

Spain



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1 Class/Group Actions

1.1 Do you have a specific procedure for handling a series or group of related claims? If so, please outline this.

Yes, article 71 of the Civil Procedural Act allows the joining of actions against one same defendant. The claimant may join as many actions against the defendant he is entitled to in the claim, though they may arise from different titles, as long as they are not mutually incompatible. The joinder of actions given permission to proceed shall lead to all the actions being dealt with in the same proceedings and their decision in a single judgment.

1.2 Do these rules apply to all areas of law or to certain sectors only e.g. competition law, security/financial services? Please outline any rules relating to specific areas of law.

These rules apply to all areas of law that are handled in civil procedures.

1.3 Does the procedure provide for the management of claims by means of class action (where the determination of one claim leads to the determination of the class), or by means of a group action where related claims are managed together, but the decision in one claim does not automatically create a binding precedent for the others in the group, or by some other process?

The decision handed down by the court in one of these procedures of collective actions does not automatically create a binding precedent for the determination of the class. Each case must be analysed individually.

1.4 Is the procedure ‘opt-in’ or ‘opt-out’?

Collective actions procedure is based on an “opt-in” system. Only the claimants who signed up with the initial claim can be part of the process, so the option lies at their sole discretion.

1.5 Is there a minimum threshold/number of claims that can be managed under the procedure?

There is no minimum threshold. The claimant may join as many

actions against the defendant he is entitled to in the claim as long as they are not mutually incompatible.

1.6 How similar must the claims be? For example, in what circumstances will a class action be certified or a group litigation order made?

The claims must not be “mutually incompatible”. This means that they must arise out of similar circumstances – the claimants concerned must have incurred damages caused by a common origin. They must be guaranteed by the same law so that they can be ruled by the same court.

1.7 Who can bring the class/group proceedings e.g. individuals, group(s) and/or representative bodies?

Any natural or legal person may join actions against one same defendant starting a collective actions procedure if they share a damage and a cause. As mentioned in section 2, legally constituted associations of consumers and users also shall be legitimised to defend the rights and interests of their members.

1.8 Where a class/group action is initiated/approved by the court must potential claimants be informed of the action? If so, how are they notified? Is advertising of the class/group action permitted or required? Are there any restrictions on such advertising?

As the identity of each claimant is known in a collective action procedure, all of them are personally informed of the progress of the procedure. Spanish procedural rules do not enforce to notify anything to potential claimants or parties which could have an interest in the process, in connection with the answer to question 1.3.

1.9 How many group/class actions are commonly brought each year and in what areas of law e.g. have group/class action procedures been used in the fields of: Product liability; Securities/financial services/shareholder claims; Competition; Consumer fraud; Mass tort claims, e.g. disaster litigation; Environmental; Intellectual property; or Employment law?

There is no way of knowing exactly how many collective claims procedures have been brought in Spain, but they are seldom used.

1.10 What remedies are available where such claims are brought e.g. monetary compensation and/or injunctive/declaratory relief?

In the collective claims system, as in any other civil procedure, claimants are free to ask for any regulated kind of compensation and the court decides which reparation is more appropriate.

2 Actions by Representative Bodies

2.1 Do you have a procedure permitting collective actions by representative bodies e.g. consumer organisations or interest groups?

Yes. Article 11 of the Civil Procedural Act says that, notwithstanding the individual standing of those damaged, the legally constituted associations of consumers and users shall be legitimised to defend the rights and interests of their members and of the association in court, as well as the general interests of consumers and users.

2.2 Who is permitted to bring such claims e.g. public authorities, state-appointed ombudsmen or consumer associations? Must the organisation be approved by the state?

As mentioned in question 2.1, the legally constituted associations of consumers and users are permitted to bring such claims. In accordance with article 23 of the General Consumer and User Protection Act, “consumer and user associations are non-profit organisations established in accordance with the legislative provisions on associations, which meet the specific requirements demanded in this law and its implementation rules, and in any regional legislation that may be applicable in this regard, with the aim of protecting the legitimate interests and rights of consumers, including their information, training and education, whether of a general nature or in relation to specific goods or services. Consumer and user associations also include entities established by consumers in keeping with legislation on cooperatives, which respect the basic requirements of this law and which have aims necessarily including the education and training of their members, and which are obliged to set up a fund for this purpose, according to their specific legislation”.

