 21:

Meeting with the Secretary General of the Council of State, Mr. Guadalupe Hernández-Gil Alvarez Cienfuegos, and the Attorney of the Council of State, Mr. Cristóbal Rodríguez Jiménez, tour of the building by both of them and the presentation of gifts.

Visit to the Spanish Constitutional Court and the Spanish Ombudsman on Monday, January 24:

- Constitutional Interview with the vice-president of the Constitutional Court, Juan Antonio Xiol Rios.

- Guided tour of the building with an explanation of the composition, organization and operation of the Constitutional Court.

- Meeting with Ms. Teresa Jiménez-Becerril, Associate First of the Ombudsman and Mr. Andrés Jiménez, Director of the Security and Justice area.

Visit to the Dean's Office and the National Court on Wednesday, January 26:

- Interview with Dean Judge Maria Jesús del Barco Martínez.
- Attendance at court hearing accompanied by the Civil Judges of the Supreme Court, Mr. Ignacio Sancho Gargallo, Mr. Rafael Sarazá Jimena.

Visit to the National Court on Thursday, January 27:

- Meeting with Mr. Eduardo Menéndez Rexach, Head of the Contested-Administrative Division of the National Court, tour of the Court.

b. Presentation of the hosting jurisdiction:

b.1. Special rules in Spanish Laws and Constitution regarding the administrative judiciary

The Spanish Constitution of 1978 has dedicated one of its titles, VI, to the Judicial power. It is comprised of eleven articles those from art 117 to art 127 which are speak about the independence of Justice (article 117), the obligation to collaborate and comply with its resolutions (art 118), of free access to it when the laws provide for this (art 119), the public nature of judicial proceedings (art 120).

The Constitution also has established that the General Council of the Judiciary is the governing body of the Courts (art 122), and that the Supreme Court is the higher jurisdictional body in all matters, except those regarding constitutional guarantees (art 123).

Art 14–29 of the Constitution do enumerate a list of fundamental rights, which enjoy a threefold system of protection and guarantees. Most of these rights have a clear impact on the Principle of Effective Legal Protection in administrative law. From this narrow perspective, the most important ones are:

- principle of non-discrimination, equality under the law (Art. 14);
- personal freedom and security (Art. 17);
- right to privacy, secrecy of communications (Art. 18);
- citizen participation in public affairs (Art. 22);
- right to access to justice, effective protection from courts, prohibition of lack of defence, judicial guarantees such as the right to a lawyer, to be informed of the charges brought against the citizen, right to judicial proceedings without undue delays, to the use of evidence, not to make self-incrimination and the presumption of innocence (Art. 24);
 - legal certainty and prior definition of offences and penalties (including administrative ones) (Art. 25);
 - right to petition (Art. 29).

These rights enjoy the strongest level of legal protection. A special type of judicial proceedings in administrative courts is devised for the case that an administrative agency clearly violates one of the ‘fundamental’ rights enshrined in Art 14–29 of the Constitution: *recurso especial en protección de derechos fundamentales*. This proceeding is a fast-track and expeditious procedure, but it is severely restricted to checking whether the agency committed a clear violation of a given fundamental right. The consideration of infringements of ‘regular’ legislation falls outside the scope of this proceeding.

In administrative law, the Principle of Effective Legal Protection includes certain rights that may be characterised as 'procedural', that is, rights that may be exercised in the context of a given administrative procedure in which the individual is an 'affected party'.

The Constitution recognises some of these rights in Art. 104 and foresees a subsequent statutory regulation thereof:

- the right to be heard;
- the right to have one's affairs and applications handled through the appropriate administrative procedure established by the Law;
- the right to access to the administrative file.

Beyond these constitutional provisions, the majority of the procedural rights of the citizens are at present extensively codified in the Administrative Procedure Act (Act 30/1992) of 1992, as amended. These rights include the following ones:

