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Which country's court is responsible?

Spain

1 Should I apply to an ordinary civil court or to a specialised court (for example an employment labour court)?

The principle underpinning the organisation of the courts in Spain is that of unity of jurisdiction. The only exceptions are military jurisdiction in times of war and states of siege, and the Constitutional Court (*Tribunal Constitucional*) as the ultimate guarantor of fundamental rights and public freedoms through an application for enforcement of fundamental rights and freedoms (*recurso de amparo*).

However, jurisdiction is divided between four types of courts: civil courts, criminal courts, courts for contentious administrative proceedings, and social courts. The cornerstone of the civil courts is the Court of First Instance (*Juzgado de Primera Instancia*), which hears civil disputes at first instance and proceedings not expressly assigned to another court. The Court of First Instance can therefore be described as the ordinary or usual court.

The civil division includes the Family Courts (*Juzgados de Familia*), which are Courts of First Instance. Where Family Courts are available (generally in the larger population centres), these are responsible for hearing family law disputes concerning marriage annulment, separation and divorce, parent/child relations and the protection of persons with limited capacity. Where criminal proceedings are brought against one of the parties in a Court dealing with Violence Against Women (*Juzgado de Violencia sobre la Mujer*), that court will also have jurisdiction over these civil proceedings.

The civil division also includes the specialised Commercial Courts (*Juzgados de lo Mercantil*) and EU Trade Mark Courts (*Juzgados de Marca Comunitaria*). The Social Courts (*Juzgados de lo Social*) are responsible for hearing cases dealing with employment law. These include individual disputes between employees and employers over employment contracts, collective bargaining disputes, Social Security claims, and claims against the State in respect of its employment law responsibilities.

The criminal courts are responsible for hearing criminal cases.

A feature of Spanish law is that civil proceedings arising from criminal offences can be joined with the criminal proceedings. In these cases, the criminal court will decide on the amount of damages payable in connection with the offence. Where a civil action is not brought by the injured party, it will be brought by the Public Prosecutor on his or her behalf, unless the injured party has expressly waived the right to bring an action in the criminal case.

Lastly, the contentious administrative courts oversee the legality of actions taken by public authorities and hear financial claims against them.

2 Where the ordinary civil courts have jurisdiction (i.e. these are the courts which have responsibility for such cases) how can I find out which one I should apply to?

See the answers given below.

2.1 Is there a distinction between lower and higher ordinary civil courts (for example district courts as lower courts and regional courts as higher courts) and if so which one is competent for my case?

In Spain, there is no distinction made among the various courts of first instance in terms of the amount of the claims or the seriousness of the cases they can deal with, and no court of first instance hears appeals on rulings by other first instance courts. Appeals in civil proceedings are always heard in the Provincial Courts (*Audiencias Provinciales*).

2.2 Territorial jurisdiction (is the court of city/town A or of city/town B competent for my case?)

For court purposes, Spain is divided geographically into municipalities, districts, provinces and Autonomous Communities. A district is a territorial unit comprising one or more adjoining municipalities within the same province. It is the most important territorial division, because it is the area in which a Court of First Instance has jurisdiction. (Details can be found on the Ministry of Justice website at mjusticia.gob.es.)

Where necessary in order to deal with the caseload, there is more than one court of the same type. This is now the case in most towns. The courts are numbered consecutively according to when they were established.

In principle, all these courts have the same jurisdiction, and the work is distributed between them according to internal government allocation rules. However, in some circumstances the allocation rules may be used to assign different types of case to different courts within the same district.

2.2.1 The basic rule of territorial jurisdiction

In the absence of any agreement or mandatory rules, the basic rule is that jurisdiction lies with the Court of First Instance of the district where the defendant has his or her domicile or, failing that, his or her residence. If the defendant is neither domiciled nor resident in Spain, the competent court will be the Court of First Instance for the district where the defendant is present or was last resident. Where none of these criteria applies, the claimant may file the claim with the Court of First Instance for the district of his or her domicile.

For these purposes:

Claims against business owners and professional people brought in connection with their business or professional activities may also be brought in any of the places where they carry on their activities, at the claimant's choice.

Claims against legal entities may also be brought in the place where the situation or legal relationship that is the subject of the claim occurred or is to have effect, provided that the legal entity has an establishment or a representative there.

