

CONSTITUTIONS OF THE COUNTRIES OF THE WORLD

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THE KINGDOM OF SPAIN

Constitution



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**THE CONSTITUTION OF THE KINGDOM OF SPAIN, 1978
(as Amended to 1992)**

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Congress, the Senate or the *Cortes Generales*, which shall be proclaimed by the King. The decree of dissolution shall set a date for the elections.

2. The proposal for dissolution may not be submitted while a motion of censure is pending.
3. There shall be no further dissolution until a year has elapsed since the previous one, except as provided for in Article 99, paragraph 5.

Article 116

1. An Organic Act shall make provision for the states of alarm, emergency and siege (martial law) and the powers and restrictions attached to each of them.
 2. A state of alarm shall be proclaimed by the Government, by means of a decree agreed in Council of Ministers, for a maximum period of fifteen days. The Congress shall be informed and must meet immediately, and without its authorization the said period may not be extended. The decree shall specify the territory to which the effects of the proclamation apply.
 3. A state of emergency shall be proclaimed by the Government by decree agreed in Council of Ministers, after prior authorization by the Congress. The authorization for and proclamation of a state of emergency must specifically state the effects thereof, the territory to which it is to apply and its duration, which may not exceed thirty days, subject to extension for a further thirty-day period, with the same requirements.
 4. A state of siege (martial law) shall be proclaimed by overall majority of Congress solely on the Government's proposal. Congress shall determine its territorial extension, duration and terms.
 5. The Congress may not be dissolved while any of the states referred to in the present Article remains in force, and if the Houses are not in session, they shall be automatically convened. Their functioning, as well as that of the other constitutional State authorities, may not be interrupted while any of these states is in force.
- If, in the event that the Congress has been dissolved or its term has expired, a situation giving rise to any of these states should occur, the powers of the Congress shall be assumed by its Permanent Deputation.
6. Proclamation of states of alarm, emergency and siege shall not affect the principle of liability of the Government or its agents as recognized in the Constitution and the laws.

TITLE VI JUDICIAL POWER

Article 117

1. Justice emanates from the people and is administered on behalf of the King by judges and magistrates members of the Judicial Power who shall be independent,

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shall have guarantee of tenure (*inamovibles*), shall be accountable for their acts and subject only to the rule of law.

2. Judges and magistrates may only be dismissed, suspended, transferred or retired on the grounds and subject to the safeguards provided for by the law.

3. The exercise of judicial authority in any kind of action, both in ruling and having judgments executed, is vested exclusively in the courts and tribunals laid down by the law, in accordance with the rules of jurisdiction and procedure which may be established therein.

4. Judges and courts shall not exercise any powers other than those indicated in the foregoing paragraph and those which are expressly allocated to them by law as a guarantee of any right.

5. The principle of jurisdictional unity is the basis of the organization and operation of the courts. The law shall make provision for the exercise of military jurisdiction strictly within military framework and in cases of state of siege (martial law), in accordance with the principles of the Constitution.

6. Courts of exception are prohibited.

Article 118

It is compulsory to comply with sentences and other final resolutions of judges and courts, as well as to pay them such assistance as they may require in the course of trials and for the execution of judgments.

Article 119

Justice shall be free when thus provided for by law, and shall in any case be so in respect of those who have insufficient means to sue in court.

Article 120

1. Judicial proceedings shall be public, with the exceptions contemplated in the laws on procedure.

2. Proceedings shall be predominantly oral, especially in criminal cases.

3. Judgments shall always specify the grounds therefore, and they shall be delivered in a public hearing.

Article 121

Damages caused by judicial error as well as those arising from irregularities in the administration of justice shall give rise to a right to compensation by the State, in accordance with the law.

Article 122

1. The *Organic Act of the Judicial Power* shall make provision for the setting up, operation and internal administration of courts and tribunals as well as for the le-

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Commentary



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Introductory Note

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I. Genesis of the Constitution of 1978

The Constitution of 1978 is the tenth Spanish Constitution since the liberal Constitution of Cádiz of 1812. Just like the Constitution of Cádiz had paved the way for the transformation of an absolute-into-a constitutional monarchy, the Constitution of 1978 heralded the return of democracy and the demise of the authoritarian corporate state created by General Francisco Franco after the end of the Civil War 1936-39. It established the constitutional framework for the far-reaching modernization of all aspects of Spanish public life which has been one of the biggest success stories in Europe over the last three decades.