- The right to initiate a procedure by filing appropriate applications (not to be confused with 'petitions'). Any legal or physical person may initiate an administrative procedure by asking something that is connected with his 'rights' (in the true sense) or legitimate interests: a licence, a permit, a grant, admission at a public university, etc.
 - The right to counsel and to the use of advisors.
 - The right to be heard (also explicitly recognised by the Constitution in Art. 105(a)).
 - The duty of the agency to give reasons (for administrative decisions): the reasoning of the decision should be at least briefly explained, stating the reasons or legal and factual considerations applicable to the case.
 - The right to access to the file and to all the relevant documents used for the adoption of the decision.
 - The right to have access to administrative archives and registers.
 - The right to have access to 'administrative' information (that is, information in any format held by administrative agencies and bodies). Recently a new statute has expanded the procedural rights of the citizen, in the domain of transparency and access to administrative documents.
 - The right to file administrative appeals.
 - The right to intervene and the right to obtain an administrative decision within a reasonable time (as a guarantee against the silence of the administrative body).
 - The right to identify the public officials and the civil servants that manage the citizen's files and procedures.
 - The right to obtain information and guidance on the legal and technical requirements laid down by the applicable laws and regulations.
 - The right to file complaints and suggestions.
 - In some regions, the right to use other 'co-official' languages in administrative procedures, different from Spanish (Catalan, Basque, Galician).
 - The right to formulate claims and to produce arguments in his own defence, within the administrative file.
 - The right not to present documents which are already held by the administrative authority.
 - The right to use electronic communications and technologies in their relations with Public Administration.

There are two articles in the Constitution both referring to the submission of the public administration to the legal system and the subsequent control for the Courts: the article 103.1 states that the main role of the administration is to serve the general interest with objectivity and,

in order to do that, it must be fully subject to justice and the law; as for the article 106.1 it assigns the Courts to control the regulatory power and the legality of administrative acts as well as its compliance with the objectives which justify it.

When the 1978 Spanish Constitution was adopted, a 1956 law regulated the proper functioning and powers of the administrative courts. This law remained in force until 1998, when Law No. 29/1998 regulating the current Contested-Administrative Jurisdiction was passed. The adoption of the current Law No. 29/1998 on the Contentious-administrative Jurisdiction was a result of the restructuring needs of the administrative courts, which were dealt with together with the Organic Law 6/1985 on the Judiciary 1985. It is sad that in the justification of Law No. 29/1998, which is described as a reform, "... during the last five years, Spanish society and the Administration have undergone enormous transformations. First, the Spanish people today are incomparably more developed, freer and more conscious of their rights than they were forty years ago. Meanwhile, the reduced, centralized and hierarchical Administration of yesteryear has become an extensive and complex organization, endowed with multiple functions and considerable resources, territorially and functionally decentralized. As a result of these transformations, the legal forms of the Administration have diversified greatly."

The act 28/1998, in line with these constitutional requirements, sets the object of the judicial review and indicates which activity of the administration may be brought before the Court, the reasons why and which request may be filed by the applicant in this regard. The plaintiff may ask the court:

- (a) to declare illegal, and therefore annul an administrative decision or rule, in total or in part;
- (b) to recognise that the plaintiff has a concrete right that was disregarded by the agency;
- (c) to order the agency to pay compensation for damages caused or produced on the plaintiff by the public services;
- (d) to stop an illegal governmental activity;
- (e) to order an administrative body to act in a certain 'positive' way, to which it was obliged vis-à-vis the plaintiff on the basis of a pre-existent contract, covenant or another form of engagement (administrative inactivity).

Each type of plea may claim a specific form of injunctive relief. In the Spanish system of judicial control of administrative action, interim relief (for instance, in the form of stopping the execution of a public infrastructure project) is not granted automatically. Interim measures can not adopted ex officio by the court. Those measures may be adopted by the court 'only when the implementation of the contested decision or administrative regulation could prevent the lawsuit from attaining its legitimate objective'. On the other hand, interim relief may be refused when such measures might produce a 'serious disturbance of the general interest or of a third party', something that the court 'will weight in a reasoned manner'. Therefore, the plaintiff has the burden to identify clearly a workable line of reasoning in order to convince the judge that, if the decision is not suspended, his rights or interests will suffer a serious and irreversible impairment.

In summary, the standards regulating the existence, powers and functions of the judges and courts of the administrative judicial system in the Spanish legal system are these standards determined by the law and the Constitution.

b.2. The structure of the Spanish court system and hierarchy

Although Spain is divided into 17 Autonomous Communities, each with its own Parliament and Government, the Judiciary is unitary. Autonomous Communities doesn't have judicial power and their courts are courts of the State. The Spanish Judiciary consists of Courts of magistrates and justice of peaces who have the power to administer justice on behalf of the King of Spain.

The State is organized territorially, for judicial purposes, in Municipalities (municipios), Judicial Districts (partidos judiciales), Provinces (provincias) and Autonomous Communities (Comunidades Autonomas). This division coincides with the administrative division of the Spanish territory and it corresponds to the administrative demarcation with the same name. The exception to this rule is the "Judicial regions" regulated in Article 32 of the organic law - Ley Organica 6/1985, de 1 de julio, del Poder Judicial (LOPJ).

