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Economic Analysis of Law Review

A Characterization of the Judicial System in Spain: analysis with formalism indices

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RESUMEN

El desarrollo de una economía de mercado necesita de un sistema judicial eficiente que garantice el cumplimiento de los contratos. La literatura destaca que el sistema judicial español sufre de un bajo rendimiento. Este trabajo proporciona, en primer lugar, un análisis del sistema judicial español y una medida de su grado de formalismo a la hora de juzgar conflictos civiles en el período 1966-2006. El grado de formalismo mide la complejidad de las formalidades necesarias para alcanzar el final de un proceso. Este trabajo analiza todos los tipos de procesos civiles disponibles, que en España dependen de la cuantía en disputa, y concluye que el grado de formalismo se ha reducido en los últimos años. La tasa de formalismo calculada es además diferente a aquélla de otros trabajos a nivel internacional. En segundo lugar, gracias a ese resultado, el trabajo proporciona una posible explicación a los grandes cambios en las tasas de resolución, pendencia y congestión del sistema de la última década.

Palabras clave: Eficiencia judicial, formalismo, ejecución de contratos, desarrollo económico.
JEL: K40, K41, O10.

ABSTRACT

An efficient system of contract enforcement is an essential issue for the development of a market economy. Several surveys have drawn attention to the low performance of the Spanish judicial system. This paper provides an analysis and a measure of "procedural formalism" of the Spanish judicial system in the long run (1966-2006). Spain has a multiplicity of procedures for the same type of civil dispute depending on the amount in litigation. In this study, all those procedures are analyzed and it is suggested that formalism of the Spanish judicial system has diminished in the most recent years. These results help to explain the recent developments of the resolution, congestion and pending cases rates of the system and also contest the level of formalism assigned to Spain by previous works in the field.

Key words: Judicial efficiency, procedural formalism, contract enforcement, development.
R: 14/9/10 **A**:29/11/10 **P**: 26/2/11

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1. Introduction

Several international surveys (World Business Environment Survey, 2000, Doing Business project between 2004-2010) have drawn attention to the underperformance of the Spanish judicial system in several dimensions when it is compared with the judicial systems of economies of similar levels of development. Among other problems are those pointing to the Spanish judicial system to be more "formal" than those in other countries. This would imply higher transaction costs and reduced efficiency (Djankov *et al*., 2003). Moreover, the performance of the Spanish judicial system generates high levels of dissatisfaction among Spanish enterprises (Círculo de Empresarios, 2003).

This situation has not improved in the most recent years. In fact, since 2001 and for the specific case of executions of judgments, the average resolution rate of the first instance courts of Spain (taken as "*Juzgados de Primera Instancia e Instrucción*") has fallen by more than 25%. At the same time, the congestion rate and the pendency cases rate of the same courts have increased by more than 33%[2]. These facts are certainly disturbing once we take into account that the judicial system is an essential instrument of contract enforcement in a developed economy and therefore an important determinant of competitiveness (see next section). At the same time, the Spanish system is costly, requires a high public expenditure (0.35% of GDP in Spain, 2003, 0.5% if we also include prisons) (Jiménez and Pastor, 2007) and employs an important number of public workers (57000) for whom an appropriate system of incentives and productivity is needed (Cabrillo and Pastor, 2001, Cabrillo and Fitzpatrick, 2008).

1.1. Literature review

As Coase (1960) highlighted, carrying on market transactions involves not only contracting, but also undertaking the inspection needed to make sure that the terms of the contracts are being observed. The same can be said about the Law and its enforcement. It is not only important to have "good" regulations, but also to be able to enforce them through an efficient system (such as the judicial system).

"Contracting" and "enforcing" are relevant economic problems. If they are overly costly many transactions may not take place. Enforcement of private contracts has many aspects, one of them of an essential economic meaning: the respect and maintenance of private property against external threats.

Since the early statements about the importance of good "institutions" for economic performance (North, 1990), it has been found several times that the protection afforded to property rights or, more in general, the possibility of enforcing the Law, is directly related to economic development. Acemoglu *et al*. (2001) confirmed that better "protection against expropriation" had positive effects on the country's income. Rodrik *et al*. (2004) measured the quality of institutions as the prevalence of the "rule of Law" (that is a wider concept that also captures the protection afforded to property rights) and also verified that was significant in explaining development.

The enforcement of contracts and regulations can take place through some private mechanisms when they are available (arbitration) or through public means. Judicial enforcement

[2] All the definitions are provided in section 3. Those percentages represent the developments of the system between 2001 and 2007. The resolution rate has diminished from 1.1 to 0.8, the congestion rate has grown from 3.3 to 4.4 and the pendency cases rate has grown from 2.3 to 3.1 (self elaboration from *Consejo General del Poder Judicial* data).

would be the paradigmatic case of the use of public means and it is the focus of this paper. Therefore, following what it was said above, a deficient judicial system may imply costs to the economy and constitute a deterrence of economic transactions. At international level, several studies analyze more particularly the effect of well-functioning judicial systems on the economy. First of all, "good" judicial systems (together with good legal environments) seem to promote greater development of financial markets. La Porta *et al*. (1997, 1998), argue that different systems of legal enforcement (such as Civil Law, Common Law, etc.) are related to different levels of investor protection. Weaker investor protection leads to smaller debt and equity markets.

In fact, a good judicial system is considered essential to ensure the availability of cheap funds that promotes economic development (Padilla and Requejo, 2000). Jappelli *et al*. (2005) analyze a panel of the Italian provinces and find that credit is more widely available when there is a higher judicial efficiency. Similar results are obtained by Padilla *et al*. (2007) for the case of Spain. In the same way, a lower proportion of credit-constrained households (for a panel of Italian judicial districts) is also observed in other case-studies (Fabbri *et al*, 2004).

Besides the financial system itself, some effects of well-functioning judicial systems and procedures are observed in the area of firm dynamics. Desai *et al*. (2005) find that greater judicial interference and greater formalism of the procedures are associated with lower entry of new firms in the markets. Desai *et al*. utilize as a measure of formalism the indicator proposed by Djankov *et al*. (2003) that will be analyzed in the next sections.

As it was already introduced, several institutions have been attracted by those facts and have conducted several surveys in order to compare the performance of the judicial system in different countries. Between 1999 and 2000, the World Bank conducted an international survey named "World Business Environment Survey" administered to enterprises that included some questions to assess the judicial system of the country and its effectiveness in enforcing property rights. The results for some of the questions for Spain, and also for France, Italy, Germany, UK and US, are included in table 1. Spain is below the average of the OECD countries in the questions about the judicial system if we compare countries with similar income. Batra *et al*. (2003), using this survey, observe that countries with higher discontent with affordability and quickness of the judicial system seem to perceive also less fairness and impartiality.

From 2004, the Doing Business group of the World Bank publishes a more ambitious survey called "Enforcing Contracts". It includes three indicators on the efficiency of contract enforcement on the basis of how a company has to go through the judicial system, in each country, to recover an overdue payment. The indicators obtained are the number of required interactions between the parties and the court in order to finalize the procedures, the estimated cost incurred during the dispute and the estimated time to resolve the dispute. Results for Spain (and again for France, Italy, Germany, UK and US) are also included in table 1. Spain holds the position 52 out of 183 analyzed countries (2010). The Doing Business project provides the results and rankings in this issue since 2004, therefore we lack the information on this indicator for the previous decades and more importantly, it does not provide information on the effects of the changes of the Spanish procedural regulations. The "Enforcing Contracts" survey is based in the methodology of Djankov *et al*. (2003) that proposes to measure the "formalism" of the judicial systems. Djankov *et al*. (2003) argue that more "formal" systems are related to higher expected durations of the procedures.

Finally, in Spain, Círculo de Empresarios (2003) conducted a survey among Spanish enterprises (members of the organization) about the situation of the Spanish justice. In general, justice in Spain gets a medium or low level of satisfaction. The results reflect the opinion that

Spanish justice is too slow and that predictability of the judgments is low. An almost complete agreement exists among the enterprises when they are asked if the "simplification of the procedures" would be a good measure (among others) to be applied to Spanish justice.

DOING BUSINESS (WORLD BANK) RANKINGS AND INDICATORS FOR "ENFORCING CONTRACTS" (2003-2007) TABLE 1

	Ease of doing business rank	Doing business/Enforcing contracts				World Business Environment Survey			
		Rank	Procedures (number)	Time (days)	Cost (% of debt)	Justice is never quick	Justice is never affordable	Never able to enforce decisions	Judiciary is a major obstacle to
FRANCE									
1999	-	-	-	-	-	47.0%	16.3%	2.1%	4.1%
2006	-	-	30	331	17.4	-	-	-	-
2007	-	-	30	331	17.4	-	-	-	-
2008	-	-	29	331	17.4	-	-	-	-
2009	31	8	29	331	17.4	-	-	-	-
2010	31	6	29	331	17.4	-	-	-	-
GERMANY									
1999	-	-	-	-	-	20.6%	18.6%	4.2%	8.0%
2006	-	-	30	394	14.4	-	-	-	-
2007	-	-	30	394	14.4	-	-	-	-
2008	-	-	30	394	14.4	-	-	-	-
2009	27	9	30	394	14.4	-	-	-	-
2010	25	7	30	394	14.4	-	-	-	-
ITALY									
1999	-	-	-	-	-	62.4%	43.8%	8.9%	16.3%
2006	-	-	41	1390	29.9	-	-	-	-
2007	-	-	41	1210	29.9	-	-	-	-
2008	-	-	41	1210	29.9	-	-	-	-
2009	74	158	41	1210	29.9	-	-	-	-
2010	78	156	40	1210	29.9	-	-	-	-
SPAIN									
1999	-	-	-	-	-	41.2%	13.5%	4.2%	12.2%
2006	-	-	40	515	17.2	-	-	-	-
2007	-	-	40	515	17.2	-	-	-	-
2008	-	-	39	515	17.2	-	-	-	-
2009	51	52	39	515	17.2	-	-	-	-
2010	62	52	39	515	17.2	-	-	-	-
UNITED KINGDOM									
1999	-	-	-	-	-	17.3%	18.2%	1.0%	2.0%
2006	-	-	30	404	23.4	-	-	-	-
2007	-	-	30	404	23.4	-	-	-	-
2008	-	-	30	404	23.4	-	-	-	-
2009	6	23	30	404	23.4	-	-	-	-
2010	5	23	30	399	23.4	-	-	-	-
UNITED STATES									
1999	-	-	-	-	-	23.2%	25.3%	7.1%	2.2%
2006	-	-	33	300	14.4	-	-	-	-
2007	-	-	32	300	14.4	-	-	-	-
2008	-	-	32	300	14.4	-	-	-	-
2009	4	9	32	300	14.4	-	-	-	-
2010	4	8	32	300	14.4	-	-	-	-

SOURCE: World Bank Doing Business Project (2010) and The World Business Environment Survey (2000).

