

COMPARATIVE NOTE

ON JUDICIAL ADMINISTRATIVE SYSTEMS II



PORTUGAL | SPAIN



Publication details

Title: COMPARATIVE NOTE ON ADMINISTRATIVE JUDICIAL SYSTEMS – II

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Design: Isabel Ferreira

Lisbon, 2026 | ISBN: 978-989-36871-1-6

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PRELIMINARY NOTE

This comparative study on the administrative judicial systems of Portugal and Spain originates from the institutional dialogue initiated between the Supreme Administrative Court of Portugal and the Administrative Litigation Chamber of the Supreme Court of Spain through the Iberian Summits of Administrative and Fiscal Jurisdiction.

The 1st Iberian Summit was held on 16 and 17 October 2025 at the Supreme Administrative Court in Lisbon, in an initiative jointly promoted by both Supreme Courts. The opening session was chaired by the President of the Supreme Administrative Court, Jorge Aragão Seia, and by the President of the Administrative Litigation Chamber of the Supreme Court, Pablo Lucas Murillo de la Cueva. The 2nd Iberian Summit took place on 27 March 2026 in Madrid, at the headquarters of the Supreme Court, with the Spanish delegation led by Vice-President Dimitry Berberoff Ayuda and President of the Administrative Litigation Chamber Pablo Lucas Murillo de la Cueva, and once again the Portuguese delegation led by President Jorge Aragão Seia.

Both editions were structured around substantive topics of shared interest and immediate relevance to both administrative jurisdictions: cassation appeals; immigration litigation; principles of tax law; judicial review of administrative offences; legal effects of invalid administrative acts; and judicial review of discretionary appointments in the Public Administration. These are not merely technical matters – they reflect structural tensions at the heart of the relationship between the Administration and the courts, and between legal certainty and effective judicial protection of rights, which both systems must resolve within the broader framework of European Union law and fundamental rights.

This comparative document is the outcome of those two meetings and aspires to extend them beyond the institutional spheres in which they took place. Its purpose, beyond sustaining the dialogue between the two courts, is to give public notice of what brings these two administrative justice systems closer together and what distinguishes them – their historical origins, organisational structures, jurisdictional scope, access to the judiciary, procedural frameworks and use of technology.

The conviction shared by both courts is that comparative knowledge is not a purely academic exercise. It is a living instrument for improving the quality of judicial decisions. Understanding how a neighbouring system – one that shares the same Iberian history and the same European legal framework, but has been shaped by distinct constitutional traditions – approaches common problems broadens the judicial horizon and strengthens the judge's capacity to decide with rigour and sound reasoning. It is in this spirit that the present study has been prepared.

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BRIEF HISTORICAL NOTE

PORTUGAL

The current Supreme Administrative Court evolved from the Council of State, an advisory body of the monarchy established in 1842 (although it was already mentioned in the Constitutional Charter of 1826). The same applies to the Constitutional Court, created in 1984, whose doctrinal origins also trace back to the historical Council of State. Although the Council of State has undergone significant reforms, it remains a constitutional body but with very limited powers, entirely political in composition and exercising exclusive advisory functions before the President of the Republic.

It was not until the constitutional revision of 1989 that administrative and tax jurisdiction was incorporated as an autonomous jurisdiction in the Portuguese Constitution of 1976. The new Statutes of the Administrative and Tax Courts were approved in 2002; the administrative procedural reform in 2004 (current Code of Procedure in Administrative Courts); and the legal framework was completed in 2023 with the approval of the legal regime for administrative and financial autonomy of the Superior Council of Administrative and Tax Courts.

SPAIN

The origins of judicial review of the Administration in Spain date back to the Council of Castile (1385), the supreme judicial and administrative body of the Hispanic monarchy, established by King John I of Castile, which lasted until 1834. A decisive turning point was the Constitution of Cadiz of 1812, which established the Supreme Court to replace the system of royal councils. The Royal Decree of 24 March 1834 definitively constituted the Supreme Court during the regency of Queen Isabella II.