At art 26 of LOPJ are listed the different types of courts. Each territorial unit has a specific type of court:

Municipalities in which there is no First Instance and Examining Court have Courts of Peace (Juzgados de Paz) whose particular status and functions are defined at arts. 99 et.seq. LOPJ

Judicial districts have First Instance and Examining Courts (Juzgados de Primera Instancia e Instruccion), Criminal Courts (Juzgados de lo Penal), Courts for the judicial review of administrative acts (Juzgados de lo Contencioso-administrativo), Labor Courts (Juzgados de lo Social), Juvenile Courts (Juzgados de Menores) and Juzgados de Vigilancia penitenciaria. Each one's functions are specified at arts. 84 et.seq. LOPJ.

Criminal Courts were created by Organic Law 7/88.

Juzgados de lo contencioso-administrativo have been created recently by Organic Law, de la Jurisdicción contencioso-administrativa, 29/1998

Chapter V LOPJ also recognizes the existence of:

-Juzgados Centrales de Instrucción (art. 88 LOPJ), created by RD-Law January 4, 1977

-Juzgado Central de lo Penal (art.89 bis.3 LOPJ), created by Organic Law 7/1988

-Juzgados Centrales de lo Contencioso-administrativo were created by Organic Law 29/1998

Provinces have a Provincial Court. arts. 80 et.seq. LOPJ

Each Autonomous Community has a High Court of Justice. Art. 152.1 2nd paragraph SC and arts. 70 et.seq. LOPJ

Over the whole Spanish territory two courts have jurisdiction:

-Supreme Court (Tribunal Supremo), art. 123 SC and arts. 53 et.seq. LOPJ

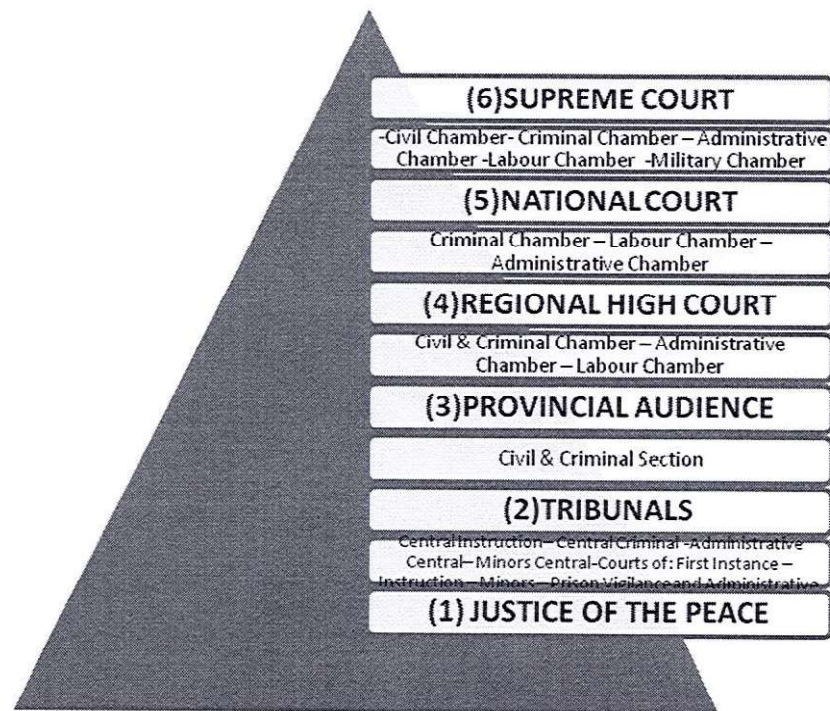
-National Court (Audiencia Nacional) arts. 62 et.seq. LOPJ

Spanish courts are also organized hierarchically. There is a system of appeals against the decisions of lower courts to higher courts and to the Supreme Court, which is the highest judicial body in all branches of justice excepting provisions concerning constitutional guarantees (art. 123.1 SC)

The Supreme Court is the highest court in all areas, with ultimate responsibility for the unity of interpretation of case law. In the case of administrative disputes, the highest competent jurisdiction is the Third Chamber of this Court (Contested-Administrative Chamber).

Article 117 of the Spanish Constitution states that the principle of judicial unity is "the foundation of the establishment and functioning of the Courts". The diagram below of the Spanish courts shows the 6 different levels where the Courts are structured from highest to

lowest.