1.2. Objectives of this paper

The purpose of this research is to provide an analysis and an indicator of the degree of formalism of the judicial system in Spain as the main public mechanism of contract enforcement during the period 1966-2008. Therefore, the analysis will provide a long-run view of the system that is not given by the previous literature in the field. Moreover, this analysis relaxes some of the restrictive assumptions made by previous literature when constructing this kind of institutional indicators, such as fixing the amount in dispute.

The benefits of that strategy are threefold: First, the indicators constructed in this study will allow observing the impacts on formalism of several changes in the procedural Laws, such as the complete reform of the Law that took place in 2000. Second, the contribution of this new information should contribute to the debate on the impact of formalism on the effective developments of the judicial system, represented by the resolution, congestion and pending cases rates that suffered significant changes in the recent decade in Spain. Finally, as a result of relaxing some of the assumptions found in the literature, we can contest the results of previous surveys.

This paper follows, in part, the methodology originally described by Djankov *et al*. (2003) but adapted to the Spanish legal system. Thus, some of the assumptions integrated in Djankov´s methodology have been relaxed consequently suffering a major change. The most important assumption made by Djankov *et al*. (2003) is that they fixed the amount of the dispute. That assumption radically limits their analysis and reduces their set of information to one single procedure. In contrast, in this paper, all the different procedures of the Spanish system are analyzed. Then, the results are provided for a long period (1966-2008) in contrast to the analysis of the Doing Business project (available since 2004)[3].

This research has been organized as follows. Section 2 summarizes the methodology of Djankov *et al*. (2003) and presents the adaptations and assumptions that have been relaxed for studying the Spanish legal system. Section 3 describes the main issues of the Spanish procedures during the period of study and provides the results of the different indicators. Section 4 makes some international comparisons of the results obtained in this work. Section 5 discusses the case of the special procedures needed to evict a non-paying tenant. Section 6 draws some final conclusions. Annex A provides a description (and adaptation) of the variables discussed in this paper. Annex B provides an extension of the debate to take into account the effects of inflation.

2. MethodologyThe "formalism" indicator proposed by Djankov *et al*. (2003) and the description of the variables

Djankov *et al*. (2003) use data from the judicial systems and procedures in 109 countries to construct an index of procedural formalism of dispute resolution. The authors observe and track two types of possible disputes to be solved before the courts: the collection of a check (an unpaid debt) and the procedure to evict a non-paying tenant. Both of them, especially the first one (which is the focus of the following sections), are "representative" cases of dispute before the national courts. An analysis of their formalism can be considered representative of the whole system. From their set of results, they conclude that, *ceteris paribus,* higher procedural formalism predicts longer duration

[3] Please note that Balas *et al*. (2008) provide the value of the index for Spain between 1950 and 2000 but their work suffers from the same assumptions as Djankov *et al*. (2003), that is, they fix the amount in their analysis and thus they do not take into account the main types of procedures in Spain.

of dispute resolution and also lower enforceability of contracts (therefore expected duration is highly correlated with formalism). The result would suggest that the legal structure is an essential dimension of judicial efficiency rather than the level of development of the country by itself.

The source of the data they use is a questionnaire that covers all the stages of the typical procedure that a company or an individual must follow to recover a debt. The authors make some assumptions to simplify the analysis: they consider that the case is solved by the courts in the country's largest city (in the case of Spain, a court of first instance, *juzgado de primera instancia e instrucción*, of Madrid) and they also fix the amount of the unpaid debt[4]. Fixing the amount implies that they analyze just one single procedure in the Spanish case. As it will be argued, that assumption is severe.

The questions and stages of the procedures analyzed are guided by the 1994 International Encyclopaedia of Laws-Civil Procedure (Kluwer Law International).

The formalism index proposed by the authors is composed of 7 sub-indicators: "Professionals vs. Laymen" (PL), "Written vs. Oral" (WO), "Legal justification" (LJ), "Statutory regulation of evidence" (RE), "Control of Superior Review" (CR), "Engagement formalities" (EF) and a measure of the number of "independent procedural actions" (IP) (see equation 1). Each sub-indicator is scored from 0 to 1 (several intermediate results are possible). Each sub-indicator is composed of several variables that are assigned the score of 0 or 1. The formalism index is the unweighted sum of the sub-indicators and, thus, has a result out of a maximum score of 7. Higher scores mean more "formalism" and, so, more complexity and longer expected duration of the procedure. The Annex A contains a table with more information on the variables included in each sub-indicator. First of all, the table contains a description and an explanation for each of the components of each of the sub-indicators. The explanation includes some adaptation notes to help understand how to interpret the indices in the context of the Spanish legal system. Finally, the last two columns provide the reference to the articles where the substantive Spanish regulation can be found on the different topics both before year 2000 (so mainly under the CPL 1881) and after 2000 (CPL 2000).

$$Formalism = PL + WO + LJ + RE + CR + EF + IP \qquad (1)$$

The sub-index for "professionals vs. Laymen" (PL) analyzes the intervention of professional judges (versus laymen) in all the procedures and their specialization for solving specific cases. It also considers whether legal representation is mandatory or not to act before a court, as legal representation is costly. The higher is the "professionalism" required or the lower is the specialization, the higher will be the index. More specialization of the courts is understood as a way of introducing "mass production" into the judicial system and therefore of, hypothetically, increasing the number of cases solved.

The sub-index for "Written vs. Oral elements" (WO) analyzes, among other issues, if it is compulsory in all the steps of the procedure to have all the notifications made by written documents and if they need to be "legalized" by a judicial officer. The sub-index also analyzes the formalism of the decisions of the court and the steps to enforce them. More written elements increase the score of the sub-index.

The sub-index for "legal justification" (LJ) measures whether it is necessary to justify all the actions and requests (such as the claim or complaint) to the court in legal terms, with legal reasoning

[4] The amount of the claim is assumed to be equal to 200% of the country's income per capita.

(or by expressly citing legal concepts and norms) or if simpler requests merely justified on grounds of "equity" are enough. Legal justification usually requires legal training and as a result, legal representation becomes necessary. The sub-index also takes into account if resolutions by the court need to be legally justified or if they can be based simply on "equity". More "legal justification" increases the value of the sub-index.

The sub-index for "statutory regulation of evidence" (RE) deals with the rules governing the "evidence" discussed and considered by the judge (oral interrogation of the parties or a witness, written documents...). It also considers if the evidence must be recorded in all cases. More rigid criteria make the sub-index have higher scores.

The sub-index for "control of superior review" (CR) considers whether enforcement of a court decision can be suspended if the decision is appealed. Also it considers the possible content and scope of the appeal. Automatic suspensions and a comprehensive review of the previous decision (including revision of old evidence already discussed) make the sub-index increase.

The sub-index for "engagement formalities" (EF) considers certain formalities that may be present in the procedure, such as a compulsory stage of "pre-conciliation". "Pre-conciliation" is not wrong in itself. In fact, it may solve the conflict without the need for a full judicial procedure. What the indicator measures is whether it is "compulsory" or not. If it is compulsory, it may be superfluous in some cases.

The sub-index "engagement formalities" also takes into account whether a judicial officer must "legalize" the documents received or sent by the court. Higher formalities or added steps (such as compulsory pre-conciliation) increase the result of the sub-index.

The sub-index for the number of "independent procedural actions" (IP) counts the number of "steps" needed to complete filing, service, trial, judgment and enforcement. The sub-index is constructed according to the values obtained in the full sample of countries. It takes value 0 for the country with a lower number of actions and one for the country with the maximum amount.

Djankov *et al*. (2003) observe that the sub-indicators move in the same direction and are positively correlated with the overall index of formalism. Therefore, they consider not necessary to design a specific methodology for the construction of the formalism index.

2.2.Appraisal and criticism of the indicator

An important question arises from the indicator of Djankov *et al*. (2003). Is "judicial formalism" a good policy indicator? Does reducing formalism improve judicial systems? Is it desirable to reduce formalism in all cases?

Some criticisms question the basic assumptions of the indicator: formalities were introduced to ensure objectivity and impartiality (Círculo de Empresarios, 2003) and predictability (at least with respect to the structure to solve the conflict) (Iglesias and Arias, 2007). Moreover, informal justice is said to be more vulnerable to subversion by the powerful (Djankov *et al*. 2003), i.e. reducing time and cost of the procedure may also reduce its fairness.

As mentioned above, the indicator proposed by Djankov *et al*. (2003) penalizes formalism. In fact, the indicator takes as a model the "neighbourhood model", inspired by the Common Law (as a consequence, "Common Law" countries generally perform better both in Djankov *et al*. (2003) and in the Doing Business Project). Common Law countries have less tradition of written norms but, from the perspective of Civil Law, the lack of legal justification of the procedures is considered to increase the risk of losing "legal certainty" and, thus, impartiality.

Another criticism points out that the indicators may not be representing the whole picture of institutions but just the reaction of the system to very specific case-studies (Ménard and Du Marais, 2006). Moreover, other specific case-studies challenge the assumptions of the sub-indices of Djankov *et al*. (2003). For instance, Garoupa *et al*. (2008) conclude that specialized courts in Madrid, after controlling for other relevant variables, may not be faster than the regular courts.

More in general, the results of the Doing Business project, which takes as their methodology the paper of Djankov *et al*. (2003) among others, have been criticised by Arruñada (2007), who analyzes the procedures needed for setting-up a firm and criticises that this type of indicators may concentrate the efforts of the reformers in simplifying the regulations rather than evaluating their real effects.

In favour of Djankov *et al*. (2003), it can be said that their conclusions coincide also with those of the World Business Environment Survey completed before their work. Batra *et al*. (2003), following that survey, also conclude that reduced time and cost of the procedures are associated with perceptions of more fairness and impartiality.

It can be highlighted, in any case, that formalism must not be considered as "desirable" or "undesirable" by itself but, from the results of Djankov *et al*. (2003), it can be related to longer and more costly procedures.

When adapting the indicators to the Spanish case some of the assumptions made by Djankov *et al*. (2003) will be relaxed giving some relief to the criticism already cited.

2.3.Adapted indicators for Spain and Spanish data

The representative dispute analyzed in this study is the action to recover a debt such as a check collection (that is also a dispute chosen by Djankov *et al*. 2003 in their indicators[5]). The dispute takes place between two or more private parties (therefore there is no public administration involved) and it is assumed to be solved by a "*juez de primera instancia*" (court of first instance) (other instances are covered with the analysis of the CR component). The analysis, as in Djankov *et al*. (2003), does not include other extrajudicial solutions[6].