It was not until 1904, by Royal Decree of 8 May, that a specific Administrative Litigation Chamber was re-established at the Supreme Court, becoming the Third Chamber. The current democratic framework was established by the Constitution of 1978. The LOPJ (Law 6/1985) organised the modern judicial structure. Law 29/1998 (LJCA) consolidated the regime of administrative courts. The cassation reform of 2015 (LO 7/2015) transformed the appeal into an objective mechanism requiring 'objective cassation interest' for the formation of jurisprudence.

Unlike Portugal, Spain does not have a structurally separate administrative jurisdiction. The principle of jurisdictional unity means that all judges – civil, criminal, administrative and social – belong to a single unified Judicial Career.

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THE PORTUGUESE JUDICIAL SYSTEM

Under the current version of the Portuguese Constitution, the Portuguese judicial system comprises two separate jurisdictions: the judicial jurisdiction (civil, commercial, criminal and social/labour law) and the administrative jurisdiction (administrative and tax law). Each jurisdiction has its own Superior Council of the Judiciary, which means the existence of two distinct governing bodies. Jurisdictional conflicts between both jurisdictions are resolved by the Court of Conflicts.

In addition to the judicial and administrative jurisdictions, Article 209 of the Portuguese Constitution provides for the existence of the Constitutional Court as an independent judicial body that exercises constitutional review through concrete review, successive abstract review and preventive abstract review (and also a mixed model for generalising the effects of concrete review when decisions in such concrete review processes are repeated in more than three cases). It also provides for the Court of Auditors, which is responsible for supervising and imposing sanctions for violations of financial regulations.

Portugal also constitutionally recognises arbitral tribunals as genuine courts, with jurisdiction in civil, commercial, administrative and tax disputes. The CJEU has declared that the Portuguese 'tax arbitration system' meets the requirements of a referring court (Ascendi judgment, case C-377/13). Finally, it should be noted that the Public Prosecution Service acts as a promoter of legality with powers to challenge administrative acts.

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THE SPANISH JUDICIAL SYSTEM

The principle of jurisdictional unity (Art. 117.5 CE) is the defining feature: administrative litigation jurisdiction is exercised by specialised courts and chambers integrated within the Judiciary. The General Council of the Judiciary (CGPJ) is the governing body for all jurisdictional orders – unlike Portugal, which maintains a specific Superior Council for the administrative and fiscal jurisdiction.

The Constitutional Court is a separate institution responsible for constitutional review (Art. 161 CE). The Council of State is a purely advisory body. The Court of Auditors exercises jurisdiction over financial accountability, and cassation and review appeals against its decisions may be lodged before the Administrative Litigation Chamber of the Supreme Court.



Unlike Portugal, the Spanish system does not provide for administrative arbitration or tax arbitration as an alternative to the judicial route. The economic-administrative claim constitutes a mandatory prior procedure in tax matters.

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THE NUMBERS OF ADMINISTRATIVE JURISDICTION

IN PORTUGAL 	IN SPAIN 
<p>10,344,802 inhabitants (2021 census)</p> <p>NUMBER OF JUDGES 1st instance: 295 judges 2nd instance: 71 judges STA Judges: 24</p> <p>JURISDICTIONAL STRUCTURE 1st instance courts: 17 TAF Central Courts: 2 TCA Supreme Administrative Court: 1 STA</p> <p>JURISDICTIONAL ACTIVITY</p> <p>1st Instance Cases/year per court: 1,600 Resolution rate: 123% Average resolution time: 600 days</p> <p>2nd Instance Cases/year per court: 2,634 Resolution rate: 89% Average resolution time: 1,168 days</p> <p>STA Cases/year: 1,379 Resolution rate: 102% Average resolution time: 169 days</p>	<p>47,431,256 inhabitants (2024 census)</p> <p>NUMBER OF JUDGES (C-A) C-A Sections Instance Courts (provincial): 244 C-A Sections Central Court: 12 TSJ Chambers (C-A): 257 National Court (C-A): 43 3rd Chamber Supreme Court: 33</p> <p>JURISDICTIONAL STRUCTURE Instance Courts (provincial): 52 Central Courts: 1 TSJ C-A Chambers: 17 National Court C-A Chamber: 1 Supreme Court 3rd Chamber: 1</p> <p>JURISDICTIONAL ACTIVITY</p> <p>1st Instance (all bodies) Annual cases: 200,000</p> <p>Supreme Court 3rd Chamber Cassation appeals/year: 8,000 Admission rate (cassation interest): 18%</p>

