

XI. Country report Spain

Document Control

<i>Document</i>	<i>Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union – country report Spain</i>
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1.1 Overview of collective redress mechanisms¹

In Spain the Law foresees means for collective redress intended to protect a series of individual interests (multi-party actions for damages) and collective redress to protect collective consumer interests (injunctions). This report will not take into consideration injunction proceedings apart from those where consumers also claim for damages. The possibilities for collective redress are discussed jointly in the following section.

Summary description

The *acción colectiva para la defensa de derechos e intereses de los consumidores y usuarios* (collective action in defence of consumers and users' rights and interests) is the first Spanish version of a collective redress mechanism, through which most relevant cases in consumer Law are currently dealt with. This scheme is usually deployed in large-scale consumer claims affecting a significant number of consumers, but it has a general application to many consumer contracts as well.

The *Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil*² (Civil Procedure Act; LEC) deals with individual consumer disputes in Civil Courts. Nevertheless, there are other rules affecting consumer individual claims such as:

- ❑ Section 128 of *Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias*³ (Act 1/2007, of 16th November, that passes the codified text of the General Law for the Defense of Consumers and Users and other complementary laws; RD Leg. 1/2007), regulates the consumer's right to compensation for damages caused by the consumption or use of products.
- ❑ Section 12.2 of *Ley 7/1998, de 13 de abril, sobre condiciones generales de la contratación*⁴ (Law 7/1998, of 13th April, on General Contractual Conditions or Standard Form Contracts; LCGC) allows consumers to accumulate injunctions, the action for the devolution of the amounts charged because of the standard terms, as well as the action for damages.
- ❑ Section 23.1 RD Leg. 1/2007, in connection with Section 11.1 LEC, states that not only consumers individually, but also consumer associations and

¹ This is an update of a previous study commissioned by DG SANCO. See: Centre for Consumer Law of the Katholieke Universiteit Leuven 2007, An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings.

² BOE num. 7, of 8 January 2000.

³ BOE num. 287, of 30 November 2007. This Act has codified, among others, the Law 26/1984, of 19th July, the General Law for the Defense of Consumers and Users (*Ley 26/1984, de 19 de julio, General para la defensa de los consumidores y usuarios*; LGDCU; BOE num. 175 and 176, of 24 July 1984) and Law 22/1994, of 6th July, on Civil Liability for Injuries caused by Defective Products (*Ley 22/1994, de 6 de julio, de Responsabilidad Civil por los Daños causados por Productos Defectuosos*; LRPD; BOE num. 161, of 7.7.1994).

⁴ BOE num. 89, of 14 April 1998.

organised groups can bring actions for the defence of consumers and users' rights and interests.

Details

A. LEGAL BASIS

The LEC regulates the action in defence of rights and interests of consumers.

Before the LEC, collective actions were regulated exclusively by Sections 7.3 of the *Ley Orgánica 6/1985, de 6 de Julio, del Poder Judicial*⁵ (Organic Law 6/1985, of 6th July, of Judicial Power; LOPJ) and 51 of the *Constitución española* (Spanish Constitution; CE) of 1978. The relevant sections are presented in Annex 2.

There are some Sections of the LEC that are applied to this action specifically. In the other questions, general provisions in the LEC will apply. Relevant Sections in this matter are also presented in Annex 2.

The LEC has not regulated a specific procedure for the protection of the consumers' collective interests but there are lots of specialties. It has produced a substantially non-uniform and non-systematic procedure, and also contradictions, and some amount of inconsistencies among rules (for example, standing, publicity, accumulated procedures, evidence, effects of decisions vis-à-vis third parties in a similar situation as the claimants or enforcement of decisions for all victims independently of their condition as claimants). Furthermore, several questions do not have a regulation in the LEC. In despite of this, there are no pending cases about a possible lack of legal basis for this procedure. Collective actions in Spain can be grouped depending on their object (see table below):

Product liability	
Product	Legal basis
Gas (Collective actions for the defence of rights and interests of consumers)	LEC Law 26/1984, of 19th July, the General Law for the Defense of Consumers and Users ⁶ (<i>Ley 26/1984, de 19 de julio, General para la defensa de los consumidores y usuarios</i> ; LGDCU): Sections 10 and following (abusive clauses), Section 13 (right to information) ⁷ LCGC
Food poisoning (Collective actions for the defence of rights and interests of consumers)	LGDCU: Sections 25 to 28 (guarantees and responsibilities); or LRPD: Sections 3 to 7 ⁸
Pharmaceutical products (Collective actions for the defence of	LRPD: Sections 3 to 7 ⁹

⁵ BOE num. 157, of 2 July 1985.

⁶ BOE num. 175 and 176, of 24 July 1984.

⁷ RD. Leg. 1/2007 has codified LGDCU (see Sections 80 and following RD Leg. 1/2007).

⁸ RD. Leg. 1/2007 has codified both LGDCU and LRPD (see Sections 128 and following RD Leg. 1/2007).

rights and interests of consumers)	
Financial services	
Service	Legal basis
Rounding-up clauses included in variable rate mortgages (Injunction and devolution of amounts improperly charged)	LEC: Section 11 (procedural standing) LGDCU: Sections 10 ter (procedural standing); 20 (procedural standing) ¹⁰ LCGC: Sections 1 (object); 12 (accumulation of injunction and action for the devolution of amounts improperly charged as well as action for damages); 16 (procedural standing); 21 and 22 (publication of the decisions)
Abusive clause in deposits (Injunction and devolution of amounts improperly charged)	LEC: Section 11 (procedural standing) LGDCU: Section 10 ter (procedural standing) ¹¹ LCGC: Sections 1 (object); 12 (accumulation of injunction and action for the devolution of amounts improperly charged as well as action for damages)
Breach of both education and credit contracts (Collective actions for the defence of rights and interests of consumers)	LEC: Section 11 (procedural standing) Civil Code (breach of education contracts): Sections 1542 and following (service contracts); Section 1124 (breach of contracts) Law 7/1995, of 23 th March, on Consumer Credit ¹² (<i>Ley 7/1995, de 23 de marzo, de Crédito al consumo</i> ; LCC): Sections 14 (effectiveness of contracts tied to obtain credit) and 15 (rights that can be exercised in tied contracts)
Telecommunication services	
Service	Legal basis
Breach of mobile telephone contracts (Collective actions for the defence of rights and interests of consumers)	LEC: Section 11 (procedural standing) and 221 (effects of the decisions) LGDCU: Sections 2 (essential rights of consumers and users); 9 and 10 (content and characteristics of offers and advertising of products and services as well as of the applicable clauses and conditions) ¹³

⁹ RD. Leg. 1/2007 has codified LRPD (see Sections 128 and following RD Leg. 1/2007).

¹⁰ RD. Leg. 1/2007 has codified LGDCU (see Sections 22 and following, 53 and following RD Leg. 1/2007).

¹¹ RD. Leg. 1/2007 has codified LGDCU (see Sections 22 and following, 53 and following RD Leg. 1/2007).

¹² BOE num. 72, of 25 March 1995.

¹³ RD. Leg. 1/2007 has codified LGDCU (see Sections 22 and following, 53 and following RD Leg. 1/2007).

Travel services	
Service	Legal basis
Breach of travel contracts (Collective actions for the defence of rights and interests of consumers)	LGDCU: Sections 25 to 28 (guarantees and responsibilities) ¹⁴ Law 21/1995, of 6 th July, on chartered travels ¹⁵ (<i>Ley 21/1995, de 6 de julio, reguladora de los viajes combinados</i> ; LVC): Section 11 (effectiveness of contracts tied to obtain credit) ¹⁶

B. COMPETENT AUTHORITY

There are no specific competence rules so the general rules apply.

In procedures about standard form contracts, general conditions imposed by a party and consumers' contracts, Section 54 LEC does not allow express submission to a territorial jurisdiction.

According to Section 50 LEC, the competent authority will be the Court of the defendants' place of residence. Professionals can be sued where they develop their activities.

In unfair competition procedures, Section 52.1.12^a establishes that the competent authority will be the Court where the defendant's establishment is located or, if it does not exist, the Court of the defendant's place of residence. If it is not located in Spain, the competent authority will be the Court of the place where the act of unfair competition was committed or its effects appeared.

According to Section 52.1.14^a, in procedures where the plaintiff asks for redress in a case of a standard form contract, competence will correspond to the Court of the plaintiff's place of residence.

At the national level, it is possible to distinguish between two competent authorities: the general rule is that competent authority is the First Instance Courts. On September 1st, *Juzgados de lo Mercantil* (Commercial Courts) came into operation to take over exclusive competence in intellectual property and unfair competition from the First Instance Courts. Commercial Courts have also exclusive competence in cases belonging to other specific legal areas, such as insolvencies, transport, Maritime Law, advertising, competition, etc. In the appeal stage, First Instance Court or Commercial Court will refer the procedure to the *Audiencia Provincial* (Court of Appeals).

¹⁴ RD. Leg. 1/2007 has codified LGDCU (see Sections 128 and following RD Leg. 1/2007).

¹⁵ BOE num.161, of 7 July 1995.

¹⁶ RD. Leg. 1/2007 has codified LGDCU (see Sections 150 and following RD Leg. 1/2007).

C. WHO CAN INITIATE THE PROCEDURE – RULES OF STANDING

According to Section 11 LEC, not only individual victims, but also Consumer Associations can initiate the procedure to defend their members' interests and their own as well as the general consumer interests. There are no parties that are not in principle allowed to initiate the procedure. The procedure is easily accessible for all consumers, including the most vulnerable (Section 7 LEC). Finally, there are no rules impeding consumers from other Member States to use this form of redress.

Spanish legislation has defined two separated types of interests:

- ❑ Multi-party, when it is possible to determine the composition of a group of people in the same legal position;
- ❑ Collective or diffuse, when it is difficult to determine the composition of a group of people in a similar legal position.

Depending on the specific interest at stake, the subjects entitled to file a suit in defense of rights and interests of consumers are different:

- ❑ When victims are a group of consumers with individualized or easily individualized members, the Consumer Associations, the legally constituted entities created to consumers' protection and the groups of victims will be entitled to introduce this collective action;
- ❑ When victims are not individualized or easily individualized, the diffuse interests' suit, in the name of consumers, will correspond exclusively to consumer associations that are representative according to the law.

Some laws recognize other entities' standing, such as the RD Leg. 1/2007, LCGC, *Law 3/1991, of 10th January, on Unfair Competition*¹⁷ (*Ley 3/1991, de 10 de enero, de Competencia Desleal*), *Law 34/1998, of 11th November, on General Advertising*¹⁸ (*Ley 34/1998, de 11 de noviembre, General de Publicidad*). In any case, LEC has a general application when the protection of groups of consumers' interests is sought.

There is not a threshold standard to certify the action as a collective action. In this report, collective actions are those that have been introduced by a group of 5 consumers at least, by Consumer Associations, by legally constituted entities created to protect consumers and by groups of victims.

D. TYPES OF DISPUTES

This action allows the plaintiff to obtain compensation for damages caused by the consumption or use of products, and generally to determine the contractual and non-contractual liability of the professional.

The context in which this scheme is usually deployed is large-scale consumer claims affecting a significant number of consumers but it has a general application to many consumer contracts as well.

¹⁷ BOE num. 10, of 10 November 1991.

¹⁸ BOE num. 274, of 15 November 1998.

All claims affecting a significant number of consumers may be solved through the collective action in defence of rights and interests of consumers.

E. MAIN PROCEDURAL RULES

The LEC has not created a specific procedure for the protection of consumers' collective and diffuse interests. Thus, in consumer claims where parties ask for compensation, judges will apply the rules for the ordinary proceeding *-juicio ordinario-* or the oral proceeding *-juicio verbal-* depending on the claimed amount.

The ordinary proceeding is a structured proceeding for most expensive and complex matters. According to Section 249.2 LEC, if the claimed amount is higher than 3 000 Euro, the ordinary proceeding will apply. The oral proceeding is a simple proceeding characterized by simplification, concentration and rapidity for small claims and less complex matters. According to Section 250.2 LEC, if the claimed amount is lower than 3 000 Euro, the oral proceeding will apply.

In unfair competition, intellectual property and advertising's subjects, Section 249.1.4⁹ establishes that for claims that do not ask only for monetary compensation, *juicio verbal* or *juicio ordinario* will apply depending on the claimed amount.

In standard form contracts, Section 249.1.5⁹ establishes that actions regulated by the LCGC will be solved through *juicio ordinario* (except collective injunctions, which will be solved through *juicio verbal*).

According to Section 15 LEC, the judge will summon all victims through the publication of the initial claim's admission in procedures initiated by consumer associations, entities created for the protection of the consumers' interests or groups of victims. If victims are individualized or easily individualized, the plaintiff must notify the claim to interested people before the presentation of the initial claim. In this case, consumers will be able to intervene in the procedure, but only to realize procedural acts that are not precluded. If victims are not individualized or it is difficult to individualize them, the announcement suspends the procedure during a period not greater than 2 months. The procedure will continue with the intervention of all consumers who decided to come forward.

Concerning evidence, Section 299 LEC admits all kinds of evidence (public and private documents, expert witnesses' reports, witnesses' interrogation, etc.), but Section 384.3 LEC refers to the opinion of the judge ("*sana critica*") regarding to technological evidence. Experts' statistical proof can be useful in collective redress to specify the victims and evaluate both the claimed amounts and the basis for estimating what corresponds to each victim. The initiative to bring evidence to the court corresponds to the parties but judges can ask for evidence or documents when the law allows it. In consumer procedures the general rule on evidence changes in unfair competition and unfair advertising procedures, where according to Section 217.1 LEC the defendant bears the burden of proof.

According to Section 221.1 LEC, if the professional is sentenced to do, not to do, or to give something, the decision will determine the affected consumers individually. If it is not possible, the decision will establish the necessary conditions to be able to benefit

from the effects of the decision. If the decision considers that certain activity or behaviour is not in compliance with consumer protection legislation, it will have non-limited procedural effects regarding the parties.

The decision of the court will not be firm and unappealable. It is possible to appeal the decision in a period of 5 days (Section 455.1 LEC).

F. REMEDIES THAT CAN BE OBTAINED

The remedies available by means of collective redress are damages (quantification of damages is mandatory). Since there are no specific rules for the calculation of the compensation, the ordinary rules apply.

According to Section 12.2 LCGC, consumers can accumulate injunctions to actions for the refund of the amounts improperly charged as a consequence of the clauses affected by the decision as well as to actions for damages caused by the application of the void clauses. Courts will usually order the publication of the decision and the publication of the voided term in the Spanish Standard Terms Register (*Registro de Condiciones Generales de la Contratación*).

G. COSTS INVOLVED FOR THE PARTIES

In Spain, legal costs include certain kind of expenses that result from the proceedings: lawyers and solicitors fees when their participation is compulsory; the publication of announcements or edicts that must be published compulsorily during the proceedings; the experts' fees; the copies, certificates, etc. asked to public registers apart from those that are asked by the Court because in this case they will be free of charge; the notaries' fees.

The party whose claims have been rejected will pay the costs that are the same as the ordinary judicial proceedings ("loser pays" or English rule). If the claim is accepted partially, every party will bear its own costs and half of the shared costs, except the parties who act with negligence.

According to Section 442 LEC, if the plaintiff does not assist to the procedure and the defendant does not have a legitimate interest in a decision, the plaintiff will have to pay the procedure's costs and the compensation to the defendant if damages are proved.

In order to encourage access to justice, Law 1/1996, of 10th January, on Legal Aid¹⁹ (*Ley 1/1996, de 10 de enero, de Asistencia Jurídica Gratuita*) states that for those consumers who have insufficient monetary resources to bring legal action, justice will be free of charge. According to Second Additional Provision of this Law, "The same right (legal aid) will have the consumer organisations, according to the Section 2.2 of the Law 26/1984, of 19th July, the General Law for the Defence of Consumers and Users" (nowadays, Section 9 RD Leg. 1/2007). Section 6 of Law 1/1996 states the content of the right to legal aid: lawyers' and solicitors' fees, publication of announcements or edicts, copies, certificates, etc. asked to public registers, notaries' fees, etc. The payment of the ads in mass media required by Section 15 LEC is one of

¹⁹ BOE num. 11, of 12 January 1996.

the main problems that consumers associations have to face because this cost is not free of charge.

Private lawyers and law firms can also introduce actions for the protection of consumers and users. In this case, there is not free legal defence and lawyers fix the level of their fees by reference to the amount recovered in the action. The so-called “*pactum de quota litis*” or contingent fees, in the American usage (an agreement entered into by the lawyer and the client before the termination of the proceeding by means of which the lawyer’s compensation is just a percentage over the result of the case) is forbidden as the sole compensation for the attorney, but is said to be tolerated.

In Spain, lawyers and their clients can freely agree on the amount of legal fees, subject to ethical and unfair competition rules. As a reference, Bar Associations may establish indicative scales that will be applied according to their rules, uses and customs²⁰.

The payment of the proceeding costs will be demanded by means of the proceeding called *tasación de costas* (Sections 241-246 LEC). Lawyers and solicitors will present an application as well as the bills and invoices that justify the legal expenses. The Court Secretary will value the costs and will reduce the legal fees that exceed the limits established by Section 394.3 LEC²¹. The losing party will be able to allege that the costs are excessive or improper and the Court will have to fix the exact amount that has to be paid.

H. AVERAGE DURATION OF THE PROCEDURE

The Judicial Statistics does not offer direct data on duration of individual cases, but a set of estimations produced by a mathematical model (based on Queuing Theory) is available that offers an estimation of the average length, stated in months, of the cases ended in each period²². Nevertheless, the more complicated the proceedings, the longer they will be therefore they can even exceed the estimations.

Procedures before ordinary courts (Court of First Instance, Court of Appeals) will be long generally, although this also depends on the docket of the particular court which has to decide the case and the willingness of the lawyers to comply with time limits.

