Research project EUPRETRIALRIGHTS

Improving the protection of fundamental rights and access to legal aid for remand prisoners in the European Union

ANALYSIS OF NATIONAL LAW

National norms as regard to access of detained persons to the law and to court

Report on SPAIN

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INTRODUCTION

CONTEXTUALIZATION

It is necessary to briefly describe in this introductory part the different ways in which a person can be deprived of liberty in Spain (in the criminal domain):

1.) Arrest or Detention (mainly regulated in arts 489-501 of the Criminal Procedure Act). Normally, arrest or detention is carried out by law enforcement authorities,[2] either following a judicial order, either because there has been flagrant criminal activity,[3] either because the existing evidence provides "sufficient reasons" to believe that a person has participated in the

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2The territorial organization of Spain involves the existence of three administrative levels (national, regional and local). Each of these three Administrations has or can have a law enforcement authority inserted in their organization. In accordance with article 2 of the Organic Law 2/1986, the Law Enforcement Authorities are composed of:

a)The State law enforcement authorities dependent on the central Government.
b)The Police Bodies dependent on the Autonomous Communities
c)The Police Bodies dependent on the Local Corporations

As regards the law enforcement authorities dependent on the central Government, It is important to distinguish between: **Guardia Civil**: which is the largest national law enforcement authority in Spain. It is an armed institution of a military nature and rural scope that covers all national territory. It depends mainly on the Ministry of Home Affairs but also, given its military nature, on the Ministry of Defence as regards certain issues. **National Police**: It is an armed institution of a civil nature, dependent on the Ministry of the Home Affairs that covers, like the Civil Guard, the entire national territory except the regions (Comunidades Autónomas) with their own autonomous police. It is responsible for criminal, judicial and terrorist investigations and matters of public order and immigration.

Besides the afore mentioned institutions, some regions have their own police. Indeed, the Autonomous Communities in Spain are allowed to create their own **regional police**, provided that this option has been envisaged in their respective Statutes of Autonomy. Among the Autonomous Communities that have foreseen the creation of police forces we find that the following have created their respective regional police, which assume to varying degrees, the powers of the National Police and Civil Guard:

I. **Mozos de Escuadra:** is the regional police of Catalonia. It replaces most of the functions of both the Civil Guard and the National Police
II. **Ertzaintza**: is the regional police of the Basque Country. It replaces most of the functions of both the Civil Guard and the National Police e
III. **Policía Foral de Navarra**: is the regional police of Navarra. It does not substitute the National Police Force or the Civil Guard, but rather constitutes an additional police force in that region
IV. **Policía Canaria**: is the autonomous police of the Canary Islands. It does not substitute the National Police Force or the Civil Guard, but serves as an additional police force in that region.

Local Police: In the municipalities, dependent on the local council, there are police bodies, the most important being the Madrid Municipal Police and the Barcelona Urban Police.

We must also briefly mention the following law enforcement authorities: **The Customs Surveillance Service** is a police service that develops its activity in the fight against smuggling, money laundering and tax fraud, which organically depends on the Department of Customs and Special Taxes of the Tax Agency. Its operations and investigations are aimed at the repression of crimes and infractions typified in the Organic Law of Repression of Contraband, throughout the Spanish territory, its airspace, and its jurisdictional waters. The means available to it allow it to carry out interceptions and boardings of vessels engaged in drug trafficking in international waters. **Port Police**, dependent on each of the Port Authorities of Spain (Ports of the State - Ministry of Development), is the oldest police force in Spain. It is a special administrative police, whose members have the consideration of law enforcement agents and have similar competences to those of the local police (security, traffic, emergencies ...) as well as all those related to the port operations (control of infractions in port waters, berths, access, environment …). **Forest Agents** are civil servants who hold the status of law enforcement agents and are entrusted with police functions for the custody of forests and nature and with the functions of judicial police in the generic sense as established in section 6 of Article 283 of the Criminal Procedure Act. They depend on the Autonomous Communities

commission of a criminal act, or when the person expressly refuses to identify him/herself and according to the law enforcement authority it is reasonable to presume that he/she will not appear when the competent Judge or Court calls him/her.

