



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE  
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2007

Country: Spain

National correspondent

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## 1. Demographic and economic data

### 1. 1. General information

#### 1. 1. 1. Inhabitants and economic information

##### 1) Number of inhabitants

43758250

##### 2) Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level (in €)

	Amount
State level	378648000000
Regional / entity level	

##### 3) Per capita GDP (in €)

22418

##### 4) Average gross annual salary (in €)

26611

##### 5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2007

#### Please indicate the sources for the questions 1 to 4

- 1) Eurostat Long term indicators
- 2) Eurostat Long term indicators. Total general government expenditure as a percentage of GDP
- 3) Eurostat Long term indicators. PIB a precios de Mercado dividido por población
- 4) Eurostat Average gross annual earnings in industry and services

### 1. 2. Budgetary data concerning judicial system

#### 1. 2. 2. Budget (courts, public prosecution, legal aid, fees)

##### 6) Total annual approved budget allocated to all courts (in €)

2983492000

##### 7) Please specify

Q7: At least part of the explanatory note we sent should be included here (see text below). The full version could be included at the end of the chapter.

Justice Policy in 2006 both at Statal and Autonomous level includes

C.G.P.J. (General Council of the Judiciary)  
(miles de euros)

111M "Governing of the Judiciary" .....	35.940,65
111O "Selection and training of Judges" .....	18.489,38
111P "Judicial documentation and publications" .....	10.400,57
TOTAL "Justicia" C.G.P.J. _ _ _ _ _	64.830,60

MM.OO (Ministry and other bodies)  
(miles de euros)

111N "Management and General Justice Services" .....	50.656,32
112A "Courts and Public Prosecution" .....	1.185.255,87
111Q "Training of Justice administration personnel" .....	13.002,90
113M "Public registers" .....	18.900,80
TOTAL "Justicia" Ministry and other bodies _ _ _ _ _	1.267.815,89

CC.AA (AUTONOMOUS COMMUNITIES)

According to the Directorate General for Budgetary Coordination with the Autonomous Communities of the Ministry of Economy, in 2004 the budget of the Autonomous Communities allocated to the Justice Policy was 1.650.845,51 miles euros

**8) Does the approved budget of the courts include the following items? Please give for each item (or some of them) a specification of the amount concerned**

Annual public budget allocated to (gross) salaries	<input checked="" type="checkbox"/> Yes	1994391570
Annual public budget allocated to computerisation (equipment, investments, maintenance)	<input checked="" type="checkbox"/> Yes	
Annual public budget allocated to justice expenses	<input checked="" type="checkbox"/> Yes	
Annual public budget allocated to court buildings (maintenance, operation costs)	<input checked="" type="checkbox"/> Yes	
Annual public budget allocated to investments in new (court) buildings	<input checked="" type="checkbox"/> Yes	
Annual public budget allocated to training and education	<input checked="" type="checkbox"/> Yes	
Other (please specify):	<input type="checkbox"/> Yes	

**9) Has the annual public budget of the courts changed (increased or decreased) over the last five years?**

- Yes  
 No

If yes, please specify (i.e. provide an indication of the increase or decrease of the budget over the last five years)

The annual public budget of the courts has increased approximately 30% in the last 5 years.

**10) In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:**

- for criminal cases?
- for other than criminal cases?

If yes, are there exceptions? Please specify:

According to Art. 35 of Law 53/2002, 30 December, there are court taxes in civil and administrative proceedings which do not apply to natural persons nor to those legal persons that are total or partially exempt from taxation.

**11) If yes, please specify the annual income of court fees (or taxes) received by the State (in €)**

0000000

**12) Total annual approved budget allocated to the whole justice system (in €)**

3100830330

**13) Total annual approved public budget allocated to legal aid (in €)**

167331526

**14) If possible, please specify**

	the annual public budget allocated to legal aid in criminal cases	the annual public budget allocated to legal aid in other court cases
Amount		

**15) Is the public budget allocated to legal aid included in the court budget ?**

- Yes
- No

**16) Total annual approved public budget allocated to the public prosecution system (in €)****17) Is the budget allocated to the public prosecution included in the court budget?**

- Yes
- No

**18) Authorities formally responsible for the budget allocated to the courts:**

	Preparation of the total court budget	Adoption of the total court budget	Management and allocation of the budget among the individual courts	Evaluation of the use of the budget at a national level
Ministry of Justice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other ministry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parliament	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Supreme Court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judicial Council	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inspection body	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

**19) If other Ministry and/or inspection body and/or other, please specify (in regards to question 18):**

To understand the budgetary system in justice administration it is useful to know that Spain has a decentralised political and administrative structure and is divided in Autonomous Regions, each of them with broad and variable political-administrative competences and it's own Parliament, Government and Civil Service. Competences in Administration of Justice are being gradually transferred to the Autonomous Communities , namely the administration of material and personal means related to justice (with the exception of judges, prosecutors and "Secretarios" Rechtspfleger/Huissiers that are national bodies) . In those Autonomous Communities where competences have not been transferred, powers in justice administration still correspond to the Ministry of Justice.

This explains that, as regards the territorial sphere of the Ministry of Justice, the budget allocated to the courts is prepared by the Ministry of Justice, adopted by the Parliament, managed by the Ministry of Justice and evaluated by the Parliament. In the case of the Autonomous Communities which are competent in justice administration, the role of the national parliament is played by the parliament of the Community and the role of the Ministry of Justice by the respective "Consejería de justicia" ( Justice offices).

**You can indicate below:**

- any useful comments for interpreting the data mentioned above
- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

## Explanatory note to statistical data on Justice Public Expenses

As happens with all types of statistics, when it comes to elaborating data on public expenditure in Justice it is important to use homogeneous and single criteria, applicable to all the institutions that produce this type of data, even if the application of such criteria might lead to some inaccuracies.

The Directorate General for Budget (within the Ministry of Economy) and the correlative bodies (within the Autonomous Communities), establish a classification of public expenditure in general, which is distributed into Functions of Policies, amongst which one can find Justice. This is the starting point for the setting up of budgetary lines or programmes, defined with a 3digit number and a letter (ie.112A Courts of Justice and Public Prosecution). The 2 first numbers correspond to the policy or function. In the example the budgetary programme belongs to the policy of Justice (11). Therefore, sticians dealing with public expenditure in Justice generally use as criteria the sum of all the budgetary allocations done in programmes whose first digits correspond to the Justice policy or function. (Usually Justice policy at State level: 11, and Function Justice in the Autonomous Communities: 14).

The inclusion of a budgetary line in a certain policy or function is decided by the Directorates General for Budget, according to criteria that do not always match the nature of the matter included. This would be the case of Programme 113M "Public Registers", which appear as Justice Policy though it is not directly linked to courts. On the other hand, there are expenses in Justice, for example those related to social security of personnel of the Justice Administration, which are considered under policies other than the Justice policy, concretely under

programmes 222M and 312E ("Benefits and healthcare of Administrative Mutual Insurance Associations").

## CEPEJ Questionnaire

### 6) Total annual approved budget allocated to all courts (in €)

Year 2004

Justice Function (in 2004, both at Statal and Autonomous level, it was referred to as function instead of policy, and the assigned code was 14):

#### C.G.P.J. (General Council of the Judiciary)

(miles de euros)

141A "Governing of the Judiciary" .....	31.359,91
141C "Selection and training of judges" .....	18.976,13
141D "Judicial Documentation and Publications" .....	7.363,94
TOTAL "Justicia" C.G.P.J. _ _ _ _ _	57.732,98

#### MM.OO (Ministry and other bodies)

(miles de euros)

141B "Management and general Justice services" .....	43.134,85
142A "Courts and Public Prosecution" .....	968.196,95
142C "Training of Justice administration personnel" .....	7.195,24
146A "Public Registers" .....	14.888,12
146B "Data protection" .....	5.386,51
TOTAL "Justicia" Ministerio and other bodies" _ _ _ _ _	1.038.801,67

#### CC.AA (Autonomous Communities)

According to the Directorate General for Budgetary Coordination with the Autonomous Communities of the Ministry of Economy, in 2004 the budget of the Autonomous Communities allocated to the Justice Function was 1.515.101,20 miles de euros

TOTAL EXPENDITURE IN 2004 ..... 2.611.635,85 miles €

This information does not include the penitentiary system, protection of minors or the Constitutional Court. It includes the Public Prosecution Services and the General Justice services. There are ongoing works to separate the budget for courts and for the Prosecution Services, but it is not currently possible to provide such information.

The difference between this figure and the data provided for 2004 (2.503.746,02 miles €), can be explained because programmes 141B, 142C, 146A y 146B regarding the Ministry and 141A of the CGPJ, all of them belonging to the Justice Programme, were not included. Also, the expenses in justice of one of the Autonomous Communities (Asturias) were not included.

