

## Spain

*The purpose of this legal analysis is to discover the legal framework and practice of the respective Member State and whether the costs of bringing a case are a barrier to access to justice.*

### **I. Country information**

Currency: *Euro (EUR)*

EUR exchange rate: -

GDP per capita: *EUR 26.100 (2008) – 103,9% of EU average*

Human Development Index: *0.949 (2008 – 16<sup>th</sup> position in the list of countries)*

### **II. Administrative and judicial procedural costs**

#### **A) Administrative procedural costs**

What is the amount of procedural duty or fee to be paid for an appeal (in EUR)?

*Spanish legal system does not establish any fee for submitting an administrative appeal within the administrative procedure.*

Who pays the procedural duty or fee for an appeal?

*Nobody, there is no fee to pay.*

Is there a waiver or an allowance, based either on the nature of the case or on personal characteristics of the appellant?

*Not applicable.*

Who bears the costs if the appeal was successful (is there a refund of procedural duty or fee)?

*Not applicable.*

Who bears the costs of evidence in an administrative procedure?

*The person who appeals has to cover the costs, if any, of evidence submitted.*

How much is approximately the total cost of evidence in a typical environmental administrative procedure (in EUR)?

*EUR 3.000 to 30.000.*

## **B) Judicial procedural costs**

### **a) Administrative<sup>1</sup> judicial procedure**

What is the amount of procedural duty or fee to be paid for the start of a procedure (in EUR)?

*EUR 120 to 210.*

What is the amount of procedural duty or fee to be paid for an appeal (in EUR)?

*EUR 300 to 600.*

Who pays the aforementioned procedural duty or fee?

*Procedural duties are paid by the applicant, i.e. by the plaintiff or the appellant.*

Is there a waiver or an allowance, based either on the nature of the case or on personal characteristics of the appellant?

*Firstly, there is an exception for non-profit entities (foundations and non-governmental organizations considered by the Ministry of Internal Affairs as of public utility).*

*Secondly, the fee is applicable only to legal persons whose income surpasses annual EUR 8.000.000. Whenever a legal person meets this criterion is obliged to pay this fee.*

*Thirdly, the aforementioned fee is applicable to all types of judicial administrative procedures, except those referred to human rights, work positions, etc.*

Who bears the costs of evidence in the procedure?

*Each party bears its own costs of evidence.*

How much is approximately the total cost of evidence in a typical environmental administrative judicial procedure (in EUR)?

*Although it is very difficult to calculate the cost of evidence because it will depend on the type of environmental case submitted and on the experts needed to provide*

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<sup>1</sup> Administrative judicial procedures are court procedures where the procedural or substantive legality of an administrative decision is decided by a court of law, based on the motion of a plaintiff against the administrative body as a defendant.

*meaningful evidences to support the appeal, it can be made an overall estimation of EUR 3.000 to 30.000.*

To what extent does the “loser pays principle” prevail in such procedures?

*Although the “loser pays principle” is also applicable to the administrative jurisdiction, usually, in practice, is only applied in cases of appeal against a court decision issued at first instance.*

### **b) Civil<sup>2</sup> judicial procedure**

What is the amount of procedural duty or fee to be paid for the start of a procedure (in EUR)?

*EUR 90 to 150.*

What is the amount of procedural duty or fee to be paid for an appeal (in EUR)?

*EUR 300 to 600.*

Who pays the aforementioned procedural duty or fee?

*The fee is applicable only to legal persons whose income surpasses annual EUR 8.000.000. Whenever a legal person meets this criterion is obliged to pay this fee.*

Is there a waiver or an allowance, based either on the nature of the case or on personal characteristics of the appellant?

*Firstly, there is an exception for non-profit entities (foundations and non-governmental organizations considered by the Ministry of Internal Affairs as of public utility).*

*Secondly, the fee is applicable only to legal persons whose income surpasses annual EUR 8.000.000. Whenever a legal person meets this criterion is obliged to pay this fee.*

*Thirdly, the aforementioned fee is not applicable to civil procedures different from oral procedures, ordinary procedures, negotiable instruments executions and extrajudicial executions. Furthermore, within these procedures the fee is only applicable to lawsuits and to annulment appeals.*

Who bears the costs of evidence in the procedure?