(1) Justice of the Peace : The First level of the court hierarchy is the courts of peace (Juzgados de Paz), which can be found in each municipality and deal with minor offences called ‘faltas’. Justices of the peace are appointed or elected from the citizens of the jurisdiction in which they serve, and are not required to have any formal legal education in order to qualify for the office. These are usually single-person judicial bodies with jurisdiction in a municipality, commune, or county where there is no court of first instance. According to the report on the Career Structure of the Judiciary dated 01 January 2019, there are 5,419 professional judges (8% of them administrative judges) active in Spain, and approximately 8,000 Justices of the peace who are non-professional. The latter have very limited powers in civil and criminal areas. Since the justice of peace generally does not have knowledge of law, it is sought that the disputes that fall under his jurisdiction are resolved amicably or according to the rules of equity or in accordance with the law.

(2) TRIBUNALS : From the second level, professional judges conduct the proceedings. Judicial districts, which include one or more municipalities, are the smallest territorial division in the Judicial Administration. There are 431 in Spain. In each of them there is at least a Court of First Instance and Examining Magistrate's Court and a Court with jurisdiction over Violence against Women. The second level is divided into four main courts: investigative courts, criminal courts, juvenile courts and criminal guardianship courts. Courts of inquiry are particularly important at this level as they deal with appeals against decisions of the magistrates' courts.

(3) PROVINCIAL AUDIENCE : The third instance courts are the Provincial Courts (Audiencia Provincial) tries civil and criminal cases. Its jurisdiction extends throughout the Province and is located in its capital. The High Courts of Justice have jurisdiction within their respective Autonomous Region, whilst the Provincial Courts have jurisdiction within their respective province.

At the provincial level there are also the Courts of Criminal Matters, the Contentious-Administrative Courts, the Labour Tribunals, the Courts for Penitentiary Supervision, the Juvenile Courts and the Commercial Courts. There are 50 provinces in Spain and in each

province, with jurisdiction throughout it and headquarters in its capital, there are one or more Contentious-Administrative Courts. (Art 90/1 of the Organic Law 6/1985)

(4)REGIONAL HIGH COURT : At the fourth level, there is Regional High Courts (Tribunal Superior de Justicia de las Comunidades Autónomas) which is the highest level of Justice within each Autonomous Community of Spain. They have authority over a single autonomous community, and are the highest jurisdictional body of the autonomous community without prejudice to the Supreme Court. They are divided into three Chambers covering four jurisdictional orders: Civil, Criminal, Administrative and Labour.

- The First Chamber, or Civil and Criminal Chamber, is responsible for civil cases involving acts by the president of the autonomous community, members of the government council or of the legislature, and in cases of communities with their own civil law appealing against rulings by inferior courts. In the Case of Criminal Jurisdiction, to inquire, and proceed in cases related to public prosecutors, judges, magistrates, members of the legislature and government council, that relate to their activity within the autonomous community.

- The Second or Administrative Chamber: hears appeals against resolutions of state bodies not assigned to other courts, appeals against resolutions of the government of an autonomous community or its members, appeals against resolutions of legislative bodies pertaining to administration, appeals against electoral boards and appeals against first instance rulings by administrative courts.

- The Third or Social Chamber: is responsible for appeals against the rulings of first instance social courts and of cases pertaining to collective bargaining agreements that affect the territory of one autonomous community.

(5)NATIONAL COURT : On the fifth level is the The Audiencia Nacional (National Court). It has jurisdiction throughout the whole Spanish territory over criminal, contentious-administrative and social matters. Its decisions can only be appealed before the Supreme Court and its seat is in Madrid. It has the following chambers:

- The Criminal Chamber: tries those cases involving crimes committed against the Royal Family, high Government officials. It also has jurisdiction throughout national territory to investigate and prosecute terrorist offences, organised crime, drug trafficking and economic crimes that cause serious damage to the economy, counterfeiting and offences committed outside the Spanish Territory which are prosecuted in Spain. It also decides on requests for Extradition and European Arrest Warrants and hears appeals against the sentences determined by the Central Criminal Courts, the Central Instruction Courts and the Central Minors' Court.

- The Administrative Chamber: it has jurisdiction over contentious administrative matters. hears the appeals against the decisions adopted by the Ministers and the Secretaries of the Spanish State.

- The Social Chamber: tries the special process for contesting collective bargaining agreements applicable to a territory, which is bigger than an Autonomous Community, it also tries those processes about collective labour conflicts.

The National Court (Audiencia Nacional) is a court of both appeal and instance in those matters that the Organic Law of the Judiciary indicates. Most of the rulings of the National Court can ultimately be appealed before the Supreme Court (Tribunal Supremo).

(6) SUPREME COURT : The sixth and the last level is the Supreme Court located in Madrid. It is a unique jurisdictional body in Spain with jurisdiction throughout national territory, constituting the highest court in all areas (Civil, Criminal, Contentious Administrative and Labour), except for matters pertaining to constitutional guarantees and rights, for which the Constitutional Court has jurisdiction.

