

# **PUNISHING TERRORISTS IN THE SPANISH SUPREME COURT: HAS IDEOLOGY PLAYED ANY ROLE?\***

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## *Abstract*

Conventional legal and comparative literature presents civil-law judiciaries as law-focused bureaucracies insulated from political preferences. We investigate decisions on appeal for terrorist actions at the Spanish Supreme Court in the period 2000-2021. Our findings show that ideology (proxied by conservative/progressive affiliation of judges) is a good predictor of prodefendant outcomes. Specifically, the results detect a pattern of behavior mediated by panel composition: a more conservative panel is less likely to be prodefendant than a more progressive panel in adjudicating terrorism criminal appeals. These findings confirm previous empirical studies about decisions by the Spanish Supreme Court in other areas of law and provide additional evidence to challenge the conventional literature on civil-law judiciaries.

*Keywords:* judicial behavior, empirical legal studies, anti-terrorism law, Spanish Supreme Court, justice rapporteur, judicial panels, ideology.

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## 1. *Introduction*

Since legal rules and standards commonly need to be interpreted, applied, and enforced in real-world disputes and circumstances, judicial decision-making is a key determinant of legal outcomes. In addition to judicial decision-making's crucial role in how legal systems operate, the political constraints and implications of their functioning are now well-recognized in political science, giving rise to an expanding area of comparative judicial politics.

What major forces influence judges' decisions is the subject matter of a lively debate in the literature. Formalist explanations abound: legal mandates, formal legal sources, and narrow interpretive methodologies are prominent in guiding judicial behavior. This is especially true in connection with judiciaries in the civil law world, and in the *Weltanschauung* of a significant majority of legal professionals and academics working in the civil-law tradition. Perhaps this is particularly so in criminal law, where self-contained and self-inspired views, uncontaminated by policy or regard for the consequences of judicial decisions, dominate this area of the law in Continental civil-law discourse (and we suspect, in other contexts, such as Latin America).<sup>1</sup>

Other scholars are more skeptical as to the adherence of judges and courts to legal rules, precedents, and other standard legal materials. Defenders of an attitudinal approach consider that judicial preferences, with special emphasis on ideology, both political and judicial philosophies, stand above other explanatory factors of judicial decisions. In a more cautious and holistic attitude, agency theorists recognize the importance of judicial preferences. However, agency theorists emphasize how they play within very relevant political and institutional contexts, both in the form of legal rules and mechanisms, and legal cultures and traditions.<sup>2</sup>

This article contributes to the growing empirical literature on judicial behavior by looking at judicial decisions on criminal law matters adopted by a group of judges which exclusively deals with crime and legal punishment of crime – the Criminal Chamber of the Spanish Supreme Court. We focus on a particularly salient -politically and legally- part of

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<sup>1</sup> See general discussion by Merryman and Pérez-Perdomo (2018).

<sup>2</sup>For discussion, see among others, Brenner and Spaeth (1988), Segal and Cover (1989), Gely and Spiller (1990), Epstein and Knight (1998), Segal and Spaeth (2002), and Hansford and Springgs (2006).

criminal law: namely, the criminal punishment of activities and actions by terrorist groups and individuals.

The institutional setting has important features. As is expected, interpretation and application of criminal law at the top level of the judiciary is performed by a court of law (the “Criminal Chamber of the Spanish Supreme Court”) largely populated by career judges.<sup>3</sup> The Spanish Supreme Court justices operate in a traditional civil-law setup which disfavors division, dissent, and controversy (in the privacy of chambers and in public) on the bench. None of the sections in the Spanish Supreme Court engage in constitutional review; however, constitutional rights certainly play a role in how they solve disputes and adjudicate their cases. Strictly speaking, constitutional review of legislation is the sole competence of the Spanish Constitutional Court. Yet, unlike the Spanish Supreme Court, Constitutional Court justices are mostly appointed by overt political actors (for example, both houses of Parliament and the Cabinet).

Consistent with previous findings on Spanish courts, we provide additional evidence that judicial behavior in the Spanish Supreme Court is partially explained by ideological determinants when adjudicating criminal law appeals concerning terrorist activities. As in previous work, our findings show that comparativists significantly exaggerate the political insulation of civil-law judiciary. The civil-law tradition of unanimous decisions and dissent avoidance makes the detection of politicization more difficult. The dispositional preferences are hidden by policy goals that largely exclude dissent opinions. Not surprisingly, legal scholars point out that very high rates of unanimous decisions are evidence of political insulation. We take a different approach. The high rate of unanimous decisions, above 85%, simply shows that civil-law judges dislike expressing dissent in the open, not necessarily that they are apolitical in their judicial behavior.

The focus of our analysis is judicial decision-making in a sensitive area of criminal law: terrorism. Clearly, this is a special area within criminal law given the visibility and political ramifications of punishing terrorist activities and organizations. Perhaps terrorism in

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<sup>3</sup> A small fraction (a fifth, according to art. 343 of the *Ley Orgánica del Poder Judicial*, or General Law on the Judiciary) of the Court’s members are not career judges, but other legal professionals with long experience and (aspirationally, at least) a prestigious track record. Typically, these are law professors, but they may also be other legal professionals: attorneys, high-level civil servants, and public prosecutors. In fact, in the Criminal Chamber, public prosecutors -who are selected and trained in an almost identical manner as career judges- are clearly present among the judges who formally belong to the group of non-career judges. Members of the court (judges and those coming from outside the judiciary) are appointed to the Supreme Court by the Judicial Council (*Consejo General del Poder Judicial*), the governing body of the Spanish judiciary.

criminal law is not as directly political as constitutional review (even in legal systems where the Constitution recognizes significant rights in criminal procedure), but it has clear ideological implications. Terrorist activities—when linked to independence goals in the Basque Country—have been a major political issue since the early days of democracy in Spain, and even before. Therefore, in terms of anti-terrorist legal adjudication, ideological considerations are likely to be relevant.

In the context of judicial adjudication and terrorism, Shayo and Zussman (2011) investigate judicial biases. Using data from Israeli small claims courts (during 2000-2004), they explore how Arab and Jewish judges exhibit different preferences with respect to terrorism. Their interpretation is social identification. In a later article, Shayo and Zussman (2017) find that judicial bias persists in later periods (during 2007-2010), and they conclude that both ethnicity and exposure to violence are important determinants. However, their papers have a distinct setting – while we consider judicial panels, they have individual decisions; while they consider ethnicity (of plaintiffs and judges), we focus on political ideology (of judges).

The paper is organized as follows. Section 2 provides an overview of the main features of criminal law adjudication by the Spanish Supreme Court. Section 3 presents and discusses our approach to understanding political factors in the Spanish Supreme Court decisions in terrorist cases. Sections 4 and 5 discuss regression analysis. Section 6 concludes the paper.