However, in contrast to what was explained in section 2.1, and in order to improve the indicators and address some of the criticism generated by them, some assumptions made by Djankov *et al*. (2003) are relaxed in this paper: it is not assumed that the conflict is solved in a particular place or city in Spain as the procedures are homogeneous throughout the country and, more importantly, it is not assumed to be a conflict for a particular amount. As will be seen in the next section, the type of procedure used in Spain depends heavily on the amount in dispute[7]. Therefore, all the possibilities are analyzed (8 in total) unlike in Djankov *et al*. who only analyze one single case. As said, Balas *et al*. (2008) suffer from the same assumptions as Djankov *et al*.

The formalism index proposed for the Spanish economy is composed of the six first components explained above (PL, WO, LJ, RE, CR and EF). As this study only analyzes Spanish justice, the IP component cannot be included. Therefore, the formalism index proposed has a maximum score of 6. As it was already said, the Annex A contains more information on the sub-

[5] This paper also discusses the case of tenant eviction in section 5.

[6] Arbitration is some times available as an extrajudicial solution for the parties. However, only a judge can execute a decision in Spain. Therefore, the parties must use the judicial system in that case.

[7] For instance, the disputes concerning the property of a television or a car are solved through different procedures because they have very different values.

indices and its variables. The last two columns contain some legal foundations for the scores given in this paper for Spain.

3. The Spanish judicial system, 1966-2008

3.1. Civil Procedural Laws

As it was mentioned in the previous section, a representative dispute resolved through the courts was chosen. That representative dispute is the action to recover a debt, such as a check collection.

For such cases, and in general for all disputes arising under private contracts, in Spain the procedures are regulated by the "Civil Procedure Law" (CPL, *Ley de Enjuiciamiento Civil*). The latter establishes the rules of access to the court system, the formalisms that the parties must comply with, the role of the judge or court, the rules governing evidence, the control by superior instances and any other related issues. Two general Civil Procedure Laws has been passed in Spain since the 19th century, the first one in 1881 (Ley de Enjuiciamiento Civil, Real Decreto de Promulgación de 3 de febrero de 1881, CPL 1881), that governed the procedures until 2001, and the most recent one, Law 1/2000 (Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil, CPL 2000) in force since 8th January 2001. Several minor reforms and amendments have been passed during the last decades.

From these Laws it can be concluded that in Spain there is not just one procedure to recover debts. The type and characteristics of the procedure will depend on the estimated amount of the debt. Under the CPL 1881 there were 4 types of procedures, "*juicio de mayor cuantía*", "*juicio de menor cuantía*", "*juicio verbal*" (named as "old" in the tables and figures to distinguish it from the new procedures passed under CPL 2000) and "*juicio de cognición*" (that was not regulated in the main text of the CPL but in a more specific piece of legislation, Decree of 21st November 1952). The CPL 2000 introduced a new set of procedures: "*juicio ordinario*", "*juicio verbal*" (type I and II) and a special "fast" procedure suitable for debt recovery under certain circumstances called "*proceso monitorio*". All new disputes that have come before the courts after 8th January 2001 must take the form of one of the procedures of the CPL 2000. As mentioned above, although the names seem similar, the old type of "*juicio verbal*" is a different procedure compared to the "*juicio verbal*" introduced by the CPL 2000.

Table 2 describes the applicability of the different procedures by amount. As it can be seen, several amendments changed the amounts that define the applicability of the different procedures. For instance, to collect an unpaid debt of €1000 after 2001 the applicable procedure would be the "*juicio verbal*". But if the estimated amount is €4000, the procedure would be a "*juicio ordinario*". The new procedures under CPL 2000 are not clearly heirs of the old types as we will see.

The period under study is 1966-2008 to cover the most recent reforms in the procedural Laws. During that period, various amendments changed the amounts applicable to each procedure. The first set of amounts was defined by Law 46/1966 and was applicable until 1985 (when Law 34/1984 entered into force). The last change in the amounts, before the new CPL 2000 entered into force, was made by Law 10/1992.

APPLICABILITY OF THE DIFFERENT PROCEDURES IN NOMINAL TERMS — TABLE 2

	JUICIO MAYOR CUANTÍA	JUICIO MENOR CUANTÍA	JUICIO COGNICIÓN	JUICIO VERBAL (OLD)
1966-1984	> 3.005 €	301- 3.005 €	60 - 301 €	< 60 €
1985-1991	> 601.012 €	3.005 - 601.012 €	301 - 3.005 €	< 301 €
1992-2000	> 961.619 €	4.808 - 961.619 €	481 - 4.808 €	< 481 €

	PROCESO MONITORIO	JUICIO ORDINARIO	JUICIO VERBAL (I)	JUICIO VERBAL (II)
2001-2008	< 30.000 €	> 3.000 €	< 3.000 €	< 900 €

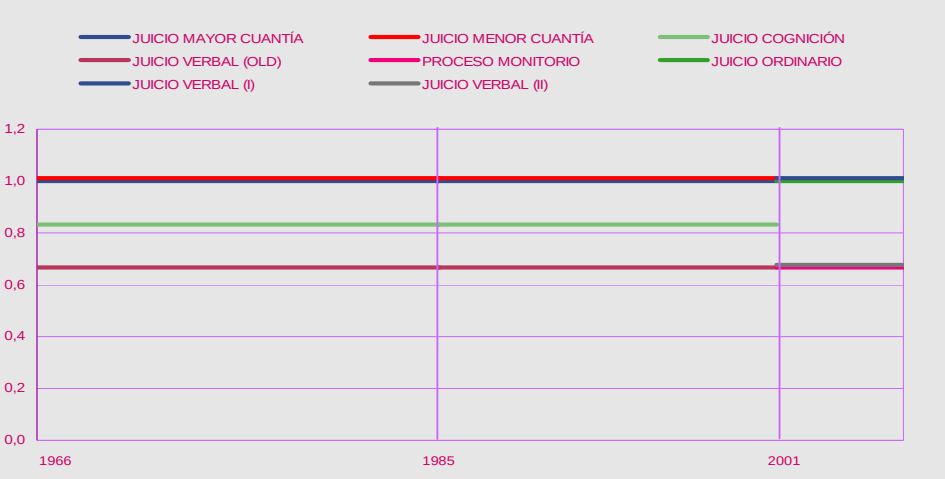
SOURCE: Spanish Civil Procedural Laws.

3.2. Formalism indices for the Spanish procedures

As explained above, to analyze the "formalism" for the Spanish case requires the construction of an index for each of the applicable procedures. Therefore, the objective here is to obtain a measure of formalism for each of the 8 procedures cited in the previous subsections and observe their evolution through time. That will allow us to obtain a comparison between them in a tractable manner and also a comparison over time. Finally, a compound indicator, taking into account the different possibilities is provided.

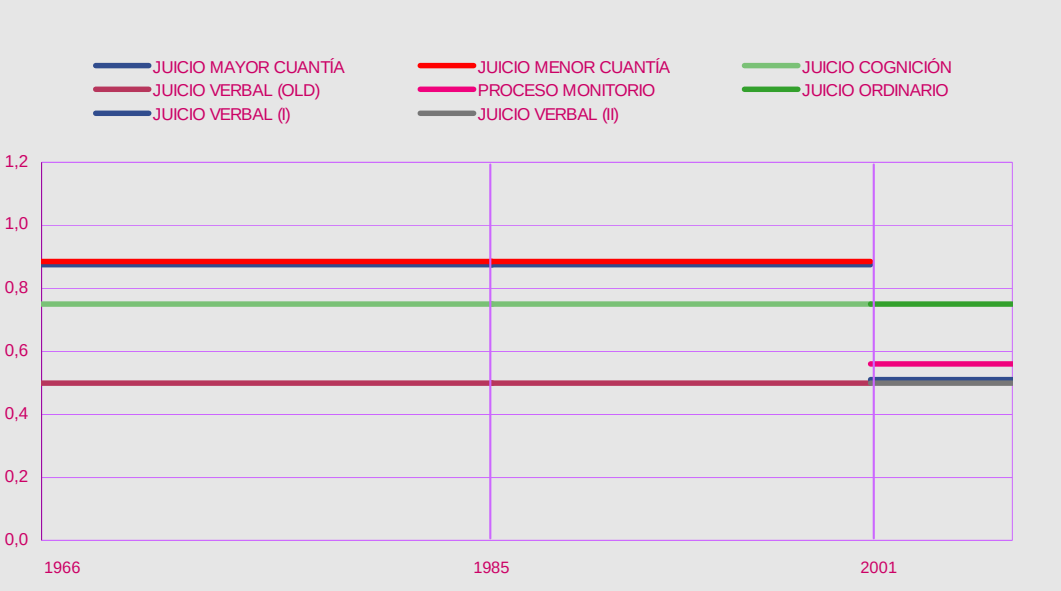
Figures 1 to 6 show the results for the 6 sub-indicators that compose the "formalism index" used here (Professionals vs. Laymen, Written vs. Oral, Legal justification, Statutory regulation of evidence, Control of Superior Review and Engagement formalities) for each type of procedure. Extensive information is provided in the Annex A. Figure 7 shows the result for the "formalism index". The vertical lines in years 1985, 1992 and 2001 indicate relevant changes in the procedures due to a change in the whole Law (with the approval of the new CPL in 2000) or minor changes made by Law 34/1984 and Law 10/1992.