2.3 In what circumstances may representative actions be brought? Is the procedure only available in respect of certain areas of law e.g. consumer disputes?

Yes, according to article 19 of the General Consumer and User Protection Act, “the legitimate economic and social interests of consumers and users shall be respected under the terms established herein, also applying such provisions as may be relevant in respect of civil, commercial and other European, national and regional laws”.

2.4 What remedies are available where such claims are brought e.g. injunctive/declaratory relief and/or monetary compensation?

When basic consumer rights such as protection against risks that may affect their health or safety or their legitimate economic and social interests are not respected, consumers can ask for compensation for damages and redress for harm suffered.

3 Court Procedures

3.1 Is the trial by a judge or a jury?

The procedures are handled by one judge in first-instance and by three judges in second-instance. There are no juries in civil courts.

3.2 How are the proceedings managed e.g. are they dealt with by specialist courts/judges? Is a specialist judge appointed to manage the procedural aspects and/or hear the case?

No, proceedings are not managed by specialist judges – they are conducted by professional judges from civil or commercial courts, as there is no specific court that deals with collective actions.

3.3 How is the group or class of claims defined e.g. by certification of a class? Can the court impose a ‘cut-off’ date by which claimants must join the litigation?

There is no definition of “group” or “class” action. According to article 11 of the Civil Procedural Act, “when those damaged by an event are a group of consumers or users whose components are perfectly determined or may be easily determined, the standing to apply for the protection of these collective interests corresponds to the associations of consumers and users, to the entities legally constituted whose purpose is the defence or protection of these, and the groups affected”. The court cannot impose a “cut-off” date by which claimants must join the litigation.

3.4 Do the courts commonly select ‘test’ or ‘model’ cases and try all issues of law and fact in those cases, or do they determine generic or preliminary issues of law or fact, or are both approaches available? If the court can order preliminary issues do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

In Spain, courts do not select “test” cases. Once the claim is declared admissible, they study each joined claim individually, taking care of both common facts and legal issues at the same time.

3.5 Are any other case management procedures typically used in the context of class/group litigation?

As mentioned in section 2, legally constituted associations of consumers and users can defend the rights and interests of their members in court, as well as the general interests of consumers and users. According to article 15 of the Civil Procedural Act, “in the proceedings lodged by associations or entities constituted for the protection of the rights and interests of consumers and users or by groups affected, those who have been damaged due to being consumers of the product or users of the service which gave rise to the proceedings shall be called to appear in order to assert their individual rights or interest. This call shall be made by the Court Clerk”.

3.6 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

Article 335 of the Civil Procedural Act says that: “Where scientific, artistic, technical or practical knowledge may be necessary to ascertain any facts or circumstances that are relevant to the matter or to acquire certainty about them, the parties may bring to the proceedings the opinions of experts having the relevant knowledge or seek that court-appointed expert should issue an opinion in the cases set forth herein.”

3.7 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

Pursuant to Spanish proceedings, expert witnesses are required to present their written statements before the first hearing takes place. These experts shall intervene at the trial as requested by the parties, to the extent allowed by the court.

3.8 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

As in ordinary civil proceedings, each party decides what evidence it chooses to attach to their pleadings before the first hearing takes place. This evidence can be complemented with the production of specific evidence when it is asked for by one of the parties and it is allowed by the court.

3.9 How long does it normally take to get to trial?

In the Spanish system there are two kind of procedures, depending on the matter and the amount of the action, and there is no specific procedure for collective actions. Under the normal procedure, it usually takes 12-14 months to get to trial and judgments are typically given between one and four weeks after the trial date. This is for the first instance.

3.10 What appeal options are available?

According to the Spanish Civil Procedural Law, each party has the right to appeal a first instance judgment within 20 days, counting from the date following that on which notice thereof was served. The remedies of appeal shall be heard by the Provincial Courts, when the decisions subject to appeal have been issued by the Courts of First Instance of their judicial district.

4 Time Limits

4.1 Are there any time limits on bringing or issuing court proceedings?

Yes, there are limits on issuing court proceedings.

