

The process of transferring the administration of justice as an instrument for analysing the dynamics of the autonomous state.

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ENG Abstract. The article analyses the processes of transfer of competences in matters of judicial administration to the Autonomous Communities. Providing a vision on how the process of construction of the current autonomous state has taken place and allows us to understand an important element of the operation of the judicial administration, a key element for the proper functioning of the judiciary, a state power little studied from political science Spanish. In addition, the transfer of this competence allows us to exemplify this type of process, which has not received much attention either, bearing in mind that these processes can condition the subsequent exercise of the competence, and its understanding provides us with key elements to understand the real functioning of the Autonomous state.

Keywords: Decentralization, judicial power, administration of justice, autonomous communities, judicial administration.

Summary: 1. Introduction. 2. Theoretical basis. 2.1. The Judiciary and Political Science. 2.2. Historical Neo-institutionalism as a theoretical frame of reference. 2.3. The administration of justice in Spain as a legal frame of reference. 3. Research design. 3.1. Main and secondary questions. 3.2. Primary and secondary objectives. 3.3. Hypothesis. 3.4. Key elements. 4. Results. Handover analysis. 4.1. Transfer of personnel. 4.2. Transfer of tangible assets. 4.3. Negotiation of competition after the handover. 5. Conclusions. Documents. Bibliography.

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1. Introduction

Understanding any process of devolution of powers allows having the tools to analyse how the autonomous State has really been articulated.

The process of transferring the judicial administration is one of the best examples of the construction of the autonomous State, but more because it is an extreme case than a typical one.

The majority of academic articles about the justice administration in Spain are of a judicial type and for therefore tend to analyse the system from the perspective of its perfection, without considering key elements such as the informal relations between legal operators and public employees, political pacts or an analysis of the power relations between actors. In this sense, and considering a legal analysis, the present research fills in the existing gap in this field of study from the Political Science and Administration point of view.

Nowadays, the judicial administration had been transferred to the Basque Country, Catalonia, Galicia, Andalusia, Navarre, Valencia, the Canary Islands, Madrid, Asturias, Cantabria, Aragon, Extremadura, La Rioja and Castile and Leon. The rest of the Autonomous Communities are at different stages of negotiation, from the agreement about to be significant in Murcia, to a slow progress in Castile and Leon, through the Balearic Islands, which is calculating the impact of staff salary reductions on the costs of the transfer.

This article begins by dealing descriptively with some key elements required to understand the administration of justice and continues by dealing with the most relevant elements of the transfer of jurisdiction, though not as transfer processes, but by analysing these elements as an example of the complexity of the jurisdiction and the peculiarities it has. First, the personnel is presented, in the context of the new Judicial Office, and the calculation of the effective cost to transfer it to the Autonomous Communities. Second, the material goods and auxiliary services are presented, with their particular calculation of the effective cost and the consequences in the intergovernmental relations that it has. Third, a more systematic detail is given of the frameworks of relations between the institutions involved in the judicial administration. Finally, a presentation of the main findings is followed by a final conclusion aimed at continuing research on this subject of study given more time and resources.

The research illustrates the way in which a competition is financed, the economic relations and the autonomy of the Communities. The case is also an example of intergovernmental, formal, informal, bilateral, horizontal and multilateral relations.

The article is based on a brief research on the processes of transferring the competence of judicial administration to the Autonomous Communities. The research in question ended up showing several of the issues mentioned in the previous paragraph in a direct or indirect way by showing paradoxical and dysfunctional phenomena in several aspects of the competence. Not all the causes of these aspects could be investigated in depth and systematically, with a public policy approach, since the original research was limited in time and means, and only aimed at showing the experiences in transfers from the autonomic point of view.

The main objective of the work was to determine the similarities and differences of the various transfer processes, considering that they had taken place at different times, in order to identify the best experiences. The final result went beyond expectations, as the differences and their causes showed us the complexities of the functioning of the autonomous State, in which asymmetries, party relations, the administrations' role, the constitutional court or financing intersect.

2. Theoretical Bases

2.1 The juridical and Political Science

The study of the organization of the State and how the separation of powers is defined in each political form is one of the most studied aspects in the Social and Legal Sciences. From the juridical point of view, there is a large number of studies that address the issue, ranging from the constitutional design of the separation of powers (Jellinek, 1910; Pérez Royo, 2016; García Morillo, 1998) to the detailed analysis of the structure and administrative functioning of the legislative (Santaolalla, 2013; Astarloa, 2016), executive (Cendón, 2004) and, from the perspective that interests us here, judicial (Gimeno Sendra, 2010; Moreno Catena, 2002; Orero, 2010) powers.

In relation to the functioning of the judiciary, there is a large number of legal research studies that analyse its general structure, as well as the functioning of the different jurisdictional orders (Salgado, 2010; Gómez and Serrano, 2015; Risueño, 2012), the functioning of the prosecutor's office (Dalmau, 1999), the judicial police (Gino Sendra, 2010) and the judicial office, which includes the personnel at the service of the administration of justice (Buján, 2009; Morato, 2005; Carrillo, 2005; Ballesteros, 2007). These studies provide an undoubtedly descriptive interest since they exhaustively define the norms and formal structures that regulate the functioning of the judicial power, its different orders and the various organs that

collaborate in the exercise of this power of the State.

However, legal studies raise two important limitations. First, they analyse structures from a formal and descriptive perspective, which tends to explain the functioning of the different institutions and public administrations from a vision that tends to perfection because legal studies do not usually pay attention to key factors in the functioning of the institutions and in the actions of the political or administrative operators that participate in them, as are: power relations, informal relations, their politicization or even the perspective of the human, material and economic resources with which they tend to carry out their function: power relations, informal relations, their politicization or even the perspective of human, material and economic resources with which they tend to develop their function.