2.2.2 Exceptions to the basic rule

2.2.2.1 When can I choose between the court in the place where the defendant lives (court determined by the application of the basic rule) and another court?

The current Spanish procedural system tends not to leave the choice of territorial jurisdiction to the claimant. It only happens in the following cases:

- Actions *in rem* over real property involving either several properties or one property located in various different districts. In these cases claimants can opt to bring the action in any of the districts with jurisdiction.

- Actions to require the presentation and approval of accounts by those responsible for managing another party's assets, if the location where the accounts are to be presented has not been determined. In these cases, claimants may choose between the defendant's domicile and the place where the assets are managed.

- Inheritance disputes: claimants can choose between the courts of the deceased's last domicile in Spain and the courts where the majority of the estate is located.

- Intellectual property actions: claimants may choose between the following locations: where the infringement occurred; where there is *prima facie* evidence that the infringement took place; or where there are unlawful copies.

- Unfair competition cases where the defendant has no establishment, domicile or residence in Spain. In these cases, claimants may choose either the place where the unfair competition occurred or where its effects are felt.
- Claims solely concerned with custody of minors or maintenance claims brought by one parent against the other on behalf of minors, where the two are resident in different court districts. In these cases, claimants may choose either the court where the defendant is domiciled or the court where the child is resident.
- Generally speaking, actions involving the exercise of individual consumer or user rights may be heard by the court of the domicile of the consumer, user or defendant, at the choice of the consumer.

2.2.2.2 When do I have to choose a court other than that in the place where the defendant lives (court determined by the application of the basic rule)?

In the following cases, there are mandatory rules requiring the claimant to apply to a court other than that of the defendant's domicile. In these cases, the parties cannot opt to submit to the jurisdiction of a particular court, either expressly or implicitly:

- Rights *in rem* or rights to receive rent in respect of real property and matters relating to commonhold property (*propiedad horizontal*): jurisdiction lies with the courts of the district where the property is located.
- Inheritance matters: jurisdiction is determined either by where the deceased was last domiciled in Spain or by where the majority of the estate is located, at the choice of the claimant.
- Cases involving assistance for or representation of persons without capacity: these will be heard by the court of the place where the person in question is living.
- Protection of fundamental rights through the civil courts: these cases will be heard by the court of the claimant's domicile or, where the claimant has no domicile in Spain, of the place where the act that infringed the right in question took place.
- Claims for damages in respect of use of motor vehicles: the court of the place where the damage occurred will have jurisdiction.
- Challenges to company resolutions: territorial jurisdiction is determined by the location of the company's registered office.
- Actions for a declaration that certain general terms and conditions of contract do not form part of a contract or that a clause is void: the court of the place of the claimant's domicile has jurisdiction.
- Declarative actions for the termination or withdrawal of standard contract terms where the defendant has no establishment or domicile in Spain: in these cases the court of the place where the standard contract was concluded has jurisdiction.
- Actions for the termination of standard contract terms in defence of consumers' or users' collective or common interests where the defendant has no establishment or domicile in Spain: in these cases the court of the claimant's domicile has jurisdiction.
- Actions to require any of the following persons to comply with their obligations: an insurance company; someone who has sold personal property to another person in instalments, or funded the purchase of that property; someone who has made a public offer of personal property or services that another person has accepted. In these cases, the court of the place of the claimant's domicile has jurisdiction.
- Third-party actions to contest seizure of property: the court of the place of domicile of the entity that ordered the seizure will have jurisdiction.
- Applications for separation, nullity or divorce: jurisdiction lies with the Family Court – or where there is no Family Court, the Court of First Instance of the location of the marital home. Where there is no marital home, jurisdiction will lie with the court of the location of either the last marital home or the residence of the other spouse. Where none of these exists, the court where the individual is domiciled will have jurisdiction. Where an application is made by mutual agreement, jurisdiction will lie with the court of the location of the last shared home or of the domicile of either spouse.
- Claims solely concerned with custody of minors or maintenance claims brought by one parent against the other on behalf of minors: in these cases jurisdiction will lie with the court of the location of the parents' last shared home. Where the parents live in different judicial districts, the claimant may choose between the court where the defendant is domiciled and the court where the child is resident.

2.2.2.3 Can the parties themselves attribute jurisdiction to a court that would not be competent otherwise?

As a general rule, territorial jurisdiction can be changed in Spain, meaning that litigants can submit, either expressly or tacitly, to the courts of a particular district, provided that the courts in question have jurisdiction over the subject matter.