It also has to be considered in which parts of Spain the proceeding takes place. In the main cities (Madrid, Barcelona, etc.) the duration of proceedings is around 7-9 months for each the First and Second Instances. The Third Instance is slower and may take 31 months (2 years and 7 months) for the final resolution. In smaller provinces the proceedings are faster, although this is not a universal rule, as there are some places

²⁰ For example, Bar Association of Madrid (*Ilustre Colegio de Abogados de Madrid*) has published some criteria about professional fees at http://www.icam.es/docs/ficheros/200609110001_6_0.pdf. For example, in proceedings about contractual general conditions it is said that fees will be able to be increased whether the case affects to a plurality of interested people, whether it may have consequences over consumers and users, etc. (indicative amount: 2.100 €). Bar Association of Barcelona has also published their criteria in <http://www.icab.es/archivos/242-54206-DOCUMENTO/RecullCriterisHonorarisComentats2005.pdf?download=1>.

²¹ According to this Section, the amount that the losing party has to pay regarding legal fees cannot exceed one-third of the amount claimed in the proceeding.

²² Source: Judicial Statistics, 2006, General Council of the Judiciary (www.poderjudicial.es).

where, for their special conditions, delays occur and the proceedings are as slow as in the big cities.

1.2 Overview of relevant literature

Specific literature on collective redress for damages focuses on the following issues:

- ❑ *Rules on collective redress* are dispersed through the LEC and regulate very different issues. The majority opinion in the literature favors a law that regulates collective actions specifically or, as a last resort, a special proceeding in the LEC itself.
- ❑ *LEC's object or field of application*: Collective actions are limited to proceedings for the protection of consumers – and, according to Final Provision 6.5 LEC, of those that adhere to contracts that include standard form terms (Additional Provision 4 LCGC) – but they do not cover collective injuries caused to non-consumers. Nevertheless, some authors consider that this limitation is improper and unnecessary and defend either the analogical application of collective redress to other fields or the modification of the LEC²³. Otherwise, Courts would need to investigate in each case whether all members of the collective action are consumers according to Sections 1.2 and 1.3 LGDCU, an extremely expensive and almost impossible task²⁴.
- ❑ *Capacity to be a party*: According to Section 6 LEC, members of the group affected by the damaging fact have to be determined or easily determinable. It will be difficult that groups may give evidence about this requirement because it depends on different and variable circumstances so the initial collective, which was determined or easily determinable, may become a non-determined group if other injured people appear later and they have not been identified yet²⁵. This issue is especially important because the requirement of capacity is controlled by Courts ex-officio so they would be able to terminate the proceedings because of the lack or defect of capacity (Sections 9 and 418 LEC). Some authors consider that Courts would be able to use Section 9 LEC, according to which “the lack of capacity to be part and the lack of procedural capacity will be able to be noticed ex-officio by the Court at any moment during the proceeding”, in order to control that the adequate representation has been formed and exists²⁶.
- ❑ *Standing to sue*: Section 11 LEC let consumers and users associations, groups that represent most of the consumers or users affected by a damaging action as well as legally constituted entities that protect consumers and users bring collective actions. Associations may defend collective (art.

²³ Gutiérrez de Cabiedes e Hidalgo de Caviedes 2001, p. 145-146.

²⁴ Marín López 2001, p. 4.

²⁵ Silguero Estagnan 2004, p. 7.

²⁶ Silguero Estagnan 2004, p. 7.

11.2 LEC) and diffuse interests (art. 11.3 LEC) but, in the latter, it will be necessary that associations are representative²⁷. Groups of consumers and entities may only bring collective actions when interests are collective.

- The LEC has not established what “most of affected consumers and users” means, what effects the loss of the majority may have, what type of intervention the non-majority groups have, whether the members of the majority can leave the group in order to create a new majority group, whether the injured people that were not taken into account initially may join the group, etc.²⁸. In any case, the constitution of the group takes place prior to, and outside, the judicial proceeding. According to Section 256.1.6⁹ plaintiffs may ask for a preliminary proceeding when the members of the group, although not being determined, are easily determinable. This is a voluntary proceeding. The evidence that groups represent most of the consumers or users affected by the damaging fact will be difficult when the number of affected people is high.

The law has also not included a definition of “legally constituted entities that protect consumers and users”. They will be other than consumers and users associations and, probably, consumers and users cooperatives²⁹.

A literal interpretation of the expression “damaging fact” (Section 11.2 LEC) would exclude the groups of consumers affected by different damaging facts. Nevertheless, doctrine considers this expression should be interpreted extensively in order to include these groups³⁰.

A solution for the accumulation of collective redress by subjects cited in Section 11.2 LEC does not exist. Some authors consider that accumulation of collective actions for the redress of injuries caused by a damaging action should be admitted³¹. The existence of different proceedings about the same fact will imply accumulation stated by Section 78.4 if requirements of Sections 76 and 77 are fulfilled.

Consumers that may be included in the injured collective can participate in the collective proceeding individually by means of an individual action for damages. Courts will pass a decision on both actions – individual and collective – in one single proceeding (subjective accumulation of actions: Section 72 LEC).

²⁷ According to 24 RD Leg. 1/2007, consumers associations will be representative when they are part of the Consumers and Users Council (*Consejo de Consumidores y Usuarios*). This Council is a national organisation for the query and institutional representation of consumers by means of its organisations. It will be integrated by suprarregional consumers’ associations that, according to their territorial importance, number of members, activity in the field of the consumers’ protection and programs of activities, are more representative (Section 38 RD Leg. 1/2007).

²⁸ Reglero Campos 2006, p. 200-201; Marín López 2001, p. 7.

²⁹ Marín López 2001, p. 8; Carrasco Perera and González Carrasco 2001, p. 1901.

³⁰ Gutiérrez de Cabiedes 2001, p. 149.

³¹ Silguero Estagnan 2004, p. 8.

Finally, consumers may bring actions for damages individually instead of bringing a collective action. Otherwise the fundamental right to a due process (Section 24 Spanish Constitution) would be violated.

- *Publicity and participation in proceedings:* According to Section 15 LEC, all consumers affected by the product or the service that caused the injuries must be informed of the proceedings. This will take place by the publication of the admission of the claim in the mass media. If affected people are determined or easy to determine (collective interests), all people interested in the proceeding will have to be notified about the filing of the claim. Notifications do not have to inform about the claim necessarily but both the intention of filing a claim and the facts that have given rise to the claim³².

If a proceeding intends to protect *collective interests*, the notification will not interrupt the proceeding and consumers will be able to carry out only the judicial acts that are not precluded. If a proceeding intends to protect *diffuse interests*, the communication interrupts the proceeding by a maximum of 2-months period. The proceeding will continue with the intervention of those consumers that are present and the participation of another consumers will not be admitted at a later stage.

Publication of the decisions is a legal cost included in the “*tasación de costas*” (art. 242.1.2^o). This cost is not free of charge according to Law 1/1996, of 10th January, on Legal Aid.

- *Remedies:* In Spanish law, plaintiffs can bring a collective action to recover pecuniary and non-pecuniary damages. A quantitative limit to bring a collective action does not exist. LEC has not established the possibility of setting up a fund or another compensation mechanisms. In Spain, the usual practice in mass torts or catastrophic accidents is that the relevant public bodies grant subsidies to the victims, and then acquire subrogation rights in the civil actions against the responsible parties and/or their insurers (for example, in a relatively recent case known as *Prestige*, arising from the black tide caused by the sinking of the tanker so named, close to the north-western Spanish coastline).
- *Effects of the decisions:* Section 221 LEC establishes some rules for decisions that have been passed in proceedings brought by consumer associations but not for those brought by groups of consumers or legally constituted entities. In spite of this, some authors consider that this Section may be applicable by analogy to these proceedings according to Section 4.1 of the Spanish Civil Code of 1889³³.

When a defendant is sentenced to do, to abstain from, or to give something, the decision will determine the affected consumers individually. If it is not

³² Banacloche Palao 2001, p. 111.

³³ Marín López 2001, p. 11.

possible, the decision will establish the necessary conditions to be able to benefit from the effects of the decision.

Section 222.3 LEC establishes an exception to the rule *res iudicata inter partes* because the *res iudicata* effects of the decisions affect not only the parties of the proceedings but all the affected consumers. This avoids that each individual consumer brings an action for the same damaging act or for the protection of the same interests and therefore the judicial security is assured³⁴.

When a decision fixes a specific compensation for a concrete consumer, the consumer will be able to ask for the performance of the decision. Otherwise, it will be necessary to individualize the specific affected people and their compensations in the supplementary proceeding (*procedimiento de ejecución de sentencia*) regulated by Section 519 LEC.

³⁴ De la Oliva Santos 2001, p. 242.

1.3 Difficulties to obtain redress for mass claims

This issue is subject of a complementary study³⁵ and results from the country studies are integrated therein.

1.4 Collective actions filed so far

The recognition of collective damages took place already before the LEC, especially in two large cases:

- ❑ The case of liability for a defective product known as the **Case of rapeseed oil**. The Decision of the Supreme Court, Criminal Division, of 26.9.1997³⁶ awarded a compensation around 3 000 million Euro and interpreted Section 20.1 LGDCU extensively by considering that the OCU (Consumers and Users Association) could ask for compensation for injuries caused by the consumption of rapeseed oil, not only on behalf of its members but all affected people³⁷.
- ❑ Another important case in this field is the **Case of the Tous dam**. In this case, around 35 000 affected people brought suit in order to get compensation because of the injuries and material damages that had suffered as a consequence of the crumble of the Tous dam. The Decision of the Supreme Court, Administrative Division, of 20.10.1997³⁸ stated the liability of the Spanish General Administration. Some consumers that considered that they had not been included in the list of affected people brought new actions (see the Decision of the Supreme Court, Administrative Division, of 25.1.1999³⁹ and the Decision of the Justice Superior Court of Comunidad Valenciana of 10.7.2000⁴⁰).

The following section describes relevant recent cases. For a comprehensive and detailed description of all cases please refer to part III of this study.

Some recent cases in Spain are in the process of being decided inside **bankruptcy or insolvency proceedings – together with a criminal proceeding generally** – because the company involved into the collective action ended up in bankruptcy. These cases are the following:

- ❑ **F. F. and A.:** Two Spanish companies, F.F. and A. offered investments in stamps on a large scale to Spanish, Portuguese and French consumers. Consumers invested their money by acquiring a series of stamps and the

³⁵ CPEC 2008, Study regarding the problems faced by consumers in obtaining redress for infringements of consumer protection legislation, and the economic consequences of such problems, Final Report (study prepared for DG SANCO).

³⁶ Westlaw Aranzadi Reference: RJ 1997\6366.

³⁷ For comments about this decision see Salvador Coderch and Fernández Crende 2006; Jiménez Aparicio 2003.

³⁸ Westlaw Aranzadi Reference: RJ 1997\7254.

³⁹ Westlaw Aranzadi Reference: RJ 1999\568.

⁴⁰ Westlaw Aranzadi Reference: RJCA 2000\1945.

companies guaranteed repurchase of the same series after a fixed period and 6% interest on the invested sum after a period. Companies also offered consumers the possibility of leaving the purchased stamps in safe storage. Nevertheless, a guarantee deposit in order to indemnify consumers if problems arise did not exist. Furthermore, according to the Fourth Additional Provision of the Law on Collective Inversions Institutions, these companies were not controlled by *Comisión Nacional del Mercado de Valores* or the *Banco de España*, but by the consumer authorities.

ADICAE, a Spanish association of investors and financial service users, warned in 2002 that the stamps were overvalued and the whole system was based on a pyramid scheme.

In 2006, public authorities concluded official investigations and confirmed the likelihood of insolvency of the two companies. Criminal and bankruptcy proceedings affecting both companies were initiated. The preliminary investigations will finish at the end of 2008 approximately. Estimations on the total number of affected persons exceed 460 000 whose investments range from 600 to 600 000 Euro.

40% of affected consumers have announced that they will bring an action against the Spanish Government because of both the lack of a legislative and statutory development of the law that regulates these companies and the lack of control over them⁴¹.

- ❑ **A. y N.:** A. y N., a company specialised in the investment in pieces of art, sold shares to consumers promising interest. The traded pieces of art were overvalued, some of them could not be sold, others were sold twice, and sometimes prices were adjusted *ex post*. Furthermore, the company carried out double accounts, a number of irregularities were detected and quite a lot of documentation was not found. The whole system turned out to be based on a pyramid scheme that collapsed the moment new investors were lacking. The company went into insolvency leaving liabilities that exceed 283 million Euro⁴².
- ❑ **A. M.:** The Spanish Airline continued to sell flight tickets to consumers even when it was clear that it would no longer be able to perform the contracted transport services. Organización de Consumidores y Usuarios⁴³ (OCU) brought a “consumer crime” action (*delito contra los consumidores*) against the company. Proceedings were suspended by judge order in June 2007. OCU filed an objection to the order that has not been resolved. The company proposed an amicable settlement on June 2007 that has to be accepted by victims representing 51% of the company's liabilities to get formal

⁴¹ <http://www.ocu.org/map/src/331534.htm>; <http://www.ocu.org/map/src/331844.htm>; <http://www.afectadosfilatelia.org/>.

⁴² <http://www.ocu.org/map/src/302634.html>; <http://www.adicae.net/>.

⁴³ <http://www.ocu.org/>.

validation⁴⁴. Regarding the bankruptcy proceeding, OCU considers that there are few possibilities of getting refund by means of this way so, although it will continue the proceeding, it will not represent affected people, who will have to bring individual actions⁴⁵.

A case that is in process of being decided by Spanish Courts by means of **civil proceedings** is:

- ❑ **F.-E. and R.:** In July 2007, an interruption of the electric power supply affected several customers in Barcelona. OCU considered that the companies in charge of the electric power supply breached their contractual obligations consisting of the obligation of keeping the supply. OCU brought an action asking for a compensation of 300 Euro/day (12,5 Euro/hour)⁴⁶. The case has not been resolved yet.

Cases that have already been decided by means of **civil proceedings** can be grouped into the following subject categories:

- ❑ **Educational services (O., W. S., Ox. C., A., etc.):** Several English schools for foreigners in Spain required payment of classes in advance and offered students the possibility of entering into financing contracts that they administered and sent to the banks with which they had signed a cooperation agreement previously. When the school closed down because of a situation of economic insolvency, they found themselves tied to the credit and they had to continue credit payments in their entirety.

Different consumers associations and groups of consumers brought a group action against the schools and the credit providers to terminate both the education contracts and the credit contracts. The court decisions recognized the claims brought by the plaintiffs, including the refund of the sums paid by the victims since the date of the schools' closing-down.

- ❑ **Gas services:** "Gas N. C. y L., S.A." charged consumers for the register, inspection and verification of the previous gas installation by means of a clause that had not been approved by the competent authorities and that had not been incorporated into the contract but a separate document signed exclusively by the consumer and not all the parties. Consumers had also paid bills with lump sums. Courts awarded compensation to the affected consumers.
- ❑ **Financial services:** Different Spanish banks included a rounding-up clause in variable rate mortgages. AUSBANC, an association for users of financial services considered that the clause was abusive. Courts stated that, firstly, the rounding-up clause was not part of the obligation of paying interests but a condition added to this obligation so it was not an essential element of the

⁴⁴ <http://www.ocu.org/map/src/302634.html>.

⁴⁵ <http://www.ocu.org/map/src/331864.htm>

⁴⁶ <http://www.ocu.org/map/src/339504.htm>.

variable rate mortgages. Secondly, it was a standard term because consumers could not negotiate its content and it was drawn up and incorporated unilaterally by the bank. Finally, it was an abusive clause and therefore void because it created an unjustified imbalance between the obligations of the parties and it benefited the defendant exclusively at the expense of consumers. Consequently, Courts awarded compensations and ordered the publication of the decisions and the abusive clauses in the Spanish Commercial Register Official Bulletin (*Boletín Oficial del Registro Mercantil*), a national newspaper and the Standard Terms Register (*Registro de las Condiciones Generales de la Contratación*).

- ❑ **Travel services:** A delay of the flight Madrid-Egypt caused the loss of one day of the trip, a cruise, the connection to Abu-Simbel as well as some of the programmed activities to several consumers. Court granted a 420.71 Euro award for pain and suffering by considering that the information that the travel agency had provided to the consumers regarding the delay and the change of hotel was insufficient. Furthermore, it did not offer them the possibility of modifying the contracts in order to be able to choose their acceptance or termination.
- ❑ **Telecommunication services:** two telephone companies, “T. S.A.” and “L. S.A.” granted lines with the code 903 or 906 to other companies in order to render their services. The price of the services depended on both the price of the call in these lines, which was superior to the price in ordinary lines, and the duration of the call. Part of the price belonged to the company that rendered the service and, the other part, to the telephone company. Consumers did not have relation with the company that rendered the service. In the analysed cases, some services were rendered by means of the code 906 despite the fact that they were referred to services that should have been rendered by means of the code 903. Consumer organisations and groups of consumers claimed for the illegality of the services, the refund of certain amounts and, in some cases, the reestablishment of the telephone service. Courts considered that the telephone companies were responsible of the rendered services because they could control the access to them and they had entered into contracts with consumers creating the false belief that the company that charged the telephone invoices was the company that also rendered the service. Courts stated the illegality of the services rendered by means of the code 906 and that consumers concluded contracts by mistake. Courts awarded compensation to consumers and ordered the reestablishment of the telephone services in those cases in which they had been cut off or, if it was not possible, the payment of 90 Euro. These rights applied to those that had got online by means of these numbers.
- ❑ **Defective products (food, pharmaceutical products):** In some cases, consumers asked for compensation as a consequence of a food poisoning whereas, in others, they claimed a compensation for the side effects caused

by the consumption of A., a pharmaceutical product that alleviates the consequences of the menopause. In all cases, Courts awarded compensation to those consumers that had given evidence about the causality between the consumption of the products and the alleged injuries.