TOTAL PROFESSIONAL VS LAYMEN — FIGURE 1



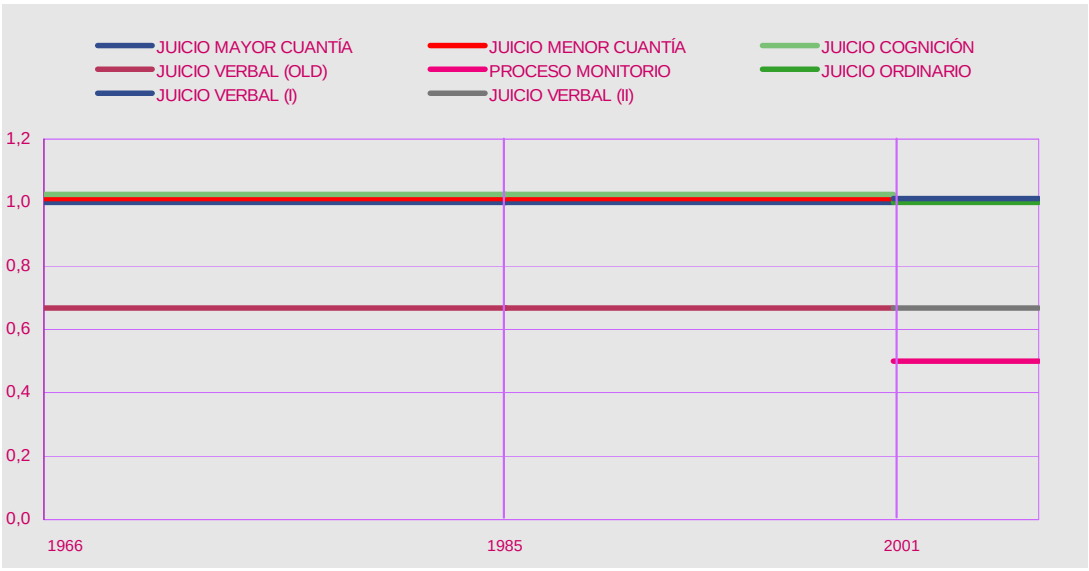
SOURCE: Self elaboration.

INDEX WRITTEN VS ORAL ELEMENTS FIGURE 2



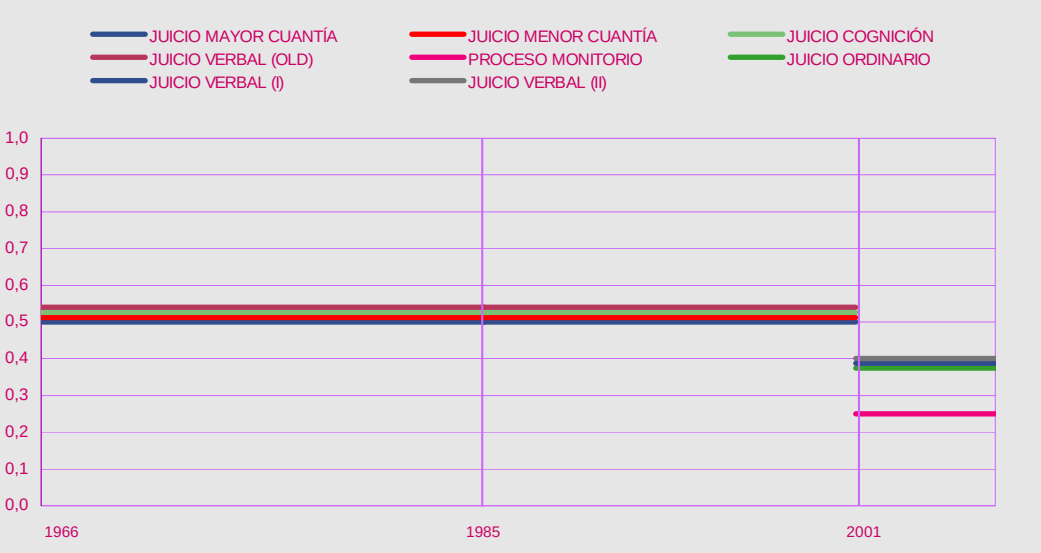
SOURCE: Self elaboration.

LEGAL JUSTIFICATION FIGURE 3



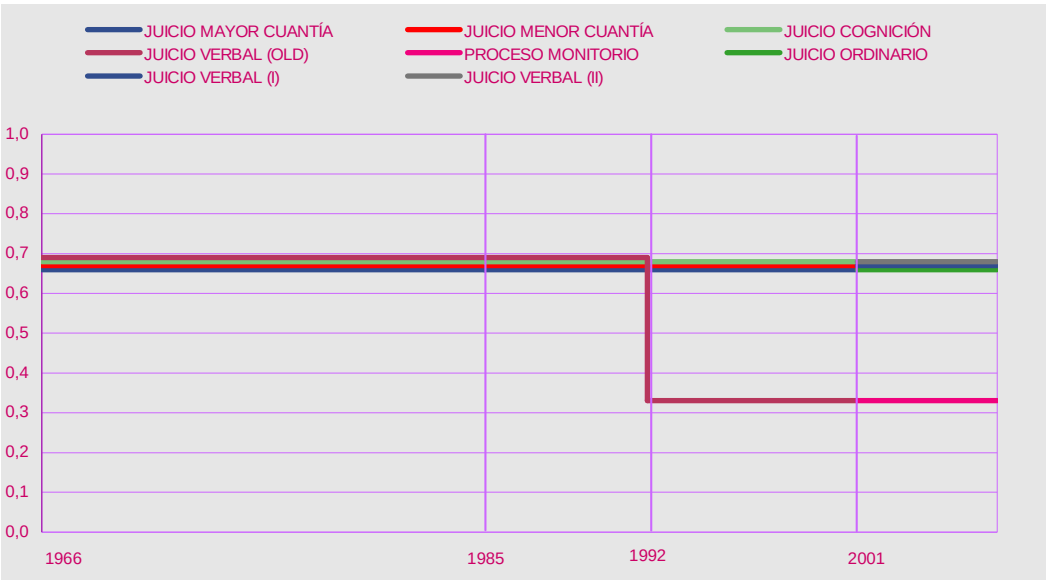
SOURCE: Self elaboration.

STATUTORY REGULATION OF EVIDENCE FIGURE 4



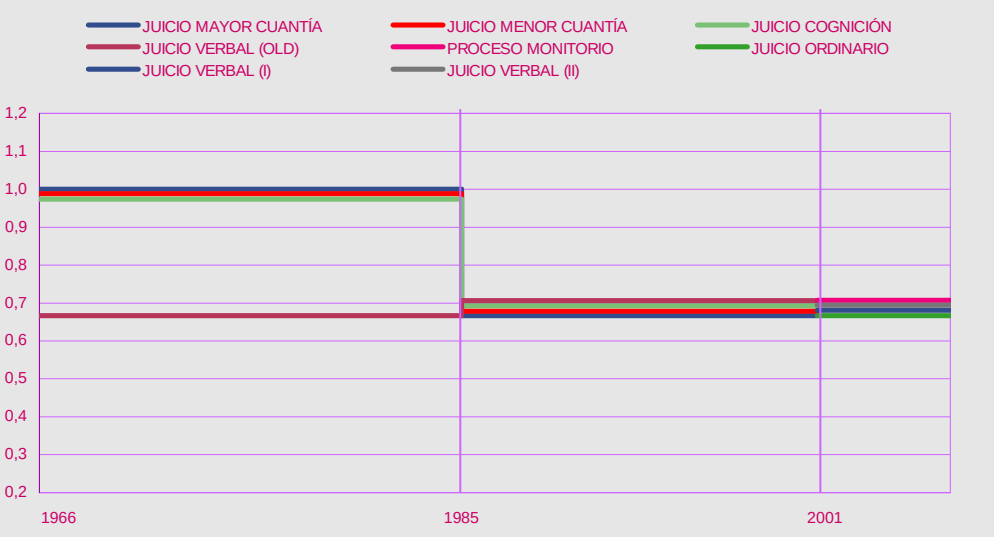
SOURCE: Self elaboration.

CONTROL OF SUPERIOR REVIEW FIGURE 5



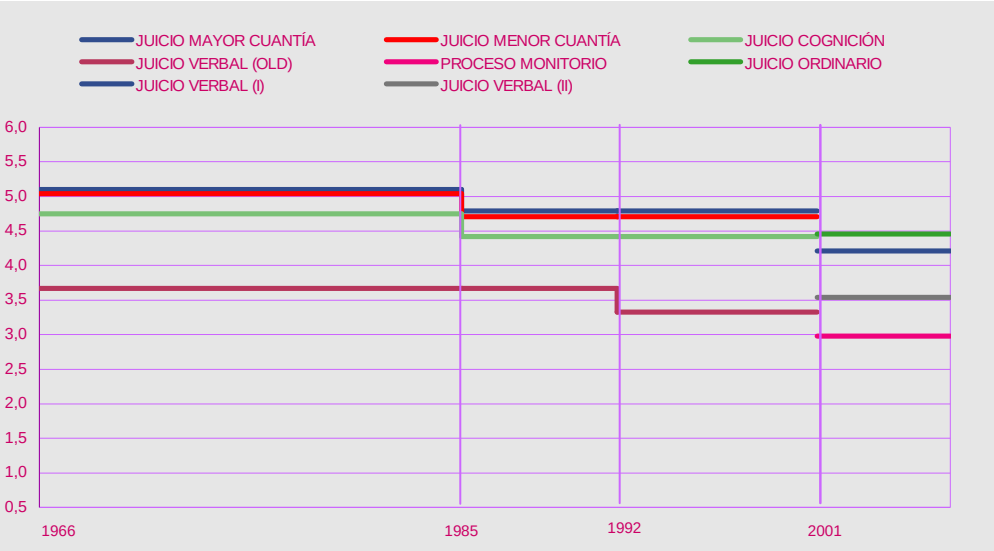
SOURCE: Self elaboration.

ENGAGEMENT FORMALITIES FIGURE 6



SOURCE: Self elaboration.

FORMALISM INDEX FIGURE 7



SOURCE: Self elaboration.

As expected, the procedures that are established by the CPL for solving cases involving lower amounts are also less "formal" ("*juicio verbal* old" before 2000 and "*juicio verbal* II" after 2000) (see figure 7). Also higher sub-indicators are related to higher nominal amounts (Figures 1-6). An exception is the "*Proceso monitorio*" (after 2000) that also has a low degree of formalism, although it can be used to solve disputes involving quite large amounts. In fact, the "*proceso monitorio*" was especially created to be a "simple" procedure to be used under strict circumstances.

All the sub-indicators have shown some improvement (that is, we obtain lower results for all or some of the procedures) in recent years. The improvements are reflected in the global indicator of formalism (Figure 7) insofar as we observe a general reduction of "formalism" over time. All the quantitative results are included in Table 3. Table 3 contains the quantitative results represented graphically in figures 1 to 7 (formalism by type of procedure and sub-indicator) in its first four columns. As seen in the graphs, the scores after 2000 are usually below than those obtained for the procedures established in the CPL 1881. However, it also provides an estimation of the level of formalism of the eviction procedure in its fifth column. This latter result will be discussed in section 5.