The Political Science and Public Administration allows overcoming these limitations, because without renouncing the very valuable existing legal analysis, it incorporates crucial elements to understand the functioning of the judiciary power, in this case, such as political, inter-administrative and informal relations and the analysis of organizational culture and human resources.

In this sense, the research would come to fill an existing gap in political science, which has rarely studied the judiciary power, considering it a "jurists' territory", and to complete the existing legal studies on the subject by introducing new dimensions that combine formal analysis with parameters. For this purpose, Historical Neo-institutionalism has been taken as a theoretical reference.

2.2 The Historical Neo-institutionalism

The Historical Neo-institutionalism shares with the traditional currents of institutionalism (Peters, 2003) the basic assumption of attempting to explain the functioning of societies based on the analysis of the functions and effectiveness of their formal institutions. The different versions of institutionalism start from the assumption that each social system has a series of functions that it has to fulfil, for which it endows itself with a series of specific institutions whose purpose is to regulate the behaviour of individuals.

Thus, the economic currents of Neo-institutionalism analyse economic relations as the result of the interaction of diverse economic institutions (Samuels, 1995) that determine the behaviour of individuals in the market, while legal institutionalism considers that it is the legal norms grouped in Codes and whose effectiveness is linked to the sanctions in case of non-compliance that condition public and private relations between individuals "a set of coercive rules" is how Kelsen (1934) defines the legal system and its capacity to determine the behaviour of individuals. On the other hand, rationalist institutionalism focuses on the agents and on how institutions act as instruments for catalysing their needs (Tsebelis, 1990), while cultural institutionalists act not as an element of containment of their desires but as a shaper of the expectations and desires of individuals (March and Olsen, 2010:15).

Historical Neo-institutionalism, on the other hand, arose from the political theories of structural-functionalism between 1960 and 1975. According to Hall and Taylor (1993), this analytical dimension is characterized by the fact that it associates the design of institutions with the production of formal and informal norms that act as a mechanism for socialization, training and information for the political actors operating within them. It is, therefore, a method of analysis that is considered an extraordinarily pertinent theoretical instrument for explaining both political phenomenology and agent-structure relations from a diachronic perspective (Bedoya, 2009:35).

Historical Neo-institutionalism also assumes the premise that it is institutions that determine the behaviour of individuals in society, but emphasizes three dimensions: path dependency, the production process of formal and informal norms, and the role of the actors.

The first of these dimensions is based on the idea that both when an institution is constituted and when it begins to develop its activity, it generates a series of formal and informal norms with the aim of developing a prolonged and defined path dependency on the present and future of the political actors (Peters, 2003: 103). Therefore, for historical neo-institutionalism, norms not only determine behaviour, but are also an instrument of socialization and information for the actors operating in the system (North, 1991; Ostrom, 2000), since norms, in addition to defining the rules of the game, are above all those that offer the actors the alternatives on which they will make their decisions.

In this sense, it is also essential to consider the "particularism" factor that surrounds any decision adopted by a political or institutional operator and how it is shaped by the influence exerted by the structures and norms defined by the institutions. Thus, in the face of positions that justify the adoption of public decisions in the framework of a purely rational choice dictated by exogenous conditions (Boudon, 2009, p. 183), as well as in the face of those who are not aware of the fact that they have to make decisions in the framework of a merely rational choice dictated by exogenous conditions (Boudon, 2009: 183), as well as in front of those who consider that policies are implemented from the mandate of a legal norm, it is necessary to understand that, above all, public decisions are determined by actors who have their own particular preferences and interests (Lenski, 2013: 52) that may be more or less shaped by experience and the course of time (Stone, 2006: 3).

Therefore, it is crucial to understand both the institutional design and the formal and informal norms that derive from it, because they will define the rules of the game in which the actors operating within the

framework of public organizations will operate, since the formal and informal rules and norms provide the information that the actors finally receive, and although they have a certain margin of discretion, they make their decisions based on the knowledge they have.

2.3. The administration of justice in Spain as a legal frame of reference

The 1978 Spanish Constitution (EC) considers the Judicial Power, following the traditional separation of powers, as one of the 3 powers of the State (Article 117 EC) and therefore emanates from the citizens following the principle of popular sovereignty recognized in Article 1.2 of the EC.

The exercise of Judicial Power in Spain manifests itself in the first place as a fundamental right (Article 24 EC) of citizens to have access to the protection of judges and courts to settle their private conflicts and to respond to the offenses caused to society and to the legal and political system as a whole. For its exercise, the EC lists key aspects that make up the essential content of this right, such as legal counsel, the impartiality of the judge, the presumption of innocence, the social function of custodial sentences and sanctions (Article 25 EC) and the prohibition of courts of honour (Article 26 EC). In order to be able to perform its functions, the Judiciary needs an administrative apparatus ranging from public employees who manage the procedure and drive it administratively with all kinds of acts (notifications, communications, etc.) to certain figures that are necessary to complement the task of judges and courts, as is the case of forensic experts or even the judicial police who participate in the investigations of the facts under investigation.

The administrative apparatus that supports and promotes the work of the judiciary is sparsely regulated in the Constitution and the legislature has opted to entrust its current management to various departments of the executive branch (Ministry of Justice, Ministry of the Interior, Ministry of Finance, etc.) generating a situation which, although from a legal perspective does not present problems and is even found in comparative legal systems, from an administrative perspective it can give rise to difficulties due to the fact that hierarchical dependence can be an important distorting factor due to the fact that the head of the jurisdictional body (judge or magistrate) does not have effective capacity over the personnel under his or her charge from a labour point of view.

This situation appears complicated from the viewpoint of the process of decentralization of power that has taken place in Spain since the 1978 Constitution, which defines in Article 2 and Title VIII a territorial structure of a federal nature. Thus, although justice is exercised by means of a single judicial power throughout the State and its administration is the exclusive competence of the State (article 149.1.5), the management of this competence has been gradually transferred to the Autonomous Communities. Therefore, the Constitution articulates an extremely complex system: it defines a power of the State, emanating from the people, which configures a fundamental right and which is exercised by what is generically called the "judiciary", comprising on the one hand career judges and magistrates who are supported by a set of material and personal resources that depend on the central executive power and whose management is being transferred to each of the Autonomous Communities that make up Spain.