Table 1: Overview of cases collected

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
1	Decision of the Audiencia Provincial (Court of Appeals) of Burgos, num. 23/2000, 14.1.2000 (Westlaw Aranzadi Reference: AC 2000\709)	Unfair term clause in contracts for gas supply.	1999	2000	None
2	Decision of the Audiencia Provincial (Court of Appeals) of Burgos, num. 524/2002, 23.10.2002 (Westlaw Aranzadi Reference: JUR 2003\17901)	Unfair term in contracts for gas supply.	2002	2002	None
3	Decision of the First Instance Court num. 2 of Madrid, num. 269/2002, 25.10.2002 (Westlaw Aranzadi Reference: AC 2003\362)	Unfair rounding-up clause included by banks in variable rate mortgages.	2002	2002	None
4	Decision of the Audiencia Provincial (Court of Appeals) of Baleares, num. 146/2002, 17.3.2003 (Westlaw Aranzadi Reference: AC 2003\1624)	Unfair rounding-up clause included by banks in variable rate mortgages.	2002	2003	None
5	Decision of the First Instance Court num. 34 of Barcelona, num.56/2003, 26.3.2003 (Westlaw Aranzadi Reference: AC 2003\843)	Unfair rounding-up clause included by banks in variable rate mortgages.	2003	2003	None

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
6	Decision of the Provincial Court of Badajoz, num. 647/2003, 31.12.2003 (Westlaw Aranzadi Reference: AC 2004\346)	Liability of a travel agency by the delay of a flight Madrid-Egypt that caused the plaintiffs to lose some of the agreed services.	2003	2004	None
7	Decision of the First Instance Court num. 13 of Zaragoza, 13.1.2004 (Westlaw Aranzadi Reference: JUR 2004\13884)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2004	2004	None*
8	Decision of the Audiencia Provincial (Court of Appeals) of Sevilla, 22.1.2004 (Westlaw Aranzadi Reference: AC 2004\5)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2003	2004	None*
9	Decision of the Audiencia Provincial (Court of Appeals) of Sevilla, num. 33/2004, 22.1.2004 (Westlaw Aranzadi Reference: AC 2004\406)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2003	2004	None*
10	Decision of the First Instance Court num. 61 of Madrid, 20.7.2004 (Westlaw Aranzadi Reference: AC 2004\1144)	Telephone services rendered by means of the code 906 were referred to services that should be rendered by means of a cheaper code.	2004	2004	None

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
11	Decision of the Audiencia Provincial (Court of Appeals) of Pontevedra, num. 332/2004, 27.9.2004 (Westlaw Aranzadi Reference: JUR 2006\25865)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2004	2004	None*
12	Decision of the Audiencia Provincial (Court of Appeals) of Asturias, num. 453/2004, 14.10.2004 (Westlaw Aranzadi Reference: AC 2004\2040)	Food poisoning in a wedding reception.	2003	2004	None
13	Decision of the Audiencia Provincial (Court of Appeals) of Las Palmas, num. 735/2004, 29.11.2004 (Westlaw Aranzadi Reference: JUR 2006\291336)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2003	2004	None*
14	Decision of the Audiencia Provincial (Court of Appeals) of Asturias, num. 61/2005, 21.2.2005 (Westlaw Aranzadi Reference: AC 2005\305)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2004	2005	None*
15	Decision of the Audiencia Provincial (Court of Appeals) of Barcelona, num.175/2005, 29.3.2005 (Westlaw Aranzadi Reference: AC 2006\1590)	Unfair rounding-up clause included by banks in variable rate mortgages.	2003	2005	None

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
16	Decision of the Audiencia Provincial (Court of Appeals) of Asturias, num. 163/2005, 5.4.2005 (Westlaw Aranzadi Reference: AC 2005\841)	Food poisoning because of the consumption of olives in bad conditions.	2003	2005	None
17	Decision of the Audiencia Provincial (Court of Appeals) of Madrid, num. 177/2005, 14.4.2005 (Westlaw Aranzadi Reference: AC 2005\823)	Telephone services rendered by means of the code 906 were referred to services that should be rendered by means of a cheaper code.	2004	2005	None
18	Decision of the Audiencia Provincial (Court of Appeals) of Barcelona, num.351/2005, 13.7.2005 (Westlaw Aranzadi Reference: AC 2006\1590)	Unfair rounding-up clause included by banks in variable rate mortgages.	2003	2005	None
19	Decision of the Audiencia Provincial (Court of Appeals) of Barcelona, num. 447/2005, 9.9.2005 (Westlaw Aranzadi Reference: JUR 2006\37691)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2003	2005	None*
20	Decision of the First Instance Court num. 27 of Barcelona, num. 205/2005, 2.11.2005 (Westlaw Aranzadi Reference: AC 2006\445)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2003	2005	None*

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
21	Decision of the Audiencia Provincial (Court of Appeals) of Valencia, num. 485/2005, 14.11.2005 (Westlaw Aranzadi Reference: JUR 2007\43510)	Unfair term in deposits.	2005	2005	None
22	Decision of the Audiencia Provincial (Court of Appeals) of Madrid, num. 10/2006, 16.1.2006 (Westlaw Aranzadi Reference: JUR 2006\116243)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2004	2006	None*
23	Decision of the Audiencia Provincial (Court of Appeals) of Madrid, num. 71/2006, 21.2.2006 (Westlaw Aranzadi Reference: AC 2006\833)	Unfair term rounding-up clause included by banks in variable rate mortgages.	2003	2006	None
24	Decision of the Audiencia Provincial (Court of Appeals) of Pontevedra, num. 119/2006, 2.3.2006 (Westlaw Aranzadi Reference: JUR 2006\110794)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2005	2006	None*
25	Decision of the Audiencia Provincial (Court of Appeals) of La Coruña, num.78/2006, 3.3.2006 (Westlaw Aranzadi Reference: JUR 2006\113443)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2004	2006	None*

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
26	Decision of the Audiencia Provincial (Court of Appeals) of Barcelona, num. 129/2006, 23.3.2006 (Westlaw Aranzadi Reference: JUR 2006\140704)	Unfair rounding-up clause included by banks in variable rate mortgages.	2005	2006	None
27	Decision of the Audiencia Provincial (Court of Appeals) of Valencia, num. 168/2006, 26.4.2006 (Westlaw Aranzadi Reference: JUR 2007\43510)	Unfair clause in deposits.	2005	2006	None
28	Decision of the Audiencia Provincial (Court of Appeals) of Barcelona, num. 241/2006, 19.5.2006 (Westlaw Aranzadi Reference: AC 2006\1688)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2005	2006	None*
29	Decision of the Audiencia Provincial (Court of Appeals) of Burgos, num. 347/2006, 31.7.2006 (Westlaw Aranzadi Reference: AC 2007\108)	Blockade in a motorway because of a snowfall.	2006	2006	None
30	Decision of the First Instance Court num 1 of Barcelona, num.973/2005, 27.9.2006 (Westlaw Aranzadi Reference: AC 2006\1724)	Side effects caused by a drug for the treatment of the consequences of the menopause.	2006	2006	None

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
31	Decision of the Supreme Court, num. 1079/2006, 3.11.2006 (Westlaw Aranzadi Reference: RJ 2007\683)	Unfair term clause in contracts for gas supply.	1999	2006	None
32	Decision of the First Instance Court num. 1 of Madrid, 15.12.2006 (Westlaw Aranzadi Reference: JUR 2007\43930)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2006	2006	None*
33	Decision of the Audiencia Provincial (Court of Appeals) of Madrid, num. 21/2007, 30.1.2007 (Westlaw Aranzadi Reference: AC 2007\356)	Telephone services rendered by means of the code 906 were referred to services that should be rendered by means of a cheaper code.	2005	2007	None
34	Decision of the Audiencia Provincial (Court of Appeals) of Pontevedra, num. 119/2006, 2.3.2006 (Westlaw Aranzadi Reference: JUR 2006\110794)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2006	2007	None*
35	Decision of the First Instance Court num. 47 of Barcelona, 2.4.2007 (not published in Westlaw yet)	Side effects caused by a drug for the treatment of the consequences of the menopause.	2007	2007	None

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
36	Decision of the Audiencia Provincial (Court of Appeals) of Cáceres, num. 348/2004, 15.9.2004 (Westlaw Aranzadi Reference: JUR 2004\264440)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2004	2004	None*
37	Decision of the Audiencia Provincial (Court of Appeals) of La Coruña, num.199/2006, 22.5.2006 (Westlaw Aranzadi Reference: JUR 2006\187791)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2005	2006	None*
38	Decision of the Audiencia Provincial (Court of Appeals) of La Coruña, num.200/2006, 22.5.2006 (Westlaw Aranzadi Reference: AC 2006\1039)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2004	2006	None*
39	Decision of the Audiencia Provincial (Court of Appeals) of La Coruña, num.207/2006, 26.5.2006 (Westlaw Aranzadi Reference: AC 2006\1003)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2004	2006	None*
40	Decision of the Audiencia Provincial (Court of Appeals) of La Coruña, num.216/2006, 7.6.2006 (Westlaw Aranzadi Reference: AC 2006\1099)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2004	2006	None*

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
41	Decision of the Audiencia Provincial (Court of Appeals) of La Coruña, num.1/2007, 8.1.2007 (Westlaw Aranzadi Reference: JUR 2007\66689)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2005	2007	None*
42	Decision of the Audiencia Provincial (Court of Appeals) of La Coruña, num.100/2007, 26.3.2007 (Westlaw Aranzadi Reference: AC 2007\1070)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2005	2007	None*
43	Decision of the Audiencia Provincial (Court of Appeals) of La Coruña, num.221/2007, 19.6.2007 (Westlaw Aranzadi Reference: JUR 2007\311219)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2005	2007	None*
44	Decision of the Audiencia Provincial (Court of Appeals) of Baleares, num. 271/2005, 20.6.2005 (Westlaw Aranzadi Reference: JUR 2005\178587)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2004	2005	None*
45	Decision of the Audiencia Provincial (Court of Appeals) of Barcelona, num. 133/2006, 2.3.2006 (Westlaw Aranzadi Reference: JUR 2006\115138)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2004	2006	None*

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
46	Decision of the Audiencia Provincial (Court of Appeals) of Valencia, num.144/2006, 31.3.2006 (Westlaw Aranzadi Reference: JUR 2006\216770)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2005	2006	None*
47	Decision of the Audiencia Provincial (Court of Appeals) of Castellon, num.368/2006, 17.7.2006 (Westlaw Aranzadi Reference: JUR 2007\56302)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2005	2006	None*
48	Decision of the Audiencia Provincial (Court of Appeals) of Malaga, num.741/2006, 22.11.2006 (Westlaw Aranzadi Reference: JUR 2007\164424)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2006	2006	None*
49	Decision of the Audiencia Provincial (Court of Appeals) of Barcelona, num.136/2007, 9.3.2007 (Westlaw Aranzadi Reference: JUR 2007\120643)	Breach of educational contracts and subsequent breach of the financing contracts because of their connection.	2006	2006	None*

Note: *Collective action proceedings relate to a case of bankruptcy of a Spanish chain of language schools and the subsequent breach of financing contracts concluded by consumers with credit providers. The case involved also consumers from Portugal, Italy and Poland who attended language classes at subsidiaries of the Spanish company in these countries. However, as these were contracts under national laws, involved national credit providers and consumers were able to seek redress in their own countries. This is therefore not considered to be a cross-border case. The collective action proceedings listed here involved only Spanish consumers.

1.5 Hypothetical example cases

The following section contains data concerning the costs of 3 “hypothetical example cases”. A “hypothetical example case” is hereby understood as being an action proceeding which is “invented” on basis of existing cases, and defined through the type of individual damage suffered by a number of consumers, the sector, the category of law, the value of the case, the affected number of consumers, etc. For each case are analysed:

- a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).*
- b) The effects on consumers who do not bring the collective action.*
- c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).*
- d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer’s fee).*
- e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.*
- f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?*

In all cases it is assumed that claims are brought at the same court. The consumers are not in a state of poverty and are not eligible for legal aid targeted exclusively at the poor. All cases are decided after appeal.

1.5.1 Case 1 - telecommunication

Due to a technical defect, the telecommunications services provider T has miscalculated the duration of all telephone calls made by customers as being 2-3 percent longer than they were in reality, resulting in extra profits of 1 million Euro. 100,000 customers suffered damages; with certain differences as to the individual case. The consumer organisation or other intermediary preparing the claim estimates the average damage per consumer to be 1 Euro per month. The service provider claims to have repaired the defect after 10 months. Therefore the average damage per consumer could be estimated at 10 Euro.

- If the relevant mechanism is an opt-out system: consumer organisation or other intermediary represents all consumers (combined value of claims 1 million Euro)*
- If the relevant mechanism is an opt-in system: consumer organisation or other intermediary could mobilise 1,000 consumers (combined value of claims 10,000 Euro)*

a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).

In this case, each consumer would be able to bring an individual action for damages. Nevertheless, according to Section 11 LEC, given that those that have been affected by the damaging fact are a group of consumers or users the members of which are perfectly determined or are easy to determinate (1000 consumers), associations of consumers and users, the legally constituted entities whose social purpose is the defence or protection of consumers and users, as well as the groups of affected people themselves would be able to bring a collective action against the telecommunications services provider.

b) The effects on consumers who do not bring the collective action.

According to Section 222.3 LEC, *res iudicata* effect of judgments shall affect all the parties to the proceedings, including their heirs, as well as non-litigants whose rights underpin the procedural standing of the parties under Section 11 of this Act.

c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).

Not available. Please see the explanation above (section: Overview of collective redress mechanisms).

d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).

Not available.

e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.

Law 1/1996, of 10th January, on Legal Aid⁴⁷ (*Ley 1/1996, de 10 de enero, de Asistencia Jurídica Gratuita*) states that for those consumers who have insufficient monetary resources to bring legal action, justice will be free of charge. According to the Second Additional Provision of this Law, "The same right (legal aid) will have the consumer organisations, according to the Section 2.2 of the Law 26/1984, of 19th July, the General Law for the Defence of Consumers and Users" (nowadays, Section 9 RD Leg. 1/2007).

⁴⁷ BOE num. 11, of 12 January 1996.

- f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?**

The party whose claims have been rejected will pay the costs that are the same as the ordinary judicial proceedings (“loser pays” rule). There exists a limit of one-third of the amount of the claim payable.

If the claim is accepted partially, every party will bear its own costs, and half of the shared costs, except the parties who act with negligence.

According to Section 442 LEC, if the plaintiff does not assist to the procedure and the defendant does not have a legitimate interest in a decision, the plaintiff will have to pay the procedure’s costs and the compensation to the defendant if he or she proves damages.

There are not specific rules on cost for collective redress so general rules apply.

1.5.2 Case 2 – financial services

Enterprise E released a third tranche of shares (230 million shares, 60 Euro per share). Following this, the value of the shares decreased rapidly during the next three years (to 10 Euro per share), leading to a loss in shareholder value of 11.5 billion Euro. Shareholders claimed that they had been victims of false information (considerably overestimated property; concealment of the burdensome acquisition of a foreign competitor) contained in the company’s prospectus when the shares were put on the market. 15,000 investors bring their claims to the court, with an average value of the claim being 7,000 Euro each. The combined value of the claims is therefore 105 million Euro.

- a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).**

In this case, each consumer would be able to bring an individual action for damages. Nevertheless, according to Section 11 LEC, given that those that have been affected by the damaging fact are a group of consumers or users the members of which are perfectly determined or are easy to determinate (15000 investors), associations of consumers and users, the legally constituted entities whose social purpose is the defence or protection of consumers and users, as well as the groups of affected people themselves would be able to bring a collective action against the telecommunications services provider.

- b) The effects on consumers who do not bring the collective action.**

According to Section 222.3 LEC, *res iudicata* effect of judgments shall affect all the parties to the proceedings, including their heirs, as well as non-litigants whose rights underpin the procedural standing of the parties under Section 11 of this Act.

c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).

Not available. Please see the explanation above (section: Overview of collective redress mechanisms).

d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).

Not available.

e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.

Law 1/1996, of 10th January, on Legal Aid⁴⁸ (*Ley 1/1996, de 10 de enero, de Asistencia Jurídica Gratuita*) states that for those consumers who have insufficient monetary resources to bring legal action, justice will be free of charge. According to the Second Additional Provision of this Law, "The same right (legal aid) will have the consumer organisations, according to the Section 2.2 of the Law 26/1984, of 19th July, the General Law for the Defence of Consumers and Users" (nowadays, Section 9 RD Leg. 1/2007).

f) Is there a "loser pays principle"? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?

The party whose claims have been rejected will pay the costs that are the same as the ordinary judicial proceedings ("loser pays" rule). There exists a limit of one-third of the amount of the claim payable.

If the claim is accepted partially, every party will bear its own costs, and half of the shared costs, except the parties who act with negligence.

According to Section 442 LEC, if the plaintiff does not assist to the procedure and the defendant does not have a legitimate interest in a decision, the plaintiff will have to pay the procedure's costs and the compensation to the defendant if he or she proves damages.

There are not specific rules on cost for collective redress so general rules apply.

⁴⁸ BOE num. 11, of 12 January 1996.

1.5.3 Case 3 - tourism

The tour operator T advertised on its website a “last-minute package” called “4-star” in which the consumers were supposed to be offered services in various hotels on various locations (Greece, Tunisia, etc.) in the 4-star category. However, the hotels were in very bad shape and in spite of the request of consumers no other accommodation was provided. The tour operator also categorically rejected all written claims of consumers for compensation. The only argument of the trader for rejection was that last-minute arrangements meant lower quality of services. About 500 travellers are affected, of which 200 claim a refund of 250 Euro each (which is 10% of the total price of the package). The combined value of the claims is therefore 50,000 Euro.

a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).

In this case, each consumer would be able to bring an individual action for damages. Nevertheless, according to Section 11 LEC, given that those that have been affected by the damaging fact are a group of consumers or users the members of which are perfectly determined or are easy to determinate (200 travellers), associations of consumers and users, the legally constituted entities whose social purpose is the defence or protection of consumers and users, as well as the groups of affected people themselves would be able to bring a collective action against the telecommunications services provider.

b) The effects on consumers who do not bring the collective action.

According to Section 222.3 LEC, *res iudicata* effect of judgments shall affect all the parties to the proceedings, including their heirs, as well as non-litigants whose rights underpin the procedural standing of the parties under Section 11 of this Act.

c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).

Not available. Please see the explanation above (section: Overview of collective redress mechanisms).

d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer’s fee).

Not available.

e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.

Law 1/1996, of 10th January, on Legal Aid⁴⁹ (*Ley 1/1996, de 10 de enero, de Asistencia Jurídica Gratuita*) states that for those consumers who have insufficient monetary resources to bring legal action, justice will be free of charge. According to the Second Additional Provision of this Law, "The same right (legal aid) will have the consumer organisations, according to the Section 2.2 of the Law 26/1984, of 19th July, the General Law for the Defence of Consumers and Users" (nowadays, Section 9 RD Leg. 1/2007). Section 6 of Law 1/1996 states the content of the right to legal aid: lawyers and solicitors fees, publication of announcements or edicts, copies, certificates, etc. asked to public registers, notaries fees, etc.

f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?