RESULTS FOR THE INDICATORS TABLE 3

UNDER CPL 1881	JUICIO MAYOR CUANTÍA	JUICIO MENOR CUANTÍA	JUICIO COGNICIÓN	JUICIO VERBAL	EVICTION PROCEDURE
Total professional vs laymen	1.00	1.00	0.83	0.67	0.67
Index written vs oral elements	0.88	0.88	0.75	0.50	0.50
Legal justification	1.00	1.00	1.00	0.67	0.67
Statutory regulation of evidence	0.50	0.50	0.50	0.50	0.50
Control of superior review (before 1991)	0.67	0.67	0.67	0.67	0.67
Control of superior review (after 1991)	0.67	0.67	0.67	0.33	0.33
Engagements formalities (before 1984)	1.00	1.00	1.00	0.67	0.67
Engagements formalities (after 1984)	0.67	0.67	0.67	0.67	0.67
Formalism index (before 1984)	5.04	5.04	4.75	3.67	3.67
Formalism index (after 1984)	4.71	4.71	4.42	3.67	3.67
Formalism index (after 1991)	4.71	4.71	4.42	3.33	3.33

UNDER CPL 2000	PROCESO MONITORIO	JUICIO ORDINARIO	JUICIO VERBAL I	JUICIO VERBAL II	EVICTION PROCEDURE
Total professional vs laymen	0.67	1.00	1.00	0.67	0.83
Index written vs oral elements	0.56	0.75	0.50	0.50	0.50
Legal justification	0.50	1.00	1.00	0.67	0.83
Statutory regulation of evidence	0.25	0.38	0.38	0.38	0.38
Control of superior review	0.33	0.67	0.67	0.67	0.67
Engagements formalities	0.67	0.67	0.67	0.67	0.67
Formalism index	2.98	4.46	4.21	3.54	3.88

SOURCE: Self elaboration,

With respect to the problem of the consistency of the indicators, as observed in the study of Djankov *et al*. (2003), the sub-indicators move in the same direction and are positively correlated with the overall index of formalism. The correlation is especially high in the case of the components of "legal justification" and "professionals vs. laymen" and the global "formalism index". Table 4 provides the correlations among the formalism index and its components. All correlations are high and positive.

CORRELATIONS OF FORMALISM INDEX AND ITS SUB-INDICES

TABLE 4

	Professionals vs. Laymen	Written vs. Oral	Legal justification	Statutory regulation of evidence	Control of superior review	Formalism index
Professionals vs. Laymen	1					
Written vs. Oral	0,6683	1				
Legal justification	0,9108	0,6602	1			
Statutory regulation of evidence	0,3148	0,5125	0,5584	1		
Control of superior review	0,7006	0,4914	0,8047	0,3111	1	
Formalism index	0,9048	0,8067	0,9665	0,5917	0,8221	1

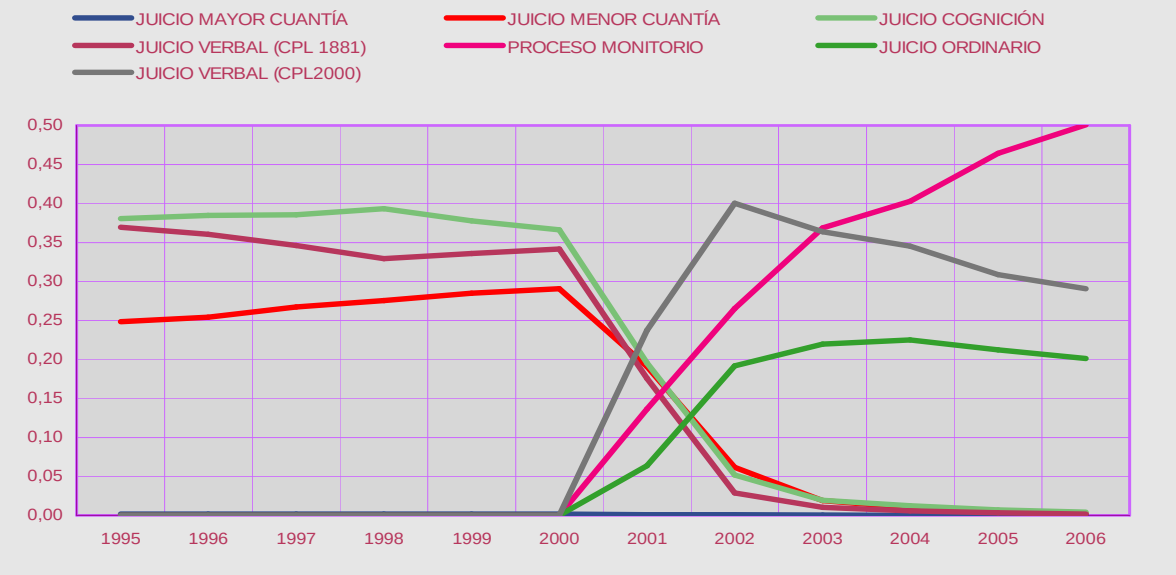
SOURCE: Self elaboration,

3.3.A compound indicator of formalism

The previous results show the levels of "formalism" of each of the procedures allowing us to make comparisons among them. It would be desirable to obtain a single indicator of formalism to represent the situation of the whole economy independently of the specific procedure needed for a specific dispute. That indicator can be constructed since data on the usage of the different types of procedures over time (1995-2006) is available.

SOLVED CONFLICTS BY TYPE OF PROCEDURE

FIGURE 8



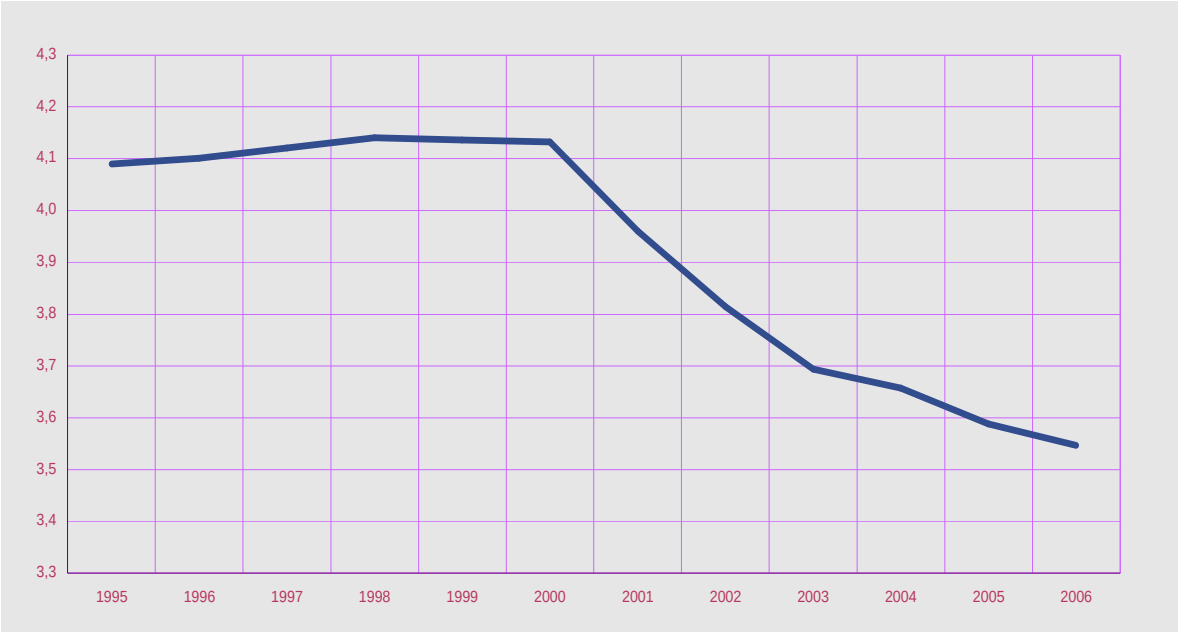
SOURCE: Consejo General del Poder Judicial (2009).

Figure 8 represents the proportion (in %) of disputes resolved by each type of procedure between 1995 and 2006. The data is obtained from the public database of the CGPJ (*Consejo General del Poder Judicial*, General Council of the Judiciary) and represents the disputes resolved by the first instance (and first instance plus "*instrucción*") courts excluding "family conflicts" and executions. After 2000, all the new cases that were filled in the Spanish courts took the form of one of the new procedures, therefore in a few years all the cases resolved by the system will be dealt with the new procedures. Meanwhile, as can be seen in the figure, in the first years after 2000 it is still possible to find a relevant, but diminishing, proportion of disputes solved under the form of the old procedures.

The data has two important drawbacks: the period available is very limited and it does not differentiate between the two "types" of "*juicio verbal*" (after 2001), as explained above.

Figure 9 (data in Table 5) shows a composite indicator of formalism taking into account the proportion of solved cases explained above. It is assumed that half of the new cases between 0 and €3000 took the form of a "*juicio verbal* I". Figure 9 shows that the implementation of the new Law 1/2000 implied a significant reduction in the "formalism" of the Spanish judicial system. It can be expected that the amount of formalism will stabilize around the results of 2006 as the weights of the old procedures in the system approach 0.

COMPOSITE INDICATOR OF JUDICIAL FORMALISM IN SPAIN FIGURE 9



SOURCE: Self elaboration.

GLOBAL FORMALISM INDEX FOR SPAIN, 1995-2006 TABLE 5

	Formalism
1995	4.09
1996	4.10
1997	4.12
1998	4.14
1999	4.14
2000	4.13
2001	3.96
2002	3.81
2003	3.69
2004	3.66
2005	3.59
2006	3.55

SOURCE: Self elaboration,

That reduction in general formalism can be explained by the introduction of some reforms in the judicial system by the CPL 2000. The CPL 2000 introduced a simple fast procedure (*proceso monitorio*) for a quite wide range of amounts (up to 30000 euros). More specifically in the "*proceso monitorio*" legal representation is not mandatory unless the procedure is transformed in another type of procedure (due to the opposition of the debtor). Also the complaint may be submitted to the court in a simplified form. Moreover, the number of steps needed to complete the procedure may be very limited under CPL 2000: the "*proceso monitorio*" begins with the presentation by the creditor of the documents which demonstrate that a debt was left unpaid by a debtor. If, faced with those documents, the debtor acknowledges before the judge that the debt exists and he is willing to pay, the procedure ends without any further steps. On the other hand, as we have seen, the CPL 2000 inherited some of the previous simplifications, such as the elimination of the pre-trial conciliation. All those innovations lead to a decrease in the formalism index.

3.4. Effects of formalism in the judicial system figures

The CGPJ offers data (for 1995-2006) on the number of cases resolved per year by the judicial system, the number of new cases that entered the judicial system during the year and the number of cases still pending at the end of the year. From these figures, it is possible to compute 3 relative measures of the efficiency of the judicial system: the resolution rate, defined as the ratio between the cases resolved and the cases that entered the system for a specific year (both measured at the end of the year), the pending cases rate, defined as the ratio between pending cases in a specific year and the cases resolved in the same period (both measured at the end of the year), and the congestion rate, defined as the ratio between the sum of pending cases (measured at the beginning of the year) plus new cases in a specific year and the cases resolved in the same year (measured at the end of the year) (see equations 2 to 4). Higher resolution rate, lower pending cases rate and lower congestion rate are related to greater efficiency of the judicial system.