As the highest tier of the appeals system, the Supreme Court is ultimately responsible for the unity of case law interpretation in Spain. As it is the court of last resort, the Supreme Court's rulings are final. The Court's duties include resolving cassation appeals, appeals for judicial review and other extraordinary appeals, prosecuting members of Government, Parliament, the Senate and other higher State bodies and processing declarations outlawing political parties.

b.3. The Council of State and its position in terms of the hierarchical structure of the Spanish court system:

The Council of State (Consejo de Estado) is the supreme consultative body of the Government. The institution of the Council of State, understood as supreme consultative council of the Government, has existed intermittently since 1812. In 1904, the judicial function was transferred to the Supreme Court, and since that date, the State Council has only fulfilled its advisory function. Nowadays the Council of State continues being the main and superior consultative body of the Government. Beyond the fact that the function of the State Council is only an advisory organ of the government, as a requirement of the Constitution, it fulfills the function of expressing opinions not only to the government but also to the Autonomous Communities art.

The Council is formed by its President that is appointed by the Council of Ministers with the advice of the Prime Minister after appearing before Congress and three kind of Councilors. The Members are selected in accordance with the principle of "integration of three generations".

- 1) The Permanent Councilors.
- 2) The Born Councilors.
- 3) The Elective Councilors.

The permanent commission, which consists of eight members appointed for life, ensures the communication so that the members are not detached from the political and administrative realities of the country. Opinions approved by the Standing Committee of the Council of State are public and recorded in the database of the Official Gazette of the State.

The Constitutional Court is defined in Part IX (sections 159 through 165) of the Constitution of Spain, and further governed by Organic Law (Law of the Constitutional Court). The Spanish Tribunal Constitucional is a court whose decisions bind all public authorities, but which is differently composed from the ordinary courts and separate and distinct from them. In other words, Constitutional Court is not a part of the court system. It's an independent institution with its own rules and rights.

The court consists of twelve magistrates who serve on a term of nine years and are appointed by the King. Even though the King makes the final decision, the appointment is diversified to a certain level: four are proposed by the Congress, four by the Senate, two by the government and finally two by the General Council of the Judiciary. Furthermore, Magistrates,

prosecutors, public officials must be highly regarded with a minimum standard of fifteen years of experience in the field in order to insure their skill, but above all their independence.

b.4. The Spanish Constitutional Court and its position in terms of the hierarchical structure of the Spanish court system:

Constitutional Court has jurisdiction over the whole territory and its functions are stated at art 161.1 of Spanish Constitution. The Constitutional Court holds numerous jurisdictional capabilities among which can be found the constitutional appeal for protection of fundamental rights, the right to reverse a prior Court Decision, or the declaration of the nullity of a law. The decisions of the Constitutional Court cannot be appealed by anyone. One might view this court as the utmost representation of justice: citizens can ask for protection from this higher court.

It is perceived as the supreme interpreter of the Spanish Constitution, as it is the highest body with the power to determine and ensure that all laws are constitutional.

The Court has successfully established itself as the guarantor of the supremacy of the Constitution.

- The jurisdictions of the Spanish courts, whose hierarchical structure has been described above, in addition to their territorial aspect, can be further divided into five jurisdictional orders:

- civil jurisdiction;
- criminal jurisdiction;
- administrative jurisdiction;
- labour or social jurisdiction and
- military jurisdiction.

Note: These jurisdictions exist at almost every level of the Spanish court pyramid.

To take a closer look at the courts authorized to hear disputes regarding administrative proceedings within the organization of the Spanish Court system;

Article 6 of the Law No. 29/1998 of 13 July, which regulates the contentious-administrative jurisdiction, lists the organs in the contentious-administrative jurisdiction as follows.

- a) Contentious-administrative Courts.
- b) Central Contentious-Administrative Courts.
- c) Contentious-administrative Chambers of the High Courts of Justice.
- d) Contentious-administrative Chamber of the National High Court.
- e) Contentious-administrative Chamber of the Supreme Court.

(1) Administrative judges (juzgados de lo contencioso) either having a national or a provincial jurisdiction. These are one-person judicial bodies and may be identified as lower or first instance courts. Among other matters, they control the decisions of local authorities (land use plans and regulations are outside their competence).

(2) The administrative chamber of the Regional High Courts. There is one such higher court in each of the 17 autonomous communities ('regions') of the Kingdom. Among other matters, they control regional agencies and departments. They also adjudicate judicial appeals filed against the rulings of the administrative judges (*recurso de apelación*).