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SUBJECT MATTER OF ADMINISTRATIVE LITIGATION JURISDICTION

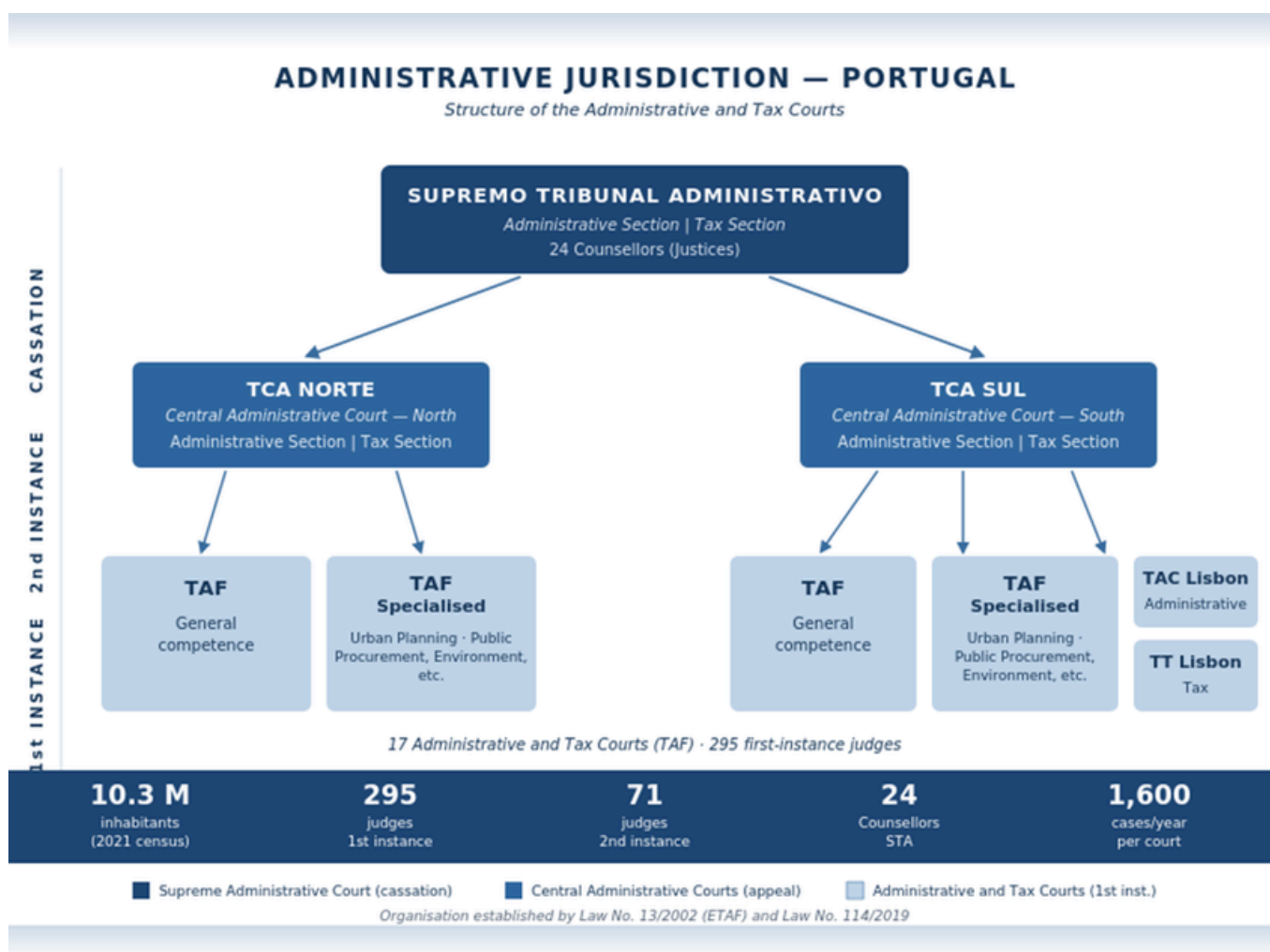
EM PORTUGAL 	EN ESPAÑA 
<p>LEGAL BASIS: Art. 4 ETAF</p> <p>INCLUDED MATTERS: Fundamental rights in administrative and tax legal relationships Legality review of administrative norms and acts (including constitutionality) Public procurement and administrative contract disputes Non-contractual civil liability of the State Judicial protection under <i>actio popularis</i> (urban planning, environment, etc.) Public intersubjective relationships of an administrative nature Electoral and public employment litigation; tax litigation</p> <p>EXCLUDED: Employment contracts governed by labour law Review of political and legislative acts Administrative offences by the Competition Authority Consumer law matters</p>	<p>LEGAL BASIS: Art. 106 CE · Law 29/1998 (LJCA)</p> <p>INCLUDED MATTERS: Appeals against administrative acts (express or by silence) and regulations Legality review of tax acts (assessments, collection) Public sector contracts (administrative procurement) Patrimonial liability of Public Administrations Staff serving Public Administrations Protection of fundamental rights in administrative context (special procedure) Administrative inaction and unlawful material action Electoral matters assigned by LOREG</p> <p>EXCLUDED: Disputes between private parties governed by private law Constitutional review (reserved to the Constitutional Court) Military jurisdiction and civil and social jurisdictional orders</p>