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<sup>2</sup> Civil judicial procedures are court procedures where the legality of a natural or legal person's conduct is decided by a court of law, based on the motion of a plaintiff against the natural or legal person as a defendant.

*Each party faces its own costs of evidence.*

How much is approximately the total cost of evidence in a typical environmental civil judicial procedure (in EUR)?

*Although this calculation is very difficult to make because it fully depends on the nature of the environmental damage caused and on the type and number of experts and technical tests and analyses that need to be provided in order to back the case, it can be made an overall estimation of EUR 3.000 to 30.000.*

To what extent does the “loser pays principle” prevail in such procedures?

*The “loser pays principle” is fully applied in the civil jurisdiction.*

### **c) Legal aid (optional questions)**

Is there a state supported scheme in your country for providing legal assistance in administrative or judicial procedures?

*Yes, there is.*

If your answer is yes, please detail briefly:

Who can use such legal aid?

*Article 119 of the Spanish Constitution establishes that everyone has the right to access to justice even if s/he does not have enough means to pay for it. Accordingly with the constitutional provision, Act 1/1996, on free legal aid, establishes that any natural or legal person who lacks the means to bear the costs involved in accessing to justice can be granted with free legal aid as follows:*

*Generally, free access can be granted to:*

- Spanish citizens and citizens of EU Member States besides other foreigners who have a legal residence in Spain.*
- Legal persons, non-governmental organizations, regarded by the Ministry of Internal Affairs as of “public utility” as provided by Article 4 of Act 1/1996.*

*Within the criminal jurisdiction, access can be granted to foreigners even if they have no legal residence in Spain.*

*Within the administrative jurisdiction, access can be granted also as follows:*

- Foreigners even if they have no legal residence in Spain regarding all processes related to obtaining the status of refugee.*
- Besides, Act 27/2006 has provided for those non-governmental organizations that meet all the requirements laid down in Article 23.2 to have access to free legal aid, although limited to cases brought before the*

*administrative jurisdiction.*

What kind of procedures is eligible for legal aid?

*All judicial procedures are eligible for legal aid.*

To what extent does legal aid cover full costs of legal assistance in the procedures?

*In our opinion is quite complete, although important issues are not included as it is explained below under heading III. It follows a list of items covered by the free legal aid scheme:*

- Legal assistance prior to the procedure to people who are seeking judicial protection of their rights*
- Legal aid and assistance to arrests and prisoners (prisoner’s aid desk)*
- Legal assistance and representation by lawyer and procurator within the judicial procedure whenever they are needed*
- Free publication of announcements and public notices, whenever they have to be mandatory published in official journals*
- Exemption of payment of bonds or deposits needed to lodge an appeal*
- Free experts’ assistance*
- Free provision of copies, testimony, instruments and notary’s certificates*
- Under certain conditions 80% reduction of certain customs duties*

*In case of application of the “loser-pays principle” to the person granted with free access to justice, this person is obliged to pay the costs of the process. However, this payment will be only satisfied if this person achieves a better economic position within the following 3 years to the court decision. If his/her economic situation did not develop positively by doubling the minimum professional salary legally established within the following 3 years, s/he does not have to pay the costs.*

### **III. Country evaluation**

According to your evaluation, does your country meet the requirements of the Aarhus Convention regarding expenses of seeking administrative and/or judicial remedies?

*In Spain costs involved in seeking administrative and/or judicial remedies are prohibitively expensive. Thus, Aarhus requirements are not met by the Spanish legal system. At this regard, provisions adopted through Act 27/2006 help but not fully solve current costs barriers.*

What arguments support your above position?

*Title IV of Act 27/2006 intends to facilitate application of access to justice provisions of the Aarhus Convention. These provisions entered into force on 20 October 2006. Article 20 of Act 27/2006 refers only to the general system of administrative review procedures (Act 30/1992) and review before administrative courts (Act 29/1998, of the*

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*Administrative Jurisdiction*). It introduces some special provisions regarding standing and free legal assistance. However, criminal and civil jurisdictions are not affected by this regulation. So far, these jurisdictions have not been adjusted to Aarhus Convention requirements.