3. Research Design

Starting from the justification and the review of the literature that has been carried out previously, it is vital to advance in the approach of a research design, whose main objective is to verify the central hypothesis of this work, which is to determine that the transfer of competencies in judicial administration is a process that serves to explain the intergovernmental dynamics of the Autonomous State.

3.1. Primary and secondary research questions

Main question:

- Are the process of devolution of powers useful to explain the effective functioning of the State of the Autonomous Communities?

Secondary Questions:

- How is the State of the Autonomous Communities? How is the distribution of powers?
- How does the Judicial Administration function in Spain? What is the distribution of competencies in the area of Judicial Administration?
- How is the transfer of competencies? How has the transfer of competencies been in the area of justice?

3.2. Hypothesis

The hypothesis on which this research is based is that the process of transferring competencies in the administration of justice to each Autonomous Community explains the subsequent differences that they

may have when exercising the competence, this being an example of the real functioning of the Autonomous State.

3.3 Key elements

Firstly, it is essential to define the term “judicial administration” since it is not commonly used either by those responsible for the field of law or by the media. In these fields, the term “justice” is commonly used to refer both to the judiciary power and to the “judicial administration”. However, it seems more accurate to refer to judicial administration as the bureaucratic organization that carries out the actions of the judiciary, since it is more semantically precise.

Basically, what the State transfers in the area of judicial administration are functions and support services regarding the judiciary, which is what the Constitutional Court has defined as “administration of the judicial administration”. This refers to the payment of personnel, the construction of new judicial offices, current expenses, the supply of office material to the courts, computer programs, payment of free legal aid and experts, cleaning and maintenance of the offices.

All these duties and services support a set of judicial bodies whose territorial scope of action is equal to or less than that of the Autonomous Community, which are part of the judiciary, and which are not transferred. The judicial bodies, the units of which the judiciary is composed, are organically independent of both the Autonomous institutions and the legislative and executive branches of the central State. These bodies encompass those of a unipersonal nature, the courts, and those of a collegiate nature, the courts of appeal and high courts. The territorial distribution of these bodies is what is known as the judicial plant, which establishes the number of bodies and the demarcation of each one.

The transfers, therefore, would affect the functions and services that support the judicial bodies at the regional or lower levels. The central State is the one that decides the judicial plant and has to revise it by law every five years. However, the Autonomous Communities with jurisdiction over judicial administration have the power to send a report to the Ministry of Justice to request the creation of the judicial bodies they consider necessary in their territory. A report is also issued by the General Council of the Judiciary, CGPJ, which is the government of the judges.

It must be noted that there is also a government of the Judiciary, the General Council of the Judiciary, in charge of judges and magistrates: recruitment, regulates the professional career, assigns posts by competition, establishes possible sanctions and is in charge of continuous training. As a consequence of the “Pacto de Estado para la Reforma de la Justicia” (hereinafter, “Justice Pact”) signed in 2001 by the central government, the PP and the PSOE, the Ministry of Justice carried out a profound restructuring of the judicial plant in addition to the five-yearly review, with the aim of adapting it to the implementation of the new Judicial Office, which has not yet been completed. In 2012, the last review of the judicial plant took place.

The fact that every five years the judicial plant, and therefore the number of organs, can vary, has generated a certain degree of uncertainty and lack of definition in the transfer of this competence to the Autonomous Communities, since the functions and services change with the judicial plant. Added to this is the fact that the transfer is made over the elements of a foreign power, the judiciary, which is not transferred and does not participate in the transfer process, and whose structure, organization and, above all, interests are independent.

Table 1. Territorial distribution of judicial bodies in Spain

Demarcation	Acting Bodies
Municipality	Justice of Peace
Judicial District: demarcation of several municipalities within the same province.	Court of Instruction (Criminal) Court of First Instance (Civil) Specialized Court of Gender Violence (Criminal)
Province	Functionally specialized Courts: <ul style="list-style-type: none"> • Contentious-Administrative Courts • Criminal Court • Commercial Court • Social Court • Juvenile Court • Surveillance Courts Penitentiary. Provincial Courts (Criminal and Civil)
Autonomous Community	Superior Court of Justice: <ul style="list-style-type: none"> • Civil-Criminal Chamber. • Contentious-Administrative Chamber. Social Chamber.
State	National Court: <ul style="list-style-type: none"> • Central Courts of Instruction (Criminal) • Central Criminal Courts. • Central Contentious-Administrative Court. • Central Court of Penitentiary Surveillance. • Central Juvenile Court. • Criminal Chamber. • Contentious-Administrative Chamber. • Social Courts. Supreme Court: <ul style="list-style-type: none"> • Civil Chamber. • Criminal Chamber. • Contentious Administrative Chamber. • Social Chamber. Military Chamber.

Source: Own elaboration

Moreover, since 2001, there has been added to this environment greater uncertainty due to the slow implementation of the new Judicial Office, a new administrative management model that separates the functions and services of the judicial administration of each judicial body, as existed until now, concentrating functions, services and material assets in administrative units that support several judicial bodies at the same time. In principle, the Autonomous Communities that received jurisdiction before 2008 have had to develop and implement their own model of the new Judicial Office, with the previous bases, and the latest transfers, to Cantabria, Aragón, Extremadura, La Rioja, and Castilla y León, have already received jurisdiction with the model of the central State. However, as the implementation is very recent, its results and impact on the functions and services being transferred are not well known. These elements generate uncertainty since once the competence has been transferred, it may be subject to important changes or conflicts with the judiciary which cannot be controlled or contemplated in the transfer.