## ***2. Context: The Institutional and Political Background of the Spanish Supreme Court***

### ***2.1. The Spanish Supreme Court***

The Spanish judiciary (*Poder Judicial*) is organized across sets of specialized and independent courts, not too different from the French, Italian, and Portuguese systems. In general, civil courts deal with private law matters; criminal courts, with crimes and misdemeanors; administrative courts, with all kinds of legal conflicts against public authorities under public law; social and labor courts, with labor law and social security claims; and military courts, with army discipline and crime.

All these court orders or hierarchies (*órdenes jurisdiccionales*) typically start at the bottom with a single judge court<sup>4</sup>. Then, they move up to an intermediate appeal level at one of the seventeen regional high courts (*Tribunal Superior de Justicia*) or one of the fifty provincial courts (*Audiencia Provincial*). For some specific legal matters in criminal law<sup>5</sup>, administrative law, and labor law, there is a National Appellate Court (*Audiencia Nacional*). Finally, at the top, final restricted appeals are presented before the Supreme Court (*Tribunal Supremo*). Abstract and concrete constitutional review is assigned to a specialized court (*Tribunal Constitucional*).

The Supreme Court is established by the Spanish Constitution and is the highest judicial body in all fields of law (apart from the Constitutional Court with exclusive powers to deliver binding constitutional interpretation).<sup>6</sup> The Spanish Supreme Court is composed of its president, the five chambers' presidents, and multiple justices (*magistrados*). The number of justices is determined by law for each chamber and section.<sup>7</sup>

The Court is divided up in five chambers (*Salas*) regulated by statute:

- (i) First, the civil chamber (*Sala de lo Civil*) is composed of its president and nine justices;
- (ii) Second, the criminal chamber (*Sala de lo Penal*) is composed of its president and fourteen justices;
- (iii) Third, the administrative chamber (*Sala de lo Contencioso-Administrativo*) is composed of its president and thirty-two justices;
- (iv) Fourth, the social or labor chamber (*Sala de lo Social*) is composed of its president and twelve justices; and

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<sup>4</sup> They receive various names depending on the type of jurisdiction or even specialization: *Juzgados de Primera Instancia*, *Juzgados de lo Mercantil*, *Juzgados de lo Social*, *Juzgados de lo Contencioso-Administrativo*, *Juzgados de Violencia sobre la Mujer*, etc.

<sup>5</sup> In criminal law matters, the National Appellate Court (*Sala de lo Penal de la Audiencia Nacional*) essentially hears disputes relating to crimes committed against the Royal Family, high government officials, major drug trafficking, counterfeiting, terrorism, and offences committed outside the Spanish territory when prosecuted in Spain. Also, it decides on requests for extradition and European Arrest Warrants, as well as hears appeals against the decisions from lower criminal courts in certain matters. For the purposes of this paper, its jurisdiction over terrorist criminal activities is crucial, since our database is composed essentially of appeals against decisions from the *Audiencia Nacional*. The concentration of jurisdiction in one single court has been controversial politically and academically. Among others, see García Torres (2014).

<sup>6</sup> Title VI of the Spanish Constitution (Judicial Power) and, specifically, in Section 123: "1. The Supreme Court, with jurisdiction over the whole of Spain, is the highest judicial body in all branches of justice, except with regard to provisions concerning constitutional guarantees. 2. The President of the Supreme Court shall be appointed by the King, on the Judicial Council's proposal in the manner to be laid down by the law."

<sup>7</sup> *Ley 38/1988 de demarcación y planta judicial*.

- (v) Fifth, the military chamber (*Sala de lo Militar*) is composed of its president and seven justices.

Our institution of interest in this paper is the Second (Criminal) Chamber of the Spanish Supreme. According to statutory law<sup>8</sup>, the Second Chamber of the Supreme Court entertains the final appeals against decisions of the criminal chambers of the regional high courts (*Audiencias Provinciales, Tribunales Superiores de Justicia*) and the criminal chamber of the National Appellate Court (*Audiencia Nacional*). It also hears criminal prosecutions that may take place against the Prime Minister, Ministers, Members of Parliament, Members of the Royal Family, and other high-ranking officials.

There is now enough evidence to support the hypothesis that in numerous settings, Spanish judges are (unavoidably, perhaps) guided by ideology subject to relevant institutional constraints.<sup>9</sup> The formalist approach taken by traditional law scholars, in Spain and in other places, has been challenged by the vast empirical evidence available in the last decade. For example, many scholarly contributions have documented that the personal ideology of the judges is correlated with the way they vote in the Spanish Constitutional Court. There is also evidence of political factors playing a role in decisions at the Supreme Court level. Nevertheless, it has been occasionally recognized that there are certain institutional features creating (actually influential, not just merely nominal) incentives to insulate courts of law from party politics. Examples include the lack of discretion in some particular contexts, the civil-law tradition, and the need to preserve a judicial reputation for being guided solely by the law in front of lower courts, among others. When ideological interests are not very strong or when there is little discretion left to the judges, unanimous voting prevails in Spanish judicial institutions.

## **2.2. Spanish Criminal Courts**

Similar to most Continental European legal systems, Spain has specialized courts dealing with criminal matters. These specialized courts span from (i) individual courts (belonging to two categories: *Juzgados de Instrucción*<sup>10</sup>, *Juzgados de lo Penal*);<sup>11</sup> (ii) collegial appeals courts

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<sup>8</sup> Article 57 of *Ley Orgánica 6/1985 del poder judicial*.

<sup>9</sup> On the Spanish Constitutional Court, see Magalhães (2002), Hanretty (2012), Garoupa et. al. (2013, 2021a, 2021b), and López-Laborda et al. (2018). On the Spanish Supreme Court, see Garoupa et. al. (2012) and Dalla Pellegrina et. al. (2017) on administrative review, Garoupa et al. (2022a) on labor law adjudication, and Mayoral Díaz-Asensio (2013) on EC law. On other Spanish judicial bodies and institutions, see Ramos (2006), Dalla Pellegrina et. al. (2020), and Garoupa et al. (2022b).

<sup>10</sup> These courts exercise jurisdictional functions in criminal matters (together with civil matters in smaller places, in which case they are called *Juzgados de Primera Instancia e Instrucción*) within

(*Audiencias Provinciales, Tribunales Superiores de Justicia, Audiencia Nacional*);<sup>12</sup> and (iii) at the apex of the judicial hierarchy, a chamber of the Supreme Court (*Sala de lo Penal del Tribunal Supremo*, the one that we examine empirically).

First-level or regular appeals (called *recursos de apelación*) against trial courts decisions are filed with the appellate courts. In turn, the courts of appeal decisions may be appealed before the Criminal Chamber of the Supreme Court, in two different ways. First, the *Tribunales Superiores de Justicia, the Audiencias Provinciales, and the Audiencia Nacional* decisions are subject to an ordinary appeal to the Supreme Court (*recurso de casación*).<sup>13</sup> Second, there is a special appeal before the Supreme Court (*recurso de revisión*).<sup>14</sup> This special appeal occurs when there are specific causes (for example, two final judgments on the same person and for the same fact) exposing new facts or evidence that if known before, this information would have led to an acquittal or a less-serious conviction.

