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Legal aid in Spain

Prepared by British Consulate General Madrid

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LEGAL AID IN SPAIN

What are the costs of a trial and who should normally pay them?

- Going to court entails certain costs. These mainly include:
 - Procurator (court agent) and lawyer's fees
 - Court Fees, which depend on the size and type of case
 - Translation and interpretation costs
 - Costs of publishing announcements in official journals
 - Deposits required for lodging certain appeals
 - Experts' fees
- These costs normally have to be paid in advance by the party concerned. At the end of the trial the court has to decide which party is ultimately to bear the costs; in Spain this is known as the "*condena en costas*" (order to pay the other party's costs) and is governed by the "loser pays" principle. In civil courts however, the claimant or defendant has to be 100% successful in its claim in order to be awarded costs in its favour, otherwise no costs order is made. The amount of costs awarded is subject to an assessment procedure called taxation ("*tasación*") which usually reaches a figure significantly less than the actual legal costs and expenses paid out.

What is legal aid?

- In Spain legal aid ("*asistencia jurídica gratuita*") is a right for members of the public who cannot afford the costs of a trial. Legal Aid may cover the following costs:
 - Pre-trial legal advice
 - Procurators' and lawyers' fees
 - Court Fees
 - Costs of publishing announcements in official journals
 - Deposits required for lodging certain appeals
 - Experts' fees
 - Affidavits
 - An 80% reduction in the fees for notarial deeds and certificates from the land registry
 - Interpretation services

The law and regulations governing Legal Aid in Spain are set out respectively in: *Ley 1/1996 de 10 de enero, de asistencia jurídica gratuita* and *Reglamento de asistencia gratuita aprobado por Real Decreto 996/2003 de 25 de Julio.*

Who can benefit from legal aid?

- All European Community citizens who pass a means test
- Non-Community nationals who are legally resident and illegal residents who are in Spain and prove they have insufficient means
- In Employment matters, any employed person regardless of nationality and means
- Public-interest associations and foundations

The applicant shall not exceed the following thresholds:

- Incomes must not be more than two times the IPREM (Public Income Index, which is a wage indicator) when the applicant is not part of a family unit.
- Two and a half times the IPREM if the applicant is part of a family unit (less than 4 members).
- Three times the IPREM if the family unit comprises 4 or more people.
- In 2016-2017 the IPREM was € 537,84 per month

Regardless of the existence of sufficient resources to litigate, the right to free legal aid is recognised for:

- Victims of gender or domestic violence
- Terrorism
- Human trafficking

In any prosecutions that are linked to, arise from, or are the consequence of their status as victims, and minors and the mentally disabled when they are victims of situations of abuse or neglect.

In addition, the right to free legal aid is recognised for those who, due to an accident, can prove permanent consequences that completely prevent them from performing the duties of their regular job or profession and who require the help of other people to perform essential daily activities, when the object of the litigation is a claim for compensation for personal injury and moral damages.

Can legal aid be obtained for all disputes?

- Criminal matters:

Legal aid is available for all cases, from the moment of arrest, and covers all proceedings, except minor offences, for which the services of a procurator and lawyer are not compulsory. It includes appeals and enforcement of judgments.

- Civil matters:

Legal aid is available for cases involving sums of over €901,52 and also includes appeals and enforcement of judgements.

In cases involving smaller sums, for which the services of a procurator and lawyer are not compulsory (those proceedings involving sums of less than €2.000), legal aid may be granted where the other party has legal representation or where explicitly called for by the judge or court to ensure that the two parties are on an equal footing. The same rule is applicable to admonitory proceedings (civil claims demanding the payment of documented debts lower than €250.000).

- Administrative matters:

All foreign citizens who can certify insufficient means for litigation, even if they do not reside legally in Spain, are entitled to free legal assistance in all proceedings relative to their application for asylum and the Aliens' Law (including preliminary administrative proceedings).

Is there a specific procedure for emergencies?

On consideration of the circumstances of the case or its urgency, the judge or court may order a procurator and lawyer to be temporarily appointed with immediate effect. However, regardless of this appointment, legal aid may be refused if the person concerned fails to demonstrate that they have insufficient means in accordance with the ordinary procedure.

Where can I obtain an application form for legal aid?

- The form is available from the website of the Secretary of Justice, Legal Guidance Departments (*Servicio de orientación jurídica*) of the relevant local Bar Association (*Colegio de Abogados*), Offices of Senior Judges (*Decanatos*) at courts and provincial Legal Aid Commissions (*Comisiones provinciales de Asistencia Jurídica Gratuita*). The following Spanish Ministry of Justice website link also offers information, in English, on legal aid and how to apply:
<http://www.mjusticia.gob.es/cs/Satellite/Portal/en/servicios-ciudadano/tramites-gestiones-personales/asistencia-juridica-gratuita>

Which documents should I attach to my request for legal aid?

- Documentation showing:
 - The applicant's own financial situation and the financial situation of the members of their family unit.
 - The applicant's personal and family circumstances
 - The legal protection sought
 - Claim to be filed with the courts and procedural stage thereof.
 - Identification of the opposing party in the litigation, if any.

Where should I file my request for legal aid?