The party whose claims have been rejected will pay the costs that are the same as the ordinary judicial proceedings (“loser pays” rule). There exists a limit of one-third of the amount of the claim payable.

If the claim is accepted partially, every party will bear its own costs, and half of the shared costs, except the parties who act with negligence.

According to Section 442 LEC, if the plaintiff does not assist to the procedure and the defendant does not have a legitimate interest in a decision, the plaintiff will have to pay the procedure’s costs and the compensation to the defendant if he or she proves damages.

There are not specific rules on cost for collective redress so general rules apply.

⁴⁹ BOE num. 11, of 12 January 1996.

1.6 Effectiveness and efficiency of collective redress mechanisms

1.6.1 Effectiveness of current collective redress mechanisms

Objectives

1. Does the collective redress mechanism fulfil the objectives of the national law which introduced it?

The collective redress mechanism may be in principle considered to fulfil the objectives of the LEC, given the following reasons:

- It reduces barriers and difficulties for consumers in obtaining compensation for harm suffered.
- It fulfils the principle of procedural economy.
- It has the potential to avoid possible contradictory proceedings and Court outcomes. However, in reality this seems not to be always the case because several cases against the same company may be pending in parallel at different Courts.
- It reduces the amount that individual consumers would have to pay as lawyers' fees given that the overall legal costs will be shared by a large number of plaintiffs, or covered by the claiming consumer organisation.
- It facilitates that small claims that would have never been brought because the cost per individual claim is higher than the amount of the claim may access the Courts.

A general issue is that the LEC does not include a complete special proceeding for the protection of collective interests but just some rules about specific matters. Some issues would probably require as well a specific regime in order to provide an efficient collective redress mechanism, such as the co-existence between collective and individual proceedings and the creation of collective compensation mechanisms, among others.

2. Has the mechanism enabled consumers to obtain satisfactory redress in cases which they would not otherwise have been able to adequately pursue on an individual basis?

Most interviewed partners tended to answer this question in the affirmative but they emphasized the fact that the execution of the judgment has to be improved.

The results of this country study confirm that the collective mechanism in Spain presents serious advantages in enabling consumers to obtain satisfactory redress, e.g. small claims that would have never been brought because of their cost may access the Courts; consumers may benefit from legal aid; justice is free of charge for consumers' associations; economies of scale in lawyers' work allow lower costs per Euro obtained in compensation, etc.

It is also true that individual consumers may obtain satisfactory redress by means of individual proceedings in similar types of disputes, too. For example, in the Opening

case, individual consumers that brought actions against both English schools and financial institutions, who gave loans to the students, have been awarded compensations (see among the most recent decisions, the Decision of the Court of Appeals of Asturias of 24.4.2007⁵⁰; the Decision of the Court of Appeals of Madrid of 7.6.2006⁵¹; or the Decision of the Court of Appeals of Madrid of 17.4.2006⁵²). The same happens in other type of disputes such as those about unfair rounding-up clauses included by banks in variable rate mortgages (see, for example, the Decision of the Court of Appeals of Madrid of 15.4.2005⁵³, or the Decision of the Court of Appeals of Barcelona of 19.3.2004⁵⁴).

On the other hand, due to the fact that claimants in both cases of rounding-up clauses included in variable rate mortgages and abusive clauses in deposits are consumer organisations, the action for an injunction and damages exists only in theory. In practice, after the judgement of the injunction, consumers will have to initiate the supplementary proceeding regulated by Section 519 LEC to individualize their compensations (which is generally not done).

Finally, although Section 222.3 LEC establishes that *res iudicata* effects shall also affect the non litigants, Spanish doctrine considers that the judgement cannot prevent individual claims by consumers because, in this case, it would also have to be applied when an individual consumer gets a judgement and then the consumer organisation files a claim⁵⁵. Furthermore, preventing consumers who did not participate in the action for the defence of diffuse interests to file an individual claim would be contrary to the Spanish Constitution. To sum up, the fact that an individual consumer cannot discuss about the general issues analysed in the proceeding initiated by the consumer organisation does not mean that he or she may not ask for a compensation as well as benefit from the previous judgement according to Section 519 LEC.

Incentives provided

3. a) Does the mechanism ensure a change in the behavior of the defendant, which results in the reduction of future harm to all consumers?

Most interviewed stakeholders tended to confirm this. Given the nature of this study, it is, however, not feasible to reach a definitive conclusion about the specific deterrent effect of collective redress in Spain. Some cases (rounding-up clauses) led to a change in the Law (*Ley 44/2006, de 29 de diciembre, de mejora de la protección de los consumidores y usuarios*, Law 44/2006, of 19 December, on improvement of the

⁵⁰ Westlaw Aranzadi Reference: JUR 2007\211304.

⁵¹ Westlaw Aranzadi Reference: JUR 2007\3334.

⁵² Westlaw Aranzadi Reference: AC 2006\1153.

⁵³ Westlaw Aranzadi Reference: JUR 2005\157999.

⁵⁴ Westlaw Aranzadi Reference: JUR 2004\122712.

⁵⁵ Marín López 2001, p. 13; Silguero Estagnan 2004, p. 9-10; López Jiménez 2008.

consumers and users' protection⁵⁶) although, in some cases, the change in the Law diverged from the outcome of the case in the Court of Appeals⁵⁷.

According to this study, with a few exceptions regarding procedural issues (Decisions of the Court of Appeals of Sevilla of 22.1.2004⁵⁸), Courts usually award some form of compensation to victims of collective damages, therefore the collective redress mechanism gives defendants some incentives to take precautions that avoid future harm to consumers when it is foreseeable that compensation plus legal costs of the proceeding will exceed those of the precaution's measures. In collective redress, the general rule is that the party whose claims have been rejected pays the costs of proceedings (*loser pays rule*), which include lawyers' and solicitors' fees, publication of announcements and edicts, experts' fees, among others.

3. b) Does the mechanism have a preventive effect and deter potential offenders, for instance by skimming off the profit gained from the incriminated conduct?

The interviewed partners mostly were of the opinion that the mechanism may have a preventive effect, although this is very difficult to confirm. In general collective redress may have effects when defendants are held liable to reimburse the illicit gains. In gas services cases, Courts ordered to refund the amounts paid by consumers for the register, inspection and verification of the previous gas installations. In educational services, Courts ordered to refund the sums paid by the students or their families. In other financial services, such as those where banks included a rounding-up clause in variable rate mortgages, Courts ordered the refund of the sums paid by consumers because of the unfair clauses. In all cases, Courts also ordered the payment of the legal interest accrued by the sums paid by consumers since the date in which they began to do it⁵⁹. This would probably constitute sufficient deterrence for similar behaviours in future cases.

⁵⁶ BOE num. 312, of 30 December 2006.

⁵⁷ See the Decision of the Court of Appeals of Madrid of 22.3.2007 (the text of the decision is not available yet). It states that the rounding-up or, in general terms, the system of prices that telephone companies apply is transparent, according to the economic rationality and not arbitrary).

⁵⁸ Westlaw Aranzadi References: AC 2004\5, AC 2004\406.

⁵⁹ Table of legal interest:

Year	Legal interest	Law
2008	5,50 %	Law 51/2007, of 26.12.2007
2007	5,00 %	Law 42/2006, of 28.12.2006
2006	4,00 %	Law 30/2005, of 29.12.2005
2005	4,00 %	Law 2/2004, of 27.12.2004
2004	3,75 %	Law 61/2003, of 30.12.2003
2003	4,25 %	Law 52/2002, of 30.12.2002
2002	4,25 %	Law 23/2001, of 27.12.2001
2001	5,50 %	Law 13/2000, of 28.12.2000
2000	4,25 %	Law 54/1999, of 29.12.1999

3 c) Does the mechanism provide incentives and sufficient opportunity for out-of-court settlement?

The mechanism does not provide a specific incentive for out-of-court settlements. However, settlement of claims is possible under Spanish law both prior to, during (Sections 460-480 LEC 1881⁶⁰, in force even after the approval of the new LEC 2000) and after the proceeding.

In-court proceedings are not the best way to deal with disputes that involve low amounts of money and require a speedy solution since they are costly (legal fees, cost of complex evidence, etc.) and relatively slow. Cost and delay of Court proceedings, however, may have an effect on the incentives of parties to settle their disputes. Whether this would enhance or reduce this deterrence effect of legal remedies is a different matter.

We do not have data about legal costs – apart from the criteria about professional fees published by the Spanish Bar Associations – but there is data available about the approximate duration of cases analysed in this report (see question 9 below).

In comparison with court proceedings, arbitration is more flexible, faster (between 4,3 and 5,7 months) and, in most cases, cheaper than ordinary judicial procedures, and it allows obtaining a firm and definitive judgment (see Annex).

4. Does the mechanism discourage the introduction of unmeritorious claims? Is there a “gatekeeper procedure” to certify whether a collective action is admissible to the court or not? If yes, how does it work?

In Spain, there is no “gatekeeper procedure” to certify whether a collective action is admissible to the court or not. The general rule of Section 404 LEC only states that Courts, after having examined their jurisdiction and objective competence and, if necessary, territorial competence will dictate a judicial order in order to allow or summarily dismiss the claim.

Accessibility

5. Is the mechanism easily accessible to consumers? [Costs, rules of standing, length of proceedings and other factors hindering or facilitating access for consumers to the mechanism should be considered]

The procedure is theoretically easily accessible for consumers, including the most vulnerable (Section 7 LEC states some cases in which plaintiffs act by means of their representatives). There are no parties that are in principle excluded from initiating the

⁶⁰ According to Section 460 LEC 1881, the First Instance Court or Judge of the peace (*Juzgado de Primera Instancia/Juez de Paz*) can try conciliation before a legal procedure. Once the claim is filed, the First Instance Court or Judge of the peace will notify the parties. Between the citation and the appearance before the Court, there is a minimum of 24 hours. The conciliation act will have the following steps: the plaintiff will present the claim and the defendant will answer it and will expose all documents he or she considers may found his exceptions. Afterwards, the parties will be able to contradict. If an agreement is not reached, the judge will try to reconcile them. If it is not possible, the act will finish without effect.

proceeding. Furthermore, there are no rules preventing consumers from other Member States to use this mechanism of redress. In practice, however, the interviewed stakeholders generally were of the opinion that the mechanism is only easily accessible for consumers if they are represented (e.g. by a consumer association). For consumers which are not represented the procedure does not seem to be easily accessible.

Section 11 LEC facilitates the access to the redress mechanism by letting consumers and users' associations, groups that represent most consumers or users affected by a damaging action, as well as legally constituted entities that protect consumers and users, bring collective actions. Groups of consumers may benefit from the right to legal aid, and justice will be free of charge for consumers' associations.

Section 15 LEC establishes specific rules that allow consumers to take notice of the filing of the claims. Moreover, everyone with a legitimate interest may have access to all Court proceedings (*actuaciones judiciales*) and to get copies of the proceedings' documents.

The length of the proceedings may deter consumers from bringing collective actions (see question 9 below).

6. What are the litigation costs of collective redress for consumers compared to individual redress? What is the risk of the consumer if the case is lost?

There are not specific rules on litigation costs for collective redress so general rules for individual redress apply.

Bar Associations establish indicative scales regarding lawyers' fees, but lawyers and their clients agree them freely. In any case, collective actions are cheaper for individual consumers because costs are shared among all plaintiffs. For example, taking into account the criteria published by the Bar Association of Madrid, in ordinary proceedings plaintiffs may have to pay previous activities (for example, attempted conciliation: until 570 Euro), preliminary proceedings (150 Euro), incidental issues (for example, disapproval of fees: until 360 Euro), the ordinary proceeding (when proceeding is about standard terms, 2 100 Euro that may be increased if it affects consumers), the appeal in the Second Instance (minimum of 900 Euro) and the appeal in the Supreme Court (minimum 2 400 Euro). Whereas an individual consumer would have to pay more than 6 480 Euro, 100 consumers would only have to pay 64.80 Euro.

If a case is lost, the party whose claims have been rejected pays the costs of the proceedings (*loser pays rule*).

Financing and distribution of proceeds

7. Are actions under the mechanism financed in a way which ensures that consumers are able to obtain effective legal representation? Are there mechanisms of public support for the party that brings forward a collective action (the intermediary⁶¹), are contingency fees/conditional fees⁶² allowed? What is the risk of the intermediary if a case is lost?

Consumer associations are financed by periodic membership fee, subsidies granted by public administrations, as well as by their own resources (for example, journals, reports or other publications). Section 22.2 c) of the Law 38/2003, of 17th November, General of Subsidies⁶³ (*Ley 38/2003, de 17 de noviembre, General de Subvenciones*), establishes the possibility of awarding subsidies directly and exceptionally when reasons of public, social, economic, humanitarian interest or other reasons properly justified exist. According to Section 28.2 of this Law, Government will approve the rules that will regulate these subsidies by means of a Regulation (*Real Decreto*). This Regulation will include, as a minimum, the following points:

- Definition of the subsidy's goal and object, pointing out its singular character and the reasons that show the public, social, economic or humanitarian interest, and those that justify the difficulties of their public announcement;
- The legal rules applicable to the subsidy;
- Beneficiaries and types of support;
- Awarding procedure and system to justify the use of funds.

Beneficiaries of these subsidies will be the organisations that are part of the Consumers and Users' Council (*Consejo de Consumidores y Usuarios*) because they are the most representative organisations in Spain, and are available to assist affected consumers free of charge. The amount of subsidies depends on the capacity of these organisations and the number of people that will use their services.

In any case, Law 1/1996, of 10th January, on Legal Aid declares that justice will be free of charge for consumer organisations. This, however, does not currently cover all costs. The payment of advertisements in mass media during the proceeding (required by Section 15 LEC) is one of the main problems that consumers associations have to face because this cost is not free of charge. Consumer organisations report a lack of resources to bring more cases to Court. There are also reportedly logistical problems of the consumer organisations to handle cases with a large number of determinate consumers.

⁶¹ A collective action is usually brought forward by an intermediary that organizes the action on behalf of consumers. This can be a public intermediary (e.g. an ombudsman), a representative organisation as intermediary (e.g. a consumer organisation) or private intermediaries (e.g. a private law firm/an individual consumer taking the lead in an action). Intermediaries may also engage a private lawyer, who is not considered to be an intermediary in this context, as long as he or she is not responsible for organising the action.

⁶² Contingency fees are lawyer's fees that consist of a percentage of the damages awarded. Conditional fees are (possibly additional) fees that are paid in case of success, but not related to the damages awarded.

⁶³ BOE num. 276, of 18 November 2003.

The so-called “*pactum de quota litis*” or contingent fee are formally forbidden, though commonly held to be used widely in civil and labour litigation. In Spain, lawyers and their clients are free to agree on the amount of legal fees, subject only to ethical and general legal constraints. Only as guidance, Bar Associations may establish indicative scales that will be apply according to their rules, uses and customs. The payment of the fees to the losing party when the Court has granted legal fees to the winning side, will be claimed by lawyers and solicitors by means of the proceeding called *tasación de costas* (Sections 241-246 LEC). The Court’s Legal Secretary will value the costs and will reduce the legal fees that exceed the established limits (one-third of the amount claimed in the proceeding). The losing party is able to argue that the costs are excessive or improper, in which case the Court will have to fix the exact amount that has to be paid.

8. Are proceeds of collective redress actions distributed in an appropriate manner amongst plaintiffs and their representatives?

In collective redress actions, only the consumers receive damages. The proceeds are not distributed amongst plaintiffs and their representatives. Difficulties seem to exist with regard to the distribution of the damages in cases where an indeterminate or hardly determinable number of consumers is affected.

1.6.2 Efficiency of available mechanisms

Length of proceedings

9. Is the length of the proceedings under the mechanism reasonable for consumers, consumer organisations, public bodies, and the defendants?

In general, proceedings are long, although the specific length depends on the docket of the particular court because of its accumulation of work, as well as the willingness of the lawyers and solicitors to comply with the deadlines.

In the main cities (Madrid, Barcelona, etc.) the duration of proceedings, in general terms, is around 7-9 months for each the First and Second Instances. The Third Instance is much slower and can take 31 months (2 years and 7 months) for the final resolution. In smaller provinces, the proceedings are typically faster in First and Second Instances, although this is not an universal rule, as there are some places where, for their special conditions, the proceedings are as slow as in the big cities.

When proceedings involve collective actions, the duration of the proceedings is longer. In the main cities (Madrid, Barcelona, etc.), the duration of proceedings is between 15-36 months, whereas in smaller provinces durations range from 5 to 13 months. Nevertheless, depending on the complexity of the case, duration of the proceedings varies inside the same Court of Appeals (for example, from 15 to 36 in Barcelona for cases on educational services, or from 5 to 22 months in Barcelona for cases on unfair clauses in financial contracts). Finally, proceedings in the Supreme Court can take

several years (approximately 7 years in the only analysed case regarding gas services: Decision of the Supreme Court 3.11.2006⁶⁴).

In any case, it has to be pointed out that decisions do not include complete information because in most cases information about the duration of the First Instance proceedings is not available.

- ❑ **Educational services:**
 - First Instance Court of Zaragoza: 12 months
 - Court of Appeals of Barcelona (15-36 months), La Coruña (16-24 months), Madrid (18 months), Las Palmas (13 months), Castellon (13 months), Sevilla (11-13 months), Pontevedra (8-11 months), Asturias (10 months), Malaga (9 months), Caceres (6 months) and Valencia (5 months).
- ❑ **Gas services:**
 - Court of Appeals of Burgos (3-6 months).
 - Supreme Court (86 months).
- ❑ **Financial services:** Court of Appeals of Madrid (35 months), Barcelona (5-22 months), Valencia (6-8 months) and Baleares (4 months).
- ❑ **Telephone services:** Court of Appeals of Madrid (9 months).
- ❑ **Travel services:** Court of Appeals of Badajoz (8 months).
- ❑ **Product services** (food poisonings): Court of Appeals of Asturias (17-23 months).