4. Results. The Transpassage Analysis

This competence began to be transferred following a TC ruling that divided “judicial administration” from “administration of judicial administration”, the latter part being transferable to the Autonomous Communities, since “judicial administration” as such is an exclusive competence of the central State, according to Article 149 of the Constitution. Following this ruling, the first transfers began to take place, to the Basque Country and Catalonia, at the end of the 1980s, in a process that has lasted until the present day.

The typical process of transfer of this competence begins with the negotiation in the Mixed Commission of Transfers that is constituted between the State and each Autonomous Community. Four working groups are created in this Commission: Personnel, Cash Costs and Financing, Building Works and Patrimony, and Information Technology.

Each working group has to reach an agreement independently, which is integrated with the rest in a common agreement. This agreement serves as the basis for drafting the Royal Decrees by which the State executes the transfer. In this competence there are two types of Royal Decrees: one deals with the transfer of personnel and the other with the transfer of material goods and auxiliary functions. There may be an overall agreement, at the political level, and there may be pending agreements on certain aspects of a specific working group. In these cases, there are usually more Royal Decrees that implement what has been agreed. In any case, we are going to study in more detail these two main types of transfer that make up the competence, since these transfers are the origin of the dysfunctions of the Spanish judicial administration.

4.1. Personal Transfers

The transfer of personnel is quite symmetrical for all the Autonomous Communities, since the jobs assigned to the relevant judicial bodies, or to the offices currently located in the autonomous territory, are transferred. The key element in the negotiation process for this transfer, in fact for any transfer of any competence in the Autonomous State, is the effective cost.

The effective cost is the calculation of what it is supposed to cost the central State to provide this competence on an ordinary basis in that territory on an annual basis, i.e., what the central State spends without considering real investments, such as those earmarked for extraordinary works, installation of special computer programs or extraordinary computer equipment linked to the implementation of the new Judicial Office, for example. This valuation is supposed to be what it should cost each Autonomous Community each year to exercise the competence transferred to it by the State. The central State, through the Royal Decrees of Transfer, is obliged to transfer annually, to each Autonomous Community exercising the competence, funds for an amount equivalent to the effective cost. This amount is updated with the CPI and, where appropriate, changes in the autonomous financing system are taken advantage of to cover the actual expenditure incurred by the Autonomous Communities in this area.

It should be noted that this system of calculating the cost of transfers is zero-sum. The cost-effective system implicitly assumes that state spending on a competence is divisible territorially and the sum of each of the parts would give us the total cost. Actually, this is false. The indirect costs incurred by the central State are not all territorially allocable, such as, for example, common services, which, being centralized, are smaller. As competition is decentralized, spending centers multiply, such as the departments providing internal government services, and economies of scale in the provision of external services are reduced, all of which increases the cost with respect to centralized provision.

The foregoing implies that most of the competencies, not only judicial administration, were transferred with lower cost estimates than the actual ones, and extraordinary financing has been required continuously, especially in the case of the first transfers that were made. These growing demands lead to continuous economic demands from the autonomous governments, to claims for investments from the central State. In the judicial administration, extra-ordinary financing has come fundamentally from investments in material goods, particularly in extraordinary works. However, it should be noted that the frequent changes in the autonomic financing systems attempt to correct these deviations in all the competencies transferred, and that the experience accumulated in the transfers makes the calculations increasingly more precise.

In any case, the interviews carried out for the research show that there were even differences between the expenditures made by the Autonomous Communities in the first year and those budgeted in the transfer documents. In the Canary Islands, the technician Joaquín García Gómez pointed out that the real cost was more than one million euros higher than the actual cost agreed in the first year of the exercise, 1997. For her part, Patricia Montagud, General Director of the Administration of Justice of the Valencian Community estimated in 2006 that what the State transferred as the effective cost was more than 40% lower than the actual expenditure they had in judicial administration.

It has to be considered that a very wide gap between the calculated effective cost and the real cost of the exercise of the competence is repeated annually, and therefore it becomes a serious problem for the financing of the Community, at least until the next revision of the autonomic financing system. It should also be pointed out that the technicians involved in the transfer process and in the subsequent management of the competences, both central State and of the Autonomous Communities, are aware of this situation, and that the calculation of the effective cost is a fiction. For this reason, when it comes to negotiating, both sides try to "take matters into their own hands" by imposing additional indirect costs with respect to personnel or by increasing extraordinary financing. In the end, achieving a better or worse valuation depends on three key elements: Political Impulse, Historical Moment, and Ability of the Technicians on both sides.

From this point on, we have that most of the effective cost of the judicial administration is a direct cost, that of the personnel transferred. The central State and the Autonomous Community calculate in the Joint Commission on Transfers the cost of what the Ministry of Justice spent in the previous year on each job that is transferred, which is basically the personnel working for the judicial bodies of the Community. For

this purpose, the Autonomous Community and the central State use the Job List (RPT) of the Ministry of Justice and account for the expenses of each of the jobs to be transferred. These expenses are basically the salary and allowances for each job, whether occupied or vacant. In this sense, it must be considered that there may be some jobs that are not occupied by any employee at the time of the transfer, but which are included in the RPT and which the State must also transfer to the Autonomous Communities.

Table 2. Criteria for improving the assessment

Criteria	Characteristics
Political Impetus	It may come from a definition of the interest that the competence has for the Autonomous Community, or from the State's interest in transferring it, as is currently the case. Here, in order to make this impulse more effective, the coincidence of political colour between the government of the Autonomous Community and that of the central State is an element that usually drives the transfer.
Historical Moment	In which the transfer is carried out, since the circumstances and the experience are not the same at the time of making the calculations at the end of the 80's and the 90's, as they are at the end of the last decade or at the present time.
Technicians' Ability	To convince the other party that the calculation is in line with reality. In this sense, the central State has usually had the advantage, since they have a previous experience in transferring the judicial administration, which the technicians of the Community do not have.

