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Claiming damages from the offender

Spain

How can I claim damages or other means of redress/satisfaction from an offender in a trial (criminal proceedings), and who should I address this claim to?

In Spanish law, the normal procedure for claiming compensation for damages suffered is that of criminal proceedings, in which civil liabilities as well as criminal ones are analysed. For that reason, the local criminal court (*Juzgado de Instrucción*) offers civil action to the injured party, so that they can state whether they wish to make a claim during the criminal proceedings or reserve the right to claim for the injury suffered through civil proceedings.

If the injured party states that they wish to claim in the criminal proceedings, they can either opt for civil action taken in their name by the public prosecutor (this will also happen if they do not state a preference) or, if they wish, attend in person (through a lawyer and the court representative).

If the injured party chooses to claim for damages outside the criminal proceedings, they must begin civil proceedings under the rules for these proceedings. Consequently, the victim can lodge a claim for compensation for damages with the court, either in person on the statement received when they are offered the possibility of entering the proceedings as a private party, or in writing declaring their claim, or through a lawyer or court representative. This written representation is not essential: if not made, the public prosecutor will bring the civil as well as the criminal proceedings.

You can get help in preparing the application from the Crime Victim Support Offices (*Oficinas de Asistencia a las Víctimas del delito*) found in all the autonomous communities, in almost all provincial capitals and also in other cities; for terrorism offences you can get help from the National High Court's Information and Support Office for Victims of Terrorism (*Oficina de Información y Asistencia a Víctimas del Terrorismo de la Audiencia Nacional*).

At which point in the criminal proceedings should I present a claim?

You can present a claim at any point in the proceedings provided it is before the beginning of the oral trial. The local criminal court offers you the chance to make the claim during the investigation stage once it is notified of the existence of an injured party.

What can I ask for in the claim and how should I present it (indicate a total amount and/or specify the individual losses, lost profit and interest)?

The claim should specify the damages caused - the amount - and contain the relevant invoices or quotations supporting your claim, which will later be examined by the court expert.

Is there a specific form for such claims?

No.

What evidence do I need to present to support my claim?

In support of the claim for damages you should provide the relevant invoices or quotations supporting your claim. If you have applied for legal aid, you will be required to provide evidence of your income and assets.

Are there court fees or other costs linked to my claim?

No.

Can I get legal aid before and/or during the proceedings? Can I get it if I'm not living in the country where the proceedings take place?

As a victim applicant, from the time of your first contact with the authorities and officials you have the right to receive information about the procedure for obtaining legal advice and defence, and if applicable the conditions for obtaining them free of charge. The Crime Victim Support Offices will also provide you with this information.

As a victim applicant you will be able to submit your request to have your entitlement to legal aid recognised to the official or authority who has given you the information about the procedure for obtaining legal advice and defence and, where appropriate, obtaining this free of charge. The official or authority will forward it, together with the documentation provided, to the relevant bar association.

Your request may also be submitted to the Crime Victim Support Offices, which will forward it to the relevant bar association.

In general, as a victim applicant you can benefit from legal guidance services that offer information about the law to all citizens. These services are organised by bar associations in each judicial area.

To access them, you have to complete a form that can be found in courts, at the Ministry of Justice and at other State offices and prove that your means of living are insufficient. You must submit your request to the bar association in the area of the respective court or at the court in the area where you reside, if the criminal proceedings have not yet begun. Once the criminal proceedings have begun, you can obtain free legal aid at any time, provided that as victim you appear in person at the proceedings.

If you are a victim of a crime of gender-based violence, you do not need to first prove that your means are insufficient to obtain legal aid.

If you are a victim of terrorism, you can also obtain legal aid.

As a victim of crime you may apply for legal aid in Spain if you are a citizen of any EU Member State and demonstrate that your resources are inadequate.

Regardless of the existence of resources to institute legal proceedings, your right to legal aid will be recognised and this aid will be provided to you immediately if you are a victim of gender-based violence, terrorism or human trafficking in any proceedings that are linked to, derived from or a result of your status as victim, or if you are a minor or have an intellectual disability or mental illness when you are the victim of situations of abuse or mistreatment.

This right will also apply to beneficiaries of any kind of aid in the event of the victim's death, provided that they were not involved in the acts.

For the purposes of granting legal aid, as applicant you will be considered a victim when a complaint or action is lodged, or when criminal proceedings are initiated, for any of the crimes mentioned, and you will maintain this status as long as the criminal proceedings are in force or where a guilty verdict has been issued following the conclusion of the proceedings.

The right to legal aid will be lost once an acquittal becomes final, or following the temporary stay or dismissal of proceedings because the criminal acts are not proven, with no obligation to repay the cost of any benefits enjoyed free of charge up to that point.

In the different proceedings that may be initiated as a result of your status as victim of the crimes identified and, in particular, in gender-based violence proceedings, it must be the same lawyer who assists you, provided that your right of defence is thus duly guaranteed.