Costs for consumers, consumer organisations and public bodies

10. Are the costs related to bringing an action under the mechanism for consumers, consumer organisations and public bodies proportionate to the amount in dispute?

The interviewees were mostly of the opinion that the fees are proportionate related to the amount in dispute. Other indicators are not available.

11. Does the mechanism minimize litigation costs for consumers?

In general terms, collective actions minimize litigation costs for consumers because they are shared among all plaintiffs.

In practice consumers only seem to have to pay for the membership fee to be represented by a consumer organisation in a collective claim (for which justice is free of charge, see above). The yearly membership fee is generally much lower than the cost for an individual litigation. Nevertheless, as already mentioned, actual data about

⁶⁴ Westlaw Aranzadi Reference: RJ 20071683.

litigation costs in Spain is not available so this is a claim that has not been empirically verified.

Costs for businesses

12. *Information costs*: Does the mechanism impose requirements on businesses (in terms of being informed about the existing collective redress mechanisms and providing related information to public authorities) that lead to additional costs? Do these costs weigh in heavily on Small and Medium Enterprises (SMEs)?

The interviewed stakeholders generally did not expect relevant costs in this respect. Relevant data is, however, not available so this cannot be empirically verified.

13. *Litigation costs and related insurance costs*: Are costs for businesses for (legal) insurance (for litigation and for damages) and the litigation costs under the existing collective redress mechanisms unreasonable?

The interviewed stakeholders generally thought that the litigation costs are on an acceptable level for companies and that there are no additional insurance costs related to the collective redress mechanism.

There is no evidence indicating that the litigation expenditures or civil liability insurance premium under the collective redress mechanisms represent an unreasonable burden for Spanish businesses. However, there is also no data available to verify this empirically.

14. *Is the economic impact on traders against whom actions have been brought under the mechanism proportionate to the alleged harm caused by the trader's conduct?*

Most interviewees were of the opinion that the economic impact on businesses is proportionate as there are no punitive damages in Spain. There is no further evidence available to verify this empirically (except what is stated in question 15 below).

15. *Does the mechanism lead to the closing down of businesses?*

There is no evidence that collective redress has led in the analysed cases – gas companies, financial institutions, travel agencies, telephone companies, etc. – to the closing down of businesses. Furthermore, except a very limited number of exceptions⁶⁵, compensation awarded to consumers does not involve large amounts (from 420 Euro to 280 000 Euro approximately). Therefore, the impact is not as relevant as to create risks of closing down of businesses.

Although it is true that, in cases concerning educational services, English language schools closed down, it was not as a consequence of the collective actions, but for the financial problems that had arisen before. The same happened regarding cases that are in the process of being decided inside bankruptcy proceedings.

⁶⁵ See Decision of the Court of Appeals of Valencia 14.11.2005 (Westlaw Arazandi Reference: JUR 2007/43510; compensation: 2.269.262,31 €).

Competitiveness and investment flows

16. Does the mechanism have an impact on the competitive position of EU firms in comparison with their non-EU rivals?

There is no evidence available in this respect.

17. Does the mechanism provoke cross-border investment flows (including relocation of economic activity in Member States which do not have any collective redress mechanisms?)

There is no data available on whether the introduction of regulation of collective actions for damages to consumers in Spanish legislation has caused cross-border investment flows from Spain. The interviewees considered such an effect unlikely.

1.6.3 Added value of available mechanisms

18. What is the added value of the collective redress mechanism(s) compared to individual judicial redress and ADR schemes, i.e. what is achieved by the mechanism(s) that is not achieved by individual redress?

Collective actions allow solving large-scale consumer claims affecting a significant number of consumers through a decision that is subject to appeal.

They avoid both the need to reiterate individual proceedings, and therefore the flooding of Courts with small claims. They also may avoid the problem that results from the fact that small claims may not be brought, despite their deterrence value, due to the lack of resources to pay procedural costs, or the negative comparison between individual benefits and costs of bringing a suit. The interviewees also stated that not all the businesses are affiliated to the ADR schemes, so the possibility to resolve a case out-of-court does not always exist. Individual judicial redress is generally only taken into consideration for a larger amount in dispute.

Finally, in collective actions consumers do not need to participate in the proceedings in order to take advantage of the judgment. Decisions will affect all the parties of the proceedings, including their successors, as well as non-litigants, whatever the outcome, and not only if it is beneficial. When the claim is for monetary compensation, or in order to require the defendant to do, abstain to do, or give a specific or generic thing, the decision will determine individually the consumers that must benefit according to the law. If such determination is not possible, the decision will establish the requirements necessary to demand payment and, when necessary, to apply for or take part in the enforcement of the decision (*en ejecución de sentencia*), if requested by the claimant association.

19. Please estimate, what percentage of consumers who were represented in the collective redress cases would likely have undertaken individual redress through ordinary court procedures if no collective redress system was in place (e.g. none, 10%, 50%)?

An empirical assessment of the percentage of consumers represented in collective redress that would have undertaken individual redress is not possible due to the fact that in most cases the number of consumers affected and represented by the consumers' associations is not established. In the interviews, those interviewees who answered to this question estimated the number to be under 10%: the smaller is the amount in dispute, the lesser is the number of consumers who would seek for individual redress.

In any case, it is necessary to point out that in consumer claims where parties ask for compensation, judges will apply the rules for the ordinary proceeding *-juicio ordinario-* or the oral proceeding *-juicio verbal-* depending on the claimed amount. The ordinary proceeding is a structured proceeding for most expensive and complex matters. It applies when the claimed amount is higher than 3 000 Euro. The oral proceeding is a simple proceeding characterized by simplification, concentration and rapidity for small claims and less complex matters. It applies when the claimed amount is lower than 3 000 Euro. In ordinary proceedings claims need to contain more information than the simple brief in the oral proceeding. Legal representation is mandatory in ordinary proceedings whereas in the oral proceedings, for claims below 900 Euro, legal representation is not required. The simplified features of the oral proceedings will likely give consumers some incentive to bring individual actions. On the other hand, the costs of collective and individual proceedings are substantially similar, so it is likely that consumers that in collective redress are represented by consumers associations, for which justice is free of charge, will not undertake individual redress whether they cannot take advantage of the right to legal aid and the amount that they have to pay as procedural costs is, because of the complexity of the case, relatively large.

1.7 Overview of alternative procedures for consumers

1.7.1 Individual court action

Is there any data available on the number of consumers seeking individual redress through ordinary court procedures?

Juicio verbal (oral proceeding)

In Spain, there is an individual in-court mechanism that, although not specifically designed to deal with individual consumer claims, seems to be the kind of judicial proceeding apt to channel most consumer claims due to the typical amounts of money involved. Individual consumer claims below 3 000 Euro are processed through the *juicio verbal* (oral proceeding / small claims procedure), regulated by Sections 437-447 of the LEC.

This scheme is administrated by Civil Courts, namely the First Instance Courts (*Juzgados de Primera Instancia*) located in every jurisdiction (Section 45 LEC and 85 LOPJ).

It is a small claims procedure characterized by:

- Simplification by means of the use of publicly prepared forms, available in the First Instance Courts, to help every citizen in presenting claims.
- For claims below 900 Euro, legal representation is not required.
- The proceedings are oral (excepting for the written initial form or brief). All arguments are oral, the evidence is proposed and presented during the trial, and the proceedings end with the parties' conclusions.
- From a formal point of view, decisions in these procedures and in ordinary procedures are the same. They can be appealed before the Court of Appeals (*Audiencia Provincial*) in 5 days since the parties are notified of the decision.

Conciliation act

Section 460-480 LEC 1881 (in force even after the approval of the new LEC 2000) regulates a conciliation act. According to Section 460 LEC, First Instance Court or Judge of the peace (*Juzgado de Primera Instancia* or *Juez de Paz*), can try conciliation before a legal procedure starts. Once the claim is filed, the First Instance Judge or Judge of the peace will notify the parties. Between the citation and the appearance before the Court, there is a minimum of 24 hours. The conciliation act will have the following steps: the plaintiff will present the claim and the defendant will answer it and will expose all documents he considers may found his exceptions. Afterwards, the parties will be able to contradict. If an agreement is not reached, the judge will try to reconcile them. If it is not possible, the act will finish without effect.

Please estimate the threshold for claims (in Euro) under which a rational consumer would refrain from seeking individual redress through ordinary court procedures?

Not available.

1.7.2 **Individual action – ADR scheme(s)**

Is there an ADR scheme(s) for consumer cases?

1. Arbitration schemes

The main out-of court mechanism is arbitration. In Spain, there are two types of arbitration schemes:

- ❑ Arbitration in Law (*arbitraje de derecho*) where arbitrators must follow the legal provisions. It is generally available in commercial or civil disputes, unless the parties have chosen equitable arbitration.
- ❑ Equitable arbitration (*arbitraje de equidad*). It is used in some areas of arbitration, such as Consumer Arbitration. In Spain, there exists a *Sistema Arbitral de Consumo* (Consumer Arbitration System) together with a few institutional arbitration schemes created by legal rules for specific areas.

a. Sistema Arbitral de Consumo (Consumer Arbitration System)

In 1993, the *Instituto Nacional de Consumo* (National Consumer Institute) established an arbitration system to solve consumers' disputes. The Order 636/1993, of 3rd May⁶⁶⁶⁷, (*Real Decreto 636/1993, de 3 de mayo, que regula el Sistema Arbitral de Consumo*) regulates the Consumer Arbitration System, whereas the Law 60/2003, of 23rd December, on Arbitration⁶⁸ (*Ley 60/2003, de 23 de diciembre, de Arbitraje*) serves as a general default legal regime. Now, art. 57-58 of RDLeg 1/2007 contain the main rules and principles of this scheme.

The parties are the consumers, on the one side, and the professionals who produce, import, provide or facilitate both goods and services to them, on the other. Nevertheless, this procedure is unidirectional and not symmetric, because only consumers, not professionals, are able to initiate it.

The Consumer Arbitration System has the following characteristics:

- ❑ *Administrative arbitration*: the public Administration intervenes in the Consumer Arbitration System's implementation, development and support.
- ❑ *Free procedure*: the Consumer Arbitration System is free, that is, parties do not have to pay the procedure's expenses, the arbitrators' fees and, with some exceptions, the cost of presenting evidence.

⁶⁶ BOE num. 121, of 21st May 1993.

⁶⁷ This Order has been reversed by the Order 231/2008, of 15th February, that regulates the Consumer Arbitration System (*Real Decreto 231/2008, de 15 de febrero, por el que se regula el Sistema Arbitral de Consumo*; Order 213/2008; BOE num. 48, of 25th February 2008). According to Fourth Final Disposition, it will come into force the 15th August 2008.

⁶⁸ BOE num. 309, of 26th December 2003.

- ❑ *Accessible procedure:* the Consumer Arbitration System does not require to satisfy special formalities. Parties should fill in a simple form provided by the Arbitration Board and attend the hearings. On the other hand, it is not necessary to act with legal representation.
- ❑ *Specialized arbitrators:* arbitrators who integrate the arbitration association have an in-depth, direct and practical knowledge about the arbitration's subject matter.
- ❑ *Speedy procedure:* the Consumer Arbitration System's maximum duration is four months since the designation of the members of the Arbitration Panel.
- ❑ *Binding and enforceable system:* the Consumer Arbitration System is an effective scheme that can finish with a final and binding award enforceable on almost equal terms to a judicial decision.
- ❑ *Voluntary procedure:* both parties need to agree to subject themselves to the Consumer Arbitration System and the arbitration award.
- ❑ *Confidential procedure:* the hearings are confidential and parties and arbitrators may be sanctioned if they reveal the content of the award. This characteristic is important in consumer arbitration, where professionals prefer to keep the lawsuit low-key.

The Consumer Arbitration System aims at solving consumers' claims. Parties can submit to consumer arbitration all matters of which they have power to dispose of. Nevertheless, the Order 636/1993 excludes the following subjects: questions where a final and definitive judicial decision exists; questions which are not in the power of the parties to dispose of; questions that require the intervention of the public prosecutor according to the Law; finally, when poisoning, injury, death or rational evidence of a crime appear⁶⁹.

This scheme has many advantages: it allows the same goals than in-court procedures. Most consumer disputes involve low amounts of money and require a speedy solution; thus, in-court proceedings are not the best way to deal with them since they are costly (legal fees, cost of complex evidence, etc.) and slow in comparison. Arbitration is more flexible, faster and, in most cases, cheaper than ordinary judicial procedures, and it allows obtaining a final and enforceable judgment. It is possible to initiate a legal action to nullify the award in the Court of Appeals in a period of 2 months from the parties' notification, but only on a restricted set of grounds.

In Spain, arbitration is only possible when the dispute affects Spanish professionals and Spanish or European Union consumers. In consumers' claims against professionals located in the European Union, the European Consumer Centre network (*Red de*

⁶⁹ According to Section 2.2 of the Order 231/2008, parties cannot submit to consumer arbitration disputes about poisoning, injury, death or those where rational evidence of a crime appears.

Apoyo de Centros Europeos del Consumidor) assists consumers with the relevant Member State's alternative means of consumer redress.

The Consumer Arbitration System has been specifically created for the solution of consumer-to-business disputes.

b. Institutional arbitration schemes created by legal rules to specific areas

There are some rules regulating arbitration schemes for specific areas:

- ❑ Section 32 of the Law 34/2002, of 11th July, on Services of the Information Society and E-Commerce⁷⁰ (*Ley 34/2002, de 11 de julio, de Servicios de la Sociedad de la Información y de Comercio Electrónico*);
- ❑ Section 37-38 of the Law 16/1987, of 30th July, on Land Transportation System⁷¹ (*Ley 16/1997, de Ordenación de los Transportes Terrestres*);
- ❑ Section 87-88 of the Law 10/1990, of 15th October, on Sport⁷² (*Ley 10/1990, de 15 de octubre, del Deporte*);

The Law 60/2003, of 23rd December, on Arbitration always serves as the general background regulating arbitration.

2. Mediation schemes

According to Section 4 b) of the Order 636/1993, the Consumer Arbitration Board has as principal function to administrate, not to solve, the dispute and has to mediate in the disputes arising from consumers' claims. Sometimes, the Board wants the dispute to be solved before the hearings. In this case, the Arbitration Board can use mediation schemes to obtain the parties' agreement.

The mediation is, in theory at least, a fast and simple procedure whereby parties reach or may reach an agreement to solve the dispute. The intervention of a neutral and impartial mediator (expert in negotiation techniques and conflict resolution) makes the parties' agreement easier. The mediator, given his knowledge about the law (in this case, consumer law), can show the advantages and disadvantages of preserving the relationship and avoiding a lawsuit.

In order to apply for a mediation scheme, the dispute must arise from a contractual relation between a consumer and a professional; "consumer according to the law"; and the dispute should not be included in the exclusion's causes stipulated for arbitration.

Parties in this scheme do not have to incur any costs. Furthermore, awards do not bind legally and are not enforceable.

3. Conciliation schemes

According to Section 12.4 of the Order 636/1993⁷³, the Arbitration Panel can urge the conciliation during the hearings. This possibility is optional, not mandatory.

⁷⁰ BOE num. 166, of 12th July 2002.

⁷¹ BOE num. 182, of 31st July 1987.

⁷² BOE num. 249, of 17th October 1990.

In consumer disputes, conciliation is the mechanism, whereby a third person (a consumer technician) advises consumers and professionals in order to reach an agreement. A conciliator does not impose his or her decision, but gives advice and stimulates the agreement. If agreement is achieved, it will be incorporated into the arbitration award and will become firm and definitive.

4. Other schemes

Next to the above-mentioned schemes, there are other alternative means of consumer redress:

- ❑ Spanish System of Commercial Communication Autoregulation (*Sistema Español de Autorregulación de la Comunicación Comercial - AUTOCONTROL*) is an association created by the major Spanish advertisers, Advertising Agencies, Communication Agencies and Professional Associations in this field. The Advertising Jury (*Jurado de la Publicidad*) is the only Spanish body that, together with the Consumer Arbitration System, has been recognized by the European Commission. Its consumer redress is based on the activity of the Advertising Jury of AUTOCONTROL, which solves the disputes arising from the violation of an Ethical Code in advertising called CONFIANZA ON-LINE, and the Consumer National Board (after the mediation of AECEM-Fecemd), which solves the electronic trade with consumers' disputes.
- ❑ Spanish Central Bank Claim System (*Servicio de Reclamaciones del Banco de España*). This system protects financial services' consumers. Claimants against the financial institutions are not only individual financial services' consumers, but also associations and organisations on behalf of their clients, or in defence of collective interests. If the financial institutions belong to another European Union country, claims may be introduced through FIN-NET, a European network solving cross-border financial disputes.

Is there any data or an evaluation report available on the consumer relevant use of the ADR scheme(s)?

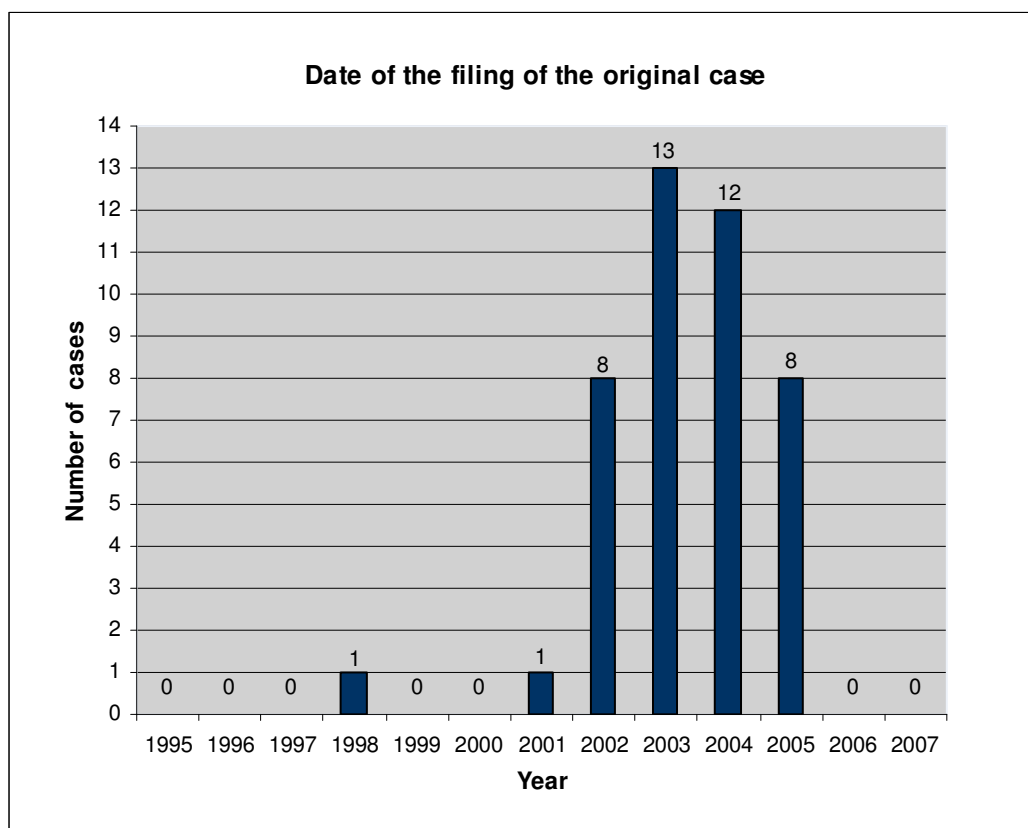
See Annex: Data about ADR schemes in Spain.