Source: Own Elaboration

We must point out that there have been some errors between the actual number of personnel transferred and that stated in the Royal Decrees in the cases of the Valencian Community, Navarre and, particularly, Andalusia: "A significant difference was observed in the number of civil servants, since persons who rendered their services in the Administration of Justice did not appear among those transferred. In pesetas, these civil servants represent a difference of slightly more than 900 million pesetas".

In summary, regarding the personnel transferred, there may be important differences between one Community and another, despite the fact that the process is formally similar, depending on whether the transfer was made at one time or another, since the greatest errors were detected in the 1990s.

4.2. The transfer of tangible assets

If the transfer of personnel is symmetrical, there are subtle differences between the transfers from the State to each of the Autonomous Communities in relation to tangible assets and auxiliary functions, which end up having an important significance. However, there is also a common pattern of matters that are transferred, as can be seen in Table 3.

Table 3. Common pattern of subjects that are transferred

Matter Subject of Transfer	Characteristics
The acquisition and, if applicable, construction of movable and immovable material means (judicial headquarters) of the judicial bodies and Judicial Offices.	This includes buildings, investments in all office equipment, furniture, computer software, etc., as well as their running costs, such as electricity, water, maintenance, etc.
Planning Function	Of the movable and immovable material assets that will be necessary in the future to provide the service.
Installation and Start-up of new Courts with their associated material and economic resources, also including current expenses.	This includes the necessary organization and administration so that a new court can begin to operate.
The provision of material and economic resources to the institutes of forensic medicine.	There is one per province.
Auxiliary Functions	Subsidies for the public defender's office, procedural steps and procedures and employees' per diems.

Source: Own Elaboration

For all these material goods and services, an assessment is made of the effective cost, similar to that summarized in the previous section: an approximation is negotiated of what the central State is supposed to spend in the corresponding Autonomous Community, plus the sum of the indirect costs. To calculate this effective cost, the programs, and items of the Ministry of Justice in the General State Budget (PGE in Spanish) of the year prior to the year of negotiation are used, and several steps are followed.

The effective cost of the material goods and auxiliary functions would be the result of the sum of the application of the valuation module, specific to each Autonomous Community, to each of the above budget items.

The problem for this valuation of the effective cost to be close to reality is that most of the budget items of the Ministry of Justice are global and cover the entire territory currently managed by the State. For this reason, it is almost impossible to calculate precisely what the State spends in a given territory, since there are budget items that are not assigned to judicial bodies or specific Judicial Offices at present, which would fall into the category of indirect costs. Examples of these are the development of a computer program for the administration of justice, which is considered a tangible asset, or the costs of planning future needs for movable and immovable assets. The possibilities for error in this area have also diminished over time, since the fewer territories the State manages, the closer the negotiating parties can approximate what is spent in a community.

In any case, there is a negotiating margin for the effective cost of tangible assets and auxiliary functions, which is greater than in the case of personnel.

Table 4. Effective cost calculation process

Step	Characteristics
The central State and the Autonomous Community negotiate a percentage called "valuation module".	<p>It is based:</p> <ul style="list-style-type: none"> Primarily, on the population of the Autonomous Community with respect to the total population of the territory still managed by the State at that time. <p>Secondarily, on specific factors that the Autonomous Community alleges for the central State to consider and weight. Geographical, socioeconomic or extraordinary particularities are used as specific factors.</p>
This valuation module is applied to each budget item of expenditure of the PGE that the Ministry of Justice has for the material goods and auxiliary functions of the judicial administration in the year prior to that in which the negotiation takes place.	<p>Regarding:</p> <ul style="list-style-type: none"> Current Expenses (Chapter II): for example, operating expenses such as water, electricity or telephone, of the judicial headquarters or office material. Subsidies (Chapter IV): for example, the costs of free legal assistance, translators and other procedural formalities related to auxiliary functions.

Source: Own Elaboration

According to Mr. José García del Olmo, Deputy Director General of Territorial Coordination of the Ministry of Justice in 2006, the central State transferred annually, within the effective cost, specific funds for the construction and refurbishment of judicial body headquarters. The Autonomous Communities do not have to justify how these funds are spent and receive them whether they are used for construction and refurbishment or for another purpose. However, the subjective difference in the valuation modules means that no two transfers of tangible assets linked to the judicial administration are the same. In addition to this subjective factor, there are other particularities that occurred in some of the first cases of transfer, which over time have become a comparative disadvantage for the Autonomous Communities that have received the competence later.

In the case of Catalonia, in the final agreement of 1990, it managed not to take charge of the creation of new judicial bodies, limiting the transfer of material assets. The particularity is that they added a phrase at the end of the agreement that has not been repeated with the rest of the Autonomous Communities.

In the list of the functions and services transferred in Royal Decree 966/1990, Catalonia assumes: "The acquisition and management of movable, immovable and household goods for the judicial bodies based in Catalonia, which do not correspond to the creation of new bodies." The sentence seems irrelevant, but it implies that Catalonia did not assume the powers of construction or acquisition of real estate for new judicial bodies, although in 1996 it assumed the function of installing and putting into operation the new judicial bodies that the central State created in Catalonia. Until then, the central State also financed the start-up of the new judicial bodies. Also in that year, in exchange for the support of Convergència y Unió in the Congress of Deputies to the Government of José María Aznar, a "Supplementary Agreement on general valuation modules to be applied to the judicial bodies" was reached in the Joint Commission on Transfers, which set the amounts per square meter of what was to be assumed by the State for each seat for each new judicial body to be created. To date today, 2018, the details of these valuation modules have never been published in any official gazette and the rest of the Autonomous Communities have not been aware of them for less than 10 years.

