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Family mediation

Španielsko

1 Regulation of mediation

In Spain, there is no specific regulation on family mediation. However, it is included as a civil matter in

[Law 5/12 of 6 July 2012, on mediation in civil and commercial matters](#), which regulates, in general terms, mediation in those areas.

Articles 3 and 27 of the aforementioned Law 5/12 include specific rules on mediation in crossborder matters.

Some autonomous communities which have jurisdiction in this area have also regulated mediation in a way that is quite similar to national legislation. All legislation on mediation at Autonomous Community level is available at:

<http://www.poderjudicial.es/cgpj/es/Temas/Mediacion/Normativa-y-jurisprudencia/Leyes-Autonomicas/>

2 Family Mediation Procedure

Family mediation is entirely voluntary in Spain and is governed, inter alia, by the principles of confidentiality, equality of the parties and mediator impartiality. In order to facilitate mediation in cases involving, inter alia, cross-border family mediation, general legislation on mediation expressly allows it to be carried out by videoconference or other electronic means that allow voice or image transmission. The parties may go to mediation before the start of the court proceedings, while they are ongoing, and even after they have been concluded, in order to change the outcome or to make it easier to enforce the court decision.

The mediation procedure is relatively simple, regardless of when it takes place. The parties contact the mediator of their choice, or, if they are involved in ongoing family proceedings, the mediator who has been appointed by the judge. First, an information session is held so that the parties can learn about the mediation procedure, and if both agree to the procedure, it can begin. The mediator leads the mediation sessions to enable each of the parties to set out its positions and try to reach agreement. The procedure ends with or without agreement on all or some of the issues. The result is recorded in a report and if there is an agreement, it must be submitted to the judicial authority for approval or, if there are no minor or disabled children involved, the report can be submitted to the notary, who can record it in a public deed. It can then be enforced.

If the parties attend mediation before the court proceedings are initiated and reach an agreement, the legal process is expedited because the parties go through a simplified procedure where both parties submit the agreement to the Family Court (*Juzgado de Familia*), which approves the agreement if it is not contrary to the law or to the interests of any minor or disabled children the couple may have. ([See Article 777 of the Code of Civil Procedure](#))

If the court proceedings have begun without the parties going to mediation, the judge, taking into account the circumstances of the case, may agree that the parties should go to mediation and the Family Court will refer them to a free information session. If they decide to go to mediation, the legal proceedings are not suspended, unless the parties request a stay of proceedings, and if an agreement is ultimately reached, it is approved by the court. However, if no agreement is reached or the parties did not want to use mediation, judgment is made on all those points on which the parties disagree.

Family mediation is not possible when there are proceedings for gender-based violence between the parties.

The information session is free, but the mediation itself involves a cost to be borne by the parties unless they qualify for legal aid. All the information about the content and requirements for obtaining legal aid is available at:

<https://www.mjusticia.gob.es/cs/Satellite/Portal/es/servicios-ciudadano/tramites-gestiones-personales/asistencia-juridica-gratuita>

3 Profession of family mediator and access to a mediator

The mediator must have a university degree or higher vocational training and, in addition, must have specific training to practise mediation that is given in institutions accredited for that purpose.

There is no requirement to be registered in any register in order to be able to practise family mediation, but registers have been set up where mediators can register both at the national level (Register of Mediators and Mediation Institutions whose website is given below - *Registro de Mediadores e Instituciones de Mediación*) and at the level of the Autonomous Communities.

At the latter level, almost all the Autonomous Communities have created a public mediation service. For information about this, simply go to the mediation section of their institutional websites where they explain in varying degrees of detail how the mediation system works and provide information on and a link to the Registry of Mediators, where such a registry exists. The websites also usually have mediation request forms that refer to the specialised agencies they have set up to carry out the mediation.

In order to find a family mediator, you have to differentiate between whether mediation is to take place once the proceedings have started or independently of the proceedings. If mediation is requested once the proceedings have started, the relevant Family Court will refer the parties to the family mediation bodies attached to it, whereas if mediation is used before or outside the court proceedings, the party will have to seek a family mediator. The following sources of information may be useful:

- The Register of Mediators and Mediation Institutions at national level referred to previously:

<https://www.mjusticia.gob.es/es/ciudadania/registros/mediadores-instituciones>

- The following institutions indicated by the Ministry of Justice:

<https://remediabuscador.mjusticia.gob.es/remediabuscador/RegistroInstitucion>

- The Mediation Services indicated for each province by the General Council of the Judiciary (*Consejo General del Poder Judicial*):

<http://www.poderjudicial.es/cgpj/es/Temas/Mediacion/Servicios-de-Mediacion-Intrajudicial/Mediacion-Familiar/>

- The Mediation Services set up by the different Autonomous Communities. The institutional websites of the Autonomous Communities usually contain information.

In addition to the above, more information on the family mediation procedure, the applicable legislation, the mediation services existing in the different Autonomous Communities and the relevant formalities are available on the website of the General Council of the Judiciary:

<http://www.poderjudicial.es/cgpj/es/Temas/Mediacion>

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