

Appeals

Contributing editors

Mark A Perry and Perlette Michèle Jura



2018

GETTING THE
DEAL THROUGH 

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Preface

Appeals 2018

Second edition

Getting the Deal Through is delighted to publish the second edition of *Appeals*, which is available in print, as an e-book, and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Austria and Switzerland.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Mark A Perry and Perlette Michèle Jura of Gibson Dunn & Crutcher LLP, for their continued assistance with this volume.

GETTING THE
DEAL THROUGH 

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Spain

Ángel Pérez Pardo de Vera and Francisco Javier Rodríguez Ramos

Uría Menéndez

1 Outline and explain the general structure of your country's court system as it relates to the commercial appellate process.

The Spanish court system is formed of five subject-matter jurisdictions:

- civil (including commercial);
- criminal;
- administrative;
- labour; and
- military.

Territorially, the judicial system is divided into judicial districts (covering one or more municipalities), provinces and autonomous regions. Civil courts have jurisdiction over contractual claims, tort law and, in general, any matter that does not fall under other areas of law. Every provincial capital (as well as other large Spanish cities) also has specialised commercial courts that hear claims relating to:

- insolvency;
- unfair competition;
- antitrust;
- industrial property;
- intellectual property and advertising matters;
- corporate law;
- international or national transport regulations;
- maritime law;
- collective actions regarding general contracting conditions; and
- appeals against specific decisions of the General Directorate of Registries and Notaries.

If a judicial district lacks a specialised commercial court, the courts of first instance will have jurisdiction over the corresponding matters.

Appeals against final rulings handed down by courts of first instance or commercial courts are heard by the civil chamber of the relevant provincial court. In certain cases, the provincial court's decision may be appealed to the civil chamber of the Supreme Court (the Supreme Court has jurisdiction over all Spanish territory).

2 Are there appellate courts that hear only civil matters?

Provincial courts hear civil and commercial matters. Specific chambers of the provincial courts are specialised in commercial matters (for example, the 18th chamber of the Provincial Court of Madrid and the 15th chamber of the Provincial Court of Barcelona conduct appeals against decisions of commercial trial courts). The city of Alicante has a special commercial court with jurisdiction over all Spanish territory and is specialised in resolving claims lodged in relation to European Community trademarks and Community drawings and models. Decisions handed down by this specialised court are subject to appeal to a specialised section of Alicante's provincial court, known as the Community Trademark Court. Second-level appeals on civil and commercial law are heard by the civil chamber of the Supreme Court.

3 Are appeals from administrative tribunals handled in the same way as appeals from trial courts?

Administrative appeals are governed by their own regulations with their own particularities in terms of procedural requirements, deadlines, production and admission of evidence and the provisional enforcement of judgments. In administrative law, contentious-administrative

courts are the equivalent of civil courts of first instance. They hear, among others, cases related to resolutions of public authorities or their failure to act, the financial liability of public authorities, as well as challenges against general provisions ranking lower than law or legislative decrees. Decisions handed down by contentious-administrative courts may be appealed to the high court of justice of the corresponding autonomous region. Under certain circumstances, judgments of a high court of justice can be appealed to the Supreme Court.

4 Is there a separate appellate bar or other requirement for attorneys to be admitted before appellate courts?

Any lawyer qualified to appear before the courts (attorneys are required to complete a specific postgraduate programme, pass an entrance examination and be members of the bar association) can lodge appeals.

5 If separate jurisdictions exist for particular territorial subdivisions or subject matters, explain their main differences as to commercial appeals.

There are no separate jurisdictions for particular territorial subdivisions. The Spanish court system is structured according to subject-matter jurisdictions. Each jurisdiction – civil (including commercial), criminal, administrative, labour and military – has its own regulations regarding appeals.

6 What are the deadlines for filing an appeal in a commercial matter?

Appeals against first and second instance final rulings must be lodged within 20 working days of the notification of the appealed decision. Other appeals against interlocutory decisions handed down by judges, tribunals or court registrars must be lodged within a shorter term of five working days as from the notification.