COMPARATIVE NOTE on JUDICIAL ADMINISTRATIVE SYSTEMS II PORTUGAL | SPAIN

ORGANISATION OF THE COURTS

IN PORTUGAL

Administrative and tax courts, as courts of first instance, operate as a unified court (TAF), except in Lisbon, where the administrative and tax courts of first instance are separate. When the volume or complexity of cases warrants it, the law allows for specialisation: ordinary administrative cases; social cases; public procurement; urban planning, environment and land use; tax cases; tax enforcement. The Supreme Administrative Court has two Sections: the Administrative Section and the Tax Section.



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ORGANISATION OF THE COURTS

EN ESPANHA

Administrative Litigation Sections of Instance Courts – formerly single-judge courts –

Single-judge bodies at provincial level and ordinary first instance. They hear cases against acts of Local Authorities and certain acts of the Autonomous Communities (personnel, sanctions ≤ €60,000, patrimonial liability ≤ €30,050).

Administrative Litigation Section of the Central Instance Court – formerly central single-judge courts –

Single-judge bodies, based in Madrid, with national jurisdiction for certain categories of acts by the General State Administration.

C-A Chambers of the Superior Courts of Justice (TSJ)

Each of the 17 Autonomous Communities (Ceuta and Melilla fall under the TSJ of Andalusia) has a TSJ. Its Chamber exercises jurisdiction at sole instance over acts of the Autonomous Communities, certain acts of the General State Administration – from bodies below the rank of Secretary of State – and acts as a second instance body against decisions of the Administrative Litigation Sections of the Instance Courts in its territory.

C-A Chamber of the National Court

National jurisdiction at sole instance over acts of Ministers and Secretaries of State not assigned to other bodies, and second instance jurisdiction over decisions of the Administrative Litigation Section of the Central Instance Court.

Third Chamber of the Supreme Court

Apex of administrative jurisdiction. Cassation for the uniform interpretation of law and exclusive jurisdiction at sole instance over acts and provisions of the Council of Ministers, the CGPJ and the Prosecutor General. A President and 32 judges in five sections. Since the 2015 reform, its cassation jurisdiction is limited to cases with objective cassation interest.