Arrest or detention by law enforcement authorities can take two forms:

A.) "**Communicated**": the one which follows the ordinary way, guaranteeing the detainee all the rights and safeguards established in the legislation (mainly in Article 520 of the Criminal Procedure Act). This kind of detention is the general rule and may last up to 72 hours,which may be extended by judicial decision for a further 48 hours in respect of offences referred to in Article 384 bis Criminal Procedure Act (i.e. "membership or relationship with armed groups or terrorist or rebellious individuals"). The CPT in its 2016 visit to Spain concluded that the time limit for deprivation of liberty by the police was respected in practice and that police detainees appeared in person before a judge to be remanded in custody.[4]

B.) "**Incommunicado**": is an exceptional measure entailing a limitation of the detainees' rights, which may be imposed by the investigative judge, ex officio or at the request of the police or the Public Prosecutor, by means of a reasoned decision. Incommunicado detention can only be ordered in relation to crimes of special gravity and when either one of the following two circumstances concur: the urgent need to prevent serious consequences which may place the life, liberty or physical integrity of a person in danger, or the urgent need for immediate action by the investigative judge in order to prevent serious harm to criminal procedure.[5] In accordance with the principles of proportionality and exceptionality, incommunicado detention may only last for as long as strictly necessary and no longer than 5 days. Although if the detained person is suspected of having committed a criminal offence referred to in Article 384 bis of the CCP (i.e. "membership or relationship with armed groups or terrorist or rebellious individuals") or other criminal offences committed concertedly and in an organised manner by two or more persons, the regime may be extended by another five days.[6] As regards incommunicado detention important changes have been introduced by Organic Law 13/2015, which entered into force on 1 November 2015 and amended certain provisions of the Code of Criminal Procedure (CCP). Before the entry into force of the said Law, persons detained under the incommunicado regime did not have certain rights, in particular the right to have the fact and place of their detention notified to a person of their choice (or, for foreign nationals, to inform the Consular Representation of their country), to appoint a lawyer of their own choice, or to meet in private with the duty lawyer appointed to assist them, even after the formal statement to the law enforcement officials has been made. Nor did they have the right to meet with a doctor of their own choice. All these restrictions were automatically applied to any detained person upon whom the incommunicado regime had been imposed.[7] Currently, a decision to impose the incommunicado regime does not automatically entail the application of the full range of possible restrictions on the detainees' rights. Instead, the judge, by way of a reasoned decision, must determine which restrictions, among those provided for by law, will apply to a particular detainee, and define the extent of these restrictions (Article 527 of the CCP). Any restriction may only be imposed if justified by the circumstances of the particular case and to the extent necessary. The Committee for the Prevention of Torture (CPT) of the Council of Europe has positively appraised the legislative amendments that now limit the scope of application of the incommunicado detention regime and distinguish among the individual restrictions which may be imposed on detained

3 When the commission of the offence is imminent, or when it is being committed or the person has absconded, detention can be carried out by any citizen (art.490 Criminal Procedure Act)

4 Report to the Spanish Government on the visit to Spain carried out by the CPT from 27 September to 10 October 2016, CPT/Inf (2017) 34, p. 12

5 Before the 2015 amendments, the following four grounds had existed for incommunicado detention: the risk that the detained person will (i) avoid the investigation, (ii) act against the interest of victims, (iii) hide, alter or destroy evidence or (iv) commit new crimes. CPT/Inf (2017) 34, p. 20

6 Before the 2015 amendments, the incommunicado detention regime may have lasted up to 13 days, in police custody and in prison, depending on the nature of the offence CPT/Inf (2017) 34, p. 20

7 CPT/Inf (2017) 34, p. 19

persons. In addition, it has described as a "positive development" the fact that the regime of incommunicado detention had not been applied in Spain in 2015 and 2016.[8] However, and notwithstanding these developments, the CPT continues to consider that, as a matter of principle, the possibility to impose the incommunicado detention regime should be removed altogether from the Spanish legislation. Particularly, the CPT regrets that, despite the 2015 amendments, the right of access to a lawyer remains virtually unchanged: The amended Article 527 of the CCP still allows that the right of access to a lawyer of one's own choice be restricted and detained persons may still be prohibited from meeting their lawyer (whether their own or appointed ex officio) in private (even once the declaration to the law enforcement officials had been made)[9]