Please estimate the threshold for claims (in Euro) under which a rational consumer would refrain from seeking redress through an ADR scheme?

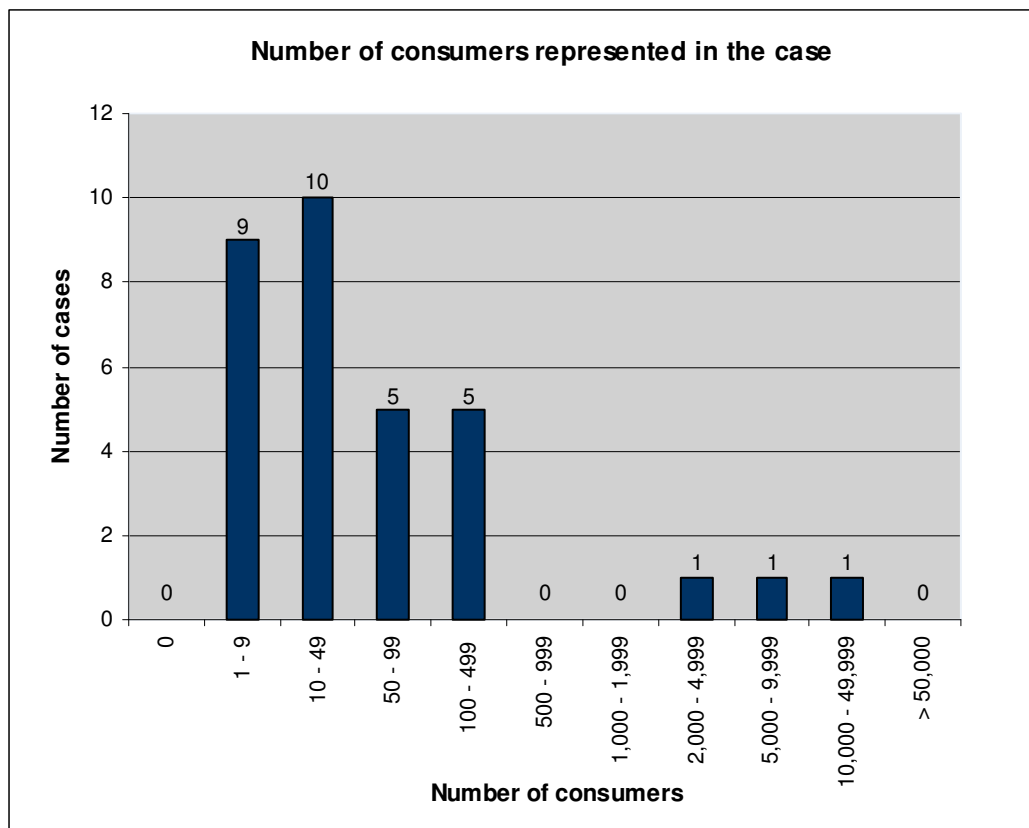
Not available.

⁷³ Section 42.1 of the Order 231/2008.

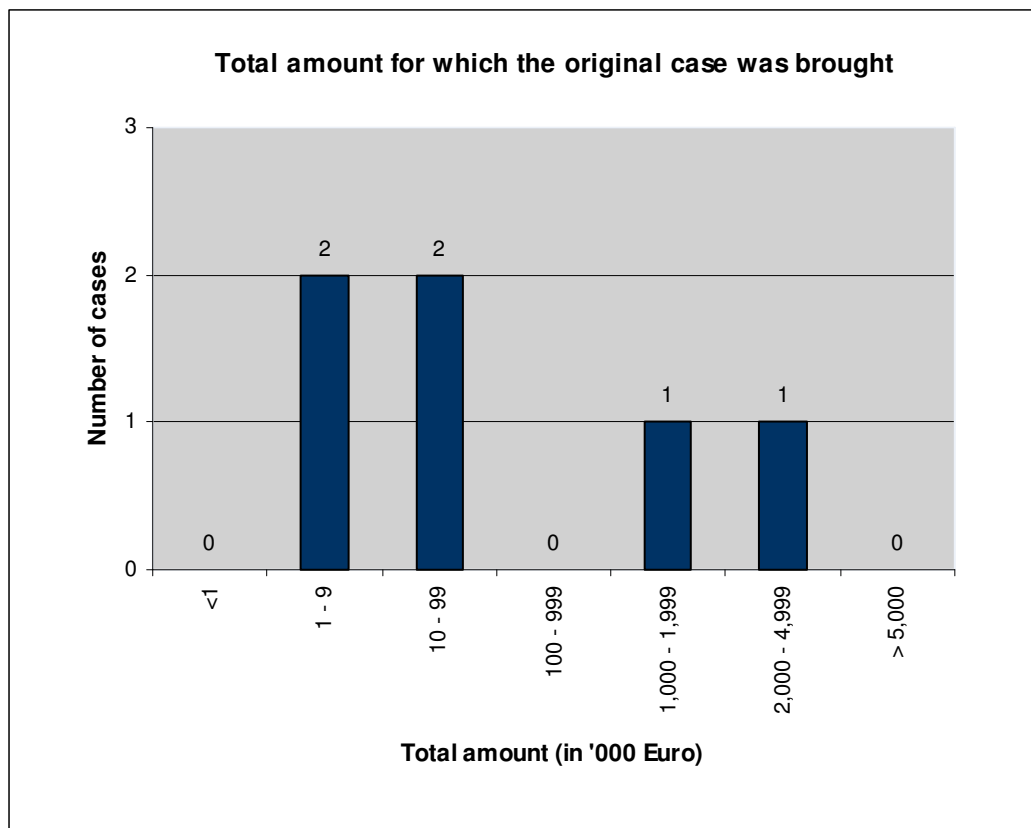
1.8 ANNEX
Annex 1: Case statistics



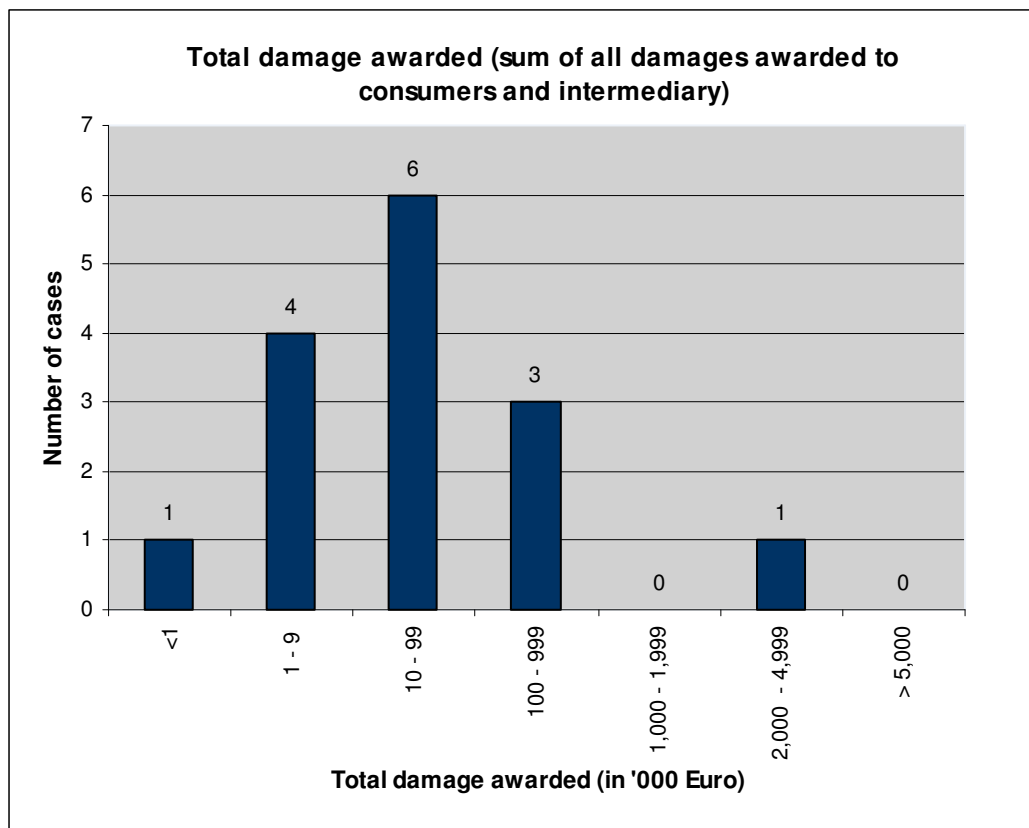
Note: No data available for 6 cases



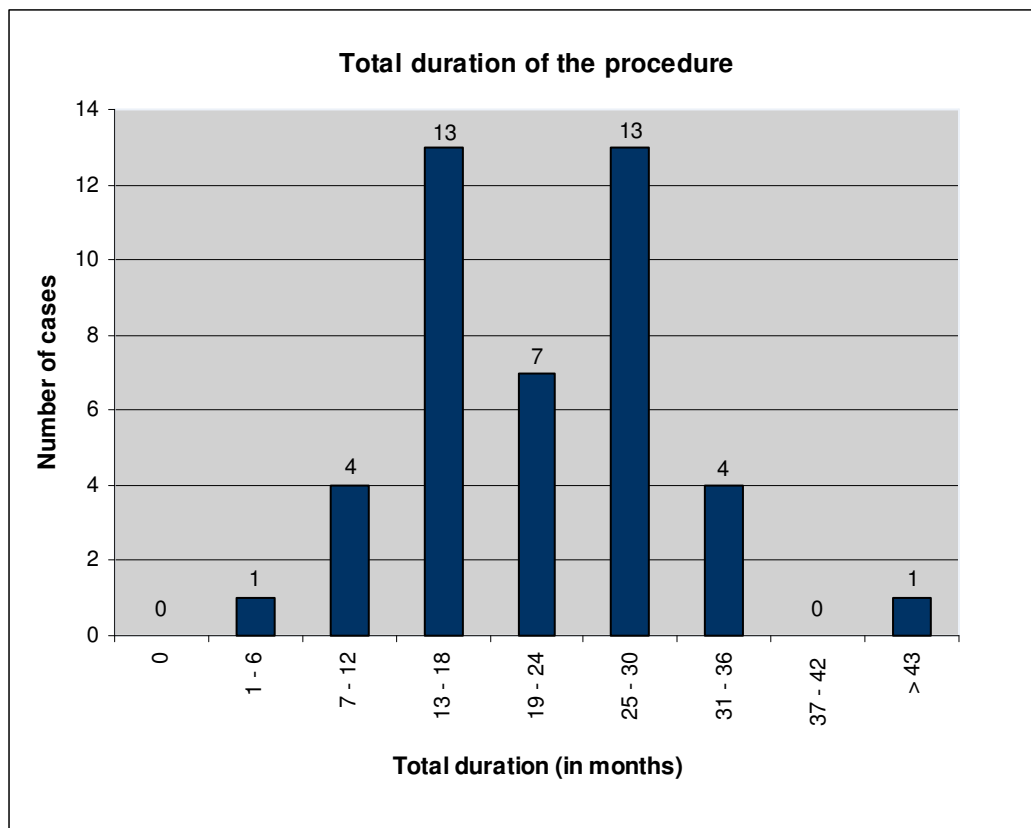
Note: No data available for 17 cases



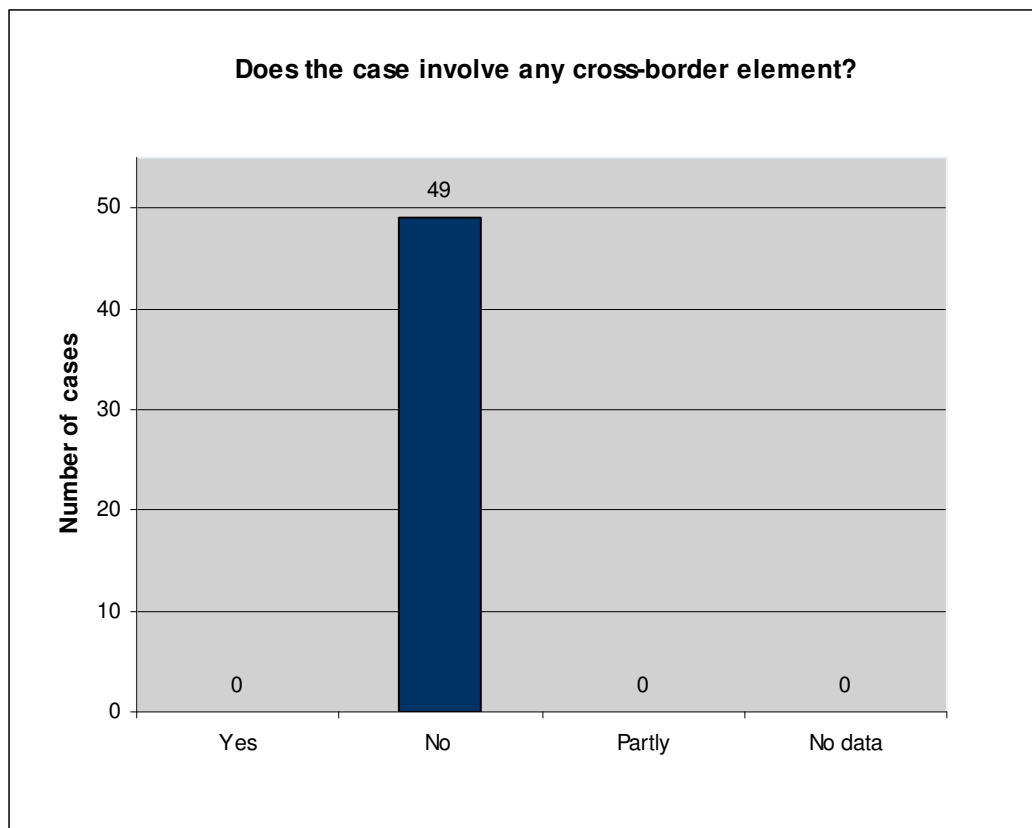
Note: No data available for 43 cases



Note: No data available for 34 cases



Note: No data available for 6 cases



Annex 2: Detailed presentation of legal basis for collective redress in Spain

The LEC regulates the action in defense of rights and interests of consumers (see main part of country report).

Before the LEC, collective actions were regulated exclusively by Sections 7.3 of the *Ley Orgánica 6/1985, de 6 de Julio, del Poder Judicial*⁷⁴ (Organic Law 6/1985, of 6th July, of Judicial Power; LOPJ) and 51 of the *Constitución española* (Spanish Constitution; CE) of 1978.

- ❑ **Section 7.3 LOPJ:** “Courts and Tribunals will protect legitimate rights and interests, both individuals and collective, and will prevent defenselessness in either case. For the defense of the later, standing will be recognized to corporations, associations and groups that turn out to be affected or that are legally entitled to promote and defend them”⁷⁵.
- ❑ **Section 51 CE:** “1. The public authorities shall guarantee the defense of consumers, protecting their safety, health, and legitimate economic interests through effective procedures.
 2. The public authorities shall promote the information and education of consumers and users, foster their organisations, and hear them in those questions that could affect them under the terms that the law shall establish.
 3. Within the framework of the provisions of the foregoing paragraphs, the law shall regulate domestic commerce and the system of licensing commercial products”⁷⁶.

There are some Sections of the LEC that are applied to this action specifically. In the other questions, general provisions in the LEC will apply.

Relevant Sections in this matter are the following:

- ❑ **Section 6.1.7^o (Capacity to be a party):** “The following will enjoy capacity to be a party in the proceedings before Civil Courts: (...) The groups of consumers or users affected by a damaging fact, when the individuals that are part of the group are determined or easy to determine. In order to file a claim, it is necessary that the group is formed by a majority of the affected people”⁷⁷.

⁷⁴ BOE num. 157, of 2 July 1985.

⁷⁵ “Los juzgados y tribunales protegerán los derechos e intereses legítimos, tanto individuales como colectivos, sin que en ningún caso pueda producirse indefensión. Para la defensa de estos últimos se reconocerá la legitimación de las corporaciones, asociaciones y grupos que resulten afectados o que estén legalmente habilitados para su defensa y promoción”.

⁷⁶ “1. Los poderes públicos garantizarán la defensa de los consumidores y usuarios, protegiendo, mediante procedimientos eficaces, la seguridad, la salud y los legítimos intereses económicos de los mismos.
2. Los poderes públicos promoverán la información y la educación de los consumidores y usuarios, fomentarán sus organizaciones y oírán a éstas en las cuestiones que puedan afectar a aquéllos, en los términos que la ley establezca.

3. En el marco de lo dispuesto por los apartados anteriores, la ley regulará el comercio interior y el régimen de autorización de productos comerciales”.

⁷⁷ “Podrán ser parte en los procesos ante los tribunales civiles: Los grupos de consumidores o usuarios afectados por

- ❑ **Section 7.7 (Appearance in court and representation):** “People who de facto or because of agreements of the entities without personality cited in Section 6.1.7⁹ and 6.2 act on their behalf in front of third parties will appear in court in their representation”⁷⁸.

