



Spain

## Mediation in Member States - Spain



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One of the phenomena affecting the administration of justice in Spain in recent years has been the increase in litigation, which is having an impact on the smooth operation of the justice system.

For this reason, alternative ways of resolving conflicts are being sought which are more efficient than those offered by the current model.

Mediation is one such way, together with arbitration and conciliation.

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### Who to contact?

See factsheet about how to find a mediator in Spain.

### In what area is recourse to mediation admissible or most common?

Law 5/2012 of 6 July 2012 on mediation in civil and commercial matters transposes Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 into Spanish law. This Law establishes a minimum framework for the practice of mediation without affecting the provisions adopted by the Autonomous Communities.

#### Mediation in the labour field

Mediation is very common in labour disputes. It is sometimes compulsory to attempt mediation before resorting to the courts. Collective disputes are usually subject to mediation and in some Autonomous Communities individual disputes are mediated.

The Autonomous Communities have employment mediation bodies which specialise in such matters. At national level, the Servicio Interconfederal de Mediación y Arbitraje, SIMA, (interconfederal mediation and arbitration service) offers a free mediation service for disputes which fall outside the remit of the bodies of the [Autonomous Communities](#).

Law 36/2011 governing the labour courts introduces a genuine novelty by establishing a general rule that all applications must be accompanied by a certificate attesting to a prior attempt at conciliation or mediation before the appropriate administrative service, the Mediation, Arbitration and Conciliation Service (SMAC), or before bodies performing such functions under a collective agreement, although the article following lists the procedures that are exempt from this requirement.

Law 36/2011 introduces express reference to mediation not only during pretrial conciliation, but also once the court proceedings are under way.

#### Mediation in the civil and family fields

Law 5/2012 on mediation in civil and commercial matters includes the possibility of informing the parties at the preliminary hearing that they have the option of using mediation to try to resolve the dispute and, taking into account the purpose of the court proceedings, the court may invite the parties to attempt to reach an agreement that would end the proceedings or allow the parties to request a stay so that they can undertake mediation or arbitration.

Law 5/2012 involves a major change in this area of law in that it introduces into the Code of Civil Procedure express reference to mediation as one of the nonjudicial methods of ending proceedings.

As far as the Spanish system is concerned, it is in the area of family law that the mediation process is most structured and reaches its maximum development.

At central government level, Law 15/2005 takes a significant step forward by viewing mediation as a voluntary alternative means of resolving family disputes and proclaiming liberty as one of the highest values of the Spanish legal system; it provides that the parties may at any time ask the court to stay the proceedings so that they can resort to family mediation and attempt to reach an agreed solution on the issues in dispute.

Furthermore, the Code of Civil Procedure provides for the possibility that the parties, by common accord, may request a stay of proceedings so that they can undertake mediation, but it does not require the court to suspend the process *ab initio* in order to refer the parties to an information session, nor does it even recommend such a step.

Family mediation services vary considerably between the various Autonomous Communities, and even within the same Community they may vary from one town to the next. In some Autonomous Communities it is the Community itself which offers the service (as in Catalonia, for example), whilst in others it is the local authorities (*Ayuntamientos*) which offer family mediation services.

The General Council of the Judiciary (*Consejo General del Poder Judicial*) supports and supervises mediation initiatives in the various courts in Spain, supported by the Autonomous Communities, universities, local authorities or associations.

#### **Mediation in the criminal field**

Mediation in the criminal field is aimed, on the one hand, at reintegrating the offender and, on the other, at compensating the victim.

In the juvenile justice system (for ages 14 to 18), mediation is expressly stipulated as a means of re-educating the minor. Here, mediation is carried out by teams supporting the service responsible for the prosecution of minors (*Fiscalía de Menores*), although it can also be carried out by organisations of the Autonomous Communities and other bodies such as associations.

In the adult justice system, there is no provision for mediation, although in practice it is carried out in some provinces on the basis of criminal codes and codes of criminal procedure which allow for plea bargaining and a reduction in the sentence by making good the loss, as well as under the applicable international rules.

Usually, mediation is carried out in connection with less serious crimes, such as petty offences, though it is also possible in cases of serious offences depending on the circumstances.