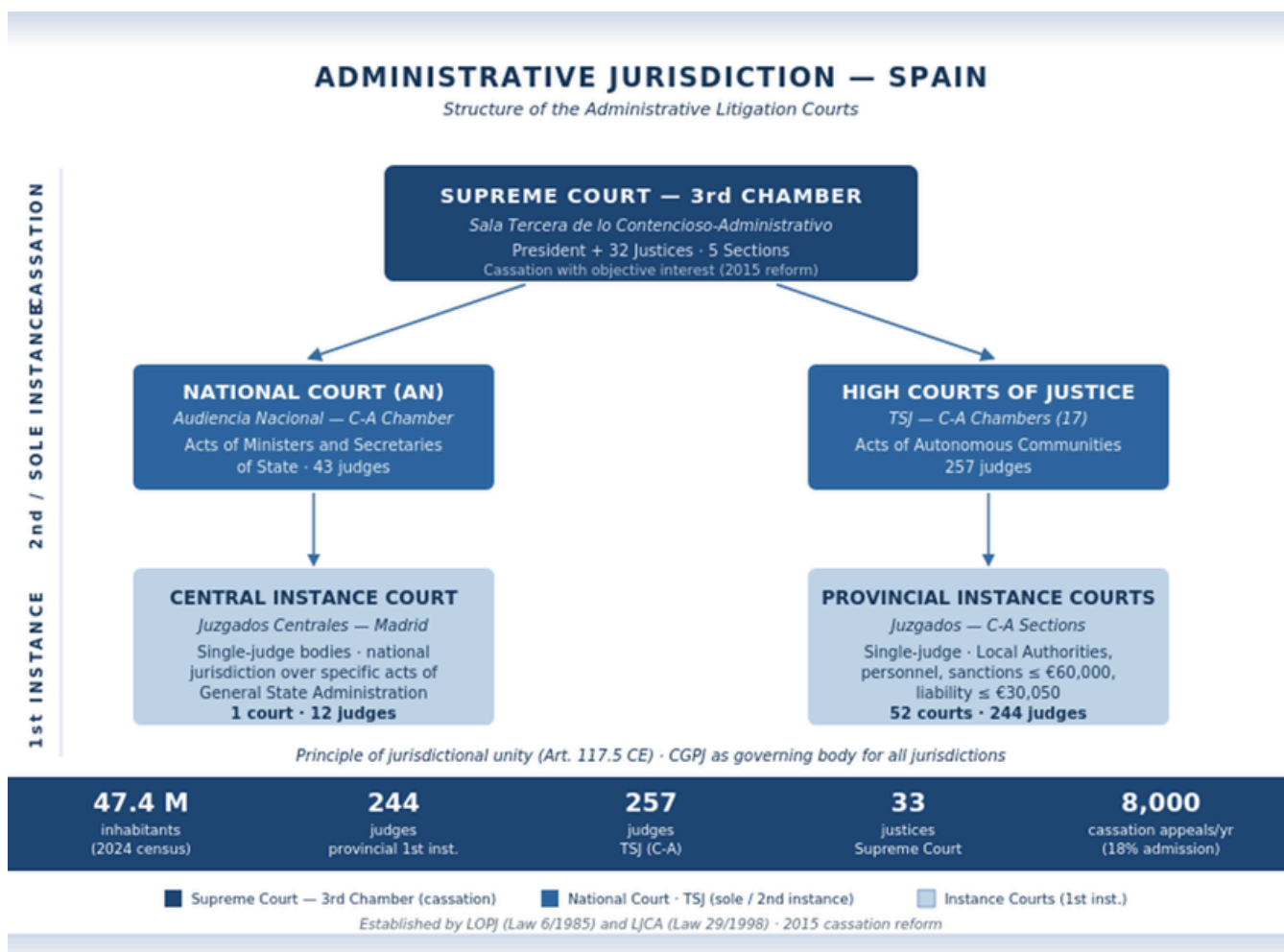
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ORGANISATION OF THE COURTS

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JUDICIAL APPOINTMENTS

RULES IN PORTUGAL

First Instance Judges (TAF)

By open competition (Law No. 2/2008): knowledge test, curriculum assessment and psychological evaluation; initial training at the Centre for Judicial Studies (1 theoretical year + 1 practical year). Also by transfer.

Judges of the Central Administrative Courts

By transfer from another section of the TCA; by competition (TAF judges with more than 5 years of service and a rating no lower than 'Good with distinction').

Counsellors of the Supreme Administrative Court

By transfer; by competition among TCA judges with more than 5 years, Deputy Prosecutors with more than 5 years, or jurists of recognised merit with more than 20 years of professional experience in public law.

