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Legal aid

Spain

1 What costs are involved in legal proceedings and who normally has to bear them?

In Spain, the administration of justice is a public service provided free of charge. There are no fees or charges for using the service. However, litigation normally generates certain costs, which mainly consist of the following:

1. Fees of the lawyer (*abogado*) and the court representative (*procurador*)
2. Costs arising from the publication of notices in official newspapers
3. Deposits required to lodge certain appeals
4. Payments for experts.

Generally speaking, these costs need to be paid in advance by the party concerned. At the end of the proceedings, the court has to decide who should ultimately bear these costs by means of what is known in Spain as an 'order to pay costs' (*condena en costas*), governed by the 'loser pays' principle.

2 What exactly is legal aid?

Pursuant to Article 119 of the Spanish Constitution, legal aid is a procedure whereby those who can demonstrate a lack of sufficient financial means are granted a series of benefits mainly consisting of exemption from payment of the fees of the lawyer and the court representative, and costs arising from expert testimonies, guarantees, court fees, etc.

More specifically, such payments include:

1. Pre-trial legal advice
2. Fees of the lawyer and court representative
3. Costs arising from the publication of notices in official journals
4. Deposits required to lodge certain appeals
5. Payments for experts.

For cross-border disputes only (after the Legal Aid Act (*Ley de asistencia Jurídica Gratuita*) was reformed by Law 16/2005 of 18 July 2005, bringing it into line with Directive 2002/8/EC), the following items have been included in the above rights:

- a) Interpretation services
- b) Translation of documents
- c) Travel costs where an appearance in person is required
- d) Defence by a lawyer and representation by a court representative even where unnecessary, if the court requires this in order to guarantee equality of the parties.

3 What are the requirements for legal aid to be granted?

All EU citizens who can demonstrate they have insufficient means (for cross-border disputes this applies to natural persons only).

- a) Third-country nationals who are legally resident in Spain or who have their right recognised in international conventions also benefit from this right (e.g. conventions on international child abduction), under the same conditions as EU citizens
- b) In employment matters, any employed person, regardless of their nationality and financial means
- c) Public-interest associations and foundations.

In criminal, administrative and preliminary administrative proceedings, foreign nationals who can demonstrate they have insufficient means for litigation, even in the event that they are not legally resident in Spain.

Regardless of the existence of means for litigation, the right to legal aid is granted to victims of gender-based offences, terrorism and trafficking in human beings, as well as to minors and persons with mental disabilities when they are victims of abuse or ill-treatment, with the right being extended to their surviving family members in the event of the victim's death, provided that they were not the perpetrators.

Similarly, regardless of the existence of means for litigation, legal aid is granted to persons who can demonstrate permanent consequences, as a result of an accident, which completely prevent them from carrying out their normal employment or occupation and who require assistance from other people, where the subject matter of the dispute is a claim for compensation for the damage suffered.

In the labour courts, for defence in legal proceedings, workers and beneficiaries of the social security system, without any need to demonstrate insufficient resources.

In the case of cross-border disputes, the right can be obtained if the person concerned can demonstrate that the costs of the proceedings cannot be met due to differences in the cost of living between the Member State in which that person is resident and Spain.

4 Is legal aid granted for all types of proceedings?

Legal aid may be granted in all types of proceedings, whether contentious or not, involving sums over EUR 2 000 except where the subject matter requires the assistance of a lawyer, and it covers all procedures, any appeals that may be lodged and the enforcement of judgments.

In proceedings involving sums less than EUR 2 000, where the services of a lawyer and court representative are not required, legal aid may also be applied for where the other party has legal representation or where the judge or court expressly orders to ensure equality between the parties.

5 Are there special procedures in cases of need?

There is the possibility of provisional appointment, either by the Bar Association (*Colegio de Abogados*), within a maximum of 15 working days from receipt of the application, or on the basis of a court order.

6 Where can I obtain a legal aid application form?

From the Legal Advice Service (*Servicio de orientación jurídica*) of Bar Associations, Court Clerk's Offices (*Decanatos de los Juzgados*) and provincial Legal Aid Commissions (*Comisiones provinciales de Asistencia Jurídica Gratuita*).