*The following can be said about provisions introduced by Act 27/2006 concerning the administrative jurisdiction:*

### *Free legal aid*

*Article 23 of Act 27/2006 provides specific requirements for NGOs to be granted with free legal aid, as regulated in Act 1/1996 on Free Legal Aid. However, this provision fails to comply with the Convention. Firstly, this provision does not prevent the procedure being “prohibitively expensive” because it is not available for “any person who considers that his or her request for information under Article 4 has been ignored” (Article 9 (1)), neither for “the public concerned” (Article 9 (2)), nor for “members of the public” that meet general legal standing requirements. Secondly, the free legal aid does not cover fees of the opposing party when obliged to pay, nor the bonds to be satisfied for preliminary injunctions.*

### *„Loser pays principle”*

*Under the administrative jurisdiction Article 139 of Act 28/1998 of the Administrative Jurisdiction establishes the general rule for costs adopting the „loser pays principle” for any appeal of an administrative court decision. This provision makes appealing decisions in administrative environmental cases potentially “prohibitively expensive.” For instance, in the Spanish Aarhus Convention Case Study within Justice and Environment, it is showed that the Neighbors Association of Senda de Granada was ordered to pay EUR 2.148 to cover attorney’s fees of the City Council. Even if the plaintiff wins, costs of access to justice are high. Furthermore, the general rules for costs do not provide for a way of recovering expenses made on the first instance. Article 23 of Act 29/1998 requires a defense by a lawyer in any administrative court case. In addition, when those cases are heard in panels with more than one judge, they shall be represented by a procurator, which adds extra costs.*

### *Injunctive relief*

*Surety bonds imposed by courts when making a positive decision about the application of a precautionary measure, whether at the administrative or criminal jurisdiction, tend to be prohibitively expensive and usually parties interested in achieving compliance of environmental legislation cannot afford to pay them.*

*Regarding criminal jurisdiction, crucial under Spanish legal system in order to fulfill requirements laid down by Article 9 (3) of the Aarhus Convention, it can be said, in first place that, usually, courts request unaffordable bonds from natural or legal persons who wanted to become a party to the process exercising the “actio popularis”. For instance, as explained under the Spanish Aarhus Convention Case Study mentioned above, the Neighbors Association was request to pay a EUR 60.000 bond to become a party under one of the criminal procedures initiated. The adoption of such a bond caused a real barrier to access to justice.*

What recommendations can you formulate in this matter?

*„Loser pays principle”*

*This barrier should be removed by changing current regulation of the “loser pays principle” for environmental cases. The so-called American rule for environmental cases could be adopted. According to that rule, if the plaintiff loses against a public authority, the plaintiff does not have to pay the government’s attorney’s fees, but if s/he wins the plaintiff has the right to recover all attorney’s fees from the government. This is especially important when the public authority has infringed the law; i.e.: access to information cases caused because the public authority has ignored the request made.*

*Free legal aid*

*The barrier of the prohibitive cost could be amended by adopting an extension of the free legal aid to anyone requesting access to information, participation, or requesting enforcement of environmental law. Besides, application of current provisions could be dramatically improved if provincial commissions responsible for granting free legal aid were properly informed or trained about applicable provisions of Act 27/2006.*

*Injunctive relief*

*This cost barrier should be faced by doing some Aarhus Convention awareness raising activities addressed to judges. Furthermore, development of meaningful tools that help judges to calculate also the costs involved for the environment affected will be of major importance to overcome this barrier.*

*Finally, regarding bonds requested to become a party of a criminal suit exercising “actio popularis”, the recommendation is to develop some Aarhus Convention awareness raising activities that help judges to understand the importance of setting, if any, reasonable bonds that do not impede access to justice in criminal cases. Several court decisions were adopted reducing the bond set on a previous decision when the lawyer let the court know about Aarhus Convention provisions requesting for promoting access to justice. These decisions show that, at this regard, court decisions can comply with Aarhus Convention requirements.*

#### **IV. Contact information:**

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