

SPAIN

Global litigation guide



About

Welcome to The Global Litigation Guide (the **“Guide”**) which has been prepared by DLA Piper’s civil litigation experts around the world for the purpose of presenting key aspects of civil litigation in jurisdictions in which DLA Piper operates.

For each country, the Guide focuses on the following aspects:

- Overview of court system
- Limitation
- Procedural steps and timing
- Disclosure and discovery
- Default judgment
- Appeals
- Interim relief proceedings
- Prejudgment attachments and freezing
- Costs
- Class actions

This global Guide provides practitioners, in-house counsel and clients with a comparative source of reference that covers some of the intricacies of civil litigation in 30 jurisdictions worldwide. DLA Piper has prepared separate guides that deal with matters that are closely related to civil litigation, such as DLA Piper’s guide to [Legal Professional Privilege](#) and (coming soon) DLA Piper’s guide to Third Party Funding. Criminal or administrative litigation (as well as litigation relating to other specialist areas of law that require different procedures such as tax and employment) are outside the scope of the Guide.

The Guide is not a substitute for legal advice. Should you have a civil claim, or if you would like further information, please contact any of the individuals listed in the Guide.

About DLA Piper

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For further information visit www.dlapiper.com.

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Spain

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Overview of court system

Spain is a civil law jurisdiction with numerous courts. In broad terms, the civil court system is divided into the following:

- first instance courts, courts of peace and certain specialized courts (including commercial courts);
- provincial courts, which hear appeals filed against the judgments of the first instance and commercial courts; and
- either:
 - High Courts of Justice, which have jurisdiction over appeals filed against the judgments of Provincial Courts on applicable regional civil law (e.g., High Court of Justice of Catalonia hears appeals from the Provincial Courts in Catalonia on matters relating to Catalan civil law); or
 - the First Chamber of the Supreme Court, which hears appeals from the Provincial Courts in cases of national civil law.

As for case law, it does not take precedence over codified statutes, though the case law of the Supreme Court, also referred to as doctrine, binds all lower courts. Further, as a member of the EU, all Spanish courts are bound by the decisions of the Court of Justice of the European Union.

The sources of law in Spain are legislation, customary law (consuetudinary) and the general principles of law. Despite its importance, case law is not considered a source. Litigation only takes place in Spanish (or, less commonly, in other co-official languages such as Catalan, Valencian, Galician or Basque).

Limitation

According to the Civil Code of Spain, personal actions for which there is no specific statutory limitation will become time barred after five years from the date on which fulfilment of the obligation can be demanded. While a five year limitation period is the default position, the Civil Code also establishes other limitation periods (e.g., a one year limitation for civil tort liability; a 20 year limitation for foreclosure of a mortgage; and a four year limitation for an action for annulment).

Procedural steps and timing

In most legal proceedings in Spain, a party must be defended by a lawyer and represented by a legal court representative (*procurador de los tribunales*). The legal court representative serves as a liaison between the lawyer, the client, and the court. They file and manage court documents such as pleadings and orders, and generally check on the status of the proceedings.

Ordinary proceedings (*juicio ordinario*) are the most common civil proceedings in Spain as they are used for claims that exceed EUR6,000 and those where the economic interests cannot be calculated. Such proceedings are initiated by the claimant issuing a claim form (*demanda*) that states all the facts and allegations and provides all the documents (including expert reports) on which the claim is based.

The service of a claim form on the defendant is performed by the court but can also be carried out by the legal court representative, at the request of the claimant. The defendant has a period of 20 working days to file the defence or opposition, following which the court

will call the parties to a preliminary hearing (*audiencia previa*) to discuss certain procedural aspects (such as necessary joinders, etc.). The parties attend the preliminary hearing with their legal representative and lawyer.

At the preliminary hearing, the judge will ask the parties whether it is possible to settle the dispute. If it is not, the judge will:

- resolve any procedural issues raised by the parties;
- give the parties the opportunity to raise additional arguments that do not change the subject of the dispute or that clarify the pleading;
- hear the parties' challenges to the documentary evidence proposed by the opposing party;
- request that the parties establish the facts under dispute;
- decide on the admission of and any challenges to the evidence to be produced at the oral hearing; and
- set a date for the oral hearing.

The purpose of the oral hearing is to:

- enable the court to examine the evidence given by the parties, the witnesses, and the experts; and
- as appropriate, examine other types of evidence including documents, images and sounds.

Once the evidence has been given at the oral hearing, conclusions will be drawn from it by the lawyers and presented to the court in their closing arguments. The judgment (*Sentencia*) is given in writing by the judge. Other types of resolution rendered by the judge are the *Autos*, which are issued, for example, to admit or dismiss claims to be processed or to grant interim measures (*medidas cautelares*). Further, certain public servants of the judiciary other than judges (*Letrados de la Administración de Justicia*) also pass resolutions, such as *Decretos* or *Diligencias*.