### **2.3. Spanish Anti-Terrorism Criminal Law**

The importance of anti-terrorism laws in Spain is reflected in their impact on court structure and procedural rules in criminal matters. As mentioned above, the National Appellate Court was created in 1977 (*Audiencia Nacional*<sup>15</sup>) as a high court with jurisdiction in the whole country to investigate, hear and try the crimes committed by terrorist organizations.

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the territory of their jurisdiction, known as a judicial district. In the criminal order, they hear and rule on trials for minor offenses. They also carry out the legal investigation of crimes, to be heard and tried before the Individual Criminal Courts or the Provincial Courts. Thus, in the Spanish criminal justice system, these *Juzgados de Instrucción*, similarly to what happens in other close relatives (France, Italy, Portugal) are granted the power to carry out the legal investigation and preparation of materials and evidence for trial (to “instruct the case” in Spanish legal parlance), and to make relevant decisions as to the person or persons charged with a crime (detention, authorizing searches and seizures, etc.). The public prosecutor is responsible for bringing the charges against an individual or individuals, but also cooperates with the investigating judge and is entrusted with the role of overseeing the lawfulness of every investigative step.

<sup>11</sup> There are also the Courts of Prison Vigilance (*Juzgados de Vigilancia Penitenciaria*), which look after the operation of prisons and the legal rights of detainees, Juvenile Courts (*Juzgados de Menores*), that hear those cases involving minors under the age of 18, and the Courts for Violence against Women (*Juzgados de Violencia sobre la mujer*), which mainly investigate cases of gender violence but also decide related family law matters.

<sup>12</sup> There are also Juries (*Tribunales de Jurado*), in which lay people make the decision about guilt or innocence, but their jurisdiction is limited to a number of crimes: murder, homicide, threats, bribery, and misappropriation of public funds.

<sup>13</sup> Article 847 of the Criminal Procedure Law (*Ley de Enjuiciamiento Criminal*).

<sup>14</sup> Article 954 of the Criminal Procedure Law (*Ley de Enjuiciamiento Criminal*).

<sup>15</sup> Article 62 et seq of the Spanish General Law on the Judiciary (*Ley Orgánica del Poder Judicial*) and *Ley Orgánica 4/1988*, which reforms criminal procedure (*Ley de Enjuiciamiento Criminal*).

Moreover, some special procedural rules are established in the context of terrorist investigations: an additional period of twenty-four hours in preventive detention as well as the possibility of incommunicado detention<sup>16</sup>; less stringent rules for police entrance into a private home to arrest terrorist suspects<sup>17</sup>; immediate loss or suspension of capacity to hold or to be appointed for public office concerning those against whom an indictment for committing a terrorist crime has been pronounced<sup>18</sup>; or the possibility that, in the event of an emergency and without explicit judicial authorization, the Minister for the Interior or the Secretary of State for Homeland Security can authorize the intervention of communications (including phone calls) used by terrorist suspects (although subject to informing a judge immediately, who has full powers to confirm or revoke the measure).<sup>19</sup> As for matters outside criminal law itself, Spanish law includes a multiplicity of support measures for victims of terrorist acts: compensation for damages, death, or disability; psychological care or grants; and other means of relief.<sup>20</sup>

The Spanish Criminal Code includes two anti-terrorism legal measures: (i) general rules and principles specially designed<sup>21</sup> to deter and punish terrorism in Spain<sup>22</sup>, and (ii) specific provisions defining certain terrorist acts and activities as crimes against social peace and public order, with respect to terrorist organizations.<sup>23</sup>

The general rules mandate compliance with full sentencing decisions, thus entailing a stricter application of criminal sanctions against terrorism than with respect to other crimes. First, the maximum limit of compliance has been increased up to forty years (it used to be thirty) when convicted of two or more crimes of terrorism. Any of these crimes of terrorism is punishable by law with imprisonment for more than twenty years, with minor caveats. Second, any possible penitentiary benefits are now applied considering the total cumulative sentence imposed (and not the sentence to be effectively served, which is smaller). The goal of this provision is to avoid shorter sentences in practice by automatic application of potential penitentiary benefits.

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<sup>16</sup> Article 520 bis of the Criminal Procedure Law (*Ley de Enjuiciamiento Criminal*).

<sup>17</sup> Article 533 of the Criminal Procedure Law (*Ley de Enjuiciamiento Criminal*).

<sup>18</sup> Article 384 bis of the Criminal Procedure Law (*Ley de Enjuiciamiento Criminal*).

<sup>19</sup> Article 579.3 of the Criminal Procedure Law (*Ley de Enjuiciamiento Criminal*).

<sup>20</sup> These measures are mainly regulated in the *Ley 32/1999*, aiding victims of terrorism.

<sup>21</sup> *Ley Orgánica 7/2003*.

<sup>22</sup> Articles 76 and 78 bis of the Criminal Code.

<sup>23</sup> Chapter VII of Title XXII of the Criminal Code.

Two requisites are necessary under current law for a defined terrorism crime to exist.<sup>24</sup> First, the existence of an armed organization (objective). Second, the goal of subverting the constitutional order or provoking serious disorders to the public peace (subjective). Membership in a terrorist organization or group is criminalized at two different levels: qualified participation and mere membership. The former refers to leaders at various levels, and includes several possibilities: promoting, creating, organizing, and directing<sup>25</sup> the gang. The latter is for those who just participate<sup>26</sup> or support.<sup>27</sup> In this context, the sentences can be up to fifteen years of prison, as well as general disqualification concerning certain political rights.

The current Criminal Code (last modified in 2019, transposing Directive 2017/541/EU of the European Parliament and of the Council) also enumerates the offenses that will be considered “terrorism crimes” if certain conditions are met. These include crimes against life or physical integrity, freedom, equity, moral integrity, public health, the Crown, and so on. Sentences’ length will change depending on the crime committed; for example, the maximum prison sentence regulated in the Code applies if terrorism activities result in death. A list of possible aggravations is also established by statute.

Other terrorist criminal activities considered by the Spanish Criminal Code are (i) the possession and storage of weapons and explosives, (ii) indoctrination and training, (iii) exaltation, enticement, and glorification of terrorism, (iv) collaboration by individuals who are not members of the organization or group in order to finance it, as well as other collaboration acts, such as (v) concealing, harboring or transferring people, or (vi) providing information.

The Criminal Code also regulates active repentance and mitigating circumstances (which lead the court to impose a lower sentence), recidivism, and criminal liability of legal entities.

### ***3. Hypotheses of Judicial Behavior at the Spanish Supreme Court***

According to traditional legal scholars, judicial decisions in criminal law—even in salient cases such as terrorism activities—should be fundamentally legalistic (in the sense of

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<sup>25</sup> Referring to effective and autonomous responsibility (STS 1140/2010, December 29).