- ❑ **Section 11 (Procedural standing for the defense of rights and interests of consumers and users):**

“1. Without prejudice of the individual procedural standing of the affected people, the consumers and users associations that have been legally incorporated, are acknowledged procedural standing to defend in Court the rights and interests of their members and those of the association, as well as the general interests of the consumers and users.

2. When the people that have been affected by a damaging fact are a group of consumers or users the members of which are perfectly determined or are easy to determine, the procedural standing to undertake the defense of the collective interests corresponds to the associations of consumers and users, to the entities legally incorporated whose goal is the defense or protection of those, as well as to the groups of affected people themselves.

3. When the people affected by a damaging action are a plurality of indeterminate consumers, or are hard to determine, the procedural standing to defend in Court those diffused interests will correspond exclusively to the associations of consumers and users that, pursuant to the law, are representative. (...)”⁷⁹.

- ❑ **Section 13.1 (Participation of non plaintiffs and defendants originally):** “Whereas the proceedings are pending, those who show a direct and rightful interest in the result of the proceedings will be able to be admitted as plaintiff or defendant. In particular, any consumer or user will be able to participate in the proceedings initiated by the entities legally recognized to protect their interests”⁸⁰.

un hecho dañoso cuando los individuos que lo compongan estén determinados o sean fácilmente determinables. Para demandar en juicio será necesario que el grupo se constituya con la mayoría de los afectados”.

⁷⁸ “Por las entidades sin personalidad a que se refiere el número 7 del apartado 1 y el apartado 2 del artículo anterior comparecerán en juicio las personas que, de hecho o en virtud de pactos de la entidad, actúen en su nombre frente a terceros”.

⁷⁹ . “1. Sin perjuicio de la legitimación individual de los perjudicados, las asociaciones de consumidores y usuarios legalmente constituidas estarán legitimadas para defender en juicio los derechos e intereses de sus asociados y los de la asociación, así como los intereses generales de los consumidores y usuarios.

2. Cuando los perjudicados por un hecho dañoso sean un grupo de consumidores o usuarios cuyos componentes estén perfectamente determinados o sean fácilmente determinables, la legitimación para pretender la tutela de esos intereses colectivos corresponde a las asociaciones de consumidores y usuarios, a las entidades legalmente constituidas que tengan por objeto la defensa o protección de éstos, así como a los propios grupos de afectados.

3. Cuando los perjudicados por un hecho dañoso sean una pluralidad de consumidores o usuarios indeterminada o de difícil determinación, la legitimación para demandar en juicio la defensa de estos intereses difusos corresponderá exclusivamente a las asociaciones de consumidores y usuarios que, conforme a la Ley, sean representativas”.

⁸⁰ “Mientras se encuentre pendiente un proceso, podrá ser admitido como demandante o demandado, quien acredite tener interés directo y legítimo en el resultado del pleito. En particular, cualquier consumidor o usuario podrá intervenir en los procesos instados por las entidades legalmente reconocidas para la defensa de los intereses de aquéllos”.

❑ **Section 15 (Publicity and participation in proceedings for the protection of collective and diffuse rights and interests of consumers and users):**

“1. In the proceedings filed by associations or entities created to protect the rights and interests of consumers and users, or in those proceedings filed by groups of affected people, everyone who could be considered a victim by reason of being consumers of the product or users of the service that originated the proceedings, will be summoned to the proceedings, so that they can claim their personal or individual interests. Summoning will be carried out by publishing the filing of the claim in media that reaches all the territorial areas where the damage of rights or interests has taken place.

2. In those proceedings where the people affected by the harmful event are determined or are easy to determine, the claimant or claimants will need to show they have had previously notified the filing of the claim to all interested people. In this case, after the summoning, the consumer or user will be able to participate in the proceedings at any stage, but will only be able to carry out those judicial acts that, at that particular stage of the proceedings, can still be carried out.

3. In those proceedings where the people affected by the harmful event are not specified or are hard to identify, the summoning will suspend the proceedings up to a maximum of a two-months period, the length of which will be determined taking into account the circumstances or the complexity of the fact, and the difficulties to identify and find out the affected people. The proceedings will be continued with the participation of all those consumers that have answered to the summoning. The individual participation of consumers or users at a later stage will not be allowed. Nevertheless, they can defend their rights or interests pursuant to articles 221 and 519 of this Act”⁸¹.

❑ **Section 78.4 (Inadmissibility of accumulation of proceedings. Exceptions):** “The rules stated in previous paragraphs will not apply to

⁸¹ “1. En los procesos promovidos por asociaciones o entidades constituidas para la protección de los derechos e intereses de los consumidores y usuarios, o por los grupos de afectados, se llamará al proceso a quienes tengan la condición de perjudicados por haber sido consumidores del producto o usuarios del servicio que dio origen al proceso, para que hagan valer su derecho o interés individual. Este llamamiento se hará publicando la admisión de la demanda en medios de comunicación con difusión en el ámbito territorial en el que se haya manifestado la lesión de aquellos derechos o intereses.

2. Cuando se trate de un proceso en el que estén determinados o sean fácilmente determinables los perjudicados por el hecho dañoso, el demandante o demandantes deberán haber comunicado previamente la presentación de la demanda a todos los interesados. En este caso, tras el llamamiento, el consumidor o usuario podrá intervenir en el proceso en cualquier momento, pero sólo podrá realizar los actos procesales que no hubieran precluido.

3. Cuando se trate de un proceso en el que el hecho dañoso perjudique a una pluralidad de personas indeterminadas o de difícil determinación, el llamamiento suspenderá el curso del proceso por un plazo que no excederá de dos meses y que se determinará en cada caso atendiendo a las circunstancias o complejidad del hecho y a las dificultades de determinación y localización de los perjudicados. El proceso se reanudará con la intervención de todos aquellos consumidores que hayan acudido al llamamiento, no admitiéndose la personación individual de consumidores o usuarios en un momento posterior, sin perjuicio de que éstos puedan hacer valer sus derechos o intereses conforme a lo dispuesto en los artículos 221 y 519 de esta Ley”.

proceedings that may be accumulated according to Sections 76 and 77 and that have been initiated in order to protect the collective and diffuse rights and interests that the laws grant to consumers and users, when the diversity of these proceedings, either initiated by the legitimate associations, entities or groups or by specific consumers and users, would not have been able to be avoided by accumulating actions or by the participation stated in Section 15⁸².

- **Section 221 (Judgments awarded in proceedings initiated by associations of consumers and users):** “1. Judgments entered in connection with claims filed by associations of consumers and users having the procedural standing referred to in section 11, shall comply with the following rules:

1. Where the claim is for monetary compensation, or in order to require the defendant to do, abstain to do, or give a specific or generic thing, the judgment shall determine which consumers and users must benefit from it according to the law. Where such determination is impossible, the judgment shall specify the details, characteristics and requirements necessary to demand payment and, where appropriate, to benefit from the enforcement of the judgment if requested by the claimant association.

2. If, as a consequence of the judgment, or resolution, an activity or conduct was declared illicit or contrary to the law, the judgment will determine whether, pursuant to the legislation regarding the protection of consumers and users, the declaration has to have procedural effects not limited to those who have been a party to the proceedings.

3. If specific consumers or users have been a party to the proceedings, the judgment will have to solve, specifically, their requests. (...)”⁸³.

⁸² “4. Lo dispuesto en los apartados anteriores no será de aplicación a los procesos, susceptibles de acumulación conforme a los artículos 76 y 77, incoados para la protección de los derechos e intereses colectivos o difusos que las leyes reconozcan a consumidores y usuarios, cuando la diversidad de esos procesos, ya sean promovidos por las asociaciones, entidades o grupos legitimados o por consumidores o usuarios determinados, no se hubiera podido evitar mediante la acumulación de acciones o la intervención prevista en el artículo 15 de esta Ley.

En tales casos, se decretará la acumulación de procesos, incluso de oficio, conforme a lo dispuesto en esta Ley”.

⁸³ 1. Sin perjuicio de lo dispuesto en los artículos anteriores, las sentencias dictadas a consecuencia de demandas interpuestas por asociaciones de consumidores o usuarios con la legitimación a que se refiere el artículo 11 de esta Ley estarán sujetas a las siguientes reglas:

1. Si se hubiere pretendido una condena dineraria, de hacer, no hacer o dar cosa específica o genérica, la sentencia estimatoria determinará individualmente los consumidores y usuarios que, conforme a las leyes sobre su protección, han de entenderse beneficiados por la condena. Cuando la determinación individual no sea posible, la sentencia establecerá los datos, características y requisitos necesarios para poder exigir el pago y, en su caso, instar la ejecución o intervenir en ella, si la instara la asociación demandante.
2. Si, como presupuesto de la condena o como pronunciamiento principal o único, se declarara ilícita o no conforme a la ley una determinada actividad o conducta, la sentencia determinará si, conforme a la legislación de protección a los consumidores y usuarios, la declaración ha de surtir efectos procesales no limitados a quienes hayan sido partes en el proceso correspondiente.
3. Si se hubieren personado consumidores o usuarios determinados, la sentencia habrá de pronunciarse expresamente sobre sus pretensiones (...).”.

- ❑ **Section 222.3 (*Res iudicata*):** “*Res iudicata* effect of judgments shall affect all the parties to the proceedings, including their heirs, as well as non-litigants whose rights underpin the procedural standing of the parties under Section 11 of this Act (...)”⁸⁴.
- ❑ **Section 256.1.6º (Types of preliminary proceedings and how to apply for them):** “Pursuant to a request by that who intends to initiate a proceeding for the defense of the interests of consumers and users, in order to specify the members of the group of affected people, in those cases in which, while the affected people are not identified, they could easily be. To that effect, the Court will adopt the necessary steps to find out the identity of the members of the group, taking into account the circumstances of the case as well as the data provided by the applicant. These might include the requirement to the defendant to collaborate in such identification”⁸⁵.
- ❑ **Section 519 (Execution by consumers or users of judgments which do not identify the individuals that are to be beneficiary of the judgement):** “Where the judgments referred to in rule one section 221 do not determine the consumers or users who should benefit from the award, the enforcement court, on the application of one or several interested parties and upon hearing the defendant, shall render an order determining whether, according to the information, characteristics, and requirements set out in the judgment, applicants are recognized as being beneficiaries of the award. The beneficiaries may then apply for enforcement by providing a copy of the award”⁸⁶.

⁸⁴ “La cosa juzgada afectará a las partes del proceso en que se dicte y a sus herederos y causahabientes, así como a los sujetos, no litigantes, titulares de los derechos que fundamenten la legitimación de las partes conforme a lo previsto en el artículo 11 de esta Ley (...)”.

⁸⁵ “6. Por petición de quien pretenda iniciar un proceso para la defensa de los intereses colectivos de consumidores y usuarios al objeto de concretar a los integrantes del grupo de afectados cuando, no estando determinados, sean fácilmente determinables. A tal efecto el tribunal adoptará las medidas oportunas para la averiguación de los integrantes del grupo, de acuerdo a las circunstancias del caso y conforme a los datos suministrados por el solicitante, incluyendo el requerimiento al demandado para que colabore en dicha determinación”.

⁸⁶ “Cuando las sentencias de condena a que se refiere la regla primera del artículo 221 no hubiesen determinado los consumidores o usuarios individuales beneficiados por aquélla, el tribunal competente para la ejecución, a solicitud de uno o varios interesados y con audiencia del condenado, dictará auto en que resolverá sí, según los datos, características y requisitos establecidos en la sentencia, reconoce a los solicitantes como beneficiarios de la condena. Con testimonio de este auto, los sujetos reconocidos podrán instar la ejecución”.

Annex 3: Country literature on collective redress

- ❑ Acosta Estévez, J. B. (1995): *Tutela procesal de los consumidores*, Bosch, Barcelona.
- ❑ Almagro Nosete, J. (2004): “Protección procesal de los intereses colectivos o difusos en la Ley de Enjuiciamiento”, *Actualidad civil*, num. 1, pp. 5-12.
- ❑ Alvariño Velga, C. (2003): “La tutela judicial efectiva de las Asociaciones de Consumidores y Usuarios, tras la Ley de Enjuiciamiento Civil 1/2000”, *Boletín de información del Ministerio de Justicia*, Year 57, num. 1953, pp. 3659-3694.
- ❑ Andrés Ciurana, B.; Calderón Cuadrado, M. P. (2003): “La sentencia dictada en procesos promovidos por asociaciones de consumidores y usuarios”, in Barona Vilar, S. (coord.), *Tutela de los consumidores y usuarios en la Ley de Enjuiciamiento Civil*, 2nd. ed., Tirant lo Blanch, Valencia, pp. 361-413.
- ❑ Álvarez Alarcón, A. (2000): “La protección de los consumidores y usuarios: intereses individuales e intereses de grupo”, in Alonso-Cuevillas Sayrol, V. (coord.), *Instituciones del nuevo proceso civil. Comentarios sistemáticos a la Ley 1/2000*, vol. I., Difusión Jurídica y Temas de Actualidad, Barcelona.
- ❑ Banacoloche Palao, J. (2001): “Comentario al art. 15 LEC”, in De la Oliva Santos, A.; Díez-Picazo Jiménez, I.; Vegas Torres, J.; Banacoloche Palao, J., *Comentarios a la Ley de Enjuiciamiento Civil*, Civitas, Madrid.
- ❑ Barona Vilar, S. (coord.) (2003), *Tutela de los consumidores y usuarios en la Ley de Enjuiciamiento Civil*, 2nd. ed., Tirant lo Blanch, Valencia.
- ❑ Barona Vilar, S. (2003): “Reflexiones en torno a la tutela procesal de los consumidores y usuarios: la política de protección de los mismos en la Unión Europea: líneas de presente y de futuro”, in Barona Vilar, S. (coord.), *Tutela de los consumidores y usuarios en la Ley de Enjuiciamiento Civil*, Tirant lo Blanch, Valencia, pp. 25-74.
- ❑ Bellido Penadés, R. (2002), “La tutela de los intereses de los consumidores en la nueva Ley de Enjuiciamiento Civil”, *Tribunales de Justicia: Revista Española de Derecho Procesal*, num. 12, pp. 1-20.
- ❑ Bujosa Vadell, L. M. (1995): *La protección jurisdiccional de los intereses de grupo*, Barcelona, Bosch.
- ❑ Bujosa Vadell, L. M. (2000): “El acceso a la justicia de los consumidores y usuarios: introducción”, in García García, L. M. (coord.); León Arce, A. (dir.), *Derechos de los consumidores y usuarios: doctrina, normativa, jurisprudencia, formularios*, Tirant lo Blanch, Valencia, pp. 1083-1201.
- ❑ Bujosa Vadell, L. M. (2001): “La protección de los intereses de los consumidores y usuarios en la nueva Ley de Enjuiciamiento Civil”, *Revista Jurídica de Cataluña*, vol. 100, num. 4, Barcelona, pp. 989-997.

- ❑ Campuzano Tomé, H. (2004): “Tutela preventiva y tutela reparadora de los intereses colectivos, difusos e individuales homogéneos: su regulación a la luz de la LEC y de la Ley de 28 de octubre de 2002”, in González Porras, J. M.; Méndez González, F. P. (coord.), *Libro homenaje al profesor Manuel Albaladejo García*, vol. 1, Colegio de Registradores de la Propiedad y Mercantiles de España, Murcia, pp. 765-800.
- ❑ Candelario Marcías, M. I. (1999): “La defensa de los consumidores y usuarios: Ley 7/1998, de 13 de abril sobre condiciones generales de la contratación”, in Espiau Espiau, S. (coord.), *Las condiciones generales de la contratación y la Ley 7/1998, de 13 de Abril*, Marcial Pons, Madrid, pp. 111-142.
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Annex 4: Data about ADR schemes in Spain⁸⁷

GENERAL DATA 2005-2006

	2005	2006
Received applications	52.233	56.476
Solved applications (previous pending applications included)	51.596	59.025
Filed because of non acceptance of arbitration by the company or by other causes	16.223	17.425
Solved by award or mediation	25.983	32.696
Non admitted, moved or desisted	9.390	8.904

EVOLUTION OF THE NUMBER OF ARBITRATION APPLICATIONS (1988-2006)

YEAR	NUMBER OF APPLICATIONS	ABSOLUTE INCREASE	INCREASE %
1989	1.880		
1990	1.475	- 405	-21,54
1991	2.955	1.480	100,34
1992	4.433	1.478	50,02
1993	5.376	943	21,27
1994	5.838	462	8,59
1995	10.389	4.551	77,95
1996	9.482	- 907	- 8,73
1997	12.473	2.991	31,54
1998	17.676	5.203	41,71

⁸⁷ Source: Instituto Nacional del Consumo (<http://www.consumo-inc.es/Arbitraje/docs/arbitraje0506.doc>).