- The application for legal aid must be filed with the Bar Association in the place where the court responsible for trying the main issue is located, or with the court of the applicant's place of residence.
- Nationals of European countries which are party to the European Agreement on the Transmission of Applications for Legal Aid may file their application with the central authority designated by their country for that purpose.
- The applicant must file their application before starting proceedings, or if the applicant is the defendant, at the time of filing the written defence brief. However, whether a claimant or a defendant, the applicant may apply for legal aid at a later stage, provided they can demonstrate that their financial circumstances have changed.

How will I be informed of whether or not I am eligible for legal aid?

The Bar Association's response to the application is formalistic and may adopt any of the following provisional decisions:

- To notify the applicant that there are defects in the application which must be rectified within 10 working days, failing which, the application will be closed;
- To declare the application inadmissible or unfounded and notify the Legal Aid Commission accordingly;
- To declare that the application fulfils the statutory requirements, in which case a procurator will be appointed within 15 days and the Lawyers' Association will be notified so that it can appoint a lawyer within 3 days; the Bar Association will also submit an application to the Free Legal Assistance Commission for final approval.
- If the Bar Association fails to reply within 15 days, the applicant may apply directly to the Free Legal Assistance Commission, which will decide forthwith whether to provisionally appoint a lawyer and a procurator pending verification of the information and documents.
- The final decision on whether or not to grant legal aid must be adopted by the Free Legal Assistance Commission within 30 days following receipt of the complete application. If, after 30 days, a decision has still not been taken, the provisional decisions adopted by the Bar Association and the Lawyers' Association will be ratified. If these Associations also fail to reply, their silence is deemed to be an approval.
- The applicant is notified of the decision within three days, as are the Procurator's Association, the Lawyers' Association and the judge or court hearing the case, or the senior member of the court if the proceedings have not yet commenced.

If I qualify for legal aid, what should I do?

- If the applicant is the claimant, they must file their application, before instituting proceedings, with the Bar Association in the place where the court responsible for trying the main issue is located or with the court in the applicant's place of residence.
- If the applicant is the defendant, they must file their application before filing their defence. An application filed by a defendant does not suspend the action; nonetheless, the court may, of its own motion or at the defendant's request, suspend the proceedings pending the decision awarding or refusing the free legal aid.

If I qualify for legal aid, who will choose my procurator?

- In general, a procurator is appointed by the Bar Association on a rota basis. However, it is possible to choose freely a procurator, provided that the latter agrees not to charge.

If I qualify for legal aid, will this cover all the costs of my trial?

Legal aid covers the following costs:

- pre-trial legal advice
- procurators' and lawyers' fees

- costs of publishing announcements in official journals
- deposits required for lodging certain appeals
- experts' fees
- affidavits
- an 80% reduction in the fees for notarial deeds and certificates from the Property Register and the Mercantile Register.
- translation services

If I qualify for partial legal aid, who will pay the other costs?

- If the applicant's monthly income is more than three, but less than five times the IPREM, the Legal Aid Commission may exceptionally grant legal aid in view of the applicant's personal and family circumstances (in 2016 the IPREM was € 537,84 per month).
- In such cases, the Commission itself decides exactly which costs are to be covered. The costs not covered will have to be met by the applicant, pending the court's ruling on who to award the costs to. If the ruling goes against the other party, it is from him/her that any costs which have been met by the applicant should be claimed

If I qualify for legal aid, will it cover any appeal I might make following the trial?

- Free legal aid covers all the stages of legal proceedings, including appeals and enforcement.
- However, in the case of enforcement action instituted more than two years after the final judgment, a new free legal aid application must be submitted.
- Legal aid may not be used for proceedings other than those for which it was granted.

If I qualify for legal aid, can it be withdrawn?

- The decision granting legal aid may be revoked if it was obtained through an incorrect statement, falsehood or omission on the part of the applicant.
- Legal aid may stop being paid if the financial situation of the person to whom it was granted improves within three years.

If I am turned down for legal aid, can I appeal against this decision?

- The applicant can appeal against a legal aid decision by writing to the Secretary of the Legal Aid Commission within ten days of the date on which they were notified of the decision. The appeal will be considered by the court within five days by issuing a Court Order.

What happens if I lose, or there is no order for costs?

- If a court order for costs is issued against the applicant for legal aid, they would only be obliged to pay those costs if their financial circumstances

change within 3 years from the decision (in other words, if their income is more than twice the IPREM).

If the decision does not contain a judgement regarding the legal costs and the applicant is successful, they will be obliged to pay their own legal costs (where these costs are less than a third part of the judgement amount awarded).

Useful vocabulary:

Procurator (*Procurador*): This is the professional legal representative who is responsible for formal communications with the court, delivery of briefs at the court office etc.

Lawyer (*Abogado*): This is the legal professional who would usually provide the substantive legal advice, prepare the case, briefs and evidence, and speak to the judge in court on your behalf.

Depending on the type and value/importance of the matter, either or both of these may be required to represent you in a court case. In order to represent you, they must have a “**Litigation Power of Attorney**” (*Poder para pleitos*) from you which you have to sign in front of a **Notary Public (*Notario*)** or in front of the Court Officer.