7 What are the key steps a litigant must take to commence an appeal?

In general, apart from the payment of a bond (addressed in answer to question 11), there is no procedural requirement prior to lodging the appeal (there are some specific requirements in the case of appeals against final rulings in proceedings of a special nature). The appeal itself and the opposition submitted by the appellee are filed with the court that rendered the challenged decision. In the second-appeal level, the appellant must attach a certified copy of the challenged ruling. In the brief, by virtue of which the appeal is submitted, the party challenging the ruling must set out all the grounds on which it bases its claim.

8 How is the documentation for appeals prepared?

In the case of remanded appeals (those to be heard by a judicial authority other than that which issued the appealed ruling), the court that issued the challenged decision is responsible for preparing the record on appeal. The corresponding court will forward the record to the appellate court. At that time, the parties must appear before the appellate court within the legally established term (10 working days in the case of appeals against rulings of courts of first instance and 30 working days in the case of appeals against rulings of second-instance courts). If the appellant fails to appear before the appellate court within the

Update and trends

On 27 January 2017, the civil chamber of the Supreme Court reformulated the criteria to accept appeals for infringement of procedure and cassation with the intention of clarifying the 2011 rules. They form part of the appeals system and were effective immediately.

On 26 May 2017, Decree Law No. 9/2017 was enacted transposing Directive 2014/104/EU of 26 November 2014 on claims for damages arising from antitrust infringements. Among other matters, Decree Law No. 9/2017 incorporates a new regulation of the production of documents applicable to procedures of claims derived from antitrust infringements. The new mechanism entitles claimants to request that the judge order the counterparty or third parties to grant access to specific sources of evidence that are necessary to substantiate the claim. The production of documents may be requested before the proceedings

commence, along with the submission of the claim or while the proceedings are underway, provided that the claimant has presented sufficient facts and evidence to justify the viability of the claim for damages. The court with jurisdiction to deal with the request will be the court with jurisdiction to hear the main claim. The parties may appeal the order accepting or rejecting the request for production of documents and the appeal will have, in some cases, suspensive effect.

The public authorities have recently promoted measures aimed at enhancing the effectiveness, efficiency and transparency of Spanish procedural system. These measures included, among others, amendments to Spain's Basic Judiciary Law and Civil Procedure Law establishing the use of electronic systems to file documents and make judicial communications.

established time limit, the appeal will be declared withdrawn and the challenged decisions will become final.

9 In commercial matters, may litigants appeal by right or is appellate review discretionary?

The Spanish procedural system is a two-tier system: all rulings of courts of first instance may be appealed (with the exception of rulings issued in oral proceedings with a value or economic interest not exceeding €3,000). Appeals against rulings of courts of second instance are only possible under certain circumstances (see question 16). In general, the right to appeal is conditioned on the existence of a burden (ie, only the party adversely affected by the pronouncement, not the grounds, of a ruling has standing to lodge an appeal against it).

10 Can litigants appeal any ruling from a trial court, or are they limited to appealing only final judgments?

Spanish procedural law establishes the possibility of appealing not only final judgments but also interlocutory decisions issued by judges or court registrars. Some common grounds of appeal against final judgments of trial courts include the erroneous assessment of evidence, misapplication of the law, a decision's lack of congruence (inconsistency between the extension, concept and scope of the decision and the claims of the parties) or motivation, and the pronouncement in relation to the liability of the losing party to support winners' litigation costs.

11 In a typical commercial dispute, must a litigant post a bond or provide security to appeal a trial court decision?

In commercial disputes, the appellants must post a bond in order to appeal decisions of first- and second-instance courts. The bond must be posted before the appeal is lodged (nevertheless, failure to do so can be amended). The bond is not required for the lodging of oral appeals or in the case of persons entitled to legal aid. If the appeal is totally or partially granted, the bond is reimbursed to the appellant. In all other cases, the bond is granted to the Ministry of Justice and is used to cover the cost of legal aid and to promote the modernisation of Spain's administration of justice.

12 Are there special provisions for interlocutory appeals?

Interlocutory appeals are subject to shorter procedural deadlines and are heard by the court that issued the appealed decision or, in the case of specific decisions issued by court registrars, by the judge of the court in charge of the proceedings. Appeals against interlocutory decisions taken during judicial hearings are lodged and resolved orally immediately in the hearing itself. This is the case, for example, in appeals lodged against decisions by which courts of first instance admit or refuse the evidence proposed by both parties.

