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**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

**Questionnaire with a view of the preparation of Opinion No. 15 on
specialisation of judges and courts**

Answers Spain

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1. Specialisation of courts

TYPES OF COURTS/JUDGES	(A) TICK THE BOX IF YOUR COUNTRY HAVE SPECIALISED COURTS/JUDGES IN:	(B) IF YES TO (A), TICK THE BOX IF THEY ARE SPECIALISED JUDGES/CHAMBERS WITHIN A GENERALIST COURT	(C) IF YES TO (A), TICK THE BOX IF THEY ARE A SEPARATE INSTITUTION WITHIN THE GENERAL ORGANISATION OF THE JUDICIARY	(D) IF YES TO (A), TICK THE BOX IF THEY ARE A SEPARATE JUDICIARY FORMING A SYSTEM OF THEIR OWN ¹	(E) IF YES TO (A), TICK THE BOX IF THEY HAVE A COMPOSITION INCLUDING LAY MEMBERS OR ONLY OF LAY MEMBERS ²	(F) IF YES TO (A), TICK THE BOX IF THEY HAVE A TERRITORIAL COMPETENCE DIFFERENT FROM GENERALIST COURTS (PLEASE SPECIFY IF APPROPRIATE)	(G) IF YES TO (A), TICK THE BOX IF THEY APPLY RULES (PROCEDURE, EVIDENCE, ETC.) THAT ARE DIFFERENT FROM THOSE APPLICABLE IN GENERALIST COURTS (PLEASE SPECIFY IF APPROPRIATE)
Family courts	yes	yes					Yes. The dispositive principle does not apply where children are concerned.*
Juvenile courts	yes	yes					Yes. The prosecutor investigates which is not the general rule in other procedures (“juge d’instruction” or “investigating magistrate”)
Administrative courts/council of state	yes		yes				Yes, they have a special procedure because the administration is the defendant.
Immigration/Asylum	It is a competency of administrative courts.						

¹ For example, appeals on decisions of the specialised court of first instance is filed with a specialised court of appeals, council of state, etc.

² For example, composition including lay members: jurors, psychologists, engineers; please specify qualifications and system of recruitment. For example composition of only lay members: representatives of labour organisations, aldermen-échevins, justices of the peace, magistrates etc.

*** The proceedings regarding capacity, kinship, marriage and minors protection , shall be resolved in keeping with the facts that were object of the debate and have been proven, regardless of the moment when they were alleged or otherwise introduced in the procedure. Notwithstanding the evidence submitted at the request of the Public Prosecution Service and the other parties, the Court may order ex officio the examination of any evidence it deems relevant. (Art. 752 Spanish Civil Procedure Act)**

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Courts of Account				They do not belong to the judiciary			
Military Courts		yes					
Tax Courts	It is a competency of administrative courts						
Labour/social courts			yes				They have their own procedure
Courts for agricultural contracts	no						
Consumers' claims courts	no						
Small claims courts	no						
Courts for wills and inheritances	no						
Patent/copyrights/trademark courts	no						
Commercial courts	yes	yes					no
Bankruptcy courts							
Courts for land disputes	no						
"Cours d'arbitrage"				They do not belong to the judiciary. They are private courts.			
Serious crimes courts/courts of assize	no						
Courts for the supervision of criminal investigations (e.g. authorising arrest, wire-tappings, etc.)	The investigating magistrate or "juge d'instruction" accomplishes these tasks						

Courts for the supervision of criminal enforcement and custody in penitentiaries	Yes	Yes					Yes, they have their own procedure but it is very simple
Other, please specify:							

To what extent specialisation of courts is relevant in your system?

2. Specialisation of judges

a) Does the recruitment procedure take into account the specialised studies accomplished after the university diploma in law? Does it take into account the specialised professional experience? Please specify.

In general NO . The Access to the judicial career is based on the principles of merit and capacity to perform judicial duties. The selection process to access the judicial career will ensure in an objective and transparent manner that all citizens who meet the necessary conditions and qualifications have equal opportunities and it will provide for the professional capacity and ability of the persons who have been selected for the judiciary. Access to the Judicial Career as a Judge (Jueces in Spanish word) requires a public examination and a theory and practical course conducted at the Judiciary School. However, the legal practitioners of acknowledged reputation may also access the Judicial Career as Supreme Court Judges or senior Judges (Magistrados in Spanish word) in the manner and number established by law. Whoever wishes to access the judiciary as a senior Judge must follow a course at the Judicial School. In this specific case, specialised professional experience is taken into account for the recruitment of judges appointed for specialised courts.

b) Are judges promoted to a higher court, or assigned to a post of chief judge, on the basis of a procedure giving relevance to specialisation? Please specify.