Year 2006

Justice Policy (in 2006 both at Statal and Autonomous level, it was referred to as policy instead of function, and the assigned code was 11)

#### C.G.P.J. (General Council of the Judiciary)

(miles de euros)

111M "Governing of the Judiciary" .....	35.940,65
111O "Selection and training of Judges" .....	18.489,38
111P "Judicial documentation and publications" .....	10.400,57
TOTAL "Justicia" C.G.P.J. _ _ _ _ _	64.830,60

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111N "Management and General Justice Services" .....	50.656,32
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111Q "Training of Justice administration personnel" .....	13.002,90
113M "Public registers" .....	18.900,80

TOTAL "Justicia" Ministry and other bodies \_ \_ \_ \_ \_ 1.267.815,89

#### CC.AA (AUTONOMOUS COMMUNITIES)

According to the Directorate General for Budgetary Coordination with the Autonomous Communities of the Ministry of Economy, in 2004 the budget of the Autonomous Communities allocated to the Justice Policy was 1.650.845,51 miles de euros

TOTAL EXPENDITURE IN 2006 ..... 2.983.492,00 miles €

8) Does the approved budget of the courts include the following items? Please give for each item (or some of them) a specification of the amount concerned

AÑO 2006

Following the abovementioned criteria, we can give the following data related to budgetary lines that form part of the justice function (11) for the different types of expenses. The fact not all data was available is why only data on salaries has been included in the questionnaire itself.

C.G.P.J.(General Council of the Judiciary)

(miles de euros)

Programme Salaries

(1) Computerisation (equipment, investments, maintenance) (2) Justice Expenses (3) Court buildings

(maintenance, operation costs)

(4) Investments in new (court) buildings

(5)

111M 22.435,05 3.160,90 1.633,89 418,60

111O 8.956,17 155,00 649,45 100,00

111P 1.886,85 947,60 180,32

Total 33.278,07 4.263,50 2.463,66 518,60

TOTAL C.G.P.J. \_ \_ \_ \_ \_ 40.523,83 miles €

MM.OO (Ministry of Justice and other bodies)

(miles de euros)

Programme Salaries

(1) Computerisation (equipment, investments, maintenance) (2) Justice Expenses

(3) Court buildings (maintenance, operation costs)

(4) Investments in new (court) buildings

(5)

111N 24.407,93 2.912,40 7.200,11 150,25

112A 969.434,52 24.860,59 4.174,36 35.174,09 24.782,79

113M 10.596,30 5.750,00 10.596,30 6,12 0,00

111Q 5.702,90 205,60 5.702,90 192,88 40,00

Total 1.010.141,65 33.728,59 20.473,56 42.573,20 24.973,04

TOTAL Ministerio y Organismos \_ \_ \_ \_ \_ 1.131.890,04 miles €

#### COMUNIDADES AUTÓNOMAS

(miles de euros)

Policy Salaries

(1) Computerisation (equipment, investments, maintenance) (2) Justice Expenses

(3) Court buildings (maintenance, operation costs)

(4) Investments in new (court) buildings

(5)

11 950.971,85 No data available



## TOTAL EXPENSE 2006:

(miles de euros)

## Programme Salaries

(1) Computerisation (equipment, investments, maintenance) (2) Justice Expenses

(3) Court buildings (maintenance, operation costs) (4) Investments in new (court) buildings

(5)

CGPJ 33.278,07 4.263,50 2.463,66 518,60

Mº y OO 1.010.141,65 33.728,59 20.473,56 42.573,20 24.973,04

CCAA 950.971,85 No data available

TOTAL 1.994.391,57 37.992,09 20.473,56 45.036,86 35.491,64

(1) Salaries: Total initial allocation to chapter 1 "Staff expenses"

(2) Computerisation (equipment, investments, maintenance): Total initial allocation assigned to concepts 206 y 216 (rental and maintenance of IT equipment), subconcept 220.02 (non-stocked IT material), and projects in chapter 6 referred to investments.

(3) Justice expenses: Total initial allocation to subconcept 22702 "Value declarations and expertise"

(4) Court buildings: Total initial allocation assigned to rentals (202), maintenance of buildings (212), electricity (22100), water (22101), gas (22102), IBI-tax (22502), cleaning (22700) and security (22701).

(5) Investments in new (court) buildings: Total initial allocation assigned to projects in article 62 ("new investments") referred to investments in works and infrastructures.

We cannot provide the Annual public budget allocated to training and education as it is not possible to establish general criteria to extract the information directly, without having to consult every Public Body or Autonomous Community.

## 12) Total annual approved budget allocated to the whole justice system (in €)

If, as we said before, to determine the budget allocated to courts we considered the budget allocated to Justice Policy both at State and Autonomous Regions level, to calculate the approved budget allocated to the whole justice system, we will in addition consider the budget allocated to the rest of programmes belonging to the Ministry of Justice and its bodies, even if they do not appear under that particular policy.

- Total Justice expenditure in 2006 ..... 2.983.492,00 miles €

Programmes belonging to the Ministry of Justice and its bodies that do not appear under the Justice policy:  
(miles de euros)

## PROGRAMA DENOMINACIÓN PRESUPUESTO

921S "Legal Advice and defence of the State" 27.926,35

467G "I&amp;D Information Society" 3.000,00

222M "Benefits of Administrative Mutual Insurance Associations" 20.506,43

312E "Healthcare of Administrative Mutual Insurance Associations" 65.905,55

TOTAL 117.338,33

TOTAL EXPENDITURE JUSTICE SYSTEM IN 2006 ..... 3.100.830,33 miles€

This doesn't include the penitentiary system (Ministry of the Interior) nor protection of minors (for which every Autonomous Community has its own budget, as competence in the matter has been transferred).

## 16) Total annual approved public budget allocated to the public prosecution system (in €)

Steps are being taken to solve the difficult problem of estimating the budget allocated to the public prosecution in an accurate way. As was mentioned before, in Spain there is one single budget that includes courts and prosecutors.

In addition, part of the staff that work in the Prosecution office (non-prosecutors) are included in the Ministry of Justice's budget and another part in the budget of those Autonomous Communities to which competences in Justice administration have been transferred. The same happens to allocations for functioning expenses and investment in prosecution offices.

Therefore, Spain considers it better not to present data on this point.

**Please indicate the sources for the questions 6, 7, 13 et 16**

6,7 Ministry of Justice (Budgetary Office)  
13)CGPJ(General Council of the Judiciary)

## 2. Access to justice

### 2. 1. Legal aid

#### 2. 1. 1. Principles

#### 20) Does legal aid concerns:

	Criminal cases	Other than criminal cases
Representation in court	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Legal advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

#### 21) If other, please specify (in regards to question 20):

- Free assistance of a lawyer in cases it is compulsory or requested by the court.
- Legal assistance to those arrested or held in custody.
- Free announcements or notices in official journals
- Exemption of deposits required for lodging certain appeals
- Experts' fees
- Reduction of certain fees (ie. related to certificates or notes in Commercial/Property Registers
- Free copies or certificates

#### 22) Does legal aid foresee the covering or the exoneration of court fees?

Yes

No

If yes, please specify:

#### 23) Can legal aid be granted for the fees that are related to the execution of judicial decisions?

Yes

No

If yes, please specify:

Legal aid for those who have insufficient means to litigate covers, during the same instance, all the legal steps and incidents, including execution.

#### 24) Number of cases granted with legal aid provided by (national, regional, local) public authorities:

--	--

Total	615465
Criminal cases	NA
Other than criminal cases	NA

**25) In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?**

- Yes  
 No

**26) Does your country have an income and asset test for granting legal aid:**

	No	Yes	Amount
for criminal cases?		y	twice IPREM
for other than criminal cases?		y	twice IPREM

**27) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action)?**

- Yes  
 No

**28) If yes, is the decision for granting or refusing legal aid taken by:**

- the court?  
 an authority external to the court?  
 a mixed decision-making authority (court and external)?

**29) Is there a private system of legal expense insurance enabling individuals to finance court proceedings?**

- Yes  
 No

Please specify:

Currently there are private insurances, namely for civil liability

**30) Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in:**

	yes	no
criminal cases?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
other than criminal cases?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**You can indicate below:**

- any useful comments for interpreting the data mentioned above
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

The main characteristic of the Spanish legal aid system is that it is rendered through the Bars, which receive conduent funding from the Administration and ensure the efficiency of the financial means put at their disposal.

Q24 - we are not able to distinguish criminal/civil cases for total data. It is also important to mention that this data doesn't include legal assistance to arrested persons, which represented an additional 1.495.000 cases. The main characteristic of the Legal Aid system is that this service is provided through the Bars, which receive funding from the administrations and ensure the efficiency of the means put at their disposal. In 2006 the number of times Legal Aid was granted by national, regional or local authorities was 615465. In addition, there were 1.495.000 cases of legal assistance to arrested persons, which implies the assistance of a lawyer when the arrested person's statement is taken and in other possible measures but does not include the defence through the whole duration of the case.

