

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

SPAIN

Responses submitted by:

Name: Santiago Nadal

Law Firm/Company: SNAbogados

Location: Barcelona, Spain

1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Civil Law

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

Adversarial in civil, commercial and labour Courts. Hybrid in Penal Courts.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Judges have the following qualifications:

- They study a degree in Law.
- After, they pass an exam (“oposición”) to study in the School of Judges.
- After they study 2 years, they pass another exam and become Judges.
- They then are sent to a Court of First Instance (and or Criminal Court of Instruction).

Judges of First Instance

They can then continue in a Court of First Instance for years. Or pass another exam and become specialized Judges: Commercial Law, Family Law, Administrative Law.

Judges of the Provincial Courts

After several years, Judges of First Instance or specialized Judges can be elected to the Provincial Courts of Appeal (or to the respective specialized chambers of said Provincial Courts).

Supreme Court Judges

Judges of the Supreme Court are elected among the best Judges of the Provincial Courts of Appeal.

Who selects the Judges?

The selection of Judges, from one tier to the next (upper) tier is done by the General Council of the Judicial Power: a group of magistrates, judges lawyers and professors in law, elected by Parliament.

Jury used in certain criminal matters.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

SPAIN

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

Yes for labour Courts and Criminal Courts. No for commercial Courts: they apply standard civil procedure.

5. Is arbitration an option and when? If so, what rules are typically used?

Yes. When the parties have agreed to arbitration and the issues are civil or commercial, we have a Law on Arbitration and each Arbitration Institution has its (supplementary) rules.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

No, as of now. Probably in the future.

8. What is the process for pre-hearing fact discovery (if any)?

(a) *Are there provisions for mandatory document disclosures?*

Yes.

(b) *Is there provision for oral examinations of the parties or others?*

Not before the trial. Except when the party convinces the Judge that the witness may disappear; and it is practically never granted.

(c) *Are there limits on the length of oral examinations?*

Not in theory. Yes in practice.

(d) *Are witness statements or summaries to be provided before the hearing?*

No.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

SPAIN

9. What is the process for pre-hearing expert disclosure (if any)?

(a) *Are expert reports or written summaries required to be exchanged?*

Yes.

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

No.

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

No.

10. Are there other notable discovery rules?

In principle, each party produces the documents it wishes to produce. As a general rule, all documents must be served with the first writ: Claim and Answer. Obliging the other party to produce documents if it wants to hide them is difficult.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

To decide on the points to be decided by the evidence to be produce and procedural issues. It is conducted by the Judge. Around 6 months before the Oral Hearing.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

Yes. As precautionary measures. You have to prove that you have a good case and that there is a matter of urgency.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

In Spain, you can obtain evidence, before initiating the main proceedings. The process is initiated before the Court that will deal with the main case. It occurs when Claimant can prove that any of the evidence is in danger of disappearance.

If one party objects to admissibility of a piece of evidence, the court rules on the objection before trial in a Preliminary Hearing where the evidence is discussed.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

SPAIN

14. What is the standard for admissibility of expert evidence?

You have to convince the Judge that the evidence is necessary / convenient to prove your position.

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

Yes, but exceptionally: when the Judge considers it needs an independent expert opinion. This could be in any area of expertise: technical, financial...

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Yes: it protects privilege. It covers any document or correspondence in which the lawyer has participated.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Not applicable.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The Court dealing with the case determines privilege disputes with participation of the Local Bar Association.

19. Briefly describe the trial process?

(a) *Are there opening submissions, in what form and of what length?*

No.

(b) *What is the order of presentation of witnesses?*

First, claimants witnesses. After, defendants witnesses. They first answer the questions from the lawyer presenting the witness; then the other party; finally the Judge.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

SPAIN

(c) *Who conducts examination and in what order?*

The Judge controls but does not normally talk.

(d) *What is the process for closing submissions?*

First the Claimant's lawyer. After, the Defendant's lawyer.

20. Please identify any other notable trial procedures.

None.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

The party claiming liability has to prove: damages and causation. They are normally proven through experts.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

Compensatory damages and interest.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Not applicable.

24. Are there time limits for bringing claims? Responding to claims? Please describe.

Yes. Statute of limitation varies. From one (1) year, extra contractual, to fifteen (15) years, contractual. There is time limit to answer a Claim: 20 days, as general rule.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

Essentially the Court of the defendants domicile has jurisdiction. But many exceptions bring the jurisdiction into the place where the facts occurred, or to the Court agreed upon by the parties in contract. There is no principle of forum more convenient.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

SPAIN

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

Yes. Defendant informs the Court in writing of the procedural need to bring any other party into the proceedings. The Judge asks written opinion of the other parties, and decides in writing.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

Yes. Legal costs are recoverably by the wining party, in Civil and Commercial matters. The amount is normally calculated as a percentage.

28. Are contingency fees allowed?

Yes. But not frequently used.

29. Is third party funding of claims permitted? Under what circumstances?

Not normally applied, and not regulated.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Yes, in theory. But not normally accepted.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Yes. When the “general interest” of this consumers or the “general public interest” is at stake.

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

One (1) year in First Instance. One (1) year in appeal. Time depends of the Court’s workload.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

SPAIN

- 33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?**

Yes. Appeals are available: on final decisions and interlocutory orders. The Appeals are heard by three_(3) Judges of the (Superior) Provincial Court. These Judges are appointed, as First Instance Judges, by the Council of Magistrates.

- 34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?**

Yes, in the big cities.

- 35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?**

Not frequent. But theoretically possible.

- 36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?**

Yes: the same lawyer.

No: no distinction between solicitor and barrister

- 37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?**

In principle, extra-contractual liability is joint and several, unless you can prove that liability should be divided in proportion. In principle, contractual liability is ruled by the contract.

- 38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?**

The Hague Convention must be followed.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

SPAIN

- 39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)**

No, except if the documents are covered by privilege or by privacy and data protection laws

- 40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.**

None.

- 41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?**

No.

- 42. Are there legislative efforts under way that address any of the litigation practices in your country?**

No.