The Catalan practice means that negotiations are conducted on a building-by-building basis, based on the valuation modules agreed in 1996. Up to 2006, Catalonia built or acquired 13 new buildings for new judicial bodies. In each, the central state has financed directly:

- A percentage of the cost of the buildings, which is transferred to Catalonia once they have been built.
- Another amount for the running costs of the service to be provided in the new courts, which is integrated and consolidated in the actual cost: maintenance of the building, cleaning, furniture, office automation, electricity, telephone, post, etc.

The result of this additional financing has been that Catalonia has obtained almost 25 million euros from the central government for the construction of buildings and increased its effective cost in current expenses by 9.4 million euros between 1994 and 2006, more than 50% over the amount transferred to it by the government in 1990.

All the experts consulted agree that the Generalitat de Catalunya has obtained more funding from the central government than the rest of the Autonomous Communities for the construction of buildings and for the current expenses necessary for their subsequent operation, since the rest have to make do with financing these expenses, even if they use the specific funds for construction and refurbishment transferred to them by the central government, because these funds are lower than the particular

Chart 1. Expansion in the Transfer of Resources to the Generalitat de Catalunya (in thousands of euros).



and opaque valuation modules that Catalonia has. Due to the advantage of this method for the autonomous part, the central State has not wanted to use this practice again for transfers to other Autonomous Communities.

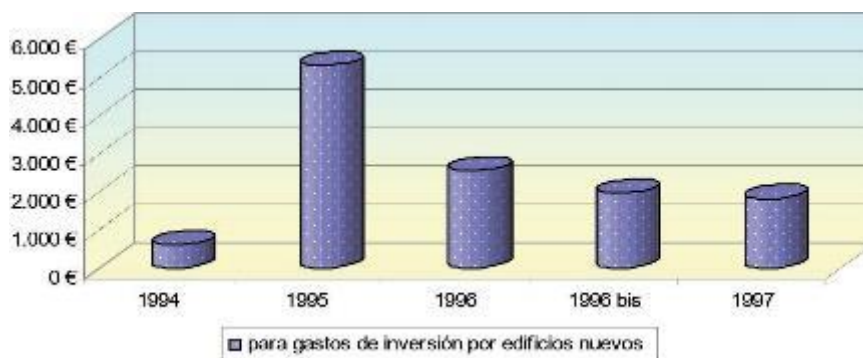
As compensation, the Autonomous Government of Catalonia finances the acquisition or refurbishment of buildings for the headquarters of judicial bodies whose personnel and auxiliary services were transferred before 1990 through specific funds for the construction and refurbishment of buildings for judicial bodies. According to the regional officials interviewed, these funds have been insufficient to cover expenses in all the Autonomous Communities, so that the Government of Catalonia has had to devote significant funds to refurbishing buildings, IT and furniture.

In addition to Catalonia, other communities in particular have also obtained additional funding from the central government for buildings to house new judicial bodies. Although the experts consulted pointed out that it does not have as high profits as Catalonia, Galicia obtained additional funding from the State for the construction of buildings for new judicial bodies independently of the specific funds it receives annually for investment in this area. At the same time that it signed the initial agreement for the transfer of the judicial administration, in 1994, the Galician regional government signed a "Complementary Agreement". As a consequence of this agreement, the State has transferred to Galicia funds for investments in new judicial offices on five occasions, through successive complementary transfers, which are characterized because: (i) the State has transferred to Galicia funds for investments in new judicial offices on five occasions, through successive complementary transfers, which are characterized by the following characteristics:

- These are transfers only for the construction of the buildings, and do not include the commissioning of the services.
- The funds are transferred before the buildings are constructed.
- The transfers do not contemplate the running costs of the services of the new headquarters in subsequent years, and therefore these costs must be assumed by the Autonomous Community.

Between 1996 and 1999, Galicia received more than 12 million euros for investment in new judicial offices.

Chart 2 Investment expenditures for new judicial headquarters received by Galicia.



Source: Own Elaboration

In the same way as in the Catalan case, the Complementary Agreement has not been published nor has it been included in any Royal Decree of transfer. However, in each Royal Decree of extension of material resources to Galicia, its consequences have been reflected in detail.

In addition to the Galician and Catalan cases, there are two other cases of additional and extraordinary financing of buildings, in which the central State only co-finances the work and does not pay for the installation and start-up costs of new courts. In these cases, the central government grants aid for the construction or refurbishment of singular, large buildings intended to house numerous existing judicial bodies. In these cases, the Royal Decrees of the initial transfer had provided for the financing of these unique buildings, because it was negotiated at the same time as the initial transfer of jurisdiction. The disadvantage of this practice is that it is discretionary; the central State may or may not recognize the need for a singular building.

In these cases, the State would finance part of the costs of relocating judicial bodies, which occupy deteriorated buildings, in the case of the Canary Islands, or scattered buildings, in the case of Madrid. It thus places them in facilities suitable for the provision of service to the public and also seeks to group the judicial bodies together, which means savings in running costs by applying economies of scale.

It must be pointed out that in addition to these real estate assets, the central State is also transferring all the furniture and office material, vehicles, hardware and computer software. The Royal Decrees of transfer include that the State and the Autonomous Communities should collaborate in the promotion of computer assets and in ensuring the compatibility of the programs with those of the rest of the State territory.

4.4. Post-transfer competition negotiations

The regional experts interviewed agreed that the state funding is insufficient to cover the real costs subsequent to the moment of transfer. In addition to the mismatches and errors in the effective cost in the negotiation, it must be added, on the one hand, that as a consequence of the restructuring of the judicial system, the number of judicial bodies has increased a circumstance that may not have been

Table 5. Other cases of additional and extraordinary financing

Autonomous Community	Characteristics
Canary Islands	The central State transferred two annual appropriations of 600,000 and 720,000, for the renovation and expansion of a singular building in Las Palmas in 1996 and 1997, the seat of the Provincial Court and numerous courts.
Community of Madrid	The central government transferred 13 million euros in four annual payments from 2002 to 2006 for the "Campus de la Justicia". This is a space where the specialized courts of Madrid, the Provincial Court and other state courts such as the central courts and the National Court will be relocated.