The specialisation has relevance in the merits contests for the provision of Contentious-Administrative ; Labour Courts and Commercial Courts . The general provision of appointments in the judicial career is made by a merits contest in the manner provided in the Spanish Judiciary Act (LOPJ 6/1985 1 July), except for Chief Justices of Provincial Courts, High Courts of Justice, the National Court and chamber's Judge Presidents and Supreme Court Judges. These appointments for Chief Justices of High Courts of Justice will be made for five years following a proposal by the Council General of the Judiciary among judges who have held office for ten years in that category and apply for this position provided that they have been fifteen years in the Judicial Career.

For the provision of vacancies of Chief Justices of High Courts of Justice or Provincial Courts in those Autonomous Communities which have Special or Regional Statutes and their own official language, the Council General of the Judiciary will consider as a specific merit their specialisation in such Regional or Special law and knowledge of the language spoken in that Community.

At the different Court Chambers of the Supreme Court, from each five positions of judges four will be allocated between members of the Judicial Career who have been held office as a senior magistrate for the last ten years and have been at least fifteen

years in the Judicial Career, and the fifth vacancy between lawyers and other legal practitioners of acknowledged repute. Of each four positions reserved for the Judicial Career:

a) Two will be allocated to judges who reached that category by the appropriate selection tests in the civil and criminal jurisdiction or who have passed them already holding that category or depending on the nature of the jurisdiction, two will be for judges who are specialised in the contentious-administrative or labour law field, or in the latter case who belong to the former Labour Judges Division (Chamber). In this provision of office, fifteen years in the judicial career will be required and only five in that category. To the purposes of vested rights of appointments in the civil jurisdiction, judges who have passed the corresponding commercial law specialisation selective tests will rank equal to the ones who have passed the selection tests in the civil jurisdiction.

b) Two judges who meet the general requirements to access the Supreme Court.

c) May a judge from a generalist court move to a specialised court, or from one specialisation to another:

<i>As to separate court systems:</i>	<i>Within the same court system:</i>
<input type="checkbox"/> by just filing an application examined on the basis of seniority and other criteria not including previous specialisation?	<input checked="" type="checkbox"/> by showing professional experience?
<input type="checkbox"/> by resigning from original post and participate to a new recruitment?	<input checked="" type="checkbox"/> by attending specialisation/reconversion courses?
<input type="checkbox"/> other?	<input checked="" type="checkbox"/> by passing a specialisation exam?

See down the answer question e)

d) Does the system ensure that all judges may access specialisation (e.g. by giving them the appropriate information)?

YES

e) What are for judges the criteria for access to specialisation?

The evaluation of the capacity and legal expertise of the candidates and their knowledge of different areas of law (civil and criminal matters ; Contentious-Administrative ; Labour and Commercial Law). They may consist in writing drafts, passing a course, drafting a legal opinion or a decision and defending it before a panel, oral exposition of different subjects and reply to the questions posed by the Panel, or in similar exercises.

f) Do financial provisions exist helping judges to transfer to other towns where specialisation may be acquired?

NO

g) Are there access/reconversion courses to specialised functions:

- Yes, within the judicial training institute ?

- Yes, organised by an institution different from the judicial training institute?

- No?

h) Are there training courses reserved only to specialised judges?

YES

- i) Are exchanges of judicial experiences between different specialisations and/or generalist groups of judges organised?

YES

- j) Do specialised positions exist in court for organisational purposes only (e.g., judge serving as spokesperson for the court; judge for the development of IT in court; judge co-operating with ADR services, etc.)?

YES , in specific matters , example judge co-operating with ADR services, specialised judges in the international Judiciary Cooperation .

- k) If yes, is there a specific training for this type of posts? Please specify.

YES ,they are a specific training. Normally the training activities , are developed by the Judiciary School (continuing training section) , which implement the Training Plan in the Judicial Career and they may conduct training activities in a de-centralised manner within an Autonomous Community or a collaborating with expert bodies and entities , also included the EJTN ,EJN – criminal branch , and civil - commercial matters - and IberRed , to the purpose of conducting training efforts.