<sup>26</sup> Equivalent to active membership (STS 608/2013, July 17).

<sup>27</sup> As active militancy (STS 230/2003, February 27).

adhering to formal legal rules and legally permissible interpretive materials) and immune to attitudinal preferences. As cited by multiple scholars, civil-law courts have been praised for their political insularity and their ability to avoid the politicization that is observable on American courts.<sup>28</sup> Civil-law judges do not develop “ideologically distinct public personalities,” as some legal scholars have remarked.<sup>29</sup> Moreover, there seems to be no correlation between political ideologies and judicial philosophies.<sup>30</sup>

In the standard attitudinal model, four conditions explain why behavior in the form of ideological voting prevails: life tenure, no judicial superiors, docket control, and no career ambitions.<sup>31</sup> Three of these conditions are satisfied in the Spanish Supreme Court: no judicial superiors, life tenure subject to mandatory retirement (at seventy, but with a possible extension of three years maximum), and no direct career ambitions. Furthermore, the justices appointed to the Supreme Court have some political connection as filtered by judicial associations.

As explained by Garoupa et al. (2022a), there are, nevertheless, significant limitations as to how much ideological goals can be advanced by individual justices in Spain. Justices have a degree of dissent aversion, which can be justified for different reasons, including the additional work that drafting a dissenting opinion requires<sup>32</sup>, the difficulties of collegial relationships, or their detrimental effects on interaction at work.<sup>33</sup> One immediate restriction is the nature of the case or the extent to which there is no discretion according to the law. The second constraint is the civil-law background that traditionally favors consensus and dislikes dissent in the bench embodied by professional norms that strongly constrain judicial behavior.<sup>34</sup> There is inevitably some pressure for consensus emerging from the ways of judicial demeanor in the civil-law tradition—dissent hinders perceived legitimacy. Finally, workloads at the various chambers of the Spanish Supreme Court are high, given the number of justices and the magnitude of incoming cases.

### ***3.1. Rapporteurs***

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<sup>28</sup> See Ferejohn and Pasquino (2004).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See Segal and Spaeth (2002).

<sup>32</sup> Supreme Court Justices in Spain, differently from those sitting in the Constitutional Court, do not enjoy the help of law clerks providing legal research and even draft opinion writing.

<sup>33</sup> See Epstein et al. (2011) and Edelman et al. (2012).

<sup>34</sup> See Merryman and Pérez-Pordomo (2018).

Next, each case is assigned to a justice rapporteur, which is selected randomly from all justices in the chamber or court.<sup>35</sup> In the various chambers of the Supreme Court (also in the Criminal Chamber) the specific allocation process is established on a yearly basis following objective public criteria that are issued by each chamber and published in the Spanish Official Gazette.<sup>36</sup> The process is based on a list that includes all members of the chamber. It sets a seniority ordering (subject to leaves of absence, potential conflicts of interest, or unexpected gross imbalances in the individual workload) to match the incoming cases as they arrive to the Court.

According to the general rules of the Spanish Judiciary<sup>37</sup>, the justice-rapporteur prepares the adequate file, reviews the reasons for the opinion and the applicable legislation and case law, and proposes a draft opinion. However, if the justice-rapporteur finds himself/herself in the minority when the draft opinion is shared with the other justices who sit to decide the case, s/he must leave the role to a different rapporteur. The President of the chamber will appoint a new justice-rapporteur from the original group participating in the deliberation of the opinion.

The role of the justice-rapporteur is critical for various reasons. First, as we have already mentioned, there is the civil-law tradition against dissent and observable division in the bench. Second, the initial justice-rapporteur bears the most significant cost of preparing the adequate file and engaging in legal research. Opposing the proposal of the justice-rapporteur has costs in terms of working environment (besides breaching a professional norm of consensus). Opposing the proposal is also inefficient since a second justice-rapporteur must be appointed and start the whole process almost from scratch in terms of preparing the case and suggesting a new opinion.<sup>38</sup> Third, the justices are under extreme pressure due to congestion and a severe backlog. Such backlog also raises issues concerning the management of the court workload. Having two rapporteurs in one case seems highly inefficient, hence increasing the individual cost of dissenting. Finally, since the interaction among judges is repeated, being deferent to the rapporteur (even when there is disagreement as to the substantive opinion) can be an optimal strategy for individual judges under a random assignment rule of rapporteurs to cases. This collegial

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<sup>35</sup> Section 203 and 204 of the Spanish General Law on the Judiciary (*Ley Orgánica del Poder Judicial*).

<sup>36</sup> The last set of criteria were adopted on November 24<sup>th</sup>, 2021 and published in the Spanish Official Gazette (BOE) on December 22<sup>nd</sup>, 2021.

<sup>37</sup> See, sections 205 and 206 of the Spanish General Law on the Judiciary (*Ley Orgánica del Poder Judicial*).

<sup>38</sup> As already mentioned, the Spanish Supreme Court does not benefit from generous clerkship support as the U.S. Supreme Court (or the Spanish Constitutional Court).

norm ensures that any individual judge will be in the position to adopt his/her favorite views when randomly assigned a case.

The theory developed in Garoupa et al (2022a) is that the justices are highly deferent to the decision suggested by the rapporteur, who is largely selected randomly in relation to each particular case. Such behavior is consequent with the civil-law principle of dissent avoidance, courteous working environment, efficient allocation of resources in a highly congested court, and individual rationality. Thus, the principle of deference to the rapporteur results from reasonable civil-law etiquette and excessive workload (in the absence of effective docket control).

There are important implications from this theory. First, an extremely high rate of unanimous decisions prevails. Second, there is no endogeneity between rapporteur and ideology at stake in any particular decision (since the assignment of rapporteurs largely follows the ordering imposed by a random allocation procedure). Third, even if justices are motivated by ideology, there should be little correlation between their party affiliation (as documented by the judicial association) and individual vote. Fourth, if ideology matters in some meaningful way, a correlation between party affiliation and the opinion of the judge-rapporteur should exist.

### **3.2. Judicial Panels**

The Second Chamber will act, ordinarily, through two sections or panels (*“tribunales”* is the formal term used<sup>39</sup>). For deliberation and decision of the appeals, each case will be constituted by five justices. Some decisions of the Criminal Chamber are *en banc*, but they are minimal in our dataset (only two). Otherwise, the decision on the appeal is rendered by a five-justices section or panel.

Once the appeals have been formalized, the Admission Chamber (formed by the President of the Chamber and two justices, appointed one in turn from oldest to youngest and another in turn from youngest to oldest) decides on admission. The cases will be distributed according to strict order: President of the Chamber, most senior justice, and most junior justice.