(3) *Audiencia Nacional*: this is a central, high administrative chamber that has territorial jurisdiction over the whole country and controls, among others, the decisions of Ministers and Secretaries of State.

(4) Supreme Court, Administrative Chamber (*Tribunal Supremo, Sala de lo contencioso administrativo*). Among other powers, this court controls the decisions and regulations adopted by the Council of Ministers (or 'central Cabinet'). The Supreme Court has also jurisdiction to revise the rulings of the *Audiencia Nacional* and of the Regional High Courts, on cassation appeal (*recurso de casación*).

b.5. Recruitment of judges in charge of review of administrative acts

The judges who sit in the tribunals and the courts of the administrative litigation order can belong to the first ("juez"), second ("magistrado") or third ("magistrado del Tribunal Supremo") category, of the single legal profession.

The conditions of nomination as a judge and the legal statute of the judges are identical in all the jurisdictions, with certain nuances for the magistrates of the Higher Court.

The initial category is done by the standard recruitment system for judges, i.e. by open competition between candidates having completed their law studies in a faculty.

However, there is also a specialisation system, after having passed the examinations arranged for this purpose. Professional training of judges Initial formation is necessary for the examination, more demanding than that of the remainder of lawyers. There is an effective program of continued training (classes, seminars, etc.) of judges throughout their career. Promotion of judges Later promotions and nominations are made by the General Council of the Judicial Power on the basis of objective criterion which combines the seniority and the merit, according to the vacancies. 1/5 of the judges of the Supreme Court can be nominated in a discretionary way by the General Council of the Judicial Power.

b.6. Composition of the Spanish Supreme Court

The Supreme Court is composed according to the Law on Judicial Bodies and Boundaries of the President at the Supreme Court who is also President of the General Council of the Judiciary, the Vice-President, the Presidents of the five Chambers and seventy-four Judges.

The rules on operation and allocation of cases for the various Chambers of the Court are approved annually by the Governing Chamber, comprising the President and Vice-President and the Presidents of the five Chambers, and five judges elected every five years by their peers.

The Supreme Court has two main bodies to carry out its duties: the Technical Office and the Governing Chamber Register's Office.

Composition of the Chambers:

First Chamber civil matters (President of the Chamber and 9 judges)

Second Chamber criminal matters (President of the Chamber and 14 judges).

Third Chamber administrative matters (President of the Chamber and 32 judges)

Fourth Chamber: labour and social security matters (President of the Chamber and 12 judges)

Fifth Chamber military matters (President and 7 judges)

Special Chambers: Jurisdiction Court, Chamber of Jurisdictional Disputes. Chamber of Competence Disputes. Chamber of the Article 61 of the Organic Law of the Judiciary.

▶ **PRESIDENT OF THE SUPREME COURT**

- **Appointment** by the General Council of the Judiciary. A judge of the Supreme Court who has been serving in the Court for at least three years, or a legal practitioner of acknowledged standing with more than 25 years' practice in his/her profession.
- **Duration of the mandate:** five years, until the appointment of a new Council. S/He can be appointed for a further non-renewable term of five years.
- **Functions:** to preside the Governing Chamber or represent the Supreme Court, to ensure consistent distribution rules, to arrange Court's inspection, etc.

▶ **VICE PRESIDENT OF THE SUPREME COURT**

- **Appointment:** by the General Council of the Judiciary S/He must be a judge of the Supreme Court who has been serving in the Court for at least 3 years.
- **Duration of the mandate:** until the end of his/her term of office. is decided by the General Council of the Judiciary.
- **Functions:** to replace the President and represent him/her in his/her absence, to attend the Governing Chamber, and to represent the Technical Cabinet at senior level.

▶ **GOVERNING CHAMBER**

Composition:

Ex officio members: President of the Supreme Court. Vice President, and presidents of the five Chambers. Elected members: 5 judges of the Supreme Court elected by the Court judges themselves.

Duration of the mandate: elected members have a term of office of five years.

Functions: to approve the distribution rules; to arrange shifts in the composition of the Chambers; to organize replacements; to exercise disciplinary powers on judges; to prepare reports; to administer the oath or promise to the judges who become members of the Supreme Court, etc.

▶ **PRESIDENTS OF THE CHAMBERS:**

Appointment: by the General Council of the Judiciary. They are selected in a public competitive procedure. The appointment is discretionary but there is a need for a strong justification.

Duration of the mandate: 5 years. It can be renewed.

Requirements: judges of the Supreme Court who have been serving in the Court for at least 3 years.