**Please indicate the sources for the questions 24 and 26**

CGAE General Council of Bar Associations

## 2. 2. Users of the courts and victims

### 2. 2. 1. Rights of the users and victims

**31) Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for the following, which the general public may have free of charge access to (Please specify the Internet addresses):**

legal texts (e.g. codes, laws, regulations, etc.)?	<input checked="" type="checkbox"/> yes	www.boe.es, www.justicia.es, www.cgae.es,
case-law of the higher court/s?	<input checked="" type="checkbox"/> yes	www.poderjudicial.es, www.tribunalconstitucional.es
other documents (for example forms)?	<input checked="" type="checkbox"/> yes	www.justicia.es www.fiscal.es

**32) Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?**

- Yes  
 No

If yes, please specify:

No, in principle procedural provisions set statutory timeframes of the proceedings

**33) Is there a public and free-of-charge specific information system to inform and to help victims of crimes?**

- Yes  
 No

If yes, please specify:

In particular through the Offices for Attention to Victims

**34) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:**

	Information mechanism	Hearing modalities	Procedural rights	Other
Victims of rape	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Victims of terrorism	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Children/Witnesses/Victims	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Victims of domestic violence	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Ethnic minorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disabled persons	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Juvenile offenders	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**35) Does your country have a compensation procedure for victims of crimes?**

- Yes  
 No

**36) If yes, does this compensation procedure consist in:**

- a public fund?  
 a court decision?  
 private fund?

If yes, which kind of cases does this procedure concern?

Compensation concerns cases involving damage or injury.

Notwithstanding the civil action that can be exercised within the criminal proceedings and lead to a judicial compensation order against the offender, there is also a system of public aid to victims established in a number of legal Acts. Public aid includes financial compensation for victims of intentional and violent crimes in general, as well as for victims of specific offences (terrorism, domestic violence) in general.

**37) Are there studies to evaluate the recovery rate of the compensation awarded by courts to victims?**

- Yes  
 No

If yes, please specify:

**38) Is there a specific role for the public prosecutor with respect to the (protection of the position and assistance of) victims?**

- Yes  
 No

If yes, please specify:

Yes, before, during and after the proceedings.

Article 10 of the Organic Statute of the Public Prosecution Service reads: "For the completion of the missions established in article 1, it falls to the Public Prosecution Service: 3. To see to victim protection during legal process by promoting the mechanisms set in place for the receipt of effective victim aid and assistance."

One of the particularities of the Spanish criminal system is that usually criminal and civil actions are jointly exercised in the same proceedings. In other words, in the Spanish system any offence entails both criminal and civil responsibility, the latter implying the obligation of the person liable from a civil point of view, to compensate damages and injury derived from the offence.

In this sense, Art. 100 Criminal Procedural Law reads:

"Criminal action arises for any offence or misdemeanour with the aim of punishing the guilty party and there may also be a civil action for the recovery of property, reparation for damages and compensation for injury caused by the criminal act"

Art. 109 of the Criminal Code provides that the examining magistrate shall offer the victim the possibility of acting as a party in the proceedings and the possibility of civil action so that he can choose whether or not to make a claim in the criminal proceedings or to reserve the right to claim for damages via separate civil proceedings.

In any case, whether the victim decides or not to become a formal party represented by a lawyer, the Public Prosecutor will proceed with civil action on his behalf. The only exception is when the victim expressly renounces to civil compensation.

According to Article 108 of the Criminal Procedural Law, "Public prosecutors must request civil compensation for the victims of a criminal offence at the same time that they exercise penal actions, whether or not there is also private prosecution in the proceedings. However, if the victim expressly waives his right to recovery, reparation or compensation, the Public Prosecutor shall only claim the punishment of the guilty party".

In addition, according to the Instruction 8/2005 of the General Prosecution Office, Public prosecutors must inform victims of their rights, means of assistance, the course of proceedings and the final decision.

### 39) Do victims of crimes have the right to contest a decision of the public prosecution to discontinue a case?

Yes

No

If yes, please specify:

In Spain it is the investigative judge and not the prosecutor who is entrusted with criminal investigations. It is therefore the Investigative judge who can decide to discontinue a case. If the prosecutor decides not to bring charges, the victim can still exercise criminal actions independently and ask the judge to continue the case.

As explained in Q38 in the Spanish system, the victim of an offence can become a party in the proceedings as "private prosecution", and exercise, by means of his legal representation, both civil and criminal actions, and can accordingly present evidence and make allegations and appeals. Often, together with the public action exercised by the criminal prosecutor, the victim represented by his lawyer will also be present in criminal proceedings, claiming the penalty and compensation he considers appropriate.

This derives from Article 109, already transcribed in the previous question, and article 110 of the Criminal Procedural Law. According to the latter, if the Investigative judge decides to file a case, the victim has the right to appeal before a higher court.

In cases where the Public Prosecutor has investigative powers to conduct investigations prior to judicial proceedings, the victim has the right to reiterate his complaint before the investigative judge, should the Public Prosecutor decide to file the investigation.

## 2. 2. 2. Confidence of citizens in their justice system

### 40) Is there a system for compensating users in the following circumstances:

excessive length of proceedings?

non execution of court decisions?

wrongful arrest?



wrongful condemnation?

If yes, please specify (fund, daily tariff):

The right of users to receive compensation by the State in case of damages caused by judicial error or by abnormal functioning of the Administration of Justice is enshrined in the Spanish Constitution. To this end citizens can claim compensation from the Ministry of Justice through an administrative procedure in which the amount will be determined.

**41) Does your country have surveys aimed at users or legal professionals (judges, lawyers, officials, etc.) to measure their trust and/or satisfaction with the services delivered by the judiciary system?**

- (Satisfaction) surveys aimed at judges
- (Satisfaction) surveys aimed at court staff
- (Satisfaction) surveys aimed at public prosecutors
- (Satisfaction) surveys aimed at lawyers
- (Satisfaction) surveys aimed at citizens (visitors of the court)
- (Satisfaction) surveys aimed at other clients of the courts

If possible, please specify their titles, how to find these surveys, etc:

Within the Bar:

La Imagen de la Abogacía en la Sociedad Española. II External Opinion Barometer Spanish General Bar Association. November 2005

La Abogacía vista por los Abogados. II Internal Opinión Barometer Spanish General Bar Association. December 2005

In addition the internal barometer was also done for the Autonomous Communities. The Barometer surveys will be repeated in 2008. The CGAE, within the Observatory for Legal Aid, included a report on the profile of officially appointed lawyers and the situation of legal aid in Spain. Increased use is being made of "flash" surveys, which sound citizen's opinion on issues affecting the Bar. In this sense the Bar made surveys on the Presumption of Innocence and on Foreigners and Legal Aid.

The General Council of the Judiciary has elaborated in 2007 his annual report on the situation of the Justice system, called " Panorámica de la Justicia en 2006". It can be found in the CGPJ's website under the heading "Actividad judicial".

**42) If yes, please specify:**

	Yes (surveys at a regular interval: for example annual)	Yes (incidental surveys)
Surveys at national level	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Surveys at court level	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**43) Is there a national or local procedure for making complaints about the performance (for example the length of proceedings) or the functioning (for example the treatment of a case by a judge) of the judicial system?**

Yes

No

**44) If yes, please specify:**

	Time limit to respond (Yes)	Time limit for dealing with the complaint (Yes)
Court concerned	<input type="checkbox"/>	<input type="checkbox"/>
Higher court	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Ministry of Justice	<input type="checkbox"/>	<input type="checkbox"/>
High Council of the Judiciary	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other external organisations (e.g. Ombudsman)	<input type="checkbox"/>	<input type="checkbox"/>

**Can you give information elements concerning the efficiency of this complaint procedure?**

Complaints are analysed and solved, the case being they can be referred to the Disciplinary Commission of the General Council of the Judiciary.

### 3. Organisation of the court system

#### 3. 1. Functioning

##### 3. 1. 1. Courts

**45) Number of courts considered as legal entities (administrative structures) and geographic locations (please, complete the table)**

	Total number
First instance courts of general jurisdiction (legal entities)	2016
Specialised first instance courts (legal entities)	760
All the courts (geographic locations)	703

**46) Please specify the different areas of specialisation (and, if possible, the number of courts concerned):**

Specialised courts (reference date 1st January 2007):

316 Labour Courts

191 Administrative courts

82 Juvenile Courts

34 Commercial Courts

79 Family Courts of 1st Instance

2 Mortgage Courts of First Instance

16 Wardship Courts of 1st Instance

40 Violence against Women Courts

Total: 760 specialised courts

1st Instance 635

Magistrates Courts 418

Mixed civil and criminal 1053

Total: 2016 Non-specialised 1st Instance Courts

**47) Is there a change in the structure of the courts foreseen (for example a reduction of the number of courts (geographic locations) or a change in the powers of courts)?**

Yes

No

If yes, please specify:

Several changes are being pursued to achieve a real modernisation of the Justice Administration from the point of view of two closely related aspects: the new organisation of the Judicial Office and the use of information technologies. For more information on these issues please refer to Q 170

**48) Number of first instance courts competent for a case concerning:**

	Number
a debt collection for small claims	1722
a dismissal	316
a robbery	1471

Please specify what is meant by small claims in your country (answer only if the definition has changed compared to the previous evaluation round):

**Please indicate the sources for the question 45**

CGPJ (General Council of the Judiciary)

### 3. 1. 2. Judges, courts staff

**49) Number of professional judges sitting in courts (present the information in full time equivalent and for permanent posts)**

4437

**50) Number of professional judges sitting in courts on an occasional basis and who are paid as such:**

	Number
gross figure	
if possible, in full time equivalent	551,26 p/day

**51) Please specify (answer only if the information has changed compared to the previous evaluation round):**

The figure refers to replacement or substitute Judges, who might act, depending on the cause that leads to their call, during a certain period of time (ie. illness, maternity leave, etc).