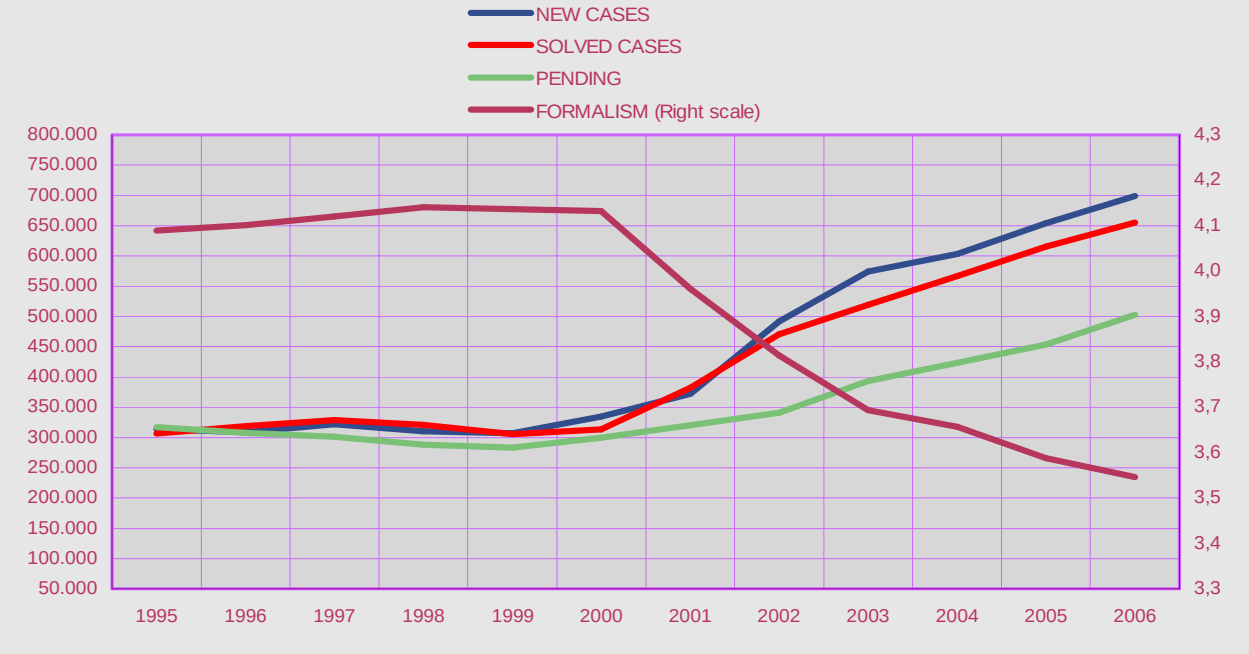
$$\text{Resolution rate}_t = \frac{\text{Cases resolved}_t}{\text{New cases}_t} \qquad (2)$$

$$\text{Pending cases rate}_t = \frac{\text{Pending cases}_t}{\text{Cases resolved}_t} \qquad (3)$$

$$\text{Congestion rate}_t = \frac{\text{Pending cases}_t + \text{New cases}_t}{\text{Cases resolved}_t} \qquad (4)$$

Table 6 shows that formalism is (somehow contra intuitively) positively correlated with all three measures in the case of the years 1995-2006 (correlation above 0.65 in all cases) (see figure 10 for a graphical intuition). This could be interpreted as evidence, although admittedly weak, that a reduction of formalism might have had a positive impact on the system through a reduced congestion and pending cases rate. However, and more importantly, the improvements in formalism may also have attracted a higher amount of new cases to the courts (a high increase in litigation) and, therefore, have produced a reduction in the resolution rate. This would suggest that a net improvement in the judicial system needs not only reforms in the procedures but also more resources, in order to cope with the new disputes reaching the courts, and an analysis of the "demand" side of justice (the litigants) (Cabrillo and Fitzpatrick, 2008). In other words, the positive effects of reduced formalism can be faded away by a reduction of the resolution capacity of the system in these circumstances.

FORMALISM AND JUDICIAL SYSTEM FIGURES — FIGURE 10



SOURCE: Self elaboration and Consejo General del Poder Judicial (2009).

CORRELATIONS OF THE FORMALISM INDEX AND FIGURES OF THE JUDICIAL SYSTEM TABLE 6

	Resolution rate	Pending cases rate	Congestion rate	Formalism
Resolution rate	1			
Pending cases rate	0.5412	1		
Congestion rate	0.1110	0.8956	1	
Formalism	0.7087	0.8720	0.6566	1

SOURCE: Self elaboration,

4. Comparison with the results of Djankov *et al.* (2003) and other international indicators

As mentioned above, the indicator of formalism proposed in the previous sections relaxes some of the assumptions made in Djankov *et al.* (2003) and takes into account all the procedures related to debt recovering, unlike the indicator proposed by Djankov *et al.* Therefore it would be interesting to compare, *ceteris paribus*[8], the results of both pieces of research.

The indicator of formalism of Djankov *et al.* was composed of 7 sub-indicators of which the last one ("independent procedural actions", IP) had to be removed from the indicator proposed in this paper. Therefore, in order to obtain comparable results in both cases, we should remove the seventh sub-indicator from the results from Djankov *et al.* (2003). Their result for the formalism index in Spain (data from 2002), once we remove the seventh sub-indicator, is 4.96. The formalism index proposed in this paper for 2002 takes the value of 3.81. In the case of Djankov *et al.*, Spain is in position 106 out of 109 countries. Therefore Djankov *et al.* (2003) conclude that Spain has a very formal system of justice. On the findings set out in this paper, Spain would be in position 79 out of 109 countries. Thus, Spain would be in a mid-position. The latter result should hold as all the different procedures for debt recovery are taken into account, and not only a very specific case.

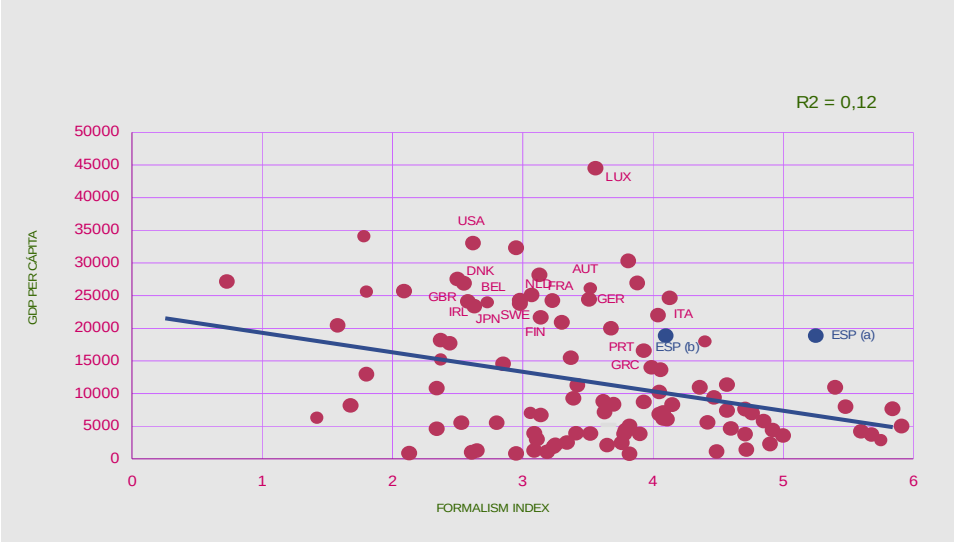
Conversely, another way to compare the indicators would be to add to the indicator obtained in this paper the component that is lacking when compared with Djankov *et al.* (2003) ("independent procedural actions"). Djankov *et al.* (2003) provide the value of each of the sub-indicators and therefore it is possible to add the value given by them to the component that is needed. Note that this is a strong assumption as adding their component for "independent procedural actions" to our indicator would mean considering that the value they offer for "independent procedural actions" (0.29 in 2002) is constant across the different types of procedures analyzed in this paper. The formalism indicator obtained in this paper for 2002 was 3.81. If we add the result for "independent procedural actions" (0.29) we obtain a result of 4.1 that is significantly lower than their result for formalism in Spain (5.25). With a value of 5.25 (obtained by Djankov *et*

[8] Note that the indicators of other countries may also contain important simplifications (in Djankov *et al.*, 2003) as we have observed for the case of Spain. However, the analysis of the effects of those simplifications on other judicial systems is out of the scope of this research.

al, 2003) Spain is in position 101 out of the 109 analyzed countries. With the results obtained in this paper Spain is in position 81 (out of 109).

Figure 11 represents the regression between the average (1995-2004) GDP per capita (in constant prices) and the formalism index taken from Djankov *et al*. (2003) adding an extra observation for Spain with the value of the formalism index obtained in this paper (once we add the seventh sub-indicator of Djankov *et al*. 2003). Formalism is significantly and negatively correlated to the average GDP per capita. Therefore, less formalism seems to be related to wealthier economies. As can be seen in the figure, Spain is above the expected level of formalism given its GDP per capita, and therefore its formalism may constitute an obstacle to development. On the other hand, the measure of formalism obtained in this paper is more consistent with the level of development of Spain if we compare it with the original measure obtained by Djankov *et al*. (2003).

GDP PER CÁPITA AND FORMALISM FIGURE 11



SOURCES: Banco de España, Heston *et al*. (2006) and Djankov *et al*. (2003).

a. Djankov *et al*. (2003).

b. Self elaboration.

In conclusion, Spain gets significantly better results when the assumptions made by Djankov *et al*. (2003) are relaxed. In fact, the World Bank, when measuring the institutions related to contract enforcement in the Doing Business project, gives Spain a mid-position in the classification that would be consistent with the results of this paper. Following the Doing Business project, Spain would be in positions 82, 101 and 39 out of 178 countries if we classify the countries by the duration of the procedures, by the number of steps needed in the procedures and by the estimated cost of litigation ,respectively.

5. A special case: evaluation of the procedures needed to evict a non-paying tenant.

A well functioning tenancy market depends heavily on the correct enforcement of its contracts. Delays in the eviction of non-paying tenants are a strong disincentive to rent and that entails a reduction in the weight of the tenancy market in the real estate market.