13 Are there special rules relating to injunctions or stays, whether entered in the trial court or on appeal?

Spanish procedural laws regulate injunctions and stays, allowing civil and commercial courts to admit any kind of interim measure to ensure the enforcement of a potential ruling in favour of the petitioner (there is no exhaustive list of these measures, so the petitioner may call for the adoption of any interim measure useful to secure the future judgment). Injunctions or stays are usually requested before the filing of a lawsuit

or together with the complaint. The court with jurisdiction to deal with the request for injunction or stay will be the court with jurisdiction to hear the main claim. The parties may appeal the order of the trial court accepting or rejecting the interim measure (the appeal will be heard by the corresponding provincial court). Under certain circumstances, parties may also request interim measures after lodging appeals against the final ruling of courts of first or second instance (in these cases, the request will be heard by the court hearing the corresponding appeal).

14 If a litigant files an appeal in a commercial dispute, does it stay enforcement of the trial court judgment?

In general, the filing of an appeal does not stay the enforcement of the trial court's judgment. Litigants may seek provisional enforcement of the first-instance judgment. Judgments ordering a party to issue a declaration of will or declaring the annulment or expiry of industrial property rights will not be subject to provisional enforcement. In the case of non-monetary orders, the obliged party may object to the provisional enforcement when it is impossible or extremely difficult to restore the situation to that existing prior to the provisional enforcement or to financially compensate the condemned party if the enforced judgment were to be reversed. In the case of monetary orders, the condemned party may not object to provisional enforcement but only to the specific enforcement actions of the distraint proceedings if those specific actions will lead to a situation that is impossible to restore or to be compensated financially; and provided that the party subject to the order indicates an alternative enforcement measure and offers sufficient security to respond to the damages caused by the delay in the execution.

15 On an appeal from a commercial dispute, may the first-level appellate court consider the facts and law anew, or is its power to review limited?

The first-level appellate court may reconsider both facts and law. It must hand down decisions in view of the actions, facts, evidence and legal grounds brought before the trial courts (appellants are not entitled to modify them).

16 If a party is dissatisfied with the outcome of the first-level appeal, is further appeal possible?

The judgments rendered at second instance can only be appealed before the Supreme Court in exceptional situations or, depending on the circumstances, before the high court of justice of the relevant autonomous region (provided that the grounds for appeal are based on a breach of civil, regional or special law). Extraordinary appeals for breach of procedure may solely be based on the following grounds:

- breach of rules on objective or functional jurisdiction and competence;
- breach of procedural rules governing the judgment;
- breach of legal rules governing procedures and safeguards of proceedings when the breach gives rise to nullity according to the law, or could have brought a lack of proper defence; or
- violation of fundamental rights in the proceedings.

Cassation appeals may solely be grounded on a breach of the substantive rules that apply to decide on matters at stake in the proceedings. They may be lodged in the following cases:

- when they are issued for the civil courts to protect fundamental rights (aside from those protected by article 24 of the Constitution);
- whenever the amount of the proceedings exceeds €600,000; or
- where the amount of the proceedings does not exceed €600,000; or the proceedings have been conducted by reason of their subject matter, provided that in both cases the decision on the appeal has reversal interest.

On the last point, a decision would have reversal interest if it contradicts the Supreme Court's case law, the case relates to a matter on which there is conflicting case law among the provincial courts or it applies laws that have been in force for fewer than five years and there is no case law from the Supreme Court pertaining to previous laws with the same or similar content.

17 How long do appeals typically take from application to appeal to a final decision?

The first-level appeal ranges, depending on the city and the tribunal division, between four months and one year. The second-level appeal is divided into two phases:

- the admission phase (taking about a one-and-a-half years); and
- the decision phase (taking about six months).

18 What is the briefing and argument process like in a typical commercial appeal?

In the first-level appeal, the appellant submits its brief within a 20-day period after the first-instance judgment is notified and the appellee must file its opposition brief in 10 days. A hearing can take place if at least one of the parties so requests and the tribunal deems it necessary. In the second-level appeal, the appellant submits its brief within a 20-day period after the second-instance judgment is notified. If the appeal overcomes the admission phase, the appellee must file its opposition brief in 20 days. If all the parties request a hearing, it will take place.

19 Are appeals limited to the evidentiary record that was before the trial court, or can new evidence be introduced on appeal?