The General Bar Council (*Consejo General de la Abogacía Española*) provides citizens with a web portal for legal aid [Justicia Gratuita](#) where it is possible, among other things, to complete the legal aid application form or check whether the financial conditions required to benefit from legal aid are met, although it is always necessary to submit the documents and application in the manner set out below.

Where to apply

Applications for legal aid, together with the relevant documentation, must be submitted to the legal advice services of the Bar Association in the place where the court dealing with the main proceedings is located or to the court of the applicant's domicile, in the event that proceedings have not been initiated.

7 Which documents need to be submitted with the legal aid application form?

Documents relating to:

1. The financial situation of the person concerned and of the members of their family unit
2. Personal and family circumstances
3. The legal protection sought.

More specifically, the following documents:

Confirmation of corporation tax payment (*Certificado de liquidación del Impuesto sobre Sociedades*) (in the case of legal entities).

Photocopy of the public benefit declaration or entry in the Register of Foundations (*Registro de Fundaciones*) (in the case of legal entities).

Confirmation of property ownership (*Certificado de signos externos*) issued by the local authorities of the applicant's domicile.

Confirmation of registration of residence (*Certificado de empadronamiento*).

Confirmation from INEM of period of unemployment and receipt of benefits.

Confirmation of receipt of state pension (*Certificado de cobro de pensiones publicas*).

Certificate from the State Public Employment Service (*Servicio Público de Empleo Estatal – SPEE*) showing receipt of unemployment benefits and the period for which they are granted.

Other (any document used to prove the facts asserted).

However, in order to speed up the application process, the Bar Associations may, if expressly authorised, apply for several of these certificates on behalf of litigants.

8 Where do I submit my application for legal aid?

Applications for legal aid must be submitted to the legal advice services of the Bar Association in the place where the court dealing with the main proceedings is located or to the court of the applicant's domicile, in the event that proceedings have not been initiated. In the latter case, the court must immediately forward the application to the Bar Association with territorial jurisdiction.

These Associations are designated as the receiving authority for applications in cross-border disputes. In such disputes, the authority issuing the application is the Bar Association for the habitual residence or domicile of the applicant.

A European citizen whose State is a party to the European Agreement on the Transmission of Applications for Legal Aid may apply to the central authority designated by their country for the implementation of the Agreement.

The application must be made before initiating the proceedings or, if the party applying for legal aid is the respondent, before contesting the application.

However, both the petitioner and the respondent may subsequently apply for legal aid after proving that their financial circumstances have changed.

9 How do I find out whether I am entitled to legal aid?

The Bar Association may adopt the following provisional decisions:

- a) Notify the person concerned that there are shortcomings in the application to be rectified within 10 days, failing which the application will be closed.
- b) Declare that the application is inadmissible and unfounded and notify the Legal Aid Commission accordingly.
- c) Declare that the application meets the legal requirements, in which case it will appoint a lawyer within a maximum of 15 days, notifying the Court Representatives' Association (*Colegio de Procuradores*) in order for the latter to appoint a court representative within 3 days. The Bar Association will forward the application to the Legal Aid Commission for final approval.

If the Bar Association is unable to reach a decision within 15 days, the applicant must send their application directly to the Legal Aid Commission, which must immediately decide to provisionally appoint a lawyer (*abogado*) and court representative (*procurador*) while verifying the information and documents.

The final decision on whether or not to grant legal aid must be adopted by the Legal Aid Commission within a maximum of 30 days of receipt of the file. If, after 30 days, a decision has still not been taken, the provisional decisions adopted by the Bar Association and the Court Representatives' Association will be ratified.

Within three days the decision must be notified to the applicant, the Bar Association, the Court Representatives' Association and the court dealing with the proceedings, or the presiding judge if the proceedings have not been initiated.

10 What should I do, if I am entitled to legal aid?

If you are a claimant, you must submit the application, before initiating the proceedings, to the Bar Association of the place where the court dealing with the main proceedings is situated or to the senior court of the place where the applicant is domiciled.

1. If you are a respondent, you must submit the application before contesting the claim. An application filed by a respondent does not suspend proceedings; however, the court may, of its own motion or at the request of the person concerned, order the suspension of proceedings pending the decision awarding or refusing legal aid.