**52) Number of non-professional judges (including lay judges and excluding jurees) who are not remunerated but who can possibly receive a simple defrayal of costs. Please specify (answer only if the information has changed compared to the previous evaluation round):**

7681

The Justice of Peace is composed of lay judges in charge of petty cases in municipalities that (not being the principal city of a judicial district) do not have a professional First Instance court.

**53) Does your judicial system include trial by jury with the participation of citizens?**

Yes

No

If yes, for which type of case(s)?

Art.1 Organic Law 5/1995 Trial by Jury comprises the following categories of offences:

- against the person

- by public officials in the exercise of their duties
- against honour
- against liberty and security
- arson

**54) If possible, indicate the number of citizens who were involved in such juries for the year of reference?**

1962

**55) Number of non-judge staff who are working in courts (present the information in full time equivalent and for permanent posts)**

40513

**56) If possible, could you distribute this staff according to the 4 following categories:**

- |   |   |      |
|---|---|------|
| non-judge staff (Rechtspfleger), with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal  | <input checked="" type="checkbox"/> Yes | 3020 |
| non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars   | <input type="checkbox"/> Yes            |      |
| staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management) | <input type="checkbox"/> Yes            |      |
| technical staff   | <input type="checkbox"/> Yes            |      |

**Please indicate the sources for the questions 49, 50, 52, 53 and 55**

Within the territory of the Ministry of Justice, the number of public officials serving the Justice Administration are: 3016 (Cuerpo de Gestión Procesal) 3.983 (Cuerpo de Tramitación Procesal) and 1.804 (Cuerpo de Auxilio Judicial).

As regards the staff that has been transferred to the Autonomous Communities, the figures are the following: Cuerpo de Gestión Procesal: 8.831, Cuerpo de Tramitación Procesal: 12.696, Cuerpo de Auxilio Judicial: 5.734). Such figures correspond to the organic staff adopted by the Ministry of Justice but as management of the staff is transferred to the Autonomous Communities, the concrete number of public officials at the reference date is unknown.

The number Secretarios Judiciales (Rechtspfleger) has been added to the 37493 non-judge members of staff.

The source for the abovementioned questions is the Ministry of Justice

## 3. 1. 3. Prosecutors

**57) Number of public prosecutors (present the information in full time equivalent and for permanent posts)**

1974

**58) Do any other persons have similar duties as public prosecutors?** Yes No

If yes, please specify:

As happened with Judges, (see Q50) there are also substitute Prosecutors, who might act, depending on the cause that leads to their call, during a certain period of time (ie. illness, maternity leave, etc). During 2006 they represented 262'80 substitute Prosecutors per day, in full time equivalent.

**59) Number of staff (non prosecutors) attached to the public prosecution service (present the information in full time equivalent and for permanent posts)**

1929

**Please indicate the sources for the questions 57 and 59**

Source: Ministry of Justice. Reference date for Q57 is december 2006.

Within the territory managed by the Ministry of Justice, the number of public officials serving the Justice Administration and attached to the prosecution service is: 93 (Cuerpo de Gestión Procesal y Administrativo), 427 (Cuerpo de Tramitación Procesal y Administrativo), 158 del Cuerpo de Auxilio Judicial.

As regards staff transferred to the Autonomous Communities, the figures are the following: 220 (Cuerpo de Gestión), 799 (Cuerpo de Tramitación Procesal) and 232 (Cuerpo de Auxilio Judicial). Such figures correspond to the organic staff adopted by the Ministry of Justice but as management of the staff is transferred to the Autonomous Communities, the concrete number of public officials at the reference date is unknown.

## 3. 1. 4. Budget and New technologies

**60) Who is entrusted with the individual court budget?**

	Preparation of the budget	Arbitration and allocation of the budget	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court President	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court administrative director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Head of the court clerk office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**61) You can indicate below:**

- any useful comments for interpreting the data mentioned above
- if available an organization scheme with a description of the competencies of the different authorities responsible for the budget process in the court

Q60 is not applicable to the Spanish system where there is no responsible person within individual courts.

**62) For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?**

	100% of courts	+50% of courts	-50% of courts	- 10 % of courts
Word processing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Electronic data base of jurisprudence	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Electronic files	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E-mail	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet connection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**63) For administration and management, what are the computer facilities used within the courts?**

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Case registration system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court management information system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial information system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**64) For the communication between the court and the parties, what are the computer facilities used within the courts?**

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Electronic web forms	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Special Website	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other electronic communication facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**65) Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary (answer only if this information has changed compared with the previous evaluation round)?**

- Yes  
 No

If yes, please specify the name and the address of this institution:

Judicial Statistics Section (General Council of the Judiciary).Marques de la Ensenada 8, Madrid

However, a National Commission for Statistics was created in July 2007 with the aim of elaborating plans and programmes regarding judicial statistics.

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your judicial system and the main reforms that have been implemented over the last two years

Please indicate the sources for the questions 62, 63 and 64

CGPJ General Council of the Judiciary

### 3. 2. Monitoring and evaluation

#### 3. 2. 1. Monitoring and Evaluation

**66) Are the courts required to prepare an annual activity report?**

- Yes  
 No

**67) Do you have a regular monitoring system of court activities concerning the:**

- number of incoming cases?  
 number of decisions?  
 number of postponed cases?  
 length of proceedings (timeframes)?  
 other?

Please specify:

Every Court has to provide a report every 3 months (statistical bulletin). Taking into account such bulletins and other additional information, the TSJ (High Justice Courts) are required to prepare an annual activity report, which comprises information on all the courts/judicial organs within their territory

**68) Do you have a regular system to evaluate the performance of each court?**

- Yes  
 No

Please specify:

On the basis of statistical data and information provided by the courts, the Inspection Service of the General Council of the Judiciary elaborates every 6 months an "activity evaluation", comparing the achieved results with the working modules, defined in advance for different types of courts



**69) Concerning court activities, have you defined performance indicators?**

- Yes  
 No

**70) Please select the 4 main performance and quality indicators that are used for a proper functioning of courts.**

- Incoming cases  
 Length of proceedings (timeframes)  
 Closed cases  
 Pending cases and backlogs  
 Productivity of judges and court staff  
 Percentage of cases that are treated by a single sitting judge  
 The enforcement of penal decisions  
 Satisfaction of employees of the courts  
 Satisfaction of clients (regarding the services delivered by the courts)  
 Judicial and organisational quality of the courts  
 The costs of the judicial procedures  
 Other

Please specify:

**71) Are there performance targets defined for individual judges?**

- Yes  
 No

**72) Are there performance targets defined at the level of the courts?**

- Yes  
 No

**73) Please specify who is responsible for setting the targets:**

- executive power (for example the Ministry of Justice)
- legislative power
- judicial power (for example a High Judicial Council or a Higher Court)
- other

Please specify

**74) Please specify the main targets applied:**

120% of the fixed working module entitles to a variable remuneration

**75) Which authority is responsible for the evaluation of the performances of the courts:**

- the High Council of judiciary
- the Ministry of Justice
- an Inspection authority
- the Supreme Court
- an external audit body
- other?

Other, please specify:

In addition to the General Council of the Judiciary, the President of every High Court of Justice (TSJ) within its territory.

**76) Are there quality standards (organisational quality and/or judicial quality policy) formulated for the courts (existence of a quality system for the judiciary)?**

- Yes
- No

If yes, please specify:

Currently limited to accumulations of lawsuits and respecting the deadlines set for handing the judicial decision

**77) Do you have specialised court staff which is entrusted with quality policy and/or quality systems for the judiciary?**

- Yes  
 No

**78) Is there a system enabling to measure the backlogs and to detect the cases which are not processed within a reasonable timeframe for:**

- civil cases?  
 criminal cases?  
 administrative cases?

**79) Do you have a way of analysing waiting time during court procedures?**

- Yes  
 No

If yes, please specify:

Every court can benefit from the court management electronic system and applications.

**80) Is there a system to evaluate the functioning of courts on the basis of an evaluation plan (timetable for visits) agreed a priori?**

- Yes  
 No

Please specify (including an indication of the frequency of the evaluation):

Yes, through scheduled visits by the Inspection Service

**81) Is there a system for monitoring and evaluating the functioning of the prosecution services?** Yes No

If yes, please specify:

The Office of the Attorney General of Spain elaborates an annual Activity Report, which is made public at the beginning of the Judicial Year and presented annually by the Attorney General to the Parliament.

Similarly, the High Court of Justice Public Prosecution Offices elaborate an annual Activity report within their territory, a copy of which is sent to the government, judicial council and legislative assembly of the Autonomous Community and presented by the High Court Prosecutor before the latter.