A weak tenancy market entails negative effects for the labour markets. In fact, it can be seen that there is a negative relationship between home ownership and mobility and that a high percentage of geographical mobility takes place among workers that were renting their homes (Maclennan *et al*. 1998, Barceló, 2006). The reduced mobility implied by inefficient tenancy markets reduces the efficiency of the economy (Hardman and Ionnides, 1999). On the other hand, a strong tenancy market is beneficial to relieve the pressures in the real estate market.

Unlike the case of recovering a general debt, which was analyzed in the previous sections, the procedure for tenant eviction is a single, special procedure of Spanish Law, which does not depend on the amounts owed (although the quantity of the rent disputed may change some characteristics of the procedure).

Apart from the "substantive" Law on Tenancy (understood as the "Residential Tenancies Act") that has changed several times during the recent decades (the last change taking place under Law 29/1994) (Mora-Sanguinetti, 2011), the procedures applicable in the case of a dispute are included in the pertinent CPLs. The Civil Procedural Law of 1881 established a special, unique, procedure for eviction called "*juicio de deshaucio*" that resembles the "*juicio verbal* (old)" analyzed above. The new CPL 2000 establishes that such a dispute should be resolved under the "*juicio verbal*" procedure (I or II, depending on the amount owed) but excluding the other procedures.

Note that these procedures lead to a judgment that gives back full rights over the dwelling to the owner and order the tenant to leave the property. However, the non-paying tenant may still decide not to comply with the judgment (and thus, not to leave the property although he no longer has any more rights over it). In that case, a further procedure would be required: execution of the judgment (that concludes with a forced eviction, "*lanzamiento*"). The analysis herein is carried out for the main procedure and not for the execution.

Table 3 contains the results for the indicator of "eviction procedure" (extensive information is provided in the Annex A). As said, the results are those of the "*juicio verbal* (old)" before CPL 2000, and a similar result to those of the new "*juicio verbal*" afterwards. Unlike the indicator describing a very general case of debt recovery, the "formalism" in the case of eviction has increased slightly. That can be explained by the fact that, depending on the amount, the litigants may need legal representation after 2001, while under CPL 1881 that legal representation was not needed, at least in part of the procedure.

6. Conclusions

This study provides a "formalism index" for the Spanish judicial system when it solves disputes related to private businesses and contracts. With respect to the previous literature in the field, the analysis has been performed taken into account a longer period of time (1966-2008) and includes all types of procedures (eight in total), thus giving a complete view of the system. The results show that the level of formalism in the Spanish economy is lower than the one obtained by

Djankov *et al*. (2003). In fact, the level of formalism obtained here would be more consistent with Spanish GDP per capita and the classifications of the World Bank.

From this study it can also be concluded that formalism has decreased over time in Spain during recent decades. Particularly, the new CPL 2000 has reduced significantly the formalism of the whole system. This effect can be explained by the different initiatives introduced by the CPL 2000, such as the creation of a simple fast procedure (*proceso monitorio*) for a quite wide range of amounts (up to 30000 euros). This has also allowed more disputes to be broad before a court without legal representation. Moreover, some steps in the procedures have disappeared in recent years, as the compulsory pre-trial conciliation (in 1984). However, as it was noted, the reduction in formalism may have attracted more cases to the courts, thus reducing the general resolution capacity of the system.

As to the issue of how to achieve further reductions in formalism, the methodology applied in this paper would support several refinements in the Spanish judicial system. In particular, reducing the number of procedures in which the litigants need legal representation would be a positive step in that direction. Related to that, reducing the complexity of the complaint or the opposition would help to make the initial steps of the procedure less formal. If legal justification of the complaint is not compulsory, legal representation may be not necessary, at least in the initial steps of the procedure. That would reduce the costs for the litigants. The indicators would also support the idea of giving more freedom to the judges to assess the admissibility and weight of evidence. Also they support simplifying and reducing the number of notifications needed during the procedure. A very different problem that would deserve to be further analyzed is the one detected when inflation is taken into account (see Annex B). The analysis of the applicable amounts in real terms shows that the more formal procedures may be used to resolve disputes involving minor amounts over time due to the eroding effect of inflation. Thus, inflation may increase formalism over time.

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ANNEX A: Description of the variables and adaptation notes for Spain

DESCRIPTION OF THE VARIABLES AND ADAPTATION NOTES FOR SPAIN (a) (b) ANNEX

VARIABLE		DESCRIPTION AND ADAPTATION	Notes under CPL 1881	Notes under CPL 2000
	General jurisdiction court	The variable measures whether a court of general or of limited jurisdiction would be chosen or assigned to hear the case under normal circumstances. A court of general jurisdiction is a state institution, recognized by the law as part of the regular court system, generally competent to hear and decide regular civil or criminal cases. A limited jurisdiction court would hear and decide only some types of civil cases. Specialized debt-collection or housing courts, small-claims courts, and arbitrators or justices of the peace are examples. Equals one for a court of general jurisdiction, and zero for a court of limited jurisdiction. For the Spanish case it is possible to say that, in general, courts are of general jurisdiction, that is the case of the "juzgados de primera instancia" (first instance courts). The existance of very specific cases of "limited" jurisdiction such as "juzgados de violencia de género" cannot be taken as representative of the whole system. The "juzgados de paz" (justices of the peace) only exist in municipalities that do not have first instance courts.	Article 51et seq.	Article 813
	Professional vs non-professional judge	The variable measures whether the judge, or the members of the court or tribunal, could be considered as professional. A professional judge is one who has undergone a complete professional training as required by law, and whose primary activity is to act as judge or member of a court. A non-professional judge is an arbitrator, administrative officer, practicing attorney, merchant, or any other layperson who may be authorized to hear and decide the case. Equals one for a professional judge, and zero for a non-professional judge. Judges in Spain are always professional. On the other hand, in Spain the parties have the option to have their conflict solved by an "arbitro" (non-professional judge) although in that case the case would be solved outside the judicial system.	Article 51et seq.	-
	Legal representation is mandatory	The variable measures whether the law requires the intervention of a licensed attorney. The variable equals one when legal representation is mandatory, and zero when legal representation is not mandatory. In Spain legal representation should be understood as the assistance by "abogado" and "procurador". Therefore only the full mark is given when both are mandatory and half mark is given when only "abogado" is compulsory (for instance the case of the "juicio de cognición" under CPL 1881). Zero mark is given to the "proceso monitorio" under CPL 2000 as, although the opposition may need representation, it ends by itselt the procedure.	Article 51et seq.	Articles 23, 437
	Filing	Equals one if the complaint is normally submitted in written form to the court, and zero if it can be presented orally.	Articles 524 et seq., 720. Also article 29 Decree 21-11-52	Article 437
	Service of Process	Equals one if the defendant's first official notice of the complaint is most likely received in writing, and zero otherwise.	Articles 525 et seq., 722. Also articles 30 and 38 Decree 21-11-52	Article 161
	Opposition	Equals one if under normal circumstances the defendant's answer to the complaint should be submitted in writing, and zero if it may be presented orally to court. Written complaints and answers are the normal case in Spain although under the "juicio verbal" (under both CPLs) the defendant's answer is done as part of the "vista" and therefore not necessarily in a written form. Opposition of the defendant in the proceso monitorio transforms it in a "juicio verbal" or "ordinario" (the opposition ends the "proceso monitorio").	Articles 503 et seq., 687 et seq., 722. Also article 40 Decree 21-11-52.	Articles 443, 815
	Evidence	Equals one if evidence is mostly submitted to the court in written form, in the form of attachments, affidavits, or otherwise, and zero if most of the evidence, including documentary evidence, is presented at oral hearings before the judge. In Spain the complaint is supported by evidence that is usually sustained with written documents. In some cases, as "juicio verbal" (CPL 1881) in which the first approach to the court is done through a standarized form (papeleta), special rules apply. Also in the "juicio verbal" under CPL 2000.	Articles 504 and 579 et seq., 699 et seq., 720 et seq. See especially 522. Also article 49 Decree 21-11-52	Article 440, 812, 814
	Final arguments	Equals one if final arguments on the case are normally submitted in writing, and zero if they are normally presented orally in court before the judge. In Spain the part of the procedure understood as "final arguments" may be identified as "actos conclusivos" or "formulación de conclusiones". That part of the procedure does not exist in all cases, for instance: "juicio verbal" and "juicio de cognición" (CPL 1881) and orality has been extended under CPL 2000.	Articles 667 et seq., 701. There are not "actos conclusivos" in the case of "juicio verbal (old)" and of "cognición".	Article 433
	Judgment	Equals one if the judge issues the final decision in the case in written form, and zero he issues it orally in an open court hearing attended by the parties. The defining factor is whether the judge normally decides the case at a hearing. If the judge simply reads out a previously made written decision, the variable equals one. Conversely, for an orally pronounced judgment that is later transposed into writing for enforcement purposes, the variable equals zero. The indicator is understood as to penalize formalism assuming that originally oral judgments may be less constrained in pre- established formalisms. Please note that the proceso monitorio (CPL 2000), finishes with an "auto", there is not "sentencia". Half marks is given in that case although the "auto" is also written. The regulation for "sentencias" contains some especialities and formal pre-requisites (Article 209 CPL 2000, Article 248 LOPJ).	Articles 364, 678, 701et seq., 731et seq.	Articles 210, 816 et seq.

DESCRIPTION OF THE VARIABLES AND ADAPTATION NOTES FOR SPAIN (cont.)