In the case of cross-border disputes in which legal aid is sought in order to go to court in another Member State, the application may also be submitted to the Bar Association (in the case of residents in Spain affected by a dispute in another State) of the applicant's habitual place of residence or domicile.

11 Who chooses my lawyer, if I am entitled to legal aid?

The general rule is that the lawyer is appointed by the Bar Association on the basis of a rota. However, it is possible for the person concerned to appoint their own lawyer, provided that the lawyer waives the right to receive any payment for their services.

12 Does legal aid cover all the costs of the proceedings?

It covers the following costs:

1. Pre-trial legal advice
2. Fees of the lawyer and court representative
3. Costs arising from the publication of notices in official journals
4. Deposits required to lodge certain appeals
5. Payments for experts.
6. An 80% reduction in fees for notarial deeds and certificates from property and commercial registers

Furthermore, in the case of cross-border disputes, interpretation and document translation services and travel are included where personal attendance is deemed necessary by the court hearing the case.

13 Who bears the other costs, if I am entitled only to limited legal aid?

Where income is more than twice but no more than five times the national minimum wage, the Legal Aid Commission may exceptionally grant legal aid on the basis of the applicant's personal and family circumstances.

Account is taken of the applicant's family circumstances, number of children or dependent family members, court fees and other costs arising from the initiation of proceedings, or other costs of a similar nature, objectively assessed and, in any event, where the applicant holds the status of relative in the ascending line of a special-category large family.

Under the same conditions as those set out in the previous paragraph, legal aid may be granted on the basis of the applicant's health situation and to persons with disabilities referred to in Article 1(2) of Law 51/2003 of 2 December 2003 on equal opportunities, non-discrimination and universal accessibility for persons with disabilities, as well as to persons on whom they are dependent when such persons are acting in proceedings on their behalf and in their interest, provided that these proceedings are related to the health or disability situation giving rise to this exceptional recognition.

In such cases, the Legal Aid Commission concerned must expressly determine which benefits referred to in Article 6 apply to the applicant.

The trial costs not covered must be met by the person concerned, pending the court's decision on costs. If the other party is ordered to pay costs, it is from them that the partial beneficiary will recoup any trial costs they may have borne.

In the case of citizens residing in another EU State, the above rule is applied in a prudential manner, taking into account the standard of living in the State of residence, in order to avoid causing damage to the applicant.

14 Does legal aid also cover appeals?

Once the right to legal aid has been recognised for a dispute, it extends to all procedures and events associated with the dispute, including enforcement if this occurs within two years of the judgment delivered at first instance, as well as to all appeals against judgments in the same dispute, without any need for any further application.

15 Can legal aid be withdrawn before the proceedings are concluded (or even revoked after the proceedings have terminated)?

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.

In either of these scenarios, the general rule applies: the costs will be paid by the party that loses the case.

16 Can I contest a refusal to give legal aid?

You can appeal against a decision on legal aid by writing to the Legal Aid Commission itself within 10 days of notification of the decision. Your appeal will be decided on by the competent court.

17 Does the request for legal aid have the effect to suspend the limitation period?

In accordance with Article 16 of the Legal Aid Act, that application does not, in principle, suspend the proceedings. However, in order to prevent the right to an action being prescribed or either party being denied the right to a trial due to expiry of the time period, the clerk of the court, of their own motion or at the request of the parties, may order the period to be suspended until there is a decision on whether or not to grant legal aid, or there is a provisional appointment of a lawyer and court representative in cases where legal representation is either mandatory or required in the interests of justice, provided that the application was made within the time periods laid down in the civil procedure legislation.

Where the application is lodged before the commencement of the proceedings and the action is liable to be prejudiced by the end of a limitation or expiry period, any such period shall be interrupted or suspended, respectively, until the provisional appointment of a lawyer and, if mandatory, a legal aid court representative acting on behalf of the applicant; and, if no such appointment can be made, until a definitive administrative decision is issued on whether or not to grant legal aid.

The limitation period will restart when the applicant is notified of the provisional appointment of a lawyer by the Bar Association or, where applicable, when the Legal Aid Commission issues its decision on whether to grant legal aid and, in any event, within two months of the application being made.

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