Source: Own Elaboration

considered at the time of the transfer. On the other hand, central government expenditures have historically been below the real needs for material goods.

The end result is that once the competence has been transferred, the autonomic leaders must consider a high investment in real estate. All the Autonomous Communities that have received jurisdiction have had

to undertake major renovations or new buildings in almost every judicial district headquarters, while at the same time investing in unique buildings for the headquarters of the large collegiate bodies. In addition, the renewal of the furniture and computer equipment of these judicial headquarters, and therefore the investment in them, has gone hand in hand with that of the buildings. However, the most recent transfers, such as Aragón, Cantabria, or Extremadura, have had a certain advantage in the field of material assets, since in 1998 the central State began to renew the material resources of the judicial administration in the territory of the Autonomous Communities that it still managed. Furthermore, since 2004, with the implementation of the new Judicial Office, the State has been installing new programs, computer and telecommunications equipment, furniture and even building new buildings for judicial headquarters in these territories. The latest transfers also include videoconferencing and recording infrastructures for all courtrooms, which in the case of the Autonomous Communities that first received the competency entails an additional expense and not all of them are facing it as a priority.

In addition, the new Judicial Office emphasizes the importance of information technology. The Ministry of Justice is eliminating the paper format in judicial processes and the different instances of each Judicial Office are communicating with each other through the computer network. To this end, computer applications have been developed and are also being transferred, which means savings for the Autonomous Communities. For those that already had jurisdiction, collaboration agreements have been signed with the Ministry of Justice for the transfer of some key applications, but there are others, such as procedural management, which are not being transferred to the Autonomous Communities that received jurisdiction before 2002. For these, the important thing is that their applications are compatible, since it is sometimes necessary for the Judicial Offices located in one Autonomous Community to be able to read and intervene in the files processed by a Judicial Office located in another. It should be noted that the CGPJ oversees granting compatibility certification and rates from 1 to 3 the compatibility of the different procedural management programs developed by the Autonomous Communities and the State.

The investments in all types of new technologies, software, hardware, and infrastructures, are a constant need in the management of the judicial administration. In the long term, an Autonomous Community should make investments of this type, in any case, which requires collaboration between Autonomous Communities, the Ministry of Justice and the CGPJ to study needs, obtain financing and save costs through economies of scale.

To meet these costs, the Autonomous Communities must continue to negotiate once competence has been transferred. These negotiations are fundamentally bilateral, at the initiative of the Autonomous Communities, and do not contemplate extensions to the transfer of material assets or functions. The result of these negotiations is the signing of agreements, negotiated between both parties in the Bilateral Cooperation Commissions between each Autonomous Communities and the central State. These bilateral collaboration agreements can cover, for example, the financing of the development and implementation of technological infrastructures, hardware, and software in the judicial administration, including broadband cable in judicial offices. They can also finance other aspects and compensate for possible errors in the calculations of the effective cost, although traditionally the sectors most favored by these agreements are training and new technologies.

However, it must be considered that these Bilateral Cooperation Commissions deal with general matters of mutual interest and take place at the highest political level, Minister or Secretary of State on the State side and Councilor on the Autonomous Community side, and in many cases, they are not those specifically responsible for judicial administration, but rather those in charge of the presidency or institutional relations. This may mean that investments in judicial administration are offset by other investments in other fields, and therefore depend to a large extent on the priority given to this area by the autonomous governments.

In any case, it is important to point out that this bilateral route leaves a margin for the discretion of the possible investments of the central State, which may increase the asymmetry in the ordinary exercise of competence between some communities and others. This symmetry is further guaranteed through multilateral relations between the State and all the Autonomous Communities exercising jurisdiction, through the Sectorial Conference on Judicial Administration. This Sectorial Conference is attended by the Minister or the Secretary of State for Justice on behalf of the central State, and on behalf of the Autonomous Communities by the Councilors in charge of the matter in the event that it is transferred. The Sectorial Conference serves to coordinate judicial administration policies, for example, with respect to personnel, computer systems, the implementation of the Judicial Office or the improvement of the financing of the Autonomous Communities as a whole.

However, for the central State, this Sectorial Conference is not always a friendly body. This is due to the fact that since 1999 there has been a forum in which the Autonomous Communities exercising jurisdiction coordinate their positions, seeking common strategies and positions vis-à-vis the central State in the Sectorial Conference. The Coordination Co-Mission of the Autonomous Communities with competencies in judicial administration was created to take a stand against the Justice Pact that was being negotiated at the time, but has subsequently evolved to deal with funding issues, exchange experiences or issues of common interest, such as the demands of the autonomous personnel in the service of the

judicial administration, which are special bodies that are not integrated into the autonomous administration as a whole and usually make specific demands on the Autonomous Communities.

Nonetheless, judicial administration does not usually appear as a particularly conflictive competence between the State and the Autonomous Communities in the media. This is largely due to the fact that it is not a priority for the regional governments, which prefer to do battle in other areas. Technicians from the administrations of the Canary Islands, Navarre, the Valencian Community, and the Ministry of Justice itself have pointed out that judicial administration is a competence which, if it works well, does not have a clear political benefit, given that the public perception attributes performance to other bodies, such as the judge or the judiciary. It is not like the case of roads or housing, whose improvements are directly perceived by citizens. This lack of political gain means that the political leaders of the Autonomous Communities do not always consider a commitment to improving the provision of services in this area to be of interest.

As can be seen, judicial administration is an underfunded competence, especially in the Autonomous Communities that received it in the early years and do not have a special financing system, such as the Basque Country and Navarre. The political efforts to obtain additional financing from the central State, for example, for the infrastructure of judicial headquarters or computerization, mean that these funds are not used for more politically profitable infrastructures. Thus, in situations of reduced spending, the judicial administration comes under the spotlight of the "cutbacks" of the autonomous governments.