Proceedings usually go by the following timeline:

- filing of the claim form;
- the relevant court will issue a notice accepting the claim within approximately one to three months;
- service of the claim form;
- 20 working days for the defendant to file a defence and any counterclaim;
- preliminary hearing within approximately three to nine months of the filing of the defence;
- oral hearing within approximately three to 12 months of the preliminary oral hearing; and
- judgment delivered within approximately one to three months of the oral hearing.

The timing of the entire proceedings is heavily influenced by the court's workload. However, the time from service of the claim form on the defendant to obtaining a judgment in an ordinary proceeding is 16 months, according to the 2022 official statistics.

Disclosure and discovery

In Spain, parties substantiate their claims with evidence of their choosing. Judges are likely to reject a party's request for general, non-specific discovery. However, a party may request the judge to order (or the court of its own volition may order) the opposing party to submit certain documents or produce evidence. The submission of documents can only be requested during the legal proceedings. The procedure, if ordered by the court, is expressly not intended to facilitate fishing expeditions. The party requesting disclosure should have a legitimate interest in such disclosure and the request should cover a narrowly defined scope of documents.

It is also possible for the court, at its own discretion, to give an interim judgment asking the party to submit certain additional evidence which the court considers essential for the case.

Default judgment

If the defendant fails to appear before the court, it will be declared to be in default (*rebeldía procesal*). However, the claimant cannot automatically apply for a default judgment or a summary judgment. The proceedings will continue in the defendant's absence and, for the claimant to succeed, it will need to prove the basis for its claim.

The defendant in default may only appeal the judgment rendered in its absence when there has been a breach of procedure or, in proceedings before the Provincial Court, because:

- there has been an incorrect interpretation or application of the law, or
- judgment was obtained in a proceeding that did not comply with the required formalities.

The term to lodge such appeal is 20 working days:

- from the notification of the judgment to the defendant in default if it had been personally notified of the judgment; or
- from the day after the publication of the judgment in the official gazette if the defendant in default had not been personally notified of the judgment.

Appeals

The parties have the right to file an appeal against the judgments entered at first instance within 20 working days of the notification of such judgment. The competent court to hear the appeal is the corresponding Provincial Court (*Audiencia Provincial*). The court will be formed of a panel of three judges and will have the opportunity to review everything done in the lower court. The timeframe in which appeals are resolved by the Provincial Court varies, ranging from six to 18 months.

The judgment issued by the Provincial Court may also be subject to an extraordinary appeal. Appeals may be made for breaches of procedure or incorrect interpretation or application of the law or when a judgment has been obtained in a proceeding that has not complied with the required formalities (cassation appeal / *recurso de casación*). This extraordinary appeal must be filed before the Provincial Court which issued the relevant judgment within 20 working days of notification of the judgment to the relevant party. Such cassation appeal will be heard by the High Court of Justice of the relevant region, when the applicable law is the regional civil law, and the First Chamber of the Supreme Court (*Sala Primera del Tribunal Supremo*), when the applicable law is national civil law.

The cassation appeal before the Supreme Court is an extraordinary appeal and can be based either on the breach of substantive or procedural rules, but only if there is *cassational interest* (this is a legal interest beyond the specific case. e.g., a question not yet addressed by case law). There used to be a quantitative limit (EUR600,000) to access this type of appeal, however, this has been recently abolished. The cassational interest will exist in three cases:

- when the decision is contrary to the settled case law of the Supreme Court;
- when the contested decision rules on matters on which there is conflicting case law among the Provincial Courts; or
- where the contested decision applies rules on which there is no case law of the Supreme Court.

In addition, cassation appeal may, in any case, be filed against judgments of the Provincial Court in the context of civil judicial protection of fundamental rights (specifically, those that are subject to *amparo* proceedings) even if there is no *cassational interest*.

The decision on whether there is *cassational interest* (and thus if the appeal is admitted or not) is discretionary of the court (according to the abovementioned criteria). In case the cassation is unadmitted, this must be reasoned via decree (*Auto*). The court can also set the formal criteria (extension, format, etc.) to be followed when filing a cassation appeal.

The timeframe in which the Supreme Court resolves extraordinary appeals is estimated to be 27 months, according to the 2022 official statistics.

Regarding the effect that appeals have on the enforcement of judgments, it must be said that judgments are enforceable when these are final (cannot be appealed or have not been appealed). However, provisional enforcement can also be requested from the court of first instance.

Interim relief proceedings

In Spain, interim relief proceedings can be brought where such relief is necessary to ensure enforcement of a future judgment. The interim measures that can be granted primarily include:

- injunctions (i.e., an order requiring a party to do or not to do something);
- preventive freezing orders;
- interventions or court-ordered receiverships of productive assets;
- deposits of moveable assets;
- preparing inventories of assets in accordance with conditions to be specified by the court;
- precautionary registry entries of the claim in the Public Registry;
- court orders to provisionally cease an activity; or
- suspensions of contested corporate resolutions.