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<sup>39</sup> See the formal Decision of the Governance Chamber of the Spanish Supreme Court, specifying the functioning criteria for the Court in 2022 (*Acuerdo de 24 de noviembre de 2021, de la Comisión Permanente del Consejo General del Poder Judicial, por el que se publica el Acuerdo de 18 de octubre de 2021, de la Sala de Gobierno del Tribunal Supremo, relativo a la composición y funcionamiento de las salas y secciones del Tribunal Supremo y asignación de ponencias para el año judicial 2022*).

Once the appeal has been admitted by the Admission Chamber, the case will be assigned to a rapporteur by order of seniority of the judges, according to the order of entry of the appeal. In sum, the allocation of cases across justices is not a mechanism subject to deterministic matching between judicial preferences and case characteristics; it is essentially random.

### 3.3. Appeals

To understand the criminal appeals in Spain, it is important to bear in mind a special feature of the Spanish Criminal Justice system. In criminal proceedings there may be three different prosecuting parties, all of them with legal standing to appeal: the public prosecutor (*Ministerio Fiscal*<sup>40</sup>), the private prosecutor (*acusación particular*), and the people's prosecutor (*acusación popular*).

The public prosecutor is a state official who is entrusted with bringing criminal charges against an individual or individuals. It is a necessary party in trials for public or semi-public crimes. These are the criminal offences that can legally be prosecuted *ex officio*, that is, on their own motion, and without a request or claim by the victim. They are prosecuted by state officials in the public prosecutor office, even if initially there has been a complaint by the offended party who set in motion the interest of the state. The intervention of the public prosecutor is not necessary in so-called "private crimes" (those that can only be prosecuted at the specific request of a party harmed by the crime). All terrorist crimes qualify as "public crimes."

Consequently, the state officials at the public prosecutor's office have the obligation to exercise prosecution, in accordance with legal provisions, against all criminal actions which they consider that deserve being prosecuted. This obligation is independent of whether there is a private prosecutor in the cases (except those that the Criminal Code reserves exclusively for private prosecution).<sup>41</sup>

The private prosecutor is the person, other than the public prosecutor, who brings criminal charges as the accusing party on behalf of the victim or any victimized party of the crime. The private prosecutor may act on behalf of the victim or aggrieved party in all crimes in addition to public or semi-public ones, but it is not a necessary party. The exception is in the private crimes, that is, those requiring the criminal charges to be brought by whoever

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<sup>40</sup> Mainly regulated by *Ley 50/1981, reguladora del Estatuto Orgánico del Ministerio Fiscal*.

<sup>41</sup> Article 105 of the Criminal Procedure Law (*Ley de Enjuiciamiento Criminal*).

holds the entitlement or legal interest protected by the criminal law rule that has been infringed.

Different from the private prosecutor, *stricto sensu* is the people's prosecutor<sup>42</sup>. Under Spanish Law, any citizen, regardless of whether he or she has been directly or indirectly harmed by the crime, may bring criminal charges in public or semi-public crimes. There are differences between the private prosecutor and the people's prosecutor. The former may file charges at any time if the statute of limitations has not run on the specific crime. The private prosecutor may even appear once the proceedings have been initiated. The same private prosecutor may also request the appointment of court-appointed counsel through the system of legal aid and is not required to provide bonds or securities for bringing charges. In contrast, the people's prosecutor must appear in the case with its own counsel, cannot obtain legal aid, it must formally file an initial criminal complaint (*querrela*) and post a bond determined by the investigating judge to ensure compliance with the potential liabilities arising from bringing – perhaps with little or no merit – the criminal charges.

In our data set, we can see cases with all three categories of prosecution available in Spanish Criminal Justice. Our variable “private prosecution” in section 4 considers both private prosecutor (*acusación particular*) and people's prosecutor (*acusación popular*).

### **3.4. Spanish Judicial Associations**

Spanish judges are usually affiliated with judicial associations. These associations have discernible connections and loyalties to political parties.<sup>43</sup> As conventional in the literature, we describe each justice as “conservative” or “progressive” as a function of the judicial association they belong to or, in case of unaffiliated justices, the prevalent perspective in the media and among a number of Spanish professors of criminal law.

In the period reflected in our data set, forty-five justices sat at the Criminal Chamber of the Spanish Supreme Court. Table A1 in the appendix summarizes the characteristics of the justices. As explained, the ideological partition is primarily based on the judicial association with which they are affiliated. When judicial association membership was not public knowledge or there was no membership in a given association, this objective

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<sup>42</sup> Article 101 of the Criminal Procedure Law (*Ley de Enjuiciamiento Criminal*).

<sup>43</sup> The major associations are *Asociación Profesional de la Magistratura* or APM (conservative), *Asociación Francisco de Vitoria* or FdV (moderate), and *Jueces para la Democracia* or JpD (progressive).

information was supplemented with perceptions in the Spanish media about the political inclinations of the justices and with feedback by local experts.

There are three justices for whom we could not obtain definite information concerning judicial associations or who were described by local experts as not being clearly “conservative” or “progressive”. They are labeled as “neutral” in the sense that we lack confirmative information of their ideological inclinations. As we can see from Table A1, the composition of the Court is, on average, “conservative” (twenty-four justices) rather than “progressive” (eighteen justices).

### ***3.5. Spanish Political Parties and Terrorism***

The Spanish party system has been dominated since the beginning of democracy in the mid-seventies by two main political forces: PSOE (progressive/socialist) and PP (conservative), albeit in the period 1977-1982, the dominant political party in the center-right political domain was UCD, whose ranks predominantly joined PP in later years.

The current evidence points out that PSOE has been reasonably stable at the center-left whereas PP (under its original name, *Alianza Popular*) started in the late 1970s at the right and converged to the center-right (see discussion by Garoupa et al., 2021a on the implications for local judicial politics).

For our analysis we posit that conservative justices are less prodefendant than progressive justices in terrorism cases. Moreover, we suggest a distinction between cases related to Basque independence terrorism (mainly by ETA) and Islamic terrorism. The hypothesis is that ideological considerations should be stronger with respect to Basque independence terrorists (due to direct implications in Spanish politics) than with Islamic-related terrorism (which has been largely a nonpartisan issue).<sup>44</sup> Basque independence terrorists targeted both PP and PSOE members, as well as armed forces and police<sup>45</sup>, but their punishment resonated more strongly with the political discourse of PP and PP voters’ preferences, who tend to disfavor Basque independence, than with leftist voters.

## ***4. Regression Analysis***

This paper applies regression analysis to a unique dataset collected manually and coded by the authors. We look at all decisions adjudicated by the Criminal Chamber of the Supreme

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<sup>44</sup> See, for example, discussion by Alonso (2013).

<sup>45</sup> For a detailed explanation on the ETA terrorist organization and its major crimes, see Anderson (2002).

Court in relation to terrorist criminal activities from 2000 to 2021. The population consists of 221 decisions, all coded by hand.<sup>46</sup> Out of these 221 decisions, 194 decisions were unanimous while 26 decisions have one dissent, and one decision has three dissents. Average dissent rates are marginal as expected (about 3%).<sup>47</sup> As to outcomes, 42% are prodefendant decisions while 58% are pro-prosecution(s) decisions as we can see in Table 1.