However, if we analyse all the information collected, we can identify a different path dependence in each Autonomous Community, which starts with the initial transfer agreement, which we have seen is different and bilateral for each one. Although underfinancing is common, it does not reach the same degree because the central State has not treated all the communities equally at the time of the transfer. This is influenced by the historical moment in which negotiations take place, the relationship between the governing parties in the regional and state governments at the time, the level of information on the real costs of providing the services that the respective administrations have, and the state in which the material resources, and particularly the buildings, are transferred.

The transfers made before 1996 to the communities with a general financing regime, during the terms of office of Felipe Gonzalez, are the most advantageous. First Catalonia in 1990 and then Galicia, in 1994, obtained notable advantages in their agreements that compensated to a large extent for initial cost calculations that were very difficult to make due to lack of information and that were defective. The relations of the governments of Felipe González with the Catalan government in 1990 were not bad at that time, nor could it be said that they were particularly conflictive with the Fraga government in Galicia in 1994 if we consult the newspaper archives, although they were with his party at the state level. Ultimately, the central government in 1994 was in a minority position in parliament, which made it weaker. For this reason, a course of decisions was generated at that time with respect to this competence in Catalonia which implied the automatic payment of the new judicial seats by the central State, and which generated a framework of bilateral intergovernmental relations, apart from the rest of the communities, in matters of administration of justice. In the case of Galicia, a course of decisions was also generated with a different, bilateral, framework of relations for this matter, in which there are economic compensations that are specific to this Community. In both cases, particular interests are generated in these communities, which make it difficult for them to share them with the rest of those exercising jurisdiction, and this illustrates a lot about the small print of the autonomous state and how bilateral relations have been favored over multilateral relations between governments in the Spanish case.

The Autonomous Communities that received the competence between 1996 and 2000 have had much more problems in the negotiations. Despite the fact that the central State had more information on the costs of competition in each territory, these were not adjusted, and there were errors even in the transfer of personnel. The relations between the Central Government and the autonomous governments of Andalusia, the Canary Islands and Valencia were different, being worse in the case of Andalusia, governed by the main opposition party at the state level, intermediate in the case of the Canary Islands, governed by Coalición Canaria together with the governing party at the state level, and good with the Valencian government, with an absolute majority of the same party. Thus, the errors were substantially greater in the case of Andalusia, which received the competencies both in material assets and personnel with a clear deficit to provide the service. Each of these communities has also had its own course of decisions, oriented in this case towards having its own funds to cover the deficits in service provision, and to seek economic compensation from the central State in other areas or in special financing. These communities have been interested in a more multilateral relationship between the Autonomous Communities and the Central State, and tend to seek more coordination in their claims, without abandoning the bilateral route, but leaving this for more general negotiations on autonomous financing, not so much in bilateral relations in the area of the administration of justice.

Finally, we have the communities that have received their competencies since 2001, with the agreement on the modernization of the Administration of Justice, which have had transfers with a higher level of information, fewer mismatches in the real costs of the service and, as time has progressed, with a better situation of the transferred infrastructures. In these cases, the negotiations and transfers have been more transparent, and the subsequent courses of decisions and intergovernmental relations have also

been more transparent. In these cases, although there is also underfinancing due to the fact that the service is more relevant than historically considered and requires more resources in general, the fact is that they are more homogeneous transfers. In these cases, although they may require additional financing, they favor multilateral frameworks, the defense of common interests and the financing of programs for all the Autonomous Communities, and if additional financing is provided, it should be for objective reasons, such as having to finance central bodies.

It should be considered that judicial administration is increasingly important for citizens, especially at times of increased social conflict. In addition, the delay in resolving cases in the administrative and commercial courts creates problems of economic planning, liquidity and obtaining credit for companies. These problems are especially important for SMEs, for which the cost of legal advice is a proportionally greater burden than for large companies, and this burden is greater the longer the delay in the resolution of cases.

5. Main findings and conclusions

The initial aim of the research was to determine whether there are better and worse transfer processes for the autonomous communities. In the case of the administration of the administration of justice, the answer is affirmative. The Catalan case, and at a second level the Galician case, can be considered the most advantageous processes from the autonomous community point of view, excluding the Basque and Navarre cases, since their financing systems mean that the processes are not benchmarks. The additional financing agreements achieved by these communities are an unattainable aspiration for the rest of the Autonomous Communities.

But the information found in the research, analysed from a more general point of view, reveals specific aspects of the functioning of the autonomous State, the small print of how its construction has developed, beyond the constitutional precepts. Thus, the transfer of the judicial administration to the Autonomous Communities shows us that the Autonomous State has been formed in an asymmetrical way, and the consequences for the subsequent ordinary functioning, which tends towards a bilateralism that rewards discretionally some Autonomous Communities or others, both for reasons of relations between parties, and because at the time of the transfer there was insufficient information. This asymmetry was not foreseen and has not been reflected by scholars of the matter (Fossas and Requejo, 1999; Aja, 2001, Cuevas, 2013) because it is in the small print of the functioning of the State. The asymmetries that are pointed out are usually of a cultural nature and their constitutional reflection, and those of a fiscal nature.

In sum, the case of the transfer of this competence to the Autonomous Communities, which has been going on for nearly 30 years, reveals that the moment at which a competence is transferred has determined how it is done, the interests that the parties will have in the future, and therefore how the Community will exercise the competence, in terms of available means, and what the relations with the central State will be in this matter, thus generating a course for each community, a path dependence, which marks asymmetries. Notwithstanding, these paths do not necessarily have to be eternal; new windows of opportunity may arise in the future, both in the financial aspect of the competence and in that of greater transparency and symmetry in intergovernmental relations in a possible readjustment of the autonomous State.

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