► JUDGES (MAGISTRADOS) OF THE CHAMBERS

Appointment: by the General Council of the Judiciary They are selected in a public competitive procedure. The appointment is discretionary, but there is a need for a strong justification.

Requirements: at least 10 years of service as a senior judge (magistrado) and 15 years as a judge. Excellence in the performance of jurisdictional duties is valued. Out of every 5 vacancies, four are occupied by judges and one by a jurist who has a recognized standing with at least 15 years' practice in his/her profession.

Duration of the mandate: until retirement.

► CLERK OF THE SUPREME COURT'S GOVERNING CHAMBER

Appointment: by the Ministry of Justice The appointment is discretionary but there is a need for a strong justification.

Requirements: members of the Corps of Court Clerks who have upgraded to category 2 with a minimum of 10 years of service.

Duration of the mandate: 10 years maximum.

Functions: management of the court clerks who exercise their duties in the secretariats of the Court, initiation of disciplinary procedures for possible infractions committed by court clerks, rest of the functions of a Clerk of the Supreme Court's Governing Chamber, including statistical monitoring and control.

► THE TECHNICAL CABINET OF THE SUPREME COURT

Created in 1985.

Current staff : a Director of the Technical Cabinet 12 judges (Lawyer legal coordinators) 63 lawyer legal advisor (20 specialized in civil matters 12 specialized in criminal matters 19 specialized in administrative matters and 12 in labour matters) more than one hundred members of auxiliary staff a reprographic service a library and documentation service an archiving service and a computing service.

Appointment: by the General Council of the Judiciary Lawyer legal advisors are selected in a public competitive procedure among civil servants (judges prosecutors senior judges - magistrados- and other civil servants experts in law)

Requirements: excellence in the performance of jurisdictional duties.

Duration of the mandate Lawyer legal coordinators special services Lawyer legal advisors one year with a possible and successive three-year extensio.

Functions support to the procedure of declaring the appeals admissible/nadmissible and to the adjudication of cases.

► THE SECRETARIATS OF THE SUPREME COURT

Each Judicial Chamber of the Supreme Court has one or several **Secretariats** of the Court led by a Court Clerk (in total there are 21 secretariats) Each Secretariat has a variable number of civil servants (around 10 per Secretariat in total 210 civil servants approximately).

Court Clerks (Letrados de la Administración de Justicia): national corps with an entrance examination They become clerks the Supreme Court by discretionary appointment among those candidates with a minimum of twenty years practice in their profession and fifteen years of service in the relevant jurisdictional order.

b.7. General Council of the Judiciary (*Consejo General del Poder Judicial*)

The General Council of the Judiciary (CGJP) is the constitutional body that governs all the Judiciary of Spain. The President of the CGJP is also the president of the Supreme Court.

It consist of the President of the Supreme Court, who shall preside it, and of twenty members appointed by the King for a five-year period, of which twelve shall be judges and magistrates of all judicial categories, under the terms provided for by the organic act; four nominated by the Congress and four by the Senate, elected in both cases by three-fifths of their members amongst lawyers and other jurists of acknowledged competence with more than fifteen years of professional practice.

Organic Law 2/2001, of June 21, modified article 122 of the Organic Law of the Judiciary reforming the election method between members coming from the judiciary. The professional associations of the judiciary or groups of judges who make up at least 2% of the total on active duty may present to the chambers a total of thirty-six candidates, of which the Congress shall elect six and the other six will be chosen by the Senate from among the remaining thirty.

The governing function of the Council deals with matters such as appointments, promotions, and transfers; the inspection of the functioning of the Courts and Tribunals and the requirement of disciplinary responsibility to the members of the Judicial Career.

Through the attribution of this type of competence to the Council, it is prevented that another power of the State, particularly the Executive Power, can directly or indirectly influence judicial independence.

It is important to point out that the action of the General Council of the Judiciary is not of a jurisdictional nature, since this type of activity is reserved, as article 117 of the Constitution proclaims , to Judges and Courts. The governing work of the Council is comparable, to a large extent, to administrative acts and, like the latter, its resolutions are subject to control of legality by the Courts and Tribunals of the contentious-administrative order.

The management of the material and personal resources of the judicial system corresponds to the Executive Power, mainly to the Ministry of Justice or to the Autonomous Communities that have assumed competences in this matter. The lack of its own budget is a shortcoming in terms of the General Council's function.