1999	24.195	6.519	36,88
2000	26.543	2.348	9,70
2001	34.183	7.640	28,78
2002	42.119	7.936	23,22
2003	58.504	16.385	38,90
2004	65.577	4.608	7,88
2005	52.333	-13.244	-20,19%
2006	56.476	4.143	+7,92%

GENERAL EFFICIENCY OF THE SYSTEM

	2005		2006	
	Total	%	Total	%
Received applications	52.233	100	56.476	100
Solved applications (previous pending applications included)	51.596	98,87	59.025	104,51

RECEIVED APPLICATIONS – SOLVED BY AWARD OR MEDIATION

	2004		2005		2006	
	Total	%	Total	%	Total	%
Received applications	65.577	100	52.333	100	56.476	100

Solved by award or mediation	19.559	29,82	25.983	49,64	32.696	57,89
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APPLICATIONS SOLVED BY MEDIATION OR AWARD

	2004		2005		2006	
	Total	%	Total	%	Total	%
Solved by award or mediation	19.559	100	25.983	100	32.696	100
By mediation	4.060	20,76	10.530	40,53	17.089	52,26
By award	15.499	79,24	15.453	59,47	15.607	47,73

TOTAL SOLVED APPLICATIONS

	2005		2006	
	Total	%	Total	%
SOLVED APPLICATIONS	51.596	100	59.025	100
Filed because of non acceptance of the arbitration by the company or other causes	16.223	31,46	17.425	29,52
Solved by award or mediation	25.983	50,36	32.696	55,39
Non admitted, moved or desisted	9.390	18,19	8.904	15,09

DATA BY REGIONAL JUNTA ARBITRAL

		APPLICATIONS		FILED APPLICATIONS AND APPLICATIONS SOLVED BY AWARD OR MEDIATION	
JUNTA ARBITRAL	RECEIVED	SOLVED	FILED	AWARD	MEDIATION
ANDALUCÍA	2460	1687	395	1101	117
ARAGÓN	1158	1572	615	488	413
ASTURIAS	877	854	475	244	72
BALEARES	719	673	314	220	129
CANARIAS	1519	1196	533	32	497
CANTABRIA	1766	1615	267	405	913
CASTILLA-LA MANCHA	1192	1644	699	0	180
CASTILLA-LEÓN	1002	920	522	210	148
CATALUÑA	5876	7547	1395	1823	2522
CEUTA	41	42	23	9	4
MELILLA	88	63	22	14	25
COMUNIDAD DE MADRID	4442	3591	1299	1060	869
EXTREMADURA	1039	825	294	102	401
GALICIA	4376	4520	1861	390	1993
LA RIOJA	435	397	193	1	200
MURCIA	1969	1896	570	532	564
NAVARRA	1172	1103	176	507	342
PAÍS VASCO	845	858	461	123	253
VALENCIA	1418	1425	773	159	280
TOTAL	32.394	32.428	10.887	7.420	9.922

PROVINCIAL JUNTAS ARBITRALES (2005)

JUNTA ARBITRAL	APPLICATIONS		FILED APPLICATIONS AND APPLICATIONS SOLVED BY AWARD OR MEDIATION		
	RECIBIDAS	RESUELTAS	ARCHIVADAS	LAUDOS	MEDIACIONES
ALICANTE	727	726	200	124	281
ALMERÍA	115	113	42	21	38
CÁDIZ	314	396	101	56	152
CASTELLÓN	431	428	122	64	194
CÓRDOBA	436	360	69	11	199
GRANADA	104	141	2	47	72
HUELVA	133	114	21	29	44
JAÉN	382	358	72	58	128
MÁLAGA	137	319	98	18	72
SEVILLA	796	650	132	6	357
TOTAL	3.575	3.605	859	434	1.537

REGIONAL JUNTAS ARBITRALES (2006)

JUNTA ARBITRAL	APPLICATIONS	FILED APPLICATIONS AND APPLICATIONS SOLVED BY AWARD OR MEDIATION			
	RECEIVED	SOLVED	FILED	AWARDS	MEDIATIONS
ANDALUCÍA	1681	1663	366	1035	179
ARAGÓN	1670	1757	698	508	487
ASTURIAS	791	659	406	270	83
BALEARES	787	745	309	304	102
CANARIAS	980	882	468	234	123
CANTABRIA	2051	2045	328	583	1114
CASTILLA-LA MANCHA	1331	1602	409	108	219
CASTILLA-LEÓN	1005	1034	484	341	165
CATALUÑA	7338	7238	1154	3186	2859
CEUTA	95	77	14	7	49
MELILLA	71	124	34	48	42

COMUNIDAD DE MADRID	4857	5932	2297	2306	1092
EXTREMADURA	811	871	286	190	384
GALICIA	5314	5279	2169	1001	1823
LA RIOJA	460	502	178	16	298
MURCIA	2370	1347	356	477	415
NAVARRA	1397	1231	213	495	310
PAÍS VASCO	843	803	269	234	283
VALENCIA	1398	1917	567	268	388
TOTAL	35.250	35.708	11.005	11.611	10.415

PROVINCIAL JUNTAS ARBITRALES (2006)

JUNTA ARBITRAL	APPLICATIONS	FILED APPLICATIONS AND APPLICATIONS SOLVED BY AWARD OR MEDIATION			
	RECEIVED	SOLVED	RECEIVED	SOLVED	RECEIVED
ALICANTE	721	679	189	115	256
ALMERÍA	192	178	96	38	32
CÁDIZ	182	171	34	28	98
CASTELLÓN	491	433	108	63	234
CÓRDOBA	445	287	59	10	184
HUELVA	1192	247	36	129	75
JAÉN	362	296	78	57	126
MÁLAGA	177	258	75	30	101
SEVILLA	845	592	203	57	250
TOTAL	4.607	3.141	878	527	1.356

TERRITORIAL MANAGEMENT

	JUNTAS AUTONÓMICAS (19)				JUNTAS PROVINCIALES (10)			
	2005		2006		2005		2006	
	Total	%	Total	%	Total	%	Total	%
RECEIVED APPLICATIONS	32.394	100	35.25	100	3.575	100	4.607	100
TOTAL SOLVED APPLICATIONS	32.428	110,1	35.70	101,29	3.605	100,8	3.141	68,17
FILED	10.887	33,57	11.00	30,82	859	23,82		0
AWARDS	7.420	22,88	11.61	32,51	434	12,04	878	27,95
MEDIATION	9.922	30,59	10.41	29,17	1.537	42,63	527	16,76

MANAGEMENT OF THE NATIONAL JUNTA ARBITRAL (2006)

JUNTA ARBITRAL NACIONAL	APPLICATIONS		FILED APPLICATIONS AND APPLICATIONS SOLVED BY AWARD OR MEDIATION		
	RECEIVED	SOLVED	FILED	AWARDS	MEDIATIONS
JUNTA NACIONAL	25	22	15	1	6
TOTAL	25	22	15	1	6

Rights of the Arbitral Court of Madrid⁸⁸

	Euros	Pesetas
Hasta 3.000.000 Ptas. (18.000 €)	60,00	9.983
Exceso hasta 10.000.000 Ptas. (60.100 €)	150,00	24.958
Exceso hasta 50.000.000 Ptas. (300.500 €)	300,00	49.916
Exceso hasta 100.000.000 Ptas. (601.000 €)	600,00	99.832
Exceso hasta 500.000.000 Ptas. (3.005.000 €)	3.000,00	499.158
A partir de 500.000.000 Ptas. (3.005.000 €)	uno por mil	uno por mil

Arbitrators' fees in the Arbitral Court of Madrid⁸⁹

	Euros	Pesetas
Los primeros 3.000.000 Ptas. (18.000 €) al 10% Y en todo caso, con un mínimo de 450 Euros (Aprox. 75.000 Ptas.).	1.800,00	299.495
Exceso hasta 10.000.000 Ptas. al 8% (60.100 €)	3.375,00	561.553
Exceso hasta 25.000.000 Ptas. al 6% (150.250 €)	5.400,00	898.484
Exceso hasta 50.000.000 Ptas. al 4% (300.500 €)	6.000,00	998.316
Exceso hasta 100.000.000 Ptas. al 2% (601.000 €)	6.000,00	983.160
Exceso hasta 200.000.000 Ptas. al 0,5% (1.202.000 €)	3.000,00	499.158
Exceso hasta 500.000.000 Ptas. al 0,3% (3.005.000 €)	5.400,00	898.484
Exceso sobre 500.000.000 Ptas. al 0,1% .		

⁸⁸ It depends on the economic content of the arbitration. Source: *Costas del Arbitraje*, approved by the Junta de Gobierno (13.10.1994) (available in http://www.icam.es/docs/ficheros/200402110004_6_0.pdf).

⁸⁹ It depends on the economic content of the arbitration. Source: *Costas del Arbitraje*, approved by the Junta de Gobierno (13.10.1994) (available in http://www.icam.es/docs/ficheros/200402110004_6_0.pdf).

Costs of filing and registration of the case: 350 €

Fees and costs: Arbitrators fees and administrative costs, which will be less if the whole arbitration process is not completed

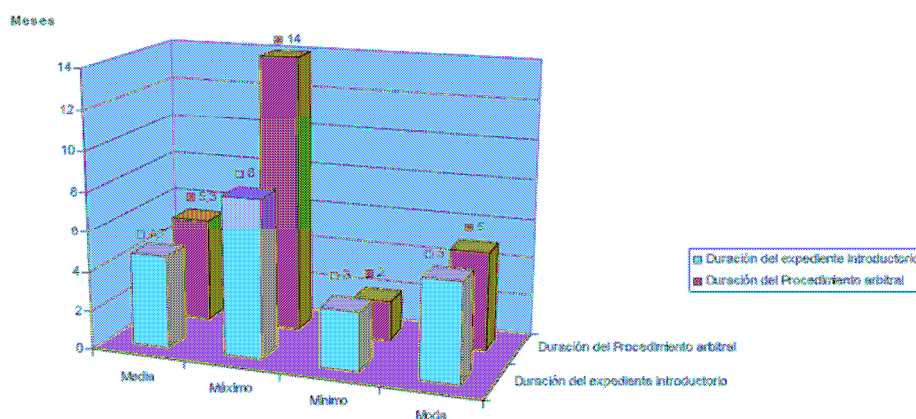
	SUM UNDER LITIGATION (Euros)		MINIMUM (Euros)	MAXIMUM (Euros)
Up to	20.000		1.800	4.000
From	20.001	to 45.000	4.000	6.750
From	45.001	to 90.000	6.750	9.000
From	90.001	to 180.000	9.000	14.400
From	180.001	to 600.000	14.400	24.000
From	600.001	to 1.500.000	24.000	30.000
	Over	to 1.500.000	30.000	30.000 + 0,5% on the excess

All the amounts, including the Filing and Registration Fee and the fees of arbitrators and administrative costs shall be subject to VAT.

Charges in Tribunal Arbitral of Barcelona⁹⁰

Duration of Arbitration in Tribunal Arbitral of Barcelona

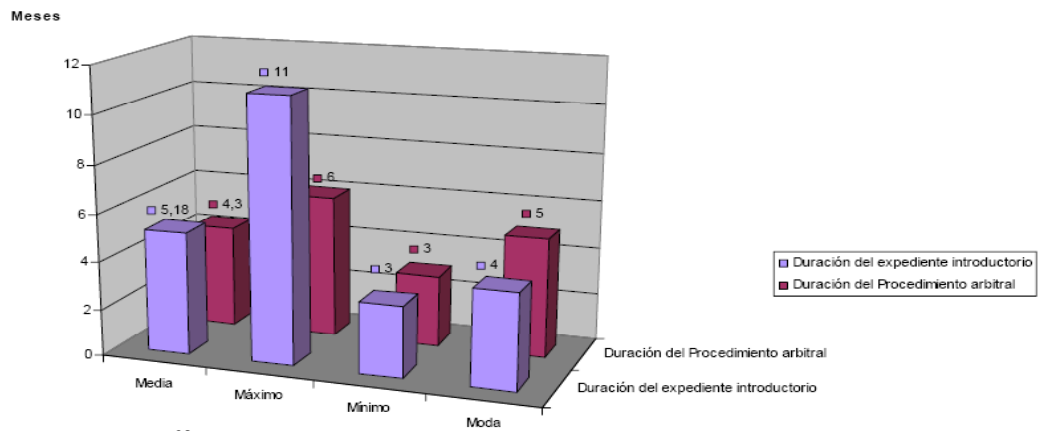
Initiated in 2006⁹¹:



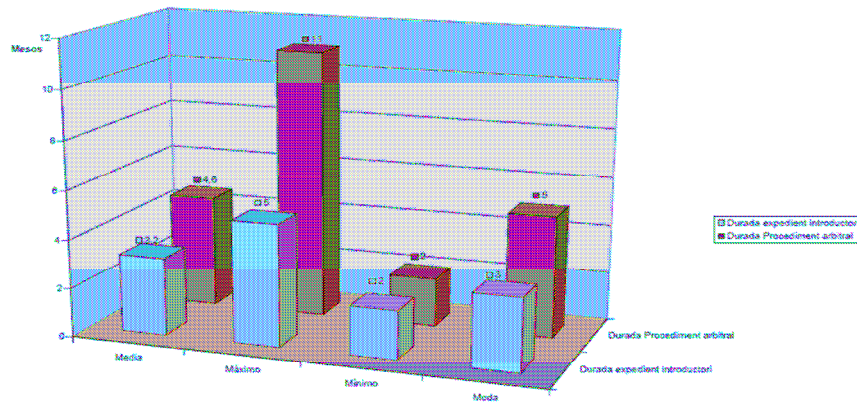
⁹⁰ Source: <http://www.tab.es/ingles/index.htm>.

⁹¹ Source: http://www.tab.es/doc/estadistiques_2006_eng.pdf.

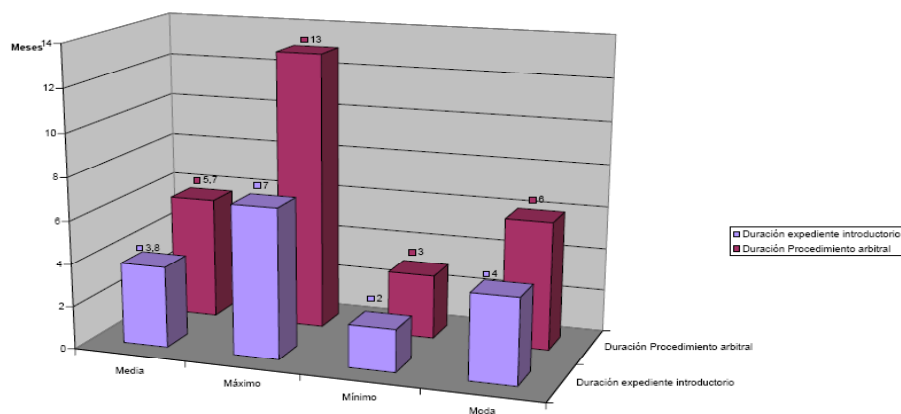
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Initiated in 2004⁹³:



Initiated in 2003⁹⁴:

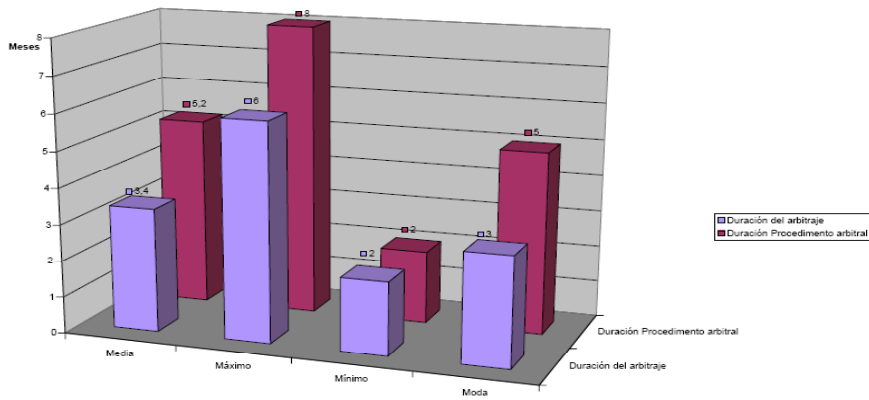


⁹² Source: http://www.tab.es/doc/estadistiques_2005_eng.pdf.

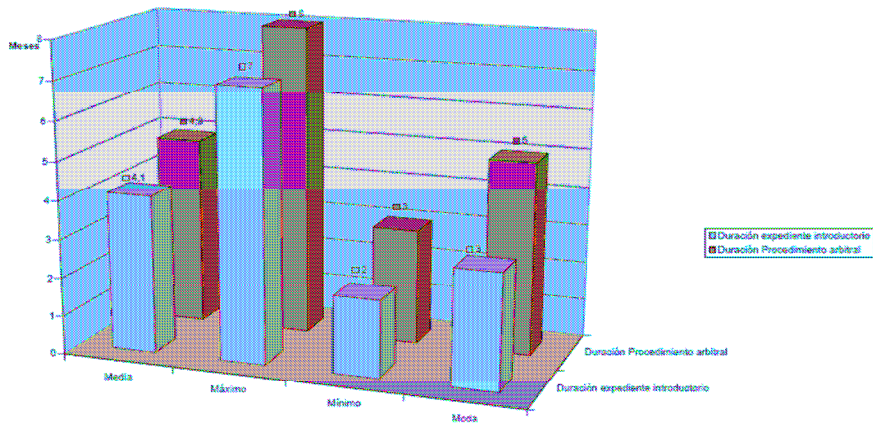
⁹³ Source: http://www.tab.es/doc/estadistic_2004_eng.pdf.

⁹⁴ Source: http://www.tab.es/doc/estadistic_2003_eng.pdf.

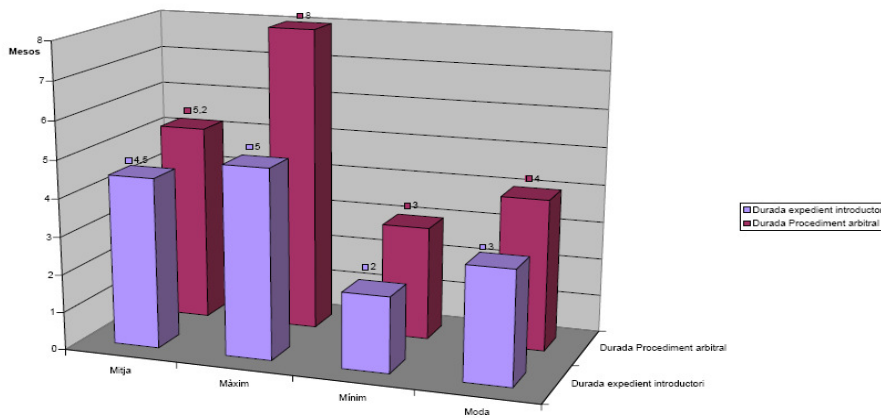
Initiated in 2002⁹⁵:



Initiated in 2001⁹⁶:



Initiated in 2000⁹⁷:



⁹⁵ Source: http://www.tab.es/doc/estadistic_2002_eng.pdf.

⁹⁶ Source: http://www.tab.es/doc/estadistic_2001_eng.pdf.

⁹⁷ Source: http://www.tab.es/doc/estadistic_2000_eng.pdf.

Annex 5: Organisations interviewed

- Ministry of Justice
- Instituto Nacional del Consumo
- Consejo de Consumidores y Usuarios
- Asociación de Usuarios de Bancos, Cajas y Seguros (ADICAE)
- Confederación de Consumidores y Usuarios (CECU) - Madrid
- Organización de Consumidores y Usuarios (OCU)
- 1 Lawyer involved in collective redress
- 1 Judge involved in collective redress

Date of interviews: February 2008