**You can indicate below:**

- any useful comments for interpreting the data mentioned above
- the characteristics of your court monitoring and evaluation system

**Please indicate the sources for the the question 70,71, 72 and 76**

CGPJ General Council of the Judiciary

## 4. Fair trial

### 4. 1. Principles

#### 4. 1. 1. General principles

**82) What is the percentage of judgements in first instance criminal cases in which the suspect is not attending in person or not represented by a legal professional (i.e. lawyer) during a court session (in absentia judgements) ?**

**83) Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?**

Yes

No

If possible, number of successful challenges (in a year):

**84) Please give the following data concerning the number of cases regarding Article 6 of the European Convention on Human Rights (on duration and non-execution), for the year of reference**

	Cases declared inadmissible by the Court	Friendly settlements	Judgements establishing a violation	Judgements establishing a non violation
Civil proceedings - Article 6§1 (duration)				
Civil proceedings - Article 6§1 (non-execution)				
Criminal proceedings - Article 6§1 (duration)	3			

**Please indicate the sources for the questions 82 and 84**

Abogacía del Estado ante el TEDH

### 4. 2. Timeframes of proceedings

#### 4. 2. 1. General information

**85) Are there specific procedures for urgent matters as regards:**

civil cases?

criminal cases?

administrative cases?

If yes, please specify:

**86) Are there simplified procedures for:**

- civil cases (small claims)?
- criminal cases (petty offences)?
- administrative cases?

If yes, please specify (for example if you have introduced a new law on simplified procedures):

**87) Do courts and lawyers have the possibility to conclude agreements on the modalities for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?**

- Yes
- No

If yes, please specify:

## 4. 2. 2. Penal, civil and administrative law cases

**88) Total number of cases in the first instance courts (litigious and non-litigious); (please complete the table)**

	Pending cases on 1 January 2006	Incoming cases	Decisions	Pending cases on 31 December 2006
Total of civil, commercial and administrative law cases (1-7)	1850672	2024371	1833225	2012079

1 Civil (and commercial) litigious cases*	732590	1169750	1094505	781754
2 Civil (and commercial) non-litigious cases*	86176	262932	252735	92283
3 Enforcement cases	946619	436286	372048	1008871
4 Land registry cases**				
5 Business register cases**				
6 Administrative law cases	85287	155403	113937	129171
7 Other				
Total criminal cases (8+9)	393923	1127216	1272309	414783
8 Criminal cases (severe criminal offences)	190638	240345	388317	205898
9 Misdemeanour cases (minor offences)	203285	886871	883992	208885

**89) \* The cases mentioned in categories 3 to 5 (enforcement, land registry, business register) are excluded from this total and should be presented separately in the table. The cases mentioned in category 6 (administrative law cases) are also excluded from this total for the countries which have specialised administrative courts or units in the courts of general jurisdiction.**

**\*\* if applicable**

**Note: for the criminal law cases there may be a problem of classification of cases between severe criminal law cases and misdemeanour cases. Some countries might have other ways of addressing misdemeanour offences (for example via administrative law procedure). Please indicate if possible what case categories are included under "severe criminal cases" and the cases included under "misdemeanour cases (minor offences)".**

### Explanation

Explanation: Article 13 of the Spanish Criminal Code establishes a three-fold classification of criminal offences: serious crimes, less serious crimes and misdemeanours. Such classification is to a great extent of a formal character in the sense it depends on the different types of penalties envisaged.

- Serious crimes are those punished with serious penalties (namely imprisonment and disqualifications of more than 5 years)
- Less serious crimes are those punished with less serious penalties (namely imprisonment of 3 months to 5 years, most criminal fines and, with some exceptions, disqualifications under 5 years). Both categories of criminal cases represent the vast majority of offences in the Spanish Criminal Code.
- Misdemeanours are punished with minor penalties (for example small fines or driving disqualifications up to one year) which do not include imprisonment.

This fundamental difference between crimes and misdemeanours, that also has procedural consequences, is important to interpret the tables. Misdemeanours have been included in category 9 (misdemeanour cases) whereas all crimes have been included in category 8 (Criminal cases). Category 8 therefore covers the vast majority of offences under the Spanish Criminal Code, punished with penalties that may include imprisonment from 3 months to 20 years or more. Finally, Spain also knows administrative sanctions (ie. police fines for speeding or parking tickets) that are not criminal cases and are treated outside the criminal law system.

**90) Total number of cases in the second instance (appeal) courts (litigious and non-litigious); (please complete the table)**

	Pending cases on 1 Jan. '06	Incoming cases	Decisions on the merits	Pending cases on 31 Dec. '06
Total of civil, commercial and administrative law cases (1-7)	124705	194721	197746	129573
1 Civil (and commercial) litigious cases*	76534	150888	148958	78947
2 Civil (and commercial) non-litigious cases*				
3 Enforcement cases				

	28139	16778	25011	28210
4 Land registry cases**				
5 Business register cases**				
6 Administrative law cases	20032	27055	23777	22416
7 Other				
Total criminal cases (8+9)				
8 Criminal cases (Severe criminal offences)	19848	126614	124930	20674
9 Misdemeanour cases (minor offences)	5681	30368	30999	4844

**91) Total number of cases in the highest instance courts (litigious and non-litigious); (please complete the table)**

	Pending cases on 1 Jan. '06	Incoming cases	Decisions on the merits	Pending cases on 31 Dec. '06
Total of civil, commercial and administrative law cases (1-7)	40995	17717	25179	34225
1 Civil (and commercial) litigious cases*	19591	9637	12310	16918
2 Civil (and commercial) non-litigious cases*				
3 Enforcement cases	13	18	19	12
4 Land registry cases**				
5 Business register cases**				
6 Administrative law cases	21391	8062	12850	17279
7 Other				
Total criminal cases (8+9)	2525	4345	4762	2108
8 Criminal cases (Severe criminal offences)				
9 Misdemeanour cases (minor offences)				

**92) Number of divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and treated by first instance courts (complete the table)**

	Pending cases on 1 Jan. '06	Incoming cases	Decisions	Pending cases on 31 Jan. '06
Divorce cases	26632	55672	46411	36245
Employment dismissal cases	14323	65162	62406	13577
Robbery cases		76997		
Intentional homicide case		104		

**93) Average length of proceedings (from the date of lodging of court proceedings)**

	% of decisions subject to appeal	% pending cases more than 3 years	1st instance	2nd instance	Total procedure
Divorce cases			7,56		
Employment dismissal cases			2,7		
Robbery cases					
Intentional homicide					



**94) Where appropriate, please specify the specific procedure as regards divorce:**

**95) How is the length of proceedings calculated for the four case categories? (please give a description of the calculation method)**

**96) Please describe the role and powers of the prosecutor in the criminal procedure (multiple options are possible):**

- to conduct or supervise police investigation?
- to conduct investigation?
- when necessary, to demand investigation measures from the judge?
- to charge?
- to present the case in the court?
- to propose a sentence to the judge?
- to appeal?
- to supervise the enforcement procedure?
- to end the case by dropping it without the need for a judicial decision?
- to end the case by imposing or negotiating a penalty without a judicial decision?
- other significant powers?

Please specify:

Some of the previous questions require a more detail explanation of our criminal procedural law:

- Conduct or supervise police investigation. In Spain the police is in charge of investigations that precede judicial proceedings. In principles the police has autonomous investigative powers though such activity can be supervised by the judge or public prosecutor if they consider it necessary. The Judicial Police depends on the judge or prosecutor who leads the investigations.

- Conduct investigations. Public Prosecutors have investigative powers which are previous to and independent from judicial proceedings. In these investigative proceedings, the public prosecutor may carry out or order the Judicial Police to carry out any type of relevant proceedings except measures restricting rights (search of homes, interception of communications). The prosecutor shall file the investigation if the finds no grounds for action, or shall proceed to bring the affair to court by formulating for that purpose the proper complaint or charge, should the investigation reveal evidence of facts of criminal significance.

- To charge. In Spain the public prosecutor defends legality. Together with the public prosecutor, there are other parties who can bring charges in criminal proceedings (the private and popular prosecution). On the other hand, the Prosecutor is not obliged to charge if he considers the facts have no criminal significance or if he understands there is not enough evidence against a concrete defendant. In these cases should any of the other parties bring charges, the Public prosecutor would act as a defence attorney and claim for the acquittal during the trial.

**97) Does the prosecutor also have a role in civil and/or administrative cases?**

- Yes
- No

If yes, please specify:

The Prosecutor participates in such civil actions as determined by law, when the interest of society is involved of when minors or incapacitated or handicapped persons are affected. In this sense, as regards civil proceedings he takes part in:

- Incapacitating proceedings. In defense of legality and public interest. Can visit closed establishments.
- Marriage annulment, in defence of legality and public and social interest.
- Divorce proceedings, where they affect minors, incapacitated or absent persons.
- Proceedings for determining or annulling filial relationships.
- Civil proceedings related to violation of fundamental rights, generally vthe right of honour, privacy and own image.

Regarding administrative cases, he generally intervenes in defense of legality or fundamental rights to:

- Give opinions in matters of jurisdiction and competence between administrative organs
- Appeal in the interest of the law
- Act in proceedings for the protection of fundamental rights against acts by Public Administrations

**98) Functions of the public prosecutor in relation to criminal cases – please complete this table:**

	Received by the public prosecutor	Discontinued by the public prosecutor because the offender could not be identified	Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	Discontinued by the public prosecutor for reason of opportunity	Concluded by a penalty, imposed or negotiated by the public prosecutor	Charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	4101736	2224309	531898	0	-	590260

**You can indicate below:**

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years

It is not possible to answer with statistical data without providing additional information:

In Spain the investigative phase of criminal proceedings corresponds to the Investigating Judge. Therefore the figures given in the table, following the criteria used also in the 2004 version of the report, refer to criminal cases received, discontinued and charged in Courts.