II. Differences and similarities between the legal systems of the country of origin and the host country:

a. Concerning the organization of the legal system:

The Turkish judicial system is mainly divided into three sections:

1) Civil and criminal divisions (courts of first instance, regional courts of justice, Court of Cassation),

2) Administrative division (tax or administrative first instance courts, regional administrative courts and the Council of State),

3) Constitutional division (Constitutional Court). In addition, the Council of Judges and Prosecutors, the electoral jurisdiction (Supreme Electoral Council) and the accounts jurisdiction (Court of Accounts) are also included in the judicial system. Each of these institutions is independent in their own field and does not interfere with one another.

However Article 117 of the Spanish Constitution states that the principle of judicial unity is "the foundation of the establishment and functioning of the Courts". So, The Spanish Supreme Court is the highest court in all areas, with ultimate responsibility for the unity of interpretation of case law. In the case of administrative disputes, the highest competent jurisdiction is the Third Chamber of this Court (Contested-Administrative Chamber).

b. Concerning the competence of administrative jurisdictions:

In both countries, The proceedings begin by means of a simple written document stating the name, profession and address of the interested parties and their petition. The petition must have explain the substance of the case. In this way, the grounds upon which the case is to be based are determined. The Court must then accept the petition by an express resolution and the counterpart will then be granted a 30 day period to raise written objections.

In the judicial systems of both countries, any legal or physical person may have access to administrative courts, as long as they have a right (in the technical meaning) or a legitimate interest that is affected or damaged by an administrative decision or regulation. The wording legitimate interest has been interpreted by administrative courts in an increasingly progressive way. In both systems, associations, trade unions and groups of affected parties also have standing for the protection of their collective rights and legitimate interests.

In both countries, the caseload of the administrative judiciary is close to each other in proportion to their population. Number of first instance, incoming and resolved, administrative cases per 100 inhabitants in 2016, while it was 0.35/0.40 in Spain, it was 0.48/0.47 in Turkey, respectively.

In Spain, disposition time for administrative cases of first instance remains below the European average of 357 days. In Turkiye the Clearance Rate is slightly below this. But this should not affect too much the evolution of the volume of pending cases, considering the positive momentum. The situation in both countries has been getting better every day over the past ten years. At second instance, courts of appeal (courts of second instance) started functioning in civil, criminal and administrative courts from 20 July 2016 in Turkiye.

c. Concerning applicable procedures and rules of law:

There is a special type of judicial proceedings called "recurso de amparo" in the Spanish administrative court system. This is devised for the case that an administrative agency clearly violates one of the 'fundamental' rights enshrined in Art 14–29 of the Constitution. This system is not known in Turkish law. The system of recurso de amparo which provides protection of constitutional individual rights and is immediately dealt with at the level of an appeals court, could be adapted to our legal system.


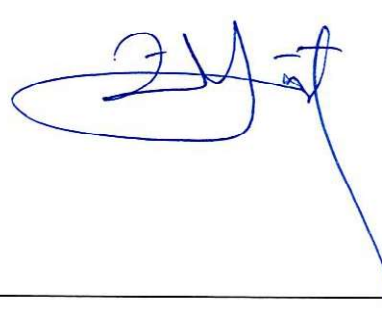
d. Other aspects:

The Act 37/2011, of 19 October 2011, introduced new procedural rules in the administrative jurisdiction in Spain. This Act raised the minimum value of a case in order to be heard by the Supreme Court (in a 'casación' appeal). In the current version of the LJCA, the case should involve a litigious affair with a monetary value of at least €600,000 (the previous figure was €150,000) to be admissible under a cassation appeal. This limit is applied by Turkish Council of State as 192 thousand liras (= approximately €12800) for 2021 in Turkey. The idea is to prevent unimportant cases from reaching the Supreme Court. This involves an additional, negative impact on the effectiveness of the principle of legal protection. Not to forget that 'cheap' cases may very well be important cases, indeed.

III. Aspects on which the host country's legal system can be a source of inspiration for the country of origin (« good practice »):

Art 24 of the Spanish Constitution proclaims that everyone has the right to have a judicial proceeding without undue delays (un proceso sin dilaciones indebidas). To achieve this goal, the Spaniards are making continuous improvements in the judiciary. During my internship, I observed that the ongoing administrative dispute cases in the Spanish Supreme Court belong to the year 2020 at most. Although we have achieved European standards in the first instance and appellate courts of the Turkish administrative justice system, we could not achieve this success in terms of the number of files heard in the Council of State. I think that in addition to the reforms implemented, increasing the monetary value of the appeal limit by law 37/2011 was effective in achieving this result.

Signature:

<p><i>Judge:</i></p> <p>Süleyman Hilmi AYDIN</p> 	<p><i>President / Chief Justice of the jurisdiction of origine:</i></p> 
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