There is no informal way to obtain interim relief. An application must be filed in writing before the court with jurisdiction to deal with the main claim.

In order to be successful, an applicant seeking interim relief must satisfy each of the following requirements:

- provide the particulars, arguments and documentary evidence allowing the court to justify, without prejudging the merits of the case, a provisional and circumstantial judgment in favor of the claim (appearance of a good claim or *fumus boni iuris*);
- prove that, if the requested measures are not adopted before the judgment is issued, there is a real risk that any judgment in favor of the applicant would be defeated or prejudiced (risk in procedural delay or *periculum in mora*); and
- offer security to the court in order to compensate the respondent and related third parties (in a speedy and effective manner) for loss if it is found that the freezing order was wrongly granted (*caución*).

It is difficult to estimate the timeframe for interim relief proceedings. Non-urgent interim relief proceedings can range between one to six months, but in urgent *ex parte* proceedings, interim relief can be granted in a matter of days (depending on the court's workload).

Interim relief orders are usually granted by first instance courts. Appeals against such orders are resolved by Provincial Courts in a timeframe ranging between six and 18 months.

Prejudgment attachments and freezing orders

Prejudgment attachments and freezing orders are types of interim relief. They can be applied for both before and during the proceedings. An application for a prejudgment attachment or freezing order should be made before the court that will be competent to hear the dispute once proceedings are commenced, or before the court hearing the dispute if the freezing order is sought during the proceedings.

These measures are initiated by the claimant (or future claimant) in the main proceedings. In principle, the court is required to hear both parties. However, if there is urgency and there is a risk that the property to which the attachment or freezing order relates may disappear before the court can hear the parties, the court will make its decision without hearing the defendant (in absentia or *ex parte*). It is mandatory for parties to be assisted in the hearing by a lawyer and legal representative (*procurador de los tribunales*).

In order to be successful, an applicant seeking a prejudgment attachment or freezing order will need to satisfy the criteria for granting interim measures referred to in [interim relief proceedings](#), briefly:

- appearance of a good claim;
- risk of irreparable harm if the granting prejudgment of the attachment or freezing order is delayed; and
- offer of security to the court.

The assets that can be attached, by way of a prejudgment attachment or freezing order, are money or bank accounts of any kind; credits; securities or other financial instruments; immovable assets or remuneration; and pensions and income from self-employed professional and commercial activities.

Where prejudgment attachments and freezing orders are requested before issuing the claim, the party requesting the relief must plead and prove urgency or necessity. Pre-action measures will become void if the main claim is not brought before the same court within 20 days of granting such pre-action relief.

If the claimant is eventually unsuccessful in its claim or the court later finds that the prejudgment attachment or freezing order was granted wrongly, it could be held liable for any damages caused to the debtor by the prejudgment attachment or freezing order.

Costs

The costs of the proceedings comprise the court fees for litigation, lawyers' fees, the fees of the legal representative and any fees incurred by experts (where relevant).

Each party is liable for the expenses and costs of the proceedings incurred at its request, which might include:

- those disbursements which originate directly from, or are immediately rooted in, the existence of the proceedings; and
- the party's costs relating to the payment of the fees of lawyers and legal representatives or deposits required for the submission of appeals (for example, the deposit for filing an appeal is EUR50).

The deposit and court fees for litigation are mandatory, fixed by law and payable when the claimant files its claim form. The amount of court fees varies depending on the type of proceeding and ranges between EUR150 and EUR1,200. The fee for ordinary proceedings is EUR300. Court fees are not usually reimbursed.

Court fees are fixed and must be paid for going to court and making use of the public service of the administration of justice though there are some exemptions (e.g., in cases which involve a decision in respect of fundamental rights). The events triggering the payment of a court fee in civil cases include:

- commencing a civil claim or enforcement proceedings in respect of an out-of-court settlement; or
- filing a counterclaim.

Class actions

In Spain, a judge will consolidate claims where they refer to:

- the same judgment;
- the same defendant; and
- the same facts.

Where this is done, only one judgment will be provided. The parties will, however, be able to appeal the consolidated judgment individually.

With regards to the rights and interests of consumers and end-users, the legally constituted associations of such consumers and end-users shall have authority in court to defend:

- the rights and interests of the associations and their members; and
- the general interests of consumers and users.

When the aggrieved consumers or end-users can be easily identified, the parties with authority to act as claimants in the proceedings are:

- the associations of consumers and end-users;
- the entities legally constituted for the purpose of representing aggrieved consumers or end-users; and
- the aggrieved groups.

Where the aggrieved consumers cannot be easily identified, the parties with authority to act as claimants in the proceedings are exclusively those associations of consumers and end-users who can legally hold such representation.

Key contacts



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