It is also important to indicate that the offences "charged by the public prosecutor" do not only refer to cases filed in 2006, but also include previous years. There are no statistics about the number of cases filed and charged per year. Because the principle of opportunity is not applicable in Spain to criminal proceedings, there are no cases discontinued for reason of opportunity. Regarding cases of negotiated penalty, they must always conclude by a judicial ruling. The Public Prosecutor cannot impose penalties.

Therefore we add a second statistic, which specifically refers to investigative proceedings received and handled exclusively by the Prosecution Office, (previous to and independent from judicial proceedings as explained in Q96).

Statistic of investigative proceedings by the Public Prosecutor.

Received by the Public Prosecutor 10.962  
 Discontinued by the Public Prosecutor 308  
 Brought to Court by formulating the appropriate complaint 249

**Please indicate the sources for the questions 92 to 94 and question 98**

Q92-94 General Council of the Judiciary

Q 96-98 General Prosecution Office

## 5. Career of judges and prosecutors

### 5. 1. Appointment and training

#### 5. 1. 1. Recrutement, nomination and promotion

#### 99) How are judges recruited?

- Through a competitive exam (for instance after a law degree)?
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

If other, please specify:

#### 100) Are judges initially/at the beginning of their carrier recruited and nominated by:

- an authority composed of judges only?
- an authority composed of non-judges only?
- an authority composed of judges and non-judges?

#### 101) Is the same authority competent for the promotion of judges?

- Yes
- No

If no, please specify which authority is competent for promoting judges:

**102) Which procedures and criteria are used for promoting judges? (please specify).**

**103) How are prosecutors recruited?**

- Through a competitive exam? (for example after a law degree)
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

If other, please specify:

**104) Are prosecutors initially/at the beginning of their carrier recruited and nominated by:**

- an authority composed of prosecutors only?
- an authority composed of non-prosecutors only?
- an authority composed of prosecutors and non-prosecutors?

**105) Is the same authority formally responsible for the promotion of prosecutors?**

- Yes
- No

If no, please specify which authority is competent for promoting prosecutors.

Promotion from 3rd(initial) to 2nd category is automatic and based on seniority.  
Promotion to 1st category requires appointment by the Ministry of Justice at the proposal of the Attorney General, after a merit competition amongst Prosecutors with 20 years of service and after hearing the Public Prosecutors' Council.

**106) Which procedures and criteria are used for promoting prosecutors (please specify)**

Seniority for promotion from 3rd to 2nd category.

Seniority of at least 20 years, professional merits and experience and CV for promotion to 1st category. Such merits are considered by the Prosecutors' Council that then votes to elect one of the candidates and issues a report. However, it is not binding and the final proposal corresponds to the Attorney General who can designate the candidate he considers most appropriate, even against the report by the Prosecutors' Council.

**107) Is the mandate given for an undetermined period for judges ?**

- Yes  
 No

Are there exceptions? Please specify:

**108) Is the mandate given for an undetermined period for prosecutors?**

- Yes  
 No

Are there exceptions? Please specify:

As such the mandate of Prosecutors is undetermined.  
 However the mandate of the Attorney General is given for 4 years and is not renewable.  
 The mandates of Deputy Attorneys, Chief Attorneys and Supreme Court Attorneys are for 5 years and renewable for an unlimited number of times.

**109) If no, what is the length of the mandate?  
 Is it renewable?**

for judges  yes, please  
 specify the  
 length

for prosecutors  yes, please  
 specify the  
 length

**You can indicate below:**

- any useful comments for interpreting the data mentioned above
- the characteristics of the selection and nomination procedure of judges and prosecutors and the main reforms that have been implemented over the last two years

The recruitment of Judges and Prosecutors currently take place through common competitive exams.

**5. 1. 2. Training**

**110) Nature of the training of judges.  
 Is it compulsory?**

- Initial training

- General in-service training
- In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)
- In-service training for management functions of the court (e.g. court president, court managers)
- In-service training for the use of computer facilities in the court

### 111) Frequency of the training of judges:

	Annual	Regular	Occasional
Initial training	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General in-service training	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In-service training for specialised judicial functions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In-service training for management functions of the court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In-service training for the use of computer facilities in the court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### 112) Nature of the training of prosecutors.

#### Is it compulsory?

- Initial training
- General in-service training
- Specialised in-service training (e.g. specialised public prosecutor)
- In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)
- In-service training for the use of computer facilities in the public prosecution service

### 113) Frequency of the training of prosecutors:

	Annual	Regular	Occasional
Initial training	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General in-service training	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Specialised in-service training	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In-service training for management functions of the prosecution services	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In-service training for the use of computer facilities in the public prosecution service	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### You can indicate below:

- any useful comments for interpreting the data mentioned above
- comments regarding the attention given to the curricula to the European Convention on Human Rights and the case law of the Court
- the characteristics of your training system for judges and prosecutors and the main reforms that have been implemented over the last two years

Regarding training of prosecutors:

- The initial training course has a duration of 8 months.
- As regards General in-service training, there are approximately 60 courses per year specifically conceived for Prosecutors and they can also participate in training organised by other institutions such as the Judicial School, Universities, International Institutions, etc (around 41 in 2006). The selection of courses and training requests depend on the Prosecutors themselves, who can ask for those which they are interested in, and requests are granted according to some general preference criteria should the number of posts be less than those requested.
- Certain specialised functions require compulsory in-service training
- For management functions, courses are organised every 6 months for Chief Prosecutors, to which assistance is voluntary.
- Finally IT/computer courses are provided annually on a voluntary basis.

## 5. 2. Practice of the profession

### 5. 2. 1. Salaries

#### 114) Salaries of judges and prosecutors (complete the table)

	Gross annual salary (euro)	Net annual salary (euro)
First instance professional judge at the beginning of his/her career	45230,47	33922,85
Judge of the Supreme Court or the Highest Appellate Court	115497,77	72763,60
Public prosecutor at the beginning of his/her career	45230,47	33922,85
Public prosecutor of the Supreme Court or the Highest Appellate Instance	115497,77	72763,60

#### 115) Do judges and public prosecutors have additional benefits?

	Judges	Prosecutors
Reduced taxation	<input type="checkbox"/>	<input type="checkbox"/>
Special pension	<input type="checkbox"/>	<input type="checkbox"/>
Housing	<input type="checkbox"/>	<input type="checkbox"/>
Other financial benefit	<input type="checkbox"/>	<input type="checkbox"/>

#### 116) If other financial benefit, please specify:

#### 117) Can judges combine their work with any of the following other professions?

	Yes with remuneration	Yes without remuneration	No
Teaching	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Research and publication	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arbitrator	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consultant	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cultural function	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other function	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



**118) If other function, please specify:**

**119) Can prosecutors combine their work with any of the following other professions?**

	Yes with remuneration	Yes without remuneration	No
Teaching	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Research and publication	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arbitrator	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consultant	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cultural function	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other function	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**120) If other function, please specify:**

**121) Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?**

- Yes  
 No

If yes, please specify:

Judges receive a variable remuneration if they reach a productivity level of 120% in respect of the demanded productivity

**Please indicate the source for the question 114**

Ministry of Justice.

The net annual salary is after personal income tax (assuming the taxpayer has no children)

### 5. 2. 2. Disciplinary procedures

**122) Which authority is authorized to initiate disciplinary proceedings against judges and/or prosecutors? Please specify:**

Against Prosecutors, the corresponding Chief Prosecutor and the Prosecution Inspection Office.

**123) Which authority has the disciplinary power on judges and prosecutors? Please specify:**

Prosecutors: As a general rule disciplinary powers correspond to Chief Prosecutors and the Inspection Office, but who imposes the sanction depends on the seriousness of the case and the sanction imposed.

When the sanction is reprimand, competence corresponds to the relevant Chief Prosecutor. To impose the rest of sanctions including suspension, the Attorney General. To impose separation of the service (dismissal) the Minister of Justice at the proposal of the Attorney General and with a previous report of the Public Prosecutor's Council.

#### 124) Types of disciplinary proceedings and sanctions against judges and prosecutors: number of disciplinary proceedings initiated

	Judges	Prosecutors
Total number (1+2+3+4)	71	155
1. Breach of professional ethics	3	
2. Criminal offence		
3. Professional inadequacy	41	
4. Other	27	

#### 125) Types of disciplinary proceedings and sanctions against judges and prosecutors: number of sanctions pronounced

	Judges	Prosecutors
Total number (total 1 to 9)	19	5
1. Reprimand	4	
2. Suspension	4	
3. Withdrawal of cases		
4. Fine	11	
5. Temporary reduction of salary		
6. Degradation of post		
7. Transfer to another geographical (court) location		
8. Dismissal		
9. Other		

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning disciplinary procedures for judges and prosecutors and the main reforms that have been implemented over the last two years

## 6. Lawyers

### 6. 1. Statute of the profession

#### 6. 1. 1. Profession

#### 126) Total number of lawyers practising in your country

116394

#### 127) Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court?

- Yes  
 No

#### 128) Number of legal advisors?

NA

#### 129) Do lawyers have a monopoly of representation:

- Civil cases\*  
 Criminal cases - Defendant\*  
 Criminal cases - Victim\*  
 Administrative cases\*

\* If appropriate, please specify if it concerns first instance and appeal. And in case there is no monopoly, please specify the organisations or persons which may represent a client before a court (for example a NGO, family member, trade union, etc) and for which types of cases.