In the first-level appeal, documents, resources and instruments related to the merits of the case may be attached to the written statement lodging the appeal when they could not be filed in the first instance under the following circumstances:

- documents dated subsequent to the first instance on the condition that it was not possible to draft or obtain them prior to the proceedings;
- documents, means or instruments prior to the first instance when the party submitting them justifies being unaware of their existence before; or
- it was not possible to obtain them because of reasons not attributable to the party.

The following evidence may additionally be sought:

- any evidence that may have been unduly rejected in the first instance;
- any evidence proposed and admitted in the first instance that could not be taken for reasons not attributable to the applicant; and
- any evidence referring to relevant facts for the decision of the case occurred before or after the time limit to issue a judgment.

20 If litigants uncover new evidence of wrongdoing that they believe altered the outcome of a trial court judgment, can they introduce this evidence on appeal?

Although it is extraordinary, they can submit the new evidence according to the circumstances addressed in question 19 and, in particular, as long as it is justified they became aware of such evidence after the prior phases of the proceedings.

21 May parties raise new legal arguments on appeal?

The matters of fact and the legal grounds raised in the first instance cannot be altered (*perpetuatio actionis*; *mutatio libelli*; *pendente appellatione* and *nihil innovetur*).

22 What are the rules regarding attorneys' fees and costs on appeal?

The attorney and his or her client can reach any agreement they consider appropriate as to the fees and costs. When all the pleas for an appeal (both of first and second level) are dismissed, the fees and costs should be imposed on the losing party. The attorney's fees that can be claimed from the party ordered to pay are usually established according to guidelines provided by the relevant bar association. The fees at the first-level appeal are usually equivalent to 50 per cent of the reimbursable fees of the first instance and fees at the second-level appeal depend on whether the two extraordinary appeals (for breach of procedure and cassation) were filed or only one of them.

23 Can parties enter into a settlement agreement to vacate the trial court judgment after an appeal has been taken?

Litigants are empowered to dispose of the matter at issue in the proceedings at any phase. In particular, any party can abandon the appeal before the corresponding decision is issued.

24 Are there any limits on settlement once an appeal has been taken?

There are different ways for the parties to settle the proceedings and their pleas (waiver, abandonment, acceptance of claim, end of proceedings owing to out-of-court settlement or *ex post facto* lack of cause). Litigants are free to agree the terms to resolve their dispute if the law does not prohibit it or establishes limitations for reasons of general interest or for the benefit of a third party.

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25 May third parties fund appeals?

Third-party funding is not prohibited in appeals or in other stages of the proceedings.

26 If litigation funding is permitted in an appeal, must funding sources be disclosed to the court or other parties to the litigation?

There are no specific legal limits on the funding of appeals by third parties regarding disclosure or obligations of any other nature.

27 Must appellate courts in your country write decisions explaining their rulings? Can the courts designate the precedential effect of their decisions?

The decisions issued by appellate courts must be reasoned expressing the factual and legal arguments leading to the assessment and evaluation of the specific case. Court decisions complement the legal system with case law that the Supreme Court establishes in the process of interpreting and applying the law through.

28 Will the appellate courts in your country consider submissions from non-parties?

Parties with standing are those that appear and act in court as parties to the judicial relationship or the matter in dispute (except for cases in

which, by law, standing is attributed to a person other than the party). While proceedings are pending, whoever accredits a direct and legitimate interest in the outcome of the case may be considered to be admitted as a claimant or defendant. The European Commission, the National Markets and Competition Commission and the competent bodies of the autonomous regions may intervene without acting as parties, on their own initiative or at the request of a judicial body, through the contribution of information or the presentation of written comments on questions concerning the application of several articles of the Treaty of the European Community and the Free Competition Law. An expert designated by the court can also act on scientific, artistic, technical or practical knowledge.

29 What are the ordinary forms of relief that can be rendered by an appellate court in a civil dispute?

The civil chamber of the Supreme Court renders reliefs on extraordinary appeals for infringement of procedure, cassation appeals, appeals in the interest of law, complaint appeals (against the court orders in which the court that has issued the decision refuses the processing of an extraordinary recourse to appeal owing to breach of procedure or cassation), appeals on the review of final judgments and jurisdiction disputes between tribunals of the same jurisdictional order. The provincial courts mainly hear appeals against the first-instance rulings and questions of jurisdiction that arise between courts.

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