Express submission occurs where the interested parties conclude an express agreement stating the specific district to whose courts they submit.

Tacit submission occurs in the following circumstances:

- In the case of the claimant, by the mere fact of applying to the courts of a particular district and filing a claim or making an application or request that has to be filed with the court having jurisdiction to hear the claim.
- In the case of the defendant, where he or she has entered an appearance and subsequently performs any procedural step other than filing an application in due time and form to challenge the court's jurisdiction.

Any changes to the parties' domiciles, the location of the object in dispute or the purpose of the proceedings that take place after proceedings have commenced will not lead to a change in jurisdiction, which will be determined in accordance with the situation as confirmed at the start of proceedings (*Perpetuatio Jurisdictionis*).

However:

Express submission is not permitted in standard form contracts, contracts where general terms and conditions have been imposed by one of the parties, or consumer/user contracts. However, tacit submission is possible in these cases.

No form of submission is possible where the law lays down mandatory rules on territorial jurisdiction.

No form of submission is allowed in fast-track proceedings, order for payment procedures or debt enforcement procedures.

3 Where specialised courts have jurisdiction how can I find out which one I have to address?

The specialised courts in Spain include the courts listed below.

The Family Courts, which are Courts of First Instance. Where Family Courts are available (generally in the larger population centres), these have sole and exclusive jurisdiction over family matters. Specifically they hear cases concerning:

separation, annulment and divorce; and
the exercise of parental responsibility over minors.

The rules on territorial jurisdiction are the same as the rules that apply to the Courts of First Instance hearing family law matters in the absence of a specialised Family Court in the district in question.

The Social Courts hear employment law claims. These include individual disputes between employees and employers over employment contracts, collective bargaining disputes, Social Security claims and claims against the State in respect of its employment law responsibilities.

The general rule is that territorial jurisdiction lies with the court in the place where the worker provides his or her services or where the defendant is domiciled, at the choice of the claimant.

The Commercial Courts operate at provincial level and deal with commercial litigation.

These courts will hear cases involving any insolvency-related matters, except where the insolvency involves an individual other than a business person: in these cases the non-specialised Courts of First Instance have jurisdiction.

They will also hear related cases involving the following matters:

- Civil financial claims against the insolvent person's assets, except claims in proceedings concerning capacity, parentage, marriage and minors.
- Corporate actions to bring about the collective termination, amendment or suspension of contracts of employment where the employer is the insolvent party, or actions to suspend or terminate senior management contracts.
- Any enforcement action or provisional measure against the insolvent party's assets and economic rights, regardless of which court made the order.
- Civil liability actions against company directors, auditors or liquidators over damage and loss suffered by the insolvent party during the insolvency procedure.

- Claims relating to:

unfair competition,
intellectual property and advertising,
company law and the law governing cooperative societies,
national or international transport,
maritime law,
general terms and conditions of contract,
the application of arbitration rules to the matters listed above.

Jurisdiction to open and hear insolvency proceedings lies with the Commercial Court of the territory where the debtor has the centre of his or her main interests. If the debtor is also domiciled in Spain and the domicile and centre of main interests are in different places, the Commercial Court of the debtor's domicile will also be competent to hear the case, at the choice of the creditor making the application.

Where the debtor is a legal entity, the presumption is that its registered office is the centre of its main interests. For these purposes, any change of registered office occurring within the six months prior to the application to open insolvency proceedings will not be taken into account.

The Commercial Courts in Alicante operate as the EU Trade Mark Courts when they exercise their exclusive jurisdiction to hear at first instance any litigation brought before them under Council Regulation No 40/94 of 20 December 1993 on the Community trade mark and Council Regulation No 6/2002 of 12 December 2001 on Community designs.

When exercising their jurisdiction over these matters, the Trade Mark Courts have jurisdiction throughout the national territory.

Aside from these specialised courts, by law the General Council for the Judiciary (*Consejo General del Poder Judicial*) may rule that, where there are several courts of the same type, one or more of them shall have exclusive jurisdiction to hear certain classes of case or to oversee enforcement in the area of law concerned.

This power has already been exercised in several locations, particularly in relation to incapacity and forced institutionalisation on grounds of mental illness, where jurisdiction has generally been assigned to the Family Courts.

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