Lawyers have the monopoly for legal assistance. Representation is exercised by a different type of legal professionals "procuradores".

#### 130) Is the lawyer profession organised through:

- a national Bar?  
 a regional Bar?  
 a local Bar?

Please specify:

In Spain the organization of the profession is structured in a system of 83 Bars, which are bound together in Regional Bars and, at central level, in a single general bar, the

General Council of Spanish Bar Associations (Consejo General de la Abogacía Española CGAE).

**Please indicate the source for the question 126**

General Council of Spanish Bar Associations (Consejo General de la Abogacía Española)

6. 1. 2. Training

**131) Is there a specific initial training and/or examination to enter the profession of lawyer?**

- Yes  
 No

**132) Is there a mandatory general system for lawyers requiring continuing professional training?**

- Yes  
 No

**133) Is the specialisation in some legal fields tied with a specific level of training/ qualification/ specific diploma or specific authorisations?**

- Yes  
 No

If yes, please specify:

6. 1. 3. Fees

**134) Can users establish easily what the lawyers' fees will be?**

- Yes  
 No

**135) Are lawyers fees:**

- regulated by law?
- regulated by the Bar association?
- freely negotiated?

**6. 2. Evaluation****6. 2. 1. Complaints and sanctions****136) Have quality standards been formulated for lawyers?**

- Yes
- No

**137) If yes, who is responsible for formulating these quality standards:**

- the Bar association?
- the legislature?
- other?

Please specify (including a description of the quality criteria used):

Rather than particular quality standards, it is the laws that regulate the profession which impose the quality of the service. Such legal provisions are contained in the General Statute of Spanish Lawyers (adopted by Royal Decree 658/2001 of 22 July and in the Deontological Code adopted by the General Bar the 27 September 2002 and amended on 10 December 2002. The General Statute is presented by the General Council of Spanish Bar Associations to the Minister of Justice for automatic adoption. The other legal provisions are internal, and directly adopted by the Spanish Bar and the General Council of Spanish Bar Associations.

**138) Is it possible to complain about :**

- the performance of lawyers?
- the amount of fees?

Please specify:

Both professional misconduct and cases of excessive or undue fees entail disciplinary sanctions

**139) Which authority is responsible for disciplinary procedures:**

- the judge?
- the Ministry of Justice?
- a professional authority or other?

Please specify:

The Bar associations, (and in appeal the Bar of the Autonomous Communities and the General Council of Spanish Bar Associations where the later dont exist) are responsible for disciplinary proceedings. As a last instance, the procedure can reach the Administrative Courts.

Judges and courts are responsible for keeping discipline during hearings.

**140) Disciplinary proceedings and sanctions against lawyers:**

**Disciplinary proceedings initiated**

	Breach of professional ethics	Professional inadequacy	Criminal offence	Other
Annual number				

**141) Disciplinary proceedings and sanctions against lawyers:**

**Sanctions pronounced**

	Reprimand	Suspension	Removal	Fine	Other
Annual number					

**You can indicate below:**

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning the organisation of the Bar and the main reforms that have been implemented over the last two years

The General Council of Spanish Bar Associations does not keep a register with the exact number of sanctions against lawyers. However the Bars are obliged to inform the General Council of the sanctions imposed so that it can inform the other bars. Sanctions are generally reprimands, suspensionas and expulsions.

Regarding main legal reforms over the last two years, one could mention the following instruments:

- Law 2/2007, de 15th March, of Professional Societies.

- Law 34/2006 access to the profession of Lawyer and Procurador.

In future, in addition to a law degree Lawyers will need to do 2 years' training and sit a state-wide exam. According to the text of the law, practices will constitute half of the educative cicle and equal oportunities are ensured through a system of grants. There is a 5-year vacatio legis before the Law enters into force.

-Royal Decree 1331/2006, of 17 November, regulating the special labour relationship of lawyers in individual or

collective law firms.

-Royal Decree 1393/2007, of 29 October, regulating official university education

## 7. Alternative Dispute Resolution

### 7. 1. Mediation and other forms of ADR

#### 7. 1. 1. Mediation

**142) If appropriate, please specify, by type of cases, the organisation of judicial mediation:**

	Possibility of private mediation or court annexed mediation	Private mediator	Public authority	Judge	Prosecutor
Civil and commercial cases	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Family law cases (ex. Divorce)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administrative cases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employment dismissals	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Criminal cases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**143) Is there a possibility to receive legal aid for mediation procedures?**

Yes

No

If yes, please specify:

**144) Can you provide information about the number of accredited mediators?**

Yes

No

If yes, please provide the number of mediators:

**145) Can you provide information about the total number of judicial mediation procedures concerning:**

civil cases?

yes,  
number:

family cases?

yes,  
number:

administrative cases?

yes,  
number:



employment dismissals?

yes,  
number:

criminal cases?

yes,  
number:

**Please indicate the source for the question 145**

### 7. 1. 2. Other forms of alternative dispute resolution

**146) Can you give information concerning other forms of alternative dispute resolution (e.g. Arbitration, conciliation)? Please specify:**

Arbitration is provided for in the Spanish system as an alternative to judicial means, in respect of matters that are disposable to parties (ie.commercial disputes). Its regulation is laid out in the Arbitration Act of 2003.

**You can indicate below:**

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years

Accredited mediators are: public bodies through conciliation and arbitration in the field of consumers and social law and through mediation techniques in family law.

## 8. Enforcement of court decisions

### 8. 1. Execution of decisions in civil matters

#### 8. 1. 1. Functioning

#### 147) Number of enforcement agents

0

#### 148) Are enforcement agents:

- judges?
- bailiff practising as private profession ruled by public authorities?
- bailiff working in a public institution?
- other enforcement agents?

Please specify their status:

In the Spanish system there are no enforcement agents for the execution of court decisions, as the responsibility for the execution corresponds to judges themselves. Only in very exceptional cases do solicitors play a role in execution.

Therefore most questions in this section are not applicable

#### 149) Is there a specific initial training or examination to enter the profession of enforcement agent?

- Yes
- No

#### 150) Is the profession of enforcement agent organised by?

- a national body?
- a regional body?
- a local body?

#### 151) Can users establish easily what the fees of the enforcement agents will be?

- Yes
- No

#### 152) Are enforcement fees:

regulated by law?

freely negotiated?

**Please indicate the source for the question 147**

### 8. 1. 2. Supervision

**153) Is there a body entrusted with the supervision and the control of the enforcement agents?**

Yes

No

**154) Which authority is responsible for the supervision and the control of enforcement agents:**

a professional body?

the judge?

the Ministry of Justice?

the prosecutor?

other?

Please specify:

**155) Have quality standards been formulated for enforcement agents?**

Yes

No

If yes, who is responsible for formulating these quality standards and what are the quality criteria used?

**156) Do you have a specific mechanism for executing court decisions rendered against public authorities, including for monitoring the execution?**

- Yes  
 No

If yes, please specify:

**Please indicate the sources for the questions 155 and 156**

### 8. 1. 3. Complaints and sanctions

**157) What are the main complaints of users concerning the enforcement procedure? (please indicate a maximum of 3)**

- no execution at all?  
 non execution of court decisions against public authorities?  
 lack of information?  
 excessive length?  
 unlawful practices?  
 insufficient supervision?  
 excessive cost?  
 other?

Please specify:

**158) Has your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?**

- Yes  
 No

If yes, please specify:

Certain courts have been specialized and exclusively deal with enforcement

**159) Is there a system measuring the timeframes of the enforcement of decisions:**

- for civil cases?  
 for administrative cases?

**160) As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court seats:**

- between 1 and 5 days  
 between 6 and 10 days  
 between 11 and 30 days  
 more

Please specify:

**161) Disciplinary proceedings initiated against enforcement agents:**

- |                               |  |
|-------------------------------|--|
| Breach of professional ethics | <input type="checkbox"/> yes,<br>number: |
| Professional inadequacy       | <input type="checkbox"/> yes,<br>number: |
| Criminal offence              | <input type="checkbox"/> yes,<br>number: |
| Other                         | <input type="checkbox"/> yes,<br>number: |

**162) Sanctions pronounced against enforcement agents:**

- Reprimand  yes,

Suspension	number: <input type="checkbox"/> yes, number:
Dismissal	<input type="checkbox"/> yes, number:
Fine	<input type="checkbox"/> yes, number:
Other	<input type="checkbox"/> yes, number:

**You can indicate below:**

- any useful comments for interpreting the data mentioned above
- the characteristics of your enforcement system of decisions in civil matters and the main reforms that have been implemented over the last two years

**Please indicate the sources for the questions 157 and 160**

General Council of the Judiciary (CGPJ)

## 8. 2. Execution of decisions in criminal matters

### 8. 2. 1. Functioning

**163) Is there a judge who is in charge of the enforcement of judgments?**

- Yes  
 No

If yes, please specify his/her functions and activities (e.g. Initiative or control functions). If no, please specify which authority is entrusted with the enforcement of judgements (e.g. prosecutor).