ANNEX

	VARIABLE	DESCRIPTION AND ADAPTATION	Notes under CPL 1881	Notes under CPL 2000
	Notification of judgment	Equals one if normally the parties receive their first notice of the final decision in written form, by notice mailed to them, publication in a court board or gazette, or through any other written means. The variable equals zero if they receive their first notice in an open court hearing attended by them (that case, "sentencia in voce" is not usual in Spain). All final decisions are assumed to be written in Spain in general terms, including the "auto" in the proceso monitorio (CPL 2000).	Article 270 et seq.	Article 212
	Enforcement of judgment	Equals one if the enforcement procedure is mostly carried out through the written court orders or written acts by the enforcement authority, and zero otherwise. Zero is also given when the parties can enforce themselves the judgment (a general term of 20 days is given in Spain under CPL 2000) not being neccesary further intervention by the judge.	-	Article 548 et seq.
	Complaint must be legally justified	The variable measures whether the complaint is required, by law or court regulation, to include references to the applicable laws, legal reasoning, or formalities that would normally require legal training. Equals one for a legally justified complaint, and zero when the complaint does not require legal justification (specific articles of the law or case-law). If "legal representation" is not compulsory and the demand may be sent to the court in a formalized form (like a "papeleta") value 0 is given.	Articles 524, 680, 720. Also article 29 Decree 21-11-52	Articles 399, 437
	Judgment must be legally justified	The variable measures whether the judgment must expressly state the legal justification (articles of the law or case-law) for the decision. Equals one for a legally justified judgment, and zero otherwise. Legal justification is compulsory in Spain (including the case of an "auto", although read the notes to previous indicators). Half mark is considered for "proceso monitorio" under CPL 2000 in order to reflect the more simple nature of the procedure if there is no opposition.	Article 248 LOPJ (Spanish Judiciary Act).	Articles 208 et seq.
	Judgment must be on Law (not on equity)	The variable measures whether the judgment may be motivated on general equity grounds, or if it must be founded on the law. Equals one when judgment must be on law only, and zero when judgment may be based on equity grounds.	-	-
	Judge cannot introduce evidence	Equals one if, by law, the judge cannot freely request or take evidence that has not been requested, offered, or introduced by the parties, and zero otherwise. In the "proceso monitorio" (CPL 2000) "evidence" is understood as the documentary evidence sent to the tribunal with the complaint (no "interrogations" take place under that procedure),	Article 652	Article 429
	Judge cannot reject irrelevant evidence	Equals one if, by law, the judge cannot refuse to collect or admit evidence requested by the parties, even if she deems it irrelevant to the case, and zero otherwise.	Articles 497.5, 566, 639	Articles 285, 446
	Out-of-court statements are inadmisible	Equals one if statements of fact that were not directly known or perceived by the witness, but only heard from a third person, may not be admitted as evidence. The variable equals zero otherwise. In Spain the judge or tribunal is free to admit or not the statement depending on the circumstances.	Article 659	-
	Mandatory pre-qualification of questions	Equals one if, by law, the judge must pre-qualify the questions before they are asked of the witnesses, and zero otherwise.	Articles 639, 641	Articles 302, 368
	Oral interrogation only by judge	Equals one if parties and witnesses can only be orally interrogated by the judge, and zero if they can be orally interrogated by the judge and the opposing party.	Articles 652	Articles 302, 368
	Only original documents and certified copies are admissible	Equals one if only original documents and "authentic" or "certified" copies are admissible documentary evidence, and zero if simple or uncertified copies are admissible evidence as well.	Article 597	Article 318
	Authenticity and weight of evidence defined by law	Equals one if the authenticity and probative value of documentary evidence is specifically defined by the law, and zero if all admissible documentary evidence is freely weighted by the judge.	Article 596 et seq.	Articles 319, 326
	Mandatory recording of evidence	Equals one if, by law, there must be a written or magnetic record of all evidence introduced at trial, and zero otherwise.	-	Articles 145 et seq.
	Enforcement of judgment is automatically suspended until resolution of the appeal	Equals one if the enforcement of judgment is automatically suspended until resolution of the appeal when a request for appeal is granted. Equals zero if the suspension of the enforcement of judgment is not automatic, or if the judgment cannot be appealed at all. In spain, in general terms, the judgments can be "provisionally" enforced even in the case of appeal. Under CPL 2000, no "appeal" (understood as "apelación") is possible against the "proceso monitorio" (opposition transforms the proceso monitorio in other type of procedure).	Articles 383, 384, 385, 702	Articles 524 et seq.
	Comprehensive review in appeal	Equals one if issues of both law and fact (evidence) can be reviewed by the appellate court. Equals zero if only new evidence or issues of law can be reviewed in appeal, or if judgment cannot be appealed. An "apelación" can review both the law and the evidence. A "casación" only reviews the law.	Articles 862, 897 et seq.	Article 456 et seq.
	Interlocutory appeals are allowed	Equals one if interlocutory appeals are allowed, and zero if they are always prohibited. Interlocutory appeals are defined as appeals against interlocutory or interim judicial decisions made during the course of a judicial proceeding in first instance and before the final ruling on the entire case. "Autos" and "providencias" are considered "interim decisions" in this variable.	Article 376	Articles 451et seq. 455

SOURCE: Self elaboration, Spanish Civil Procedural Laws and Djankov *et al*. (2003).

DESCRIPTION OF THE VARIABLES AND ADAPTATION NOTES FOR SPAIN (cont.) ANNEX

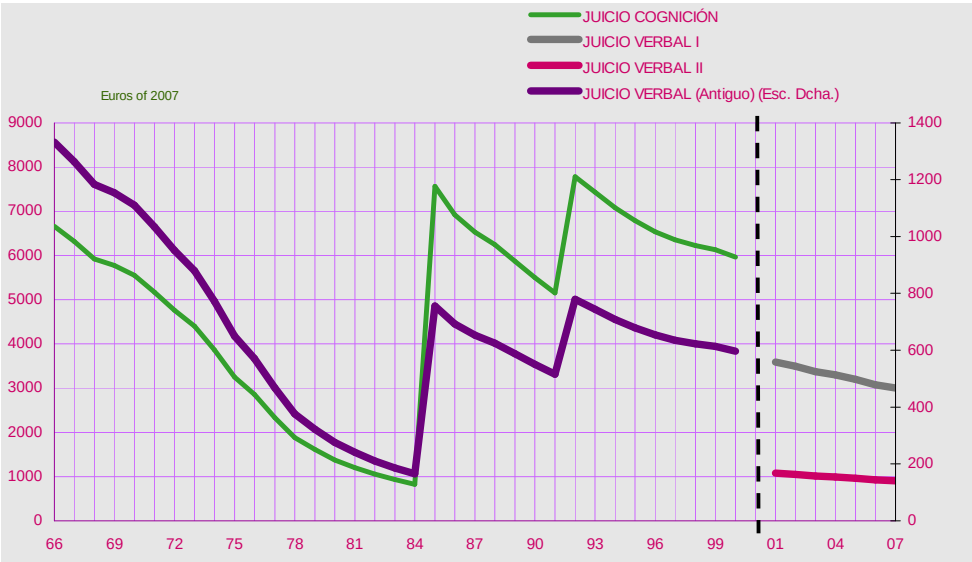
	VARIABLE	DESCRIPTION AND ADAPTATION	Notes under CPL 1881	Notes under CPL 2000
[redacted]	Mandatory pre-trial conciliation	Equals one if the law requires plaintiff to attempt a pre-trial conciliation or mediation before filing the lawsuit, and zero otherwise. Pre-trial conciliation was compulsory before Law 34/1984 (with the exception of the "juicio verbal"). Afterwards (and also under CPL 2000) conciliation is voluntary. Thus, the value of the indicator has diminished.	Article 460. Amendment by Law 34/1984	-
	Service of process by judicial officer required	Equals one if the law requires the complaint to be served to the defendant through the intervention of a judicial officer, and zero if service of process may be accomplished by other means.	Articles 525, 680 et seq., 722. Article 38 Decree 21-11-52	Articles 152, 276, 439. Judgment SAP Barcelona 20-12-2004
	Notification of judgment by judicial officer required	Equals one if the law requires the judgment to be notified to the defendant through the intervention of a judicial officer, and zero if notification of judgment may be accomplished by other means.	Article 252	Articles 161, 815

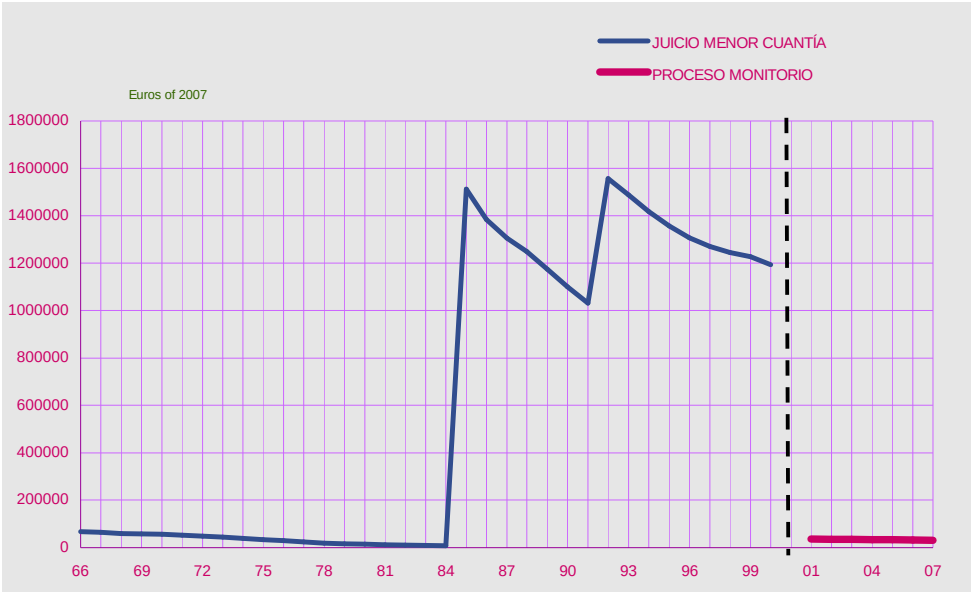
SOURCE: Self elaboration, Spanish Civil Procedural Laws and Djankov *et al*. (2003).

ANNEX B: Applicable amounts in real terms

A problem with the system of procedures explained above (section 3.1) is that it establishes a rigid set of amounts that can only be changed by a new Law (which happened very often as it was already explained). As a result, the Law was not taking into account the effect of inflation and, therefore, year after year the limits of the different procedures were falling in real terms. Table 2 describes the applicable amounts for each procedure in nominal terms. For instance, the applicable amount for a "*juicio ordinario*" was in 2001 €3000 or more, and this amount remained unchanged in the following years.

APPLICABILITY OF THE DIFFERENT JUDGMENT TYPES FIGURE 12





Note: Nominal amounts of the procedures (see Table 3) corrected by monthly CPI indices (SOURCE: Self elaboration and Instituto Nacional de Estadística, INE (2009).

Figure 12 shows the amounts applicable to the different procedures in real terms, therefore after adjusting for inflation. As a consequence, over time smaller amounts were brought under more "complex" procedures. The "steps" in the graph coincide with the cited amendments in the CPLs.

Inflation entails several costs. Probably the best known is the distortion caused by inflation in money demand. Dolado *et al*. (1997) have identified other costs for the Spanish economy, some of them related to rigid regulations such as the ones governing taxation.

In this respect, in the same way that inflation may lead to distortions in revenue through incomplete or delayed indexation of tax brackets, the lack of indexation of the amounts to which Spanish civil procedures apply may produce unexpected changes in formalism. More formal procedures become applicable to actions for lower amounts if inflation is present in the economy. Thus, inflation may increase the formalism of the judicial system.