You have the right to legal aid if your yearly income and income per family unit do not exceed:

Twice the Public Multiple Purpose Income Indicator (*Indicador Público de Renta de Efectos Múltiples – IPREM*) in force at the time of making the request, where the persons in question are not a part of any family unit. The IPREM is an index that is fixed annually and used to determine the amount of certain benefits or the threshold for accessing certain benefits, entitlements or public services.

Two and a half times the IPREM in force at the time of making the request, where the persons in question are part of any of the types of family unit with fewer than four members.

Three times the IPREM where the family units in question are formed of four or more members.

If as victim you are granted the benefit of legal aid, you will not have to pay the following costs:

Prior legal advice.

Lawyer and court representative fees.

Costs arising from the publication of advertisements in official newspapers.

The deposits required to lodge certain appeals.

Payments for experts.

In addition, you will benefit from an 80 % reduction on the cost of notarial deeds and certificates from the land and trade registers.

When would the criminal court dismiss or refuse to adjudicate on my claim against the offender?

In general, in the case of **violent crimes and sexual offences**, the court needs to assess the existence of a wilful (intentional) violent crime or sexual offence and establish this in the judicial decision which ends the criminal proceedings. In this final judicial decision in the criminal proceedings, the causal relationship between the offence and the injuries or damage to health or, if applicable, the death, must be clearly determined.

It is also possible that the judicial decision that puts an end to the criminal proceedings may order the temporary stay of proceedings or the closing of the proceedings .

According to Spanish legislation on criminal matters, the temporary stay of proceedings is appropriate if the perpetration of the crime that resulted in the court case is not duly proven, or if it is concluded that a crime was committed but there are not sufficient reasons to accuse (a) particular person(s) as perpetrators, accomplices or accessories.

The closing of the proceedings is appropriate if there is no reasonable indication of the act giving rise to the court case having been committed, if the act did not constitute a crime or if those tried as perpetrators, accomplices or accessories appear to be exempt from criminal liability.

In the case of **terrorism offences**, it is generally necessary for the court to assess whether there is civil liability for the acts and the damages provided for in the applicable legislation. The granting of the aid and benefits recognised under Spanish legislation on terrorism is subject to the principles on compensation set out in the European Convention on the Compensation of Victims of Violent Crimes.

Can I appeal against such a decision or seek other means of redress/satisfaction?

If the examining magistrate (in a court or judicial body) decides to close the proceedings - that is, order dismissal - the victim can appeal if they have appeared in person at the proceedings and it is a private prosecution.

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In the case of **violent crimes and sexual offences**, a judicial decision that puts an end to the criminal proceedings and against which no further remedy is available is generally necessary in order to apply for the different kinds of aid provided for legally. To that end, the final decision of the criminal proceedings may be appealed against within the set term and by lodging the appeals as indicated in that decision.

If I am awarded damages by the court, how do I ensure the judgment is enforced against the offender and what help can I get to ensure this?

The State will pay all or part of the aid if the offender has been declared partially insolvent.

The State will subrogate itself to your rights against the party civilly liable for the crime, up to the full amount of the provisional or final aid you have been granted as victim or beneficiary.

The State may bring an action for recovery against the party civilly liable for the criminal act to demand the full or partial reimbursement of the aid granted.

This action will be carried out, where appropriate, by means of the administrative enforced recovery procedure and will apply in the following cases, among others:

Where the final judicial decision rules the absence of a crime.

Where after payment of the aid, both you as victim as well as your beneficiaries obtained, on any grounds, full or partial redress for the damages suffered in the three years following the granting of the aid.

Where the aid was obtained based on the provision of false or deliberately incomplete information or by any other fraudulent means, as well as the deliberate omission of circumstances that would lead to the refusal or reduction of the aid claimed.

Where the compensation awarded in the judgment is less than the provisional aid.

This action will be brought by the appearance of the State in the criminal or civil proceedings being conducted, without prejudice to the civil action that may be brought by the public prosecutor.

Victims may be assisted through the relevant Crime Victim Support Offices, or in the case of terrorism offences, through the National High Court's Information and Support Office for Victims of Terrorism, with any information they need on these matters as victims of crime.

The Crime Victim Support Offices will provide information about the possibility you have as victim to participate in the prison sentence and will carry out whatever assistance activities are needed so you can exercise the rights recognised by law.

If you are a victim of terrorism, the National High Court's Information and Support Office for Victims of Terrorism will provide you with the information channels necessary for you to find out everything related to the prison sentence enforcement up to the time the sentences have been fully served, especially in cases where benefits are granted or the convicts are released. In addition, within the scope of the processing of compensation cases it will provide information to you as victim on obtaining certificates of the final judgments, orders not to enforce civil liabilities and other documents required to process the legally established aid.

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