2.) Pre-trial detention (in Spanish "prisión provisional" or "prisión preventiva") is mainly regulated in arts 502-519 of the Criminal Procedure Act. It is a precautionary measure, which entails deprivation of liberty and as such must be adopted by a judge or court. It aims to ensure the accomplishment of the criminal procedure and the future ruling and can only be adopted for offences of a particular severity.[10] As explained by Díez Ripollés, pre-trial detention "may not be extended for longer than strictly necessary and, in any case, not longer than the term of the penalty which punishes the type of offence charged to the remand detainee. Its term may not exceed one year if the offence entails a prison penalty equal to or smaller than three years, or two years if the imprisonment of which such an offence entails is greater than three years.[11] Nevertheless, whenever circumstances allow to predict that the case may not be judged within such terms, the judge or court may agree on a single extension of up to two years if the offence entailed a prison penalty greater than three years, or of up to six months if the offence entailed a prison penalty equal to or smaller than three years. If the sentence has already been pronounced and an appeal against it has been filed, the remand detention may be extended for up to half of the term of the penalty imposed in the sentence".[12]
Given that the present report mainly focuses on pre-trial detention, we will develop further on this issue in the fore coming sections.

3.) The fulfilment of sentence: which consists of serving the custodial sentence imposed in a final judgement by the final court.

4.) Compliance with the following security measure: confinement in a psychiatric prison, which must be ordered by a court. If the person in question was remanded in custody during

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8 CPT/Inf (2017) 34, p. 21

9 The CPT further regrets that the incomunicado detention may be applied to persons aged 16

10 Remand detention may only be imposed when the following requirements are present, accumulatively 1.) That in the proceedings is recorded the existence of one or several acts which show characteristics of an offence that is sanctioned with a penalty whose maximum is equal to or greater than two years of imprisonment, or with a custodial sentence for a smaller prison term if the defendant has a criminal record which was not removed nor can be removed derived from a criminal conviction for a deliberate offence. 2.) That enough reasons appear in the proceedings to consider as criminally responsible of the offence the person against whom the order for remand detention is to be pronounced. 3.) That through the remand detention any of the following purposes is pursued:

– To ensure the presence of the defendant at the trial, when it may rationally be inferred that there is a risk of absconding.

– To avoid the concealment, alteration or destruction of the sources of evidence which are relevant for the procedure.

– To avoid the possibility of the defendant acting against the victim's rights.

– To avoid the risk of the defendant committing other criminal acts.

11 There is an exception: when the goal is to protect the sources of evidence: the term shall not exceed six months, which are non-extendable. José Luis Díez-Ripollés and Cristina Guerra-Pérez, "Pre-trial detention in Spain", *European Journal of Crime, Criminal Law and Criminal Justice,* 18 (2010), p. 374-375

12 José Luis Díez-Ripollés and Cristina Guerra-Pérez, "Pre-trial detention in Spain", *European Journal of Crime, Criminal Law and Criminal Justice,* 18 (2010), p. 376

trial, once the sentence imposing such security measure is rendered, he/she will be transferred from prison (where pre-trial detention was being served) to a psychiatric prison (in Spain there are only two, in Alicante and in Sevilla)

All these deprivations of liberty can be appealed before the Spanish courts through a lawyer (who defends the client) and a solicitor ("procurador", who represents the client). In all these cases, legal assistance is foreseen, and depending on the economic situation of the person concerned it may be free legal aid. If acts of torture and/or ill-treatment occur during these deprivations of liberty, they can also be reported to the Ombudsman and before the Public Prosecutor's Office.

I. BRIEF DESCRIPTION OF THE DETENTION REGIME APPLICABLE TO PRE-TRIAL DETAINEES

Before detailing the detention regime applicable to pre-trial detainees, we must first clarify that pre-trial detention takes place in ordinary prison facilities (where convicted inmates also serve their prison sentence), which are dependent on the Secretary General of Prison Institutions of the Ministry of Home Affairs.
Sometimes, particularly in large cities,[13] transfer to a prison facility does not take place immediately after the order of remand custody is adopted and for hours a pre-trial detainee is kept in the premises designated for such purposes within judicial or police facilities (the so-called "calabozos", i.e. dungeons). These premises are not just for pre-trial detainees but are also meant for arrested persons who are brought before the judicial authority. Thus, the number of detainees can get to be very large at one point in relation to the facilities. However, the amount of time detainees spend in these detention centres has decreased considerably due to more rapid transfers to prisons carried out by the Civil Guard.[14]