RULES IN SPAIN

In Spain, all judges and magistrates belong to a single unified Judicial Career: Judge (single-judge bodies), Magistrate (single-judge bodies in provincial capitals and other important municipalities, as well as collegiate bodies) and Judge of the Supreme Court. Appointments are made by the King, upon proposal of the CGPJ, for an indefinite term until the statutory retirement age (70 years, extendable to 72).

First category – Judge

Open competition (average 4–5 years of preparation): 100-question test + two oral examinations on 332 topics + Judicial School in Barcelona (~23 months). Since 2001, a unified process with the Public Prosecution Career.

Second category – Magistrate

- By seniority;
- Specialisation examinations in the administrative litigation order (every ~2 years): oral theoretical exercise + practical exercise + Judicial School course;
- Merit competition for jurists of recognised competence with more than 10 years of practice.

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JUDICIAL APPOINTMENTS

RULES IN SPAIN

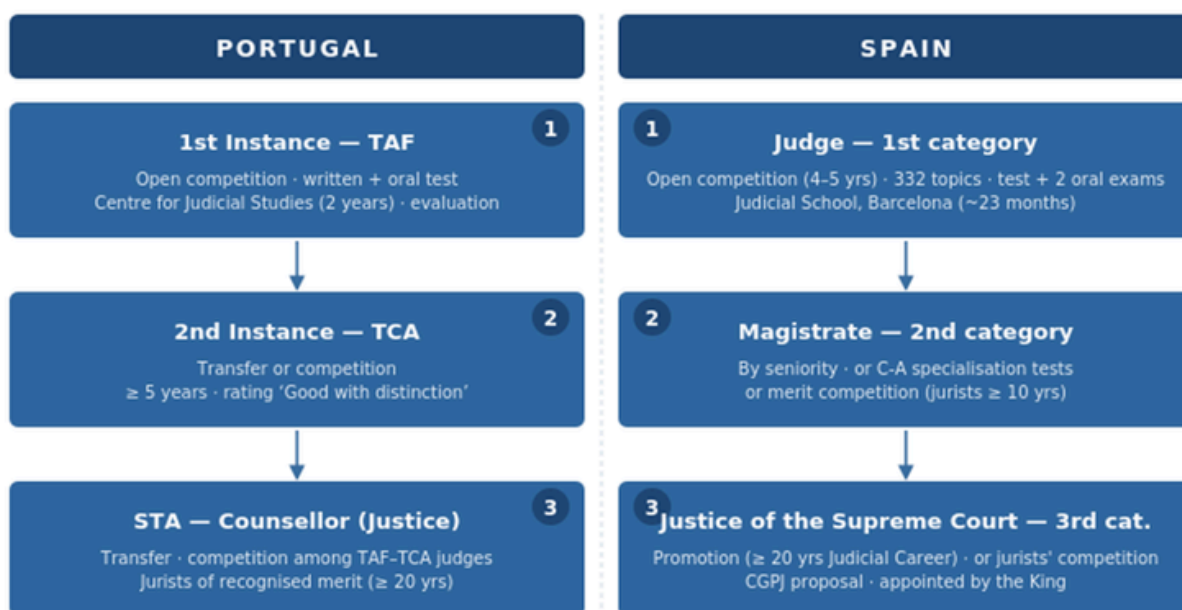
Third category – Judge of the Supreme Court

- Promotion among Magistrates with a minimum of 20 years of seniority;
- Open competition for eminent jurists with more than 15 years of professional activity.

The President of the Supreme Court and the Presidents of the Chambers are elected by the Plenary of the CGPJ.

ACCESS TO ADMINISTRATIVE JUDICIAL OFFICE

Comparison of judicial appointment systems



Key structural difference:

Portugal maintains a Magistrate Career exclusively for administrative and fiscal matters.
 Spain integrates all judges in a single Judicial Career, with subsequent administrative-litigation specialisation.