As far as domestic violence is concerned, Organic Law 1/2004 on comprehensive protection measures against gender violence expressly prohibits mediation in cases involving gender-based violence. However, there are more and more advocates of mediation in this branch of the legal system, because it makes sense to look at individual cases in order to assess whether or not mediation would be appropriate. In this regard, the General Council of the Judiciary's 2001 Report on Gender Violence in the Family emphasised that minor offences or offences involving domestic violence should be referred to the civil courts.

The General Council of the Judiciary supports and supervises mediation initiatives which are carried out in local criminal courts (*Juzgados de Instrucción*), criminal courts (*Juzgados de lo Penal*) and provincial courts (*Audiencias Provinciales*). So far, the quantitatively most significant experiments have taken place in Catalonia and the Basque Country.

#### **Mediation in the area of contentious administrative proceedings**

The Law on contentious administrative proceedings does not expressly provide for the possibility of using alternative means of resolving disputes facilitated by a third party, although nor does it prohibit such means.

This law also provides for the possibility that the legality of administrative activities can be reviewed by other means that complement judicial means, to prevent the proliferation of unnecessary court actions and provide inexpensive and rapid methods of resolving the numerous disputes.

The [Administration of Justice Portal](#) contains information about the judicial bodies in the civil, commercial, criminal, family and labour legal systems providing in-court mediation services as well as on the various out-of-court mediation services offered through various professional associations.

#### **Are there specific rules to follow?**

Generally speaking, mediation is carried out by an impartial third party bound by a duty of confidentiality.

The parties, with help from their lawyers, can decide to try mediation and notify the court, or else they may be contacted by the court when it is thought that the case is suitable for mediation.

In the criminal field, it is usual for the offender to be contacted first, and if he or she agrees, the victim is contacted in order to attempt mediation.

## Information and training

Law 5/2012 on mediation in civil and commercial matters provides that the mediator must have an official university degree or advanced vocational training and have specific training to practise mediation acquired by following one or more specific courses taught by appropriately accredited institutions, which will be valid for the exercise of the mediation activity anywhere in the country.

Only certain laws and regulations in some Autonomous Communities refer to the training required to become a family mediator. Generally speaking, the mediator is required to have a university qualification, of at least diploma level plus 100-300 course hours of mainly practical training specifically in mediation.

The specific training in mediation is normally offered by universities and professional associations, such as psychologists' or lawyers' associations.

### What is the cost of mediation?

Generally speaking, mediation connected with the court is free of charge.

In the employment field, the services of the Autonomous Communities and of SIMA are free of charge.

In the family field, the services offered by the bodies working with the courts are generally free of charge. In Catalonia, the cost of the mediation process is regulated for those who do not receive legal aid.

In the criminal field, the mediation offered by public bodies is free of charge.

Outside of mediation connected with the court, the parties are free to use a mediator and to pay freely agreed fees. Regarding the cost of mediation, Law 5/2012 expressly provides that whether or not mediation has ended in an agreement, the cost will be divided equally between the parties unless otherwise agreed.

With the aim of encouraging the out-of-court settlement of disputes, Law 10/2012 regulating certain fees in the area of the administration of justice and the National Institute of Toxicology and Forensic Sciences, provides for a refund of the amount of the fee when an out-of-court settlement saves some of the costs of the services provided.

### Is it possible to enforce an agreement resulting from mediation?

Law 5/2012 provides that where the parties reach an agreement through a mediation procedure they may formally record that agreement.

When the mediation agreement is to be applied in another State, in addition to the formal record, it will be necessary to comply with the requirements, if any, of the international conventions to which Spain is a party and with European Union rules.

When the agreement has been reached in mediation that took place after judicial proceedings were commenced, the parties must ask the court to approve the agreement pursuant to the provisions of the Civil Procedure Act.

The possibility of enforcing a mediation agreement depends on the parties' freedom of action in respect of the subjectmatter of the agreement.

### Related Links

 [SERVICIO INTERCONFEDERAL DE MEDIACIÓN Y ARBITRAJE DE ESPAÑA](#)

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