The different types of pre-trial detention in Spain are:[15]

1.) "comunicada": it is the most common situation and corresponds to regular imprisonment in prison facilities. The pre-trial inmate has the right to have visits and communicate with the outside world through several means (we will further elaborate on it in the fore coming sections)
2.) "incomunicada": incommunicado pre-trial detention in a prison facility is an exceptional measure, the general rule being the communicated modality. Incommunicado pre-trial detention is agreed when the same circumstances as for incommunicado police detention concur (that is, those established in art. 509. 1. a or b. of the Criminal Procedure Act)[16], but it is served in an ordinary prison facility instead than in a police station. It may only last for as long as it is strictly necessary and no longer than 5 days (although in respect of offences

13 For example, in Madrid on average there are 100 detainees per day and until the three courts on duty do not finish with the rounds of declaration taking, no detainee is transferred to prison nor released. In practice, this means that until 18:00 or even 22:00 in the evening all detainees are kept in the detention facilities located within the courthouse. This happens in large cities, given that the police lacks the logistic for transferring detainees one at a time. However, in smaller towns, where there are less detainees, they are transferred after the judicial decision.

14 José Luis Díez-Ripollés and Cristina Guerra-Pérez, "Pre-trial detention in Spain", *European Journal of Crime, Criminal Law and Criminal Justice,* 18 (2010), p. 380

15 José Luis Díez-Ripollés and Cristina Guerra-Pérez, "Pre-trial detention in Spain", *European Journal of Crime, Criminal Law and Criminal Justice,* 18 (2010), p. 376

16 Art. 509.1.a.: the urgent need to prevent serious consequences which may place the life, liberty or physical integrity of a person in danger. Art. 509.1.b.: the urgent need for immediate action by the investigative judge in order to prevent serious harm to criminal procedure. Indeed, the goal of incommunicado pre-trial detention is to facilitate the investigation into the facts, since isolation prevents the inmate from interacting with third parties who may destroy evidence or hinder the inquiries that are being carried out. José Luis Díez-Ripollés and Cristina Guerra-Pérez, "Pre-trial detention in Spain", *European Journal of Crime, Criminal Law and Criminal Justice,* 18 (2010), p. 376

referred to in Article 384 bis of the Criminal Procedure Act, i.e. “membership or relationship with armed groups or terrorist or rebellious individuals”, and in respect of other offences committed in an organized fashion it may be extended for another 5 days, i.e. 10 days in total). As has already been stated when explaining incommunicado police detention, this kind of deprivation of freedom entails the limitation of some of the detainees’ rights, such as notifying the fact of the pre-trial detention and the prison facility in which the inmate is being kept, restriction of visits and communications by telephone, in writing or by other means, ban on the free choice of a lawyer and doctor and restriction on the right to meet in private with the appointed lawyer to assist him/her. It is the judicial authority who orders it who must, by way of a reasoned decision, determine which restrictions, among those provided for by law, will apply to a particular pre-trial inmate, and define the extent of these restrictions (Article 527 of the CCP). Any restriction may only be imposed if justified by the circumstances of the particular case and to the extent necessary.
3.) “atenuada”: where the person’s freedom is restricted without him/her being sent to a prison facility. It is regulated in art. 508 of the Criminal Procedure Act and it is foreseen for the following two cases: 1.) when due to illness, confinement in prison may entail the worsening of the state of health of the inmate 2.) when the person on whom a pre-trial prison order is served is subjected to a detoxification treatment (for example for narcotic substances) and confinement in prison would frustrate the result of said treatment. This measure is served under house arrest or through admission in a detoxification or anti-drug addiction centre.