4.2 If so, please explain what these are. Does the age or condition of the claimant affect the calculation of any time limits and does the court have discretion to disapply time limits?

The age or condition of the claimant does not affect the calculation of any time limits. The court does not have discretion to disapply the limits.

In the Spanish system, the limitation period vary widely depending on the nature of the action exercised. Despite that there is a standard limitation or prescription period of fifteen years according to article 1.964 of the Spanish Civil Code: “personal remedies for which no special statute of limitations has been provided” shall become barred “after fifteen years”; the different actions regulated by Spanish law have different limitation periods ranging from six months to twenty years. The limitation period begins at the day when the claimant had knowledge of the circumstances.

4.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

The limitation period normally begins from the time the concealment or fraud was discovered or from the moment in which the claimant, exercising reasonable diligence, would have discovered it.

5 Remedies

5.1 What types of damage are recoverable e.g. bodily injury, mental damage, damage to property, economic loss?

All types of damage are recoverable as long as the claimants can establish beyond a doubt whether there is a cause and effect relationship between that damage and the acts or omissions of the defendant.

5.2 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where a product has not yet malfunctioned and caused injury, but it may do so in future?

If the product has not yet malfunctioned and caused injury it is improbable that the claimant can recover any indemnification. The Spanish Supreme Court set forth that the damage needs to be certain for the obligation to compensate is born and payable.

5.3 Are punitive damages recoverable? If so, are there any restrictions?

Compensatory and punitive damages are not recoverable in civil procedures.

5.4 Is there a maximum limit on the damages recoverable from one defendant e.g. for a series of claims arising from one product/incident or accident?

No, generally there is no maximum limit on the damages recoverable, unless when there are specific statutes (e.g. accidents). Spanish law regulates an action called “damages and injuries”. Damages have a more direct nature, while injuries are also damaged, but in some

indirect way, so they are like compensatory damages which are limited by the judge depending on the circumstances of each case.

5.5 How are damages quantified? Are they divided amongst the members of the class/group and, if so, on what basis?

Damages are quantified taking into account each individual damage. Claimants receive their part of a potential compensation, which has been settled in the pleading.

5.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required?

No; as in general civil procedures, the parties are free to reach a settlement in the terms and conditions that they decide. No court approval is required.

6 Costs

6.1 Can the successful party recover: (a) court fees or other incidental expenses; and/or (b) their own legal costs of bringing the proceedings, from the losing party? Does the 'loser pays' rule apply?

Under article 241 of the Civil Procedural Law, "each party shall pay for the proceedings' costs and expenses incurred at such party's request as they come about. The proceedings' expenses shall be construed to be any payments that directly and immediately arise from the existence of such proceedings". Despite this, the successful party can recover legal costs if the judge considers so. Article 394 says that "in declaratory proceedings, the costs in the first instance shall be imposed on the party who has had his pleas rejected unless the court considers and reasons that the case may pose serious *de facto* or *de iure* doubts. For the purposes of ordering a party to pay costs, in order to verify that the case is legally doubtful, the jurisprudence of similar cases shall be taken into account".

6.2 How are the costs of litigation shared amongst the members of the group/class? How are the costs common to all claims involved in the action ('common costs') and the costs attributable to each individual claim ('individual costs') allocated?

In general, statutory lawyers' fees are paid individually, as each claimant signs an individual contract with the lawyer. In the case of costs of litigation, they are shared by all claimants in proportion to the value of each claim.

6.3 What are the costs consequences, if any, where a member of the group/class discontinues their claim before the conclusion of the group/class action?

Article 396 of the Civil Procedural Law states that "if the proceedings terminate due to abandonment by the claimant, and the defendant does not consent, the claimant shall be ordered to pay all the costs".

6.4 Do the courts manage the costs incurred by the parties e.g. by limiting the amount of costs recoverable or by imposing a 'cap' on costs? Are costs assessed by the court during and/or at the end of the proceedings?

In the Spanish system, legal costs of proceedings are limited. Lawyers' fees are calculated in accordance with the standards established by the different Bar associations, and other litigation costs are reasonably measured by the parties and ruled by the court.