<Insert Table 1 >

The distribution of rapporteur justices in the dataset reflects the balance between “conservative” (70%) and “progressive” (28%) in a slightly different way, with “neutral” (2%) being much less common (that is, we could not obtain confirming definite information about three justices concerning their ideological leaning).

In the 221 cases, “conservative” and “progressive” adjudicating justices are represented in similar proportions to the justice-rapporteurs, on average (66% “conservative”, 33% “progressive” while 1% are “neutral”). Therefore, this group of justices in the Spanish Supreme Court appears to be closer to “conservative” political inclinations than others.

We consider two other judicial characteristics that are potentially relevant – gender and non-career judiciary (that is, justices who were selected into the Supreme Court at a later stage of a professional career outside the judiciary such as legal academia, the bar, or the public prosecutor’s office). As to gender, there are three females and forty-three males in the dataset. This translates into 3% female rapporteurs and 3% female panel composition, on average. With respect to background, there are thirty-five career judges and eleven former attorneys, law professors, or public prosecutors. The relevant statistics are 22% and 24% non-career judiciary, as to justice-rapporteur and panel composition, respectively.

The 221 cases in our empirical analysis are divided into three distinct groups: Basque terrorism cases (73%), Islamic-related terrorism (15%), and other cases (12% - including 7% radical left terrorism, 1% radical right terrorism, and 4% diverse forms of terrorism). Due to perfect collinearity, we exclude other cases of terrorism as a variable from the regression specifications. Therefore, the estimated coefficients for Basque and Islamic terrorism variables should be interpreted in relation to other cases of terrorism.

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<sup>46</sup> We collect all cases that include, at least once, the word “terrorism” in the core text of the judgement.

<sup>47</sup> There are 29 dissents for a population of 1,102 individual votes.

We also look at the type of criminal case: speech supporting terrorist activities (26%), collaboration in criminal terrorist activities (45%), terrorist actions with murder or homicide (11%), and terrorist actions with property damage (20%). Although the typology of crimes is not mutually exclusive, given the near-perfect collinearity, we exclude the last type from the regression specifications. Thus, the estimated coefficients for the three initial types should be interpreted in relation to terrorist actions causing property damage.

Terrorist criminal actions can be prosecuted and tried as mere attempts (14%) or as consummated or completed actions (86%). They are all subject to public prosecution and, in addition, to private prosecution (21% of the cases), including private prosecutor (*acusación particular*) and people's prosecutor (*acusación popular*). We consider, in particular, private prosecution (thus, private prosecutor or people's prosecutor) asking the court for more severe sanctions than public prosecution (it happens in 13% of the cases). Number of defendants and duration of the case in the Supreme Court (in months) are also controlled for in the regressions.

We turn to a regression analysis by probit.<sup>48</sup> The dependent variable is the court decision. It takes the value "one" if the decision is prodefendant and "zero" if the decision is prosecution. The explanatory variables are summarized in Table 1, including judicial characteristics, type of cases, nature of prosecution, nature of defendant (one or more individuals), and duration (from 3 to 50 months). All regressions include year fixed effects.

If disposition preferences prevail as we have hypothesized, we should expect the coefficients of PP ("conservative" rapporteurs) and PSOE ("progressive" rapporteurs) to be negative and positive, respectively. A similar reasoning would apply to the composition of the deciding panels characterized by PP/T and PSOE/T. A more significant percentage of "conservative" justices in the panel should push the decision to a less prodefendant tone while a more significant percentage of "progressive" justices should have the opposite effect.

We present seven specifications on Table 2. In specifications (1) to (7), we control for one particular ideological disposition. However, we do not include case characteristics yet, except the political nature of terrorism (Basque and Islamic). A different interaction term is

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<sup>48</sup> We used STATA 17.

added in each specification to test for possible relation between type of terrorism activity and judicial ideology.

The estimated coefficients for PP and PP/T are consistent with our hypothesis in specification (1), but only PP/T is statistically significant (at 10% significance). Looking at specifications (2) to (7), we observe that the introduction of interaction terms impacts the sign of the estimated coefficient for PP and the statistical significance of the estimated coefficient for PP/T. Furthermore, the interaction terms have the expected signs but are never statistically significant. Islamic-related terrorism cases have a positive sign, being statistically significant in one specification (at 10% significance).

<Insert Table 2 here>

The results are largely consistent with our expectations even if one recognizes that statistical significance is not strong. The main conclusion is that more “conservative” justices on the judicial panel are reflected in less favorable treatment of defendants while more “progressive” justices induce more prodefendant outcomes. At the same time, we cannot reject the hypothesis that rapporteurs and interactions between type of terrorism and judicial ideology make no difference. Gender and professional background (both rapporteurs and panel composition) do not seem to play any relevant role in this empirical analysis.

In Table 3, we provide further specifications, including all control variables but excluding interaction terms. Specifications (2) and (4) exclude neutral rapporteurs and specifications (3) and (6) exclude decisions with dissents. The results are largely in line with those already discussed for Table 2.

<Insert Table 3 here>

The estimated coefficients for judicial ideology have the expected signs but they are only significant for PSOE/T in specifications (1) and (2) (at 10% significance) and for PP/T in specifications (4) and (5) (at 5% significance). The only control variable with statistical significance in all specifications is number of defendants: the possibility of more defendants increases the likelihood of a prodefendant decision (at 10% significance in four specifications).

In Table 4, we combine all control variables with interaction terms. The results from Table 2 and Table 3 are again reconfirmed. PP/T has a negative estimated coefficient which is statistically significant (at 10% significance) in the absence of certain interaction terms.<sup>49</sup>

<Insert Table 4 here>

As postestimation robustness test, we can consider Count R<sup>2</sup>, which tells the number of correctly predicted observations using the model divided by the total number of observations. It is between 65% and 68% when all observations are included. It goes up to 70% when decisions with at least one dissent are excluded.

Finally, we consider marginal effects. Changing from a “progressive” to a more “conservative” judicial panel reduces the probability of a prodefendant outcome by 49% (in specification 1, Table 2) to 62% (in specification 4, Table 3). Increasing the number of defendants has an impact on the likelihood of a prodefendant decision by 1%.

## 5. *Discussion of Results*

Unanimous decisions represent more than 85% of all decisions by the Criminal Chamber of the Spanish Supreme Court from 2000 to 2021 when it comes to judging terrorist activities (as reflected in our dataset). Inevitably, there is little to be expected from the empirical analysis of individual votes (where we observe a dissent rate of 2%). In line with previous findings by Garoupa et al (2022a) for the Labor Chamber of the Spanish Supreme Court, disposition preferences are constrained by internal arrangements and other institutional and cultural factors. However, we have some indications that judicial ideology plays an important role in the outcome. The results of all tables are consistent with the hypothesis that “conservative” justices tend to favor less prodefendant outcomes than “progressive” justices. Unlike previous literature, in the case of terrorism cases, we detect judicial ideology more in terms of panel composition than the pivotal role played by the justice-rapporteur. This could reflect the limited number of observations.

