

Case study 2 - family law - custody of the children - Spain

In this case study on family law — custody of children — Member States were asked to advise the plaintiff on litigation costs in the following situations:

**Case A – National situation:** Two people have lived together for a number of years without being married. They have a three-year-old child when they separate. A court decision gives custody of the child to the mother and visiting rights to the father. The mother sues to limit the father's visiting rights.

**Case B – Transnational case, where you are a lawyer in Member State A:** Two people have lived together without being married in a Member State (Member State B) for a number of years. They have a child together, but they separate immediately after the birth of the child. A decision by a court in Member State B gives custody of the child to the mother and visiting rights to the father. The mother and child move to live in another Member State (Member State A), which they are authorised to do by the court decision, and the father remains in Member State B. Some years later, the mother sues in Member State A to modify the father's visiting rights.



Costs in Spain

Costs for court, appeals and alternative dispute resolution

Case study	Court		Appeals	Alternative dispute resolution
	Initial costs	General costs	Initial costs	Is this option open for this type of case?
Case A	<p>Initial costs: Advances paid to the lawyer (<i>abogado</i>) and the legal representative (<i>procurador</i>), unless the party is entitled to legal aid under Law 1 /1996 on legal aid.</p> <p>If the proceeding only concerns guardianship and custody of the minor, no fee is payable (Article 4(1) of Law 10/2012).</p>	<p>These are the general costs of the proceedings, payable by a party which has had all its claims dismissed (Article 394(1) of the Code of Civil Procedure) after assessment of the costs.</p>	<p>The party lodging an appeal must make a prior deposit, unless entitled to legal aid (15th additional provision of the Organic Law on the Judiciary - LOPJ).</p> <p>If the proceeding only concerns guardianship and custody of the minor, no fee is payable (Article 4(1) of Law 10/2012).</p>	<p>The parties may agree on other visiting arrangements. This should be done through an agreement which must be notified by the Public Prosecutor and approved by a judicial authority.</p> <p>The parties may, by mutual agreement, ask for the proceedings to be stayed and avail themselves of</p>

				mediation in accordance with Law 5/212 of 6 July 2012.  Information on the mediation services is available on the justice administration portal. In-court mediation is provided by courts free of charge.
<b>Case B</b>	The same as for the previous case.	Idem	Idem	Idem

**Costs of lawyers, bailiffs and experts**

Case study	Lawyers		Bailiffs			Experts
	Is representation compulsory?	Costs	Is representation compulsory?	Pre-judgment costs	Post-judgment costs	Is use compulsory?
<b>Case A</b>	The parties must be assisted by a lawyer and represented by a legal representative (Article 750 of the Code of Civil Procedure).  In cases of mutual agreement, the parties may use a single lawyer and legal representative.	An advance must be paid on fees for a lawyer and legal representative. In contentious proceedings, the losing party may ultimately have to pay the costs.	No representation of the parties.	None	None	The use of certain specialists (psychologists) may be necessary.  The party proposing the specialist pays, unless the court's psycho-social experts are used.
<b>Case B</b>	The same as for the previous case.	Idem	Idem	Idem	Idem	Idem

**Costs of witness compensation, pledges or security and other relevant fees**

Case study	Witness compensation		Pledge or security		Other costs
	Are witnesses compensated?	Costs	Does this exist? When and how is it used?	Costs	Description
<b>Case A</b>	Witnesses are entitled to claim for losses incurred in attending hearings from the party that has called them (Article 375(1) of the Code of Civil Procedure).	Part of the cost is included in the payment of costs.	No prior pledge or security is required.	None	Certificates from civil status records, such as birth of children (currently free of charge) or other documents relevant to their claim to entitlement.
<b>Case B</b>	Idem	Idem	Idem	Idem	Idem

**Costs of legal aid and other reimbursements**

Case study	Legal aid	Reimbursements
		Are there occasions when legal aid expenses are

	When and under what conditions is it applicable?	Conditions:	Can the winning party obtain reimbursement of litigation costs?	reimbursed to the organisation providing the legal aid?
<b>Case A</b>	It applies to persons who can prove that they have insufficient finances to institute legal proceedings (for example for a lawyer and legal representative)	Lack of financial means is said to exist where the individual can demonstrate that his or her resources and income, calculated annually, from all sources and per family unit, do not exceed double the Public Index of Income (IPREM) in effect at the time of the application.	This will depend on the agreement concluded with the lawyer, if any. If no such agreement has been reached, the costs are payable by a party which has had all its claims dismissed (Article 394(1) of the Code of Civil Procedure), subject to certain exceptions.  The reimbursable costs are the lawyer's fees, provided they do not exceed one third of the amount of the claim, the fees of the legal representative, and any other fees, which can be reimbursed after assessment of the costs.	
<b>Case B</b>	The same as for the previous case.	Idem	Idem	Idem

#### Costs of interpretation and translation

Case study	Translation		Interpretation	
	When and under what conditions is it necessary?	What are the approximate costs?	When and under what conditions is it necessary?	What are the approximate costs?
<b>Case B</b>	All foreign public or private documents that may be required under conditions laid down by law (translation by an officially recognised sworn translator).	Interpreters' fees are variable.	Interpreters for the proceedings where this proves necessary. Interpreters are necessary when a person who does not speak the language has to be questioned, to make a statement or to be notified of a court decision. No fee is payable if the interpreter is requested by the court itself. Any person who speaks the language in question and who has sworn or promised to translate accurately may be appointed as interpreter.  In other cases, interpreters' fees are variable.	

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