

Case study 5 - commercial law - responsibility - Spain

In this case study on commercial law – liability – Member States were asked to advise the customer on litigation costs in the following situations:

Case A – National situation: A manufacturer of heating equipment delivers a boiler to a plumber. The plumber sells the boiler to a customer and installs it in the customer’s house. The house catches fire shortly afterwards. Each one of the parties involved (manufacturer of heating equipment, plumber, final customer) is insured. The origin of the fire is contested. Nobody wants to compensate the customer.

The customer decides to bring proceedings to obtain full compensation from the heating manufacturer, the plumber and the insurance companies.

Case B – Transnational situation: A manufacturer of heating equipment in Member State B delivers a boiler to a plumber in Member State C. The plumber sells the boiler to a customer and installs it in the customer’s house in Member State A. The house catches fire shortly afterwards. Each one of the parties involved (manufacturer of heating equipment, plumber, final customer) is insured by an insurance company in that party’s own Member State. The origin of the fire is contested. Nobody wants to compensate the customer.

The customer decides to bring proceedings in Member State A to obtain full compensation from the heating manufacturer, the plumber and the insurance company in Member State A.



Costs in Spain

Costs for courts, appeals and alternative dispute resolution

Case study	Court			Appeals			Alternative dispute resolution
	Initial costs	General costs	Other costs	Initial costs	General costs	Other costs	Is this option open for this type of case?
	Initial costs: Advances paid to the party’s lawyer (<i>abogado</i>) or legal representative (<i>procurador</i>), and in general payment of	These are the general costs of the proceedings. They are payable by a party which has had all its claims dismissed (Art. 394(1) of the	Offers of evidence: - Compensation for witnesses - Expert opinions	The party lodging an appeal must make a prior deposit, unless entitled to legal aid.	The same rule applies as at first instance.	The same rule applies as at first instance.	The parties may reach agreement on the amount owed without the intervention of a third party, in which case the agreement must be approved by the court, and they may reach a settlement by

Case A	fees depending on the type of proceeding and the amount claimed, provided that it exceeds €2 000, unless the party is entitled to legal aid under Law 1/1996 on legal aid.	Code of Civil Procedure).					means of mediation even if the proceeding has begun.
Case B	The same as for the previous case	Idem	Idem	Idem	Idem	Idem	Idem

Costs for lawyers, bailiffs and experts

Case study	Lawyers		Bailiffs	Experts
	Is representation compulsory?	Costs	Is representation compulsory?	Is use compulsory?
Case A	When the amount claimed exceeds €2 000, the parties must be assisted by a lawyer and represented by a legal representative (Art. 31 of the Code of Civil Procedure).	Vary depending on the amount of the claim and the type of proceedings.	No representation of the parties.	The use of experts is advisable (valuation of loss); an expert opinion is paid for by the party requesting it.
Case B	The same as in the previous case	Idem	Idem	Idem

Costs for witness compensation, pledge or security and other relevant fees

Case study	Compensation for witnesses		Pledge or security
	Are witnesses compensated?	Costs	Does this exist and when and how is it used?
Case A	Witnesses are entitled to obtain compensation from the party calling them for losses caused by their appearance in court (Art. 375(1) Code of Civil Procedure).		No prior pledge or security has to be lodged.
Case B	The same as in the previous case		Idem

Costs for legal aid and other reimbursements

Case study	Legal Aid			Reimbursement

	When and under which conditions does it apply?	When is full aid given?	Conditions	Can the winning party obtain reimbursement of the litigation costs?
Case A	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. Generally speaking, a considerable part or indeed all of the lawyer's fee will be refunded, provided that this does not exceed one third of the amount of the claim. Fees and advance payments to the party's legal representative and expert's fees (where applicable) can be reimbursed after assessment of the costs.
Case B	The same as for the previous case		Idem	Idem

Translation and interpretation costs

Case study	Translation		Interpretation	
	When and under which conditions is it necessary?	Approximate costs?	When and under which conditions is it necessary?	Approximate costs
Case A	Documents submitted in a language other than Spanish (or, where applicable, the language of the Autonomous Community where the case is being heard) must be accompanied by a translation. The document can be translated privately; if one of the parties challenges that translation on the grounds that it is not accurate, giving reasons for this claim, the Court Clerk will order an official translation to be made of the disputed part of the document at the expense of the party which submitted it. If the official translation is substantially identical to the private translation, the costs must be paid by the party who challenged the translation.	Variable	When a person must take part in proceedings to be questioned, to make a statement or to be notified personally of a decision, and he /she does not know Spanish or, where appropriate, the other official language of the Autonomous Community where the case is being heard, any person who speaks the language in question and who has sworn or promised to translate accurately may be appointed as interpreter.	
Case B	Idem		Idem	Difficult to determine in advance.

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