There could be a possible objection to our conclusion based on a potential endogenous choice of rapporteur. The objection would be that a particular judicial majority would

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<sup>49</sup> In appendix, we present an alternative statistical approach. We estimated a weighted logit and clustered by year. The weight is given by duration. The rationale is that a longer delay could be associated with party ideology playing a more significant role in adjudication. The findings are consistent with the probit estimations presented in the article.

adulterate formal procedural rules and select a rapporteur or panel composition to favor such majority. We have already explained that institutionally, that seems highly unlikely given the rules of appointment, which are publicly announced, and are administered to a large extent by public officials who cannot be fired or promoted by the justices (the secretaries of the Court). Table 1 complements this analysis by showing that the percentage of justices in the relevant panel is not that different from the percentage of rapporteurs. Moreover, manipulation of court choices by a particular judicial ideology seems inconsistent with unanimous decisions prevailing in more than 85% of the decisions.

## **6. Conclusions**

We have provided an empirical analysis of judicial behavior in the Spanish Supreme Court in the context of criminal law, specifically terrorism cases. Following recent analyses, this article addresses a court of law dominated by career judiciary. The evidence and the regression analysis confirm two important aspects. First, in line with previous findings, a civil-law judiciary seems more willing to abdicate or do away with disposition preferences to favor certain policy goals such as consensus, formalism, and dissent avoidance. However, at the same time, we detect a weak relationship between the outcome of the case and the ideological alignment of the ruling panel concerning defendant-prosecution interests. We suggest that our empirical analysis adds to the literature undermining the myth of ideological insulation by civil-law judges. It also confirms that adjudicating criminal law in the salient cases such as terrorism can be associated with different ideological views of the world, albeit in subtle and not very prominent ways.

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**Table 1. Descriptive Statistics**

		Number of Obsv	Min	Max	Mean	St Dev
Defendant	Decision is pro employer	221	0	1	0.42	0.50
PP	Rapporteur is conservative	221	0	1	0.70	0.46
PSOE	Rapporteur is progressive	221	0	1	0.28	0.45
PP/T	Percentage of conservative justices	221	0.2	1	0.66	0.17
PSOE/T	Percentage of progressive justices	221	0	0.67	0.33	0.16
Gender	Rapporteur is female	221	0	1	0.03	0.16
Gender/T	Percentage of female justices	221	0	0.4	0.03	0.08
Non-Judge	Rapporteur is not career judge	221	0	1	0.22	0.41
Non-Judge/T	Percentage of noncareer judges	221	0	0.8	0.24	0.17
Basque	Case is about Basque terrorism	221	0	1	0.73	0.44
Islamic	Case is about Islamic terrorism	221	0	1	0.15	0.36
Speech	Case is about terrorism speech-related crimes	221	0	1	0.26	0.44
Collaboration	Case is about collaboration in terrorism criminal activities	221	0	1	0.45	0.50
Murder	Case is about terrorism murder-related crimes	221	0	1	0.11	0.31
Attempt	Case is about terrorism attempts	221	0	1	0.14	0.35
Private	Cases is also privately prosecuted	221	0	1	0.21	0.41
Private Plus	Case is also privately prosecuted for more severe punishment than public prosecution demands	221	0	1	0.13	0.33
N Defendants(*)	Number of defendants	221	1	45	2.93	4.93
Duration	Duration of case (in months)	221	3	50	9.27	4.61

(\*) The distribution of number of defendants: 1 defendant -136, 2 to 5 defendants – 61, more than 5 defendants – 24.

**Table 2. Prodefendant decisions, year fixed effects (2000-2021) & no case controls**

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Constant	-0.28	-0.51	-0.53	-0.76	-0.74	-0.80	-0.76
PP	-0.06	0.29	0.36	-0.06	-0.07	0.25	0.32
PP/T	-1.25*	-1.26*	-1.26*	-0.56	-0.55	-0.80	-0.87
Gender	-0.71	-0.41	-0.40	-0.60	-0.63	-0.38	-0.38
Gender/T	-0.69	-0.81	-0.68	-0.42	-0.35	-0.61	-0.50
Non-Judge	0.13	0.10	0.08	0.14	0.13	0.11	0.09
Non-Judge/T	0.87	0.91	0.92	0.86	0.84	0.90	0.90
Basque	0.01	0.31	-0.20	0.63	-0.32	0.68	-0.36
Islamic	0.68*	0.63	0.60	0.65	0.64	0.62	0.59
PP x Basque		-0.48				-0.41	
PSOE x Basque			0.61				0.56
PP/T x Basque				-0.95		-0.63	
PSOE/T x Basque					0.98		0.54
N	221	221	221	221	221	221	221
McFadden R <sup>2</sup>	0.10	0.11	0.11	0.11	0.11	0.11	0.11
Count R <sup>2</sup>	0.65	0.65	0.65	0.66	0.66	0.66	0.66

\* 10% significance, \*\* 5% significance, \*\*\* 1% significance

**Table 3. Prodefendant decisions, year fixed effects (2000-2021) & no interaction terms**

	(1)	(2)	(3)	(4)	(5)	(6)
		NEUT=0	UNAN		NEUT=0	UNAN
Constant	-1.48	-1.40	-1.52	-0.55	0.13	-0.59
PP				-0.03	-0.08	-0.13
PSOE	0.08	0.09	0.19			
PP/T				-1.59**	-1.60**	-0.93
PSOE/T	1.57*	1.60*	0.94			
Gender	-0.56	-0.60	-0.84	-0.59	-0.72	-0.81
Gender/T	-0.74	-0.08	-0.02	-0.76	-0.05	-0.07
Non-Judge	-0.02	0.0001	-0.04	0.03	-0.001	-0.02
Non-Judge/T	0.84	0.85	1.01	0.93	0.94	1.16
Basque	-0.10	-0.12	-0.14	-0.10	-0.10	-0.14
Islamic	0.56	0.47	0.43	0.54	0.46	0.41
Speech	0.29	0.28	0.45	0.30	0.27	0.46
Collaboration	0.17	0.15	0.24	0.14	0.13	0.22
Murder	-0.36	-0.39	-0.32	-0.35	-0.38	-0.30
Attempt	0.38	0.41	0.24	0.39	0.42	0.24
Private	-0.19	-0.20	-0.27	-0.20	-0.21	-0.26
Private Plus	0.67	0.68	0.93*	0.69	0.68	0.94*
N Defendants	0.04*	0.04*	0.04	0.04*	0.04*	0.04
Duration	-0.02	-0.03	-0.004	-0.02	-0.02	-0.002
N	221	215	194	221	215	194
McFadden R <sup>2</sup>	0.14	0.14	0.16	0.15	0.14	0.16
Count R <sup>2</sup>	0.67	0.67	0.69	0.67	0.66	0.70