The screenshot shows a web browser window displaying the website 'poderjudicial.es'. The page is titled 'Formación y especialización' and features a navigation menu with categories like 'Formación y especialización', 'Actividades internacionales', 'E-Justicia', 'Foros judiciales', 'Igualdad', 'Mediación', and 'Nueva Oficina Judicial'. The main content area includes a header for 'Formación y especialización' with a sub-header 'Oferta de tutores para alumnos de la Escuela Judicial tanto del turno de Novedades' and 'Destacados'. The 'Destacados' section lists several news items, including 'Acuerdo del Pleno del CGPJ, de 23 de noviembre de 2011, por el que se aprueba la Resolución definitiva de concesión y denegación de ayudas para la financiación de actividades de formación realizadas por miembros de la Carrera Judicial - año 2011', 'Boletín informativo de derecho europeo y cooperación judicial internacional penal', 'Doctrina jurisprudencial de la Sala Primera, en materia de interés casacional (2005-2010)', 'Bolsa de Participantes en las actividades de la Red Europea de Formación Judicial 2010', 'Acceso al Campus Virtual de la sección de Formación Continua del CGPJ', and 'Libro blanco sobre la formación continua de los jueces y magistrados - Nueva versión en inglés y francés'. The page also includes a sidebar with 'Agenda del Consejo', 'Preguntas frecuentes', 'Enlaces de interés', and 'Buzón de contacto'.

- l) Do specialised judges have a higher compensation than generalist judges? Please distinguish, if relevant, according to whether the specialist judges belong to the same court system or a separate court system (e.g., in some countries, depending on the distinction between ordinary judges and administrative judges).

NO

m) Are there special allowances, or benefits in kind, for specialised judges?

NO

n) Are specialised judges entitled to a preferential access to higher courts? If yes, is such access limited to the specialisation field of the judge concerned?

See answer supra, paragraph b), this question 2.

3. Specialisation of courts vis-à-vis specialisation of other actors of justice

a) Is the bar and/or professional associations of lawyers organised on a specialised basis in your country? Please specify.

Yes, the bar has some specialised committees: civil liability; family law; labour law, fundamental rights, and so on.

b) In order to practice before specialised courts, have lawyers to be specialised (e.g. registered in special bar listings)?

No

c) Is public prosecution organised on a specialised basis in your country? Please specify.

Yes: Anti-fraud; gender violence; minors, criminal enforcement ; environment ; anti-draught , and so on.

d) In order to practice before specialised courts, have prosecutors to be specialised (e.g. belong to specialised department of the prosecution service)?

Yes, normally

e) Are specialised judges assisted by specialised staff (clerks, technical staff, etc.) ? If yes, is this staff recruited on an *ad hoc* basis?

No, as a general rule

4. Specialisation and governance

Is your Council for the judiciary or other another equivalent independent body entrusted with the protection of the independence of judges competent for all specialised judges, as for all generalist judges? If not, please specify the specialised judges that are not under the governance of the Council.

Yes, for both and at identical level

5. Specialisation, professional associations of judges, judicial ethics

a) Are there in your country professional associations of specialised judges?

In some cases there are sections inside the associations

b) Do specialised judges have separate or common “principles of judicial ethics”³ with respect to generalist judges? If separate principles apply, please specify (i.e. separate principles needed by exposure of specialised judges to problems affecting juveniles, family problems, labour disputes, etc.).

No, there are not specialized principles of judicial ethics

6. Conclusion

a) Please give your opinion on the advantages and disadvantages of special courts

The main advantage is that this kind of courts allows a more accurate application of the law in the field they are specialised in.

These courts can give a better legal answer to questions arisen by advocates or legal firms already specialised in a specific branch of the law.

Specialisation also reduces the possibility of contradictory judgements.

Excessive specialisation can add rigidity and may hinder the accessibility to the judicial organisation.

b) Please give your opinion on the advantages and disadvantages of specialisation of judges

Specialised application of the law produces a focused knowledge of the law. But a judge needs a wide knowledge of legal principles and institutions. A judge who only knows the specialised branch of the law he is dealing with in his daily work can hardly be a good judge.. Sometimes what is need to resolve a difficult case is not the knowledge of the full legal regulation in the specific branch of the law, but of the principle in which the law is based. Sometimes what citizens look for in a judge is not a specialised knowledge, but a general view of the law, common sense, and contact with reality.

³ See principles of judicial ethics as defined in CCJE’s Opinion No. 3 (i.e. rules having no disciplinary impact).