In the present report we will elaborate on the most common detention regime applicable to pre-trial detainees; that is, the “comunicada” which takes place in ordinary prison facilities. It is mainly regulated in Chapter V of Title III of the Prison Regulations, titled “Pre-trial prisoners’ regime”.
It must be firstly pointed out that the Spanish legislation (Articles 74, 100 to 109 Prison Regulation) provides for three categories of regime applicable to **convicted** prisoners: closed (corresponding to a “first grade” classification, according to the terminology used in Spanish legislation), ordinary (“second grade”) and open (“third grade”). **Pre-trial** detainees, however, are not usually classified into one of these three categories and are rather ascribed, as a general rule, to an ordinary regime (Art. 74 Prison Regulation); that is, to a “second grade” regime. Nevertheless, articles 96 and 97 of the Prison Regulation together with article 10 of the General Prison Law exceptionally foresee the possibility of applying a “first grade” (closed) regime to pre-trial detainees who are considered extremely dangerous or manifestly unadjusted to the ordinary regime. If such a measure is adopted, the Prison Administration must notify it to the Judge for Prison Supervision within 72 hours after its adoption and must review it every three months. However, as already mentioned it is an exceptional measure, and the general rule is to apply the ordinary (“second grade”) regime to pre-trial detainees. In practical terms this means that the visiting arrangements, calls and correspondence regime is the same for pre-trial inmates as it is for convicted prisoners who are classified into a “second grade” regime. Yet, pre-trial inmates cannot opt for the same prison benefits as “second grade” convicted prisoners, that is: prison leaves, progressions of regime and probation. They can only request extraordinary prison leaves for the following three reasons: birth of a child, death of an immediate family member and medical appointments (in cases where the medical treatment is provided outside prison).

As a general rule, pre-trial prisoners are remanded in modules with other pre-trial prisoners, but in some cases they can also be with convicted prisoners. This is the case for example in the so-called “respect modules” (“modulos de respeto”)[17] since there is only one module of

17 The respect modules were introduced in 2006 as separate units within a prison to which inmates are freely admitted as long as they commit to abide by a set of rules (in the sphere of personal hygiene, hygiene of the cell, good inter-personal relations with staff and inmates as well as participation in daily and weekly activities) in exchange for a degree of self-management with less staff supervision and the possibility of gaining easier access to permits and benefits. The respect modules are organised in thematic groups (on admission, conflict resolution and legal assistance) and inmates

that type per prison. However, the general rule is segregation between convicted and pre-trial inmates. Also as a general rule, pre-trial detainees share cells, just as convicted prisoners do, since cells in Spanish prisons are designed for accommodating two or more prisoners (even the newest prisons are built with bunk beds). The general rule is two pre-trial prisoners per cell, but in some prison facilities three or more inmates may share the same cell.

Pre-trial prisoners can theoretically participate in workshops (except in the so-called "productive workshops", which are remunerated) and other activities organized in prison (recreational, cultural, educational...), but the issue is that workshops and activities are scarce and those which are offered are mostly directed at convicted inmates. Pre-trial inmates do not work while in prison, job vacancies are reserved for convicted prisoners. Nonetheless, it is not forbidden by law; on the contrary, article 133.3 of the Prison Regulation states that "preventive prisoners **may** work according to their aptitudes and inclinations, and the Prison Administration shall provide them with means of occupation, **if available**. If voluntarily they carry out productive work within the framework of the special prison employment relationship, they shall enjoy, on equal terms with convicted inmates, the remuneration rates established for them"

The disciplinary regime is applicable to all inmates, including pre-trial prisoners, except to those who are confined in psychiatric prisons or psychiatric modules (art. 231.2 Prison Regulation). The competent authority which decides the imposition of sanctions is the Disciplinary Committee existent in each prison facility.

II BODIES ENTITLED TO RECEIVE FORMAL COMPLAINTS AND THEIR EFFECTIVENESS WITH REGARD TO ARTICLE 13 ECHR

Once pre-trial detainees are remanded in custody in ordinary prison facilities, the main external body entitled to receive their formal complaints (as well as those from convicted inmates) is the **Judge for Prison Supervision** ("Juez de Vigilancia Penitenciaria"). It must be noted that before seizing the Judge for Prison Supervision, pre-trial prisoners (as well as convicted inmates) must first file their requests and complaints before the authorities of the prison where they are serving their pre-trial prison measure (depending on the request and complaint this authority can be the Prison Director, the Disciplinary Committee or the Treatment Board). Indeed, article 50 of the General Prison Law states that inmates have the right to file petitions and complaints before the Prison Director, in order for him/her to take the appropriate measures or, if necessary, to forward them to the competent authorities. Even though it is not clear-cut from the wording of Article 50 of the General Prison Law, a *de facto* procedure has developed which involves filing first a complaint and request before the Prison Administration prior to turning to the Judge for Prison Supervision.