\* 10% significance, \*\* 5% significance, \*\*\* 1% significance

**Table 4 – Prodefendant decisions, year fixed effects (2000-2021) & interaction terms**

	(1)	(2)	(3)	(4)	(5)	(6)
Constant	-0.35	-0.33	-0.47	-0.53	-0.52	-0.51
PP	0.41	0.48	-0.03	-0.04	0.38	0.45
<b>PP/T</b>	<b>-1.61**</b>	<b>-1.60**</b>	<b>-1.02</b>	<b>-0.89</b>	<b>-1.36</b>	<b>-1.32</b>
Gender	-0.21	-0.19	-0.51	-0.51	0.20	-0.18
Gender/T	-0.92	-0.75	-0.55	-0.44	-0.82	-0.62
Non-Judge	-0.02	-0.04	0.03	0.03	-0.01	-0.04
Non-Judge/T	1.00	1.01	0.93	0.90	1.00	1.00
Basque	0.27	-0.37	0.41	-0.44	0.47	-0.49
Islamic	0.49	0.44	0.52	0.50	0.48	0.43
Speech	0.33	0.33	0.31	0.31	0.33	0.32
Collaboration	0.16	0.16	0.16	0.16	0.17	0.17
Murder	-0.31	-0.33	-0.32	-0.33	-0.30	-0.32
Attempt	0.44	0.47	0.38	0.38	0.43	0.46
Private	-0.20	-0.22	-0.20	-0.19	-0.21	-0.21
Private Plus	0.72	0.73	0.66	0.66	0.71	0.72
<b>N Defendants</b>	<b>0.03*</b>	<b>0.04*</b>	<b>0.04*</b>	<b>0.04*</b>	<b>0.04*</b>	<b>0.04*</b>
Duration	-0.02	-0.02	-0.02	-0.02	-0.02	-0.02
PP x Basque	-0.60				-0.56	
PSOE x Basque		0.73				0.70
PP/T x Basque			-0.79		-0.34	
PSOE/T x Basque				0.99		0.39
N	221	221	221	221	221	221
McFadden R <sup>2</sup>	0.14	0.15	0.14	0.14	0.14	0.15
Count R <sup>2</sup>	0.67	0.67	0.68	0.68	0.67	0.67

\* 10% significance, \*\* 5% significance, \*\*\* 1% significance

**Table A1. Other Specifications: Logit - Prodefendant decisions, clustered by years and weighted by duration**

	(1)	(2)	(3)	(4)
Constant	0.89	-2.09	0.83	-2.03
PP	-0.02		0.09	
PSOE		0.08		-0.30
PP/T	-3.00**		-3.01	
PSOE/T		3.01**		3.32**
Gender	-1.00	-0.84	-0.91	-0.49
Gender/T	-5.43	-4.91	-5.53	-5.26
Non-Judge	0.20	0.20	0.19	0.17
Non-Judge/T	1.39	1.20	1.40	1.25
Basque	0.18	0.17	0.25	0.10
Islamic	0.83**	0.92**	0.82**	0.86**
Speech	0.18	0.17	0.18	0.14
Collaboration	-0.06	-0.03	-0.06	-0.04
Murder	-0.81	-0.82	-0.80	-0.80
Attempt	0.33	0.30	0.34	0.33
Private	0.30	0.32	0.30	0.31
Private Plus	0.55	0.51	0.56	0.54
N Defendants	0.04*	0.05**	0.04*	0.05**
PP x Basque			-0.15	
PSOE x Basque				0.49
PP/T x Basque			0.02	
PSOE/T x Basque				-0.36
N	221	221	221	221
Clusters	22	22	22	22
McFadden R <sup>2</sup>	0.11	0.11	0.11	0.12

\* 10% significance, \*\* 5% significance, \*\*\* 1% significance

Table A2. Composition of the Section (*Sala de lo Penal*) in 2000-2021

NAME	PARTY	CAREER JUDGE	RAPPORTEUR	VOTES
Adolfo Prego de Oliver y Tolivar	PP	1	4	9
Alberto Jorge Barreiro	PSOE	1	12	45
Ana María Ferrer García	PSOE	1	0	18
Andrés Martínez Arrieta	PP	1	12	76
Andrés Palomo Del Arco	PP	1	6	28
Antonio del Moral García	PP	0	12	50
Cándido Conde-Pumpido Tourón	PSOE	1	1	10
Carlos Granados Pérez	PSOE	1	8	60
Carmen Lamela Díaz	NEUT	1	0	2
Diego Ramos Gancedo	PSOE	0	1	12
Eduardo de Porres Ortiz de Urbina	NEUT	1	6	18
Enrique Abad Fernández	NEUT	1	0	3
Enrique Bacigalupo Zapater	PSOE	0	1	9
Francisco Monterde Ferrer	PP	1	13	54
Gregorio García Ancos	PSOE	1	1	6
Javier Hernández García	PSOE	1	0	1
Joaquín Delgado García	PP	1	6	12
Joaquín Giménez García	PSOE	1	16	52
Joaquín Martín Canivell	PSOE	1	1	2
José Antonio Marañón Chávarri	PP	1	6	1
José Antonio Martín Pallín	PSOE	0	0	23
José Aparicio Calvo-Rubio	PP	0	0	5
José Augusto de Vega Ruiz	PSOE	1	0	0
José Hermenegildo Moyna Ménguez	PSOE	1	0	0
José Hijas Palacios	PP	1	0	0
José Jiménez Villarejo	PSOE	0	0	2
José Luis Manzanares Samaniego	PP	1	0	0
José Manuel Martínez-Pereda Rodríguez	PP	0	0	0
José Manuel Maza Martín	PP	1	9	43
José Ramón Soriano Soriano	PP	1	15	45
Juan Ramón Berdugo y Gómez de la Torre	PP	1	24	87
Juan Saavedra Ruiz	PP	1	1	49
Julián Sánchez Melgar	PP	1	14	74
Leopoldo Puente Segura	PSOE	0	0	3
Luciano Varela Castro	PSOE	1	2	49
Luis Román Puerta Luis	PP	1	3	10
Luis Vivas Marzal	PP	0	0	0
Manuel Marchena Gómez	PP	0	5	45
Miguel Colmenero Menéndez de Luarca	PP	0	9	74
Pablo Llarena Conde	PP	1	13	38

Perfecto Andrés Ibáñez	PSOE	1	3	41
Ramón Montero Fernández-Cid	PSOE	1	0	0
Roberto García-Calvo y Montiel	PP	1	0	0
Siro Francisco García Pérez	PSOE	1	3	8
Susana Polo García	PSOE	1	6	15
Vicente Magro Servet	PP	1	8	23
<b>TOTAL</b>			<b>221</b>	<b>1,102</b>