7 Funding

7.1 Is public funding e.g. legal aid, available?

Yes, legal aid is available in our system for ensuring access to justice. Pursuant to the Act of Legal Aid, the benefit of legal aid is a right of Spanish citizens, associations of public utility or foundations if they provide evidence of financial eligibility. It covers legal advice, free defence and representation by a lawyer and a court procedural representative, and it exempts from the payment of court fees.

7.2 If so, are there any restrictions on the availability of public funding?

Yes, a financial restriction exists. The right to legal aid is granted to those who, lacking sufficient assets, have a gross income or financial means, calculated annually for every measure and per family unit, that does not exceed determinate thresholds.

7.3 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

Contingency fees can be agreed upon when the clients ask for them because of economic reasons. It exists when lawyers' fees depend on the outcome of the process.

7.4 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

In general, financial aid by a third party it is not prohibited itself, but it is not common in the Spanish system.

8 Other Mechanisms

8.1 Can consumers' claims be assigned to a consumer association or representative body and brought by that body? If so, please outline the procedure.

Yes, consumers' claims can be assigned to a consumer association. According to the Spanish legal system, associations of consumers and users shall be legitimised to defend the rights and interests of their members and of the association in court, as well as the general interests of consumers and users.

8.2 Can consumers' claims be brought by a professional commercial claimant which purchases the rights to individual claims in return for a share of the proceeds of the action? If so, please outline the procedure.

Yes, consumers' claims can be brought by a professional commercial claimant that purchases the rights, so a third party could litigate on its own name, giving a compensatory amount in return. It is common in insolvency situations.

8.3 Can criminal proceedings be used as a means of pursuing civil damages claims on behalf of a group or class?

According to Spanish Criminal Code, "perpetration of an act defined as a felony or misdemeanour by Law shall entail, pursuant to the provisions contained in the laws, to repair the damages and losses caused thereby. In all cases, the party damaged may opt to sue for civil liability before the Civil Jurisdiction".

8.4 Are alternative methods of dispute resolution available e.g. can the matter be referred to an Ombudsperson? Is mediation or arbitration available?

Yes, alternative methods of dispute resolution are arbitration and mediation. Parties are free to agree on which method they want to be used.

8.5 Are statutory compensation schemes available e.g. for small claims?

No, there are no statutory compensation schemes in the Spanish civil system, or when talking about arbitration or mediation. When a party asks for an indemnisation based on damage and injuries, it has the freedom to ask for a reasonable amount, although it might not be the final agreed amount.

8.6 What remedies are available where such alternative mechanisms are pursued e.g. injunctive/declaratory relief and/or monetary compensation?

As with monetary compensation, parties are free to arrange some other method of compensation which they consider reasonable and appropriate, insofar as this is permitted by the procedural rules of the alternative mechanism.

9 Other Matters

9.1 Can claims be brought by residents from other jurisdictions? Are there rules to restrict 'forum shopping'?

Yes, residents from other jurisdictions can bring claims without "forum shopping" restrictions. The Spanish Judiciary Act states that "the Spanish courts have jurisdiction over lawsuits arising in Spanish territory between Spaniards, among foreigners and Spaniards and foreigners in accordance with the provisions of this Act and the international treaties and conventions to which Spain is a party".

9.2 Are there any changes in the law proposed to promote class/group actions in Spain?

There are no changes proposed to promote class/group actions.



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Fernando Zunzunegui (Ph.D.) has been providing regulatory and financial counselling to financial institutions, government entities and investors for more than 20 years. He was a former Chairman of the European Commission's forum of user experts in the area of financial services, FIN-USE (Brussels, 2006-2009) and lawyer at IBERCLEAR, the Spanish Central Securities Depository in charge of the Register of Securities and the Clearing & Settlement of all trades (1992-1996). Mr. Zunzunegui holds a Ph.D. in Banking Law, *cum laude* (Universidad Autónoma de Madrid, 1981), a Master's in Company and Bankruptcy Law, and degrees in Law and Economics. He is currently professor of Banking and Securities Law at Universidad Carlos III of Madrid. He is a member of the International Bar Association and Madrid Bar Association, and has been ranked by Chambers and Partners as "Leader in their field".

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Cristina Eguiraun Ais has assisted the litigation department in financial disputes, civil matters including restructuring and insolvency since 2011.

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