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JUDICIAL PROCEEDINGS – IN PORTUGAL

ADMINISTRATIVE PROCEDURAL LAW

The administrative action is the paramount procedure, with full jurisdiction and the possibility of joining claims. The applicant may request interim measures (urgent), requiring proof of *fumus boni iuris*, *periculum in mora* and proportionality.

Types of appeal:

- Ordinary appeal before the Plenary of the Section regarding decisions of the Supreme Court itself at first instance (challenge to administrative acts and rules of the higher state bodies);
- Exceptional appeal ('writ of certiorari') against decisions of the TCA, limited to questions of law;
- *Per saltum* appeal against first instance decisions (amount > €500,000);
- Appeal for the uniformisation of jurisprudence (extraordinary);
- Review of a final judgment (extraordinary).

TAX PROCEDURAL LAW

Article 9 of the General Tax Law guarantees access to tax justice. An appeal only has suspensive effect when appropriate guarantees are provided. Portugal has a tax arbitration system recognised by the CJEU as a referring court (*Ascendi* case, C-377/13).

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JUDICIAL PROCEEDINGS – IN SPAIN

TYPES OF ACTIONS AND PROCEDURES

The main procedural instrument is the administrative litigation appeal (LJCA). Prior exhaustion of administrative channels is required and, in tax matters, the mandatory economic-administrative claim. A distinctive feature is that the administrative file constitutes a necessary background and core of the process and, since Royal Decree-Law 6/2023, must be submitted in electronic format.

INTERIM MEASURES

Under Article 129 LJCA, the court may grant suspension of the challenged act or any other interim measure if there is periculum in mora and the suspension or such other measure does not seriously disturb the public interest. Unlike the Portuguese system, *fumus boni iuris* is not expressly required, although case law takes it into account in certain cases.

APPEAL SYSTEM

- Appeal: against decisions of the C-A Sections of Instance Courts before the TSJ (cases > €30,000); against the Central Court Section before the National Court;
- Cassation appeal (2015 reform): admissible only with objective cassation interest. Deadline: 30 days;
- Autonomous Community cassation appeal: before the TSJ, for uniform interpretation of autonomous community law;
- Review appeal: against final judgments for recovered documents or contradictory decisions.

ENFORCEMENT OF JUDGMENTS

Regulated in Articles 103–113 LJCA. Courts may impose coercive fines on recalcitrant administrations and set substitute compensation.

TAX PROCEDURE

Tax disputes follow a mandatory two-stage structure: economic-administrative claim before the TEA (TEAR or TEAC) and, after its resolution, judicial appeal. This mandatory prior stage distinguishes the Spanish system from the Portuguese one, which offers tax arbitration as an alternative.

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JUDICIAL PROCEEDINGS – IN SPAIN

CASE MANAGEMENT IN SPAIN

- The CGPJ publishes annual judicial statistics reports with data on case intake, resolution rates, backlogs and average times;
- The absence of administrative or tax arbitration implies a high volume of cases in administrative litigation courts;
- The objective cassation interest filter (2015 reform) has significantly reduced the number of appeals before the Supreme Court;
- The implementation of the Instance Courts (LO 1/2025) aims to rationalise judicial support offices for single-judge magistrates, with the aim of improving operational efficiency.

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THE IMPLEMENTATION OF TECHNOLOGY IN THE COURTS

IN PORTUGAL

- Digitised proceedings on the Magistratus platform; orders and signatures are digital;
- Judgments from the TCA and STA available at www.dgsi.pt (first instance judgments are not); decisions are anonymised before publication;
- Under development: AI-based anonymisation software and software to assist judges in drafting decisions.

IN ESPANHA

The central platform is LexNET (Royal Decree 1065/2015): more than 630 million communications processed, daily average of 420,000 notifications, 312,000 users. LexNET is interoperable with Autonomous Community systems: Atenea/Minerva, Adriano (Andalusia), Cicerone (Comunitat Valenciana), Atlance (Canary Islands). The Electronic Judicial Seat facilitates online access to judicial services.

All judgments of the Supreme Court, the National Court and the TSJ are published on CENDOJ (Judicial Documentation Centre of the CGPJ), with search by keyword, body, rapporteur, date and case number. Spain participates in e-CODEX for the secure cross-border transmission of procedural documents.



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