In principle, the criminal court which pronounces the conviction is in charge of its enforcement. However when the penalty implies an actual deprivation of liberty there are special prison courts (Juzgados de Vigilancia Penitenciaria) with control functions as regards the execution of the penalty and the rights of prisoners.

**164) As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?**

- Yes  
 No

If yes, please specify:

**You can indicate below:**

- any useful comments for interpreting the data mentioned above**
- the characteristics of your enforcement system of decisions in criminal matters and the main reforms that have been implemented over the last two years**

## 9. Notaries

### 9. 1. Statute

#### 9. 1. 1. Functioning

**165) Do you have notaries in your country? If no, go to question 170.**

- Yes  
 No

**166) Is the status of notaries:**

a private one (without control from public authorities)?

yes,  
number:

a status of private worker ruled by the public authorities?

yes,  
number:

a public one?

yes,  
number:

other?

yes,  
number and  
specify:

Notaries are public officials as they carry out public functions. Number of Notaries: 2775 (1st January 2008).

**167) Do notaries have duties:**

- within the framework of civil procedure?  
 in the field of legal advice?  
 to authenticate legal deeds?  
 other?

Please specify:

Notaries give public effectiveness to all sorts of extra-judicial transactions or private acts. They act therefore in different areas

- facts, authenticating factual situations (giving faith officially authenticated records)

- civil and commercial contracts (giving them executive or declarative effect in proceedings)

- property, by means of the instrumental "tradition" (legal possession) as the documents a notary authorises can convey property and other real rights if the rest of necessary contractual requisites apply

- in the personal sphere, they also intervene in family acts and inheritance law

**Please indicate the source for the question 166**

Directorate General of Registers and Notaries

#### 9. 1. 2. Supervision



**168) Is there an authority entrusted with the supervision and the control of the notaries?**

- Yes  
 No

**169) Which authority is responsible for the supervision and the control of the notaries:**

- a professional body?  
 the judge?  
 the Ministry of Justice?  
 the prosecutor?  
 other?

Please specify:

Inspection and control of their activity depends on the Directorate General of Registers and Notaries under the Secretary of State for Justice in the Ministry of Justice.

**You can indicate below:**

- any useful comments for interpreting the data mentioned above
- the characteristics of your system of notaries and the main reforms that have been implemented over the last two years

The organisation and geographical distribution of Notaries is laid down by the Spanish government by means of a Royal Decree (a regulatory provision adopted in the Council of Ministers).

The number of posts, investiture, age of compulsory retirement (currently 70) is also governmental.

Access to the profession is achieved through a public competition open to any EU citizen with a recognised bachelors diploma in Law.

Salaries are fixed by the State and at the same time their activity generates no responsibility for the State neither does it imply any cost.

Ownership of the "protocols"-set of documents authorised by notaries- corresponds to the State.

## 10. Functioning of justice

### 10. 1. Foreseen reforms

#### 10. 1. 1. Reforms

**170) Can you provide information on the current debate in your country regarding the functioning of justice? Are there reforms foreseen? (for example changes in legislation, changes in the structure of the judiciary, innovation programmes, etc). If yes, please specify.**

As a starting point it is interesting to refer to the transformation the Spanish Justice Administration has been going through during the past 25 years. The main premise of such transformation is the consideration of Justice as a public service which must therefore keep in mind the quality of the service provided to the citizens. It is a new way of managing the Justice Administration linked to entrepreneurial concepts of efficiency.

However, and despite the efforts that are being made in different fields to improve its functioning, Justice does not always come across as efficient. The length of proceedings plays an important role in the good or bad image citizens have of the system. During 2006, the average length of proceedings in 1st Instance courts was 7,4 months, de 1,8 months in Criminal investigative courts, 5,3 in Labour Courts and 8,9 in Administrative Courts.

Different factors which increase the length of proceedings have been highlighted, one of the most important being the excessive workload of Courts. Complete information to citizens about access to justice, increased population due to immigration or the "judicialisation" of issues that traditionally were not seen in court are some of the aspects that have meant an increase in litigation. The number of cases registered in Spanish Courts in 2006 was 8.043.809, 4,1% more than in 2005. Litigation in 2006 reached 179,9 cases per 1.000 inhabitants (2,7% more than in 2005). In 2006, 7.863.012 cases were solved (3,1% more than in 2005, but less than the registered cases).

To alleviate this problem, from 2000 to 2007, 1024 new posts for judges and 601 for prosecutors were created.

It is also necessary to pursue the efforts relating to the modernisation of the Justice Administration, from the point of view of two closely related aspects: the new organisation of the Judicial Office and the use of information technologies.

Stakeholders agree that the current model of judicial office, which dates from the 19th Century, is no longer valid in the 21st Century.

The current model leads to an insufficient use of the qualifications and skills of certain professionals, in particular the "secretarios judiciales" (Huissiers de justice). It also entails undefinition in the functions and professional careers of different bodies of the Justice administration, because the organisation of work is based, in a majority of courts, in the simple distribution of cases according to their file number.

Finally and most important, this system of functioning prevents judges from focusing on their constitutional function (ruling and having judgements executed), and obliges them to deal with other tasks (supervising the judicial organ and the procedural steps in the case) that exceed those strictly jurisdictional.

As regards foreseen reforms, there are several on-going initiatives to speed up and modernise the Justice Administration.

#### 1. - New Judicial Office.-

To achieve a fast and effective Justice it is necessary to have adequate procedural laws, but these must be complemented with a better organisation of the justice administration. In this sense, it is important to refer to Organic Law 19/2003 of 23rd December amending the Organic Law for the Judiciary (LOPJ) which established in article 435.3 that "the Judicial Office shall function under the principles of swiftness, effectiveness, efficiency, rationalising of the workload, management responsibility, coordination and cooperation between Public Administrations, with the main aim that citizens obtain close and quality service".

Basically, this new organization tries to distinguish the 3 types of activities (jurisdictional, procedural and administrative) which are carried out within the Justice Administration, so that the first one corresponds to the Judges, the second to the "Secretario Judicial" (Huissier) and the third to the Ministry of Justice or the Autonomous Communities with transferred powers in the matter.

The new judicial office is conformed, according to their functions, by 2 different types of procedural Units:

- The Procedural Units for Direct Support, which according to art.437. 1 of the LOPJ, directly assist Judges to comply with their duties, taking the necessary measures for the exact and efficient compliance of their decisions.
- The Common Procedural Services, which according to art. 438 of the LOPJ are units pertaining to the judicial offices but not integrated in a concrete Court that carry out centralised tasks of management and support in activities derived from the application of procedural laws.
- Alongside these procedural units Art.439 of the LOPJ defines Administrative Units as those not integrated in the Judicial Office but created in the area of Justice Administration by the Ministry of Justice or the competent Autonomous Community for the directing and management of personal and material means, including IT, of their competence.

The reform by Organic Law 19/03 also requires procedural laws be adapted to the new model of Judicial Office. In particular, a new distribution of powers between Judges and Secretarios (Huissiers) so that the latter, apart from the formal impulse of proceedings, can take procedural decisions provided they don't affect strict jurisdictional functions. Other complementary objectives are spreading best practices or reinforcing procedural guarantees. These procedural reforms are currently in Parliament.

2. - New Technologies.- The set up of the new judicial office needs adequate IT tools that allow for the transmission of cases between the different units composing the office. To this end intensive work has been going on for the development of several IT applications such as the Module for Generic Exchange (MIG "módulo de intercambio genérico"), a new case management system (Minerva-Nueva Oficina Judicial) and the Programmed Hearings Agenda, aimed at coordinating all the hearings in a judicial district to achieve maximum performance of Judicial Offices and an optimal management of hearing rooms.

In relation to new technologies, the on-going procedural reforms also give legal shape to new issues deriving from the use of electronic means, both regarding the lodging of claims or presentation of documents and the notification of judicial decisions to legal professionals. This derives from the Royal Decree 84/2007 of 26th January (BOE 13 February de 2007) implementing in the Justice Administration the LEXNET system for the electronic filing of documents, distribution of copies to legal parties and electronic communication of procedural acts.

It is necessary to deal with issues such as the introduction of documents together with the principal claim; the starting point of legal effects for documents filed electronically, the value of notifications made by the system or its use by all legal parties. In all, it is essential for the correct functioning of the system to clearly determine the concrete procedural moment when a procedural act, done through electronic means, should be considered effectively accomplished.

3. - Reform of Voluntary Jurisdiction.- Voluntary Jurisdiction refers to those proceedings in which a citizen asks for the intervention of a 3rd party invested with authority in cases where there is no conflict or opposing interests. A new comprehensive legal text in the matter is necessary so that obsolete cases are suppressed, those still useful amended or incorporated, and powers redistributed in favour of legal professionals other than judges, so that the challenge of a modern and efficient Justice is also met in this field.

The current Civil Procedural Law didn't regulate Voluntary Jurisdiction, referring its regulation to a future law. While such law is passed, Book III of the former Civil Procedural Law of 1881 dedicated to this issue is still in force. The last draft law brought a number of cases out of the judicial sphere, which will contribute to reduce the workload of courts, and introduced a new regulation of these cases which are important to citizens both from a quantitative and qualitative point of view.