Judges for Prison Supervision are part of the judiciary, and more precisely are embedded within the criminal branch (art. 94 of the Organic Law of the Judicial Power). This institution was created "ex novo" by the General Prison Law of 1979 and it started operating by an agreement of the General Council of the Judicial Power of 22 July 1981.[18] They are the ones entitled to decide on complaints and requests filed by pre-trial prisoners regarding their life in prison, ranging from serious issues such as the application of a particular prison regime[19] but also regarding domestic or minor matters. Complaints concerning any disciplinary sanction imposed on pre-trial prisoners by the Disciplinary Committee of each prison facility are also filed before this judicial institution.

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are evaluated periodically by staff in relation to their behaviour through a points system CPT/Inf (2017) 34, p. 33

18 F., MARTÍN DIZ, "EL juez de vigilancia penitenciaria: Garante de los derechos de los reclusos", Ed. Comares, Granada 2002, p. 53, 55.

19 We would like to recall that pre-trial detainees are normally ascribed to a second grade or ordinary regime. However exceptionally a first grade or closed regime may be applied to certain pre-trial detainees. This circumstance would be challenged before the Judge for Prison Supervision

However, as regards pre-trial inmates there are several exceptions to the jurisdiction of the Judge for Prison Supervision:

1.) According to art. 159 of the Prison Regulations, pre-trial inmates must obtain the approval of the **investigating judge** ("juez de instrucción") **who ordered their remand in prison** when requesting **exceptional prison leaves**.[20] The procedure for requesting extraordinary prison leave is as follows: the request for prison leave is filed by the pre-trial detainee him/herself and assessed by the Technical Team of the prison facility (which comprises psychologists, jurists, educators, social workers, sociologists and pedagogues), which must report either favourably or not. The request together with the Technical Team's report is forwarded to the Treatment Board, or to the Prison Director when the decision on the granting/rejection of the prison leave must be taken urgently (for example, when the death of the relative is imminent) and the Treatment Board does not plan to meet in the mean time. The decision adopted by the Prison Administration is then forwarded to the investigating judge who ordered the remand in prison for its final approval. In the case of pre-trial inmates with a double criminal-procedural situation (i.e. temporary concurrence of the condition of pre-trial and convicted) both, the Judge for Prison Supervision and the investigating judge who remanded him/her in prison have to approve the extraordinary prison leave.[21]

2.) Pre-trial inmates also seize the **sentencing court** once the trial stage has already started (or, in larger cities, the criminal execution court) when requesting the **suspension of the enforcement of the penalty** (among which it is included the access to an early release measure for medical reasons). Art. 80 et seq. of the Criminal Code foresees the following:
1. Request suspension of the enforcement of the sentence, if imprisonment or the sum of all the penalties imposed by the judgement does not exceed two years in prison. Two additional requirements must be met: It must be the first time the person commits a crime (and thus have no criminal record) and must satisfy the civil liability derived from the offence (unless the declaration of insolvency is recorded in the criminal case). The penalty may be suspended between 2 and 5 years and if during that period the person re-offends, the suspension will be revoked and s/he will enter prison to serve the suspended sentence and the new one.
2. Request suspension of the enforcement of the sentence in case of drug addicts, if the penalty does not exceed 5 years of imprisonment and provided it has been established in the judgement that addiction was a triggering element of the offence and the person enters into a detoxification program.
3. Request the suspension of the enforcement of the sentence in case the person suffers incurable diseases. The illness must be properly proven through an official medical report and must lead to the applicant's death in a short time.
All these requests are lodged by the same lawyer litigating the main criminal case and are covered by free legal aid if the person has been recognised as a beneficiary.

3.) Claims on acts of **torture and/or ill-treatment** filed by inmates (both convicted and on remand) fall under the jurisdiction of **criminal judges** who are the ones responsible for investigating the facts which may constitute criminal offences. It is desirable if Judges for Prison Supervision are informed too so that they may adopt those measures necessary to prevent the commission of further acts of ill-treatment against the prisoner-claimant inside

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20 We would like to recall that pre-trial detainees cannot request ordinary prison leaves, but only exceptional prison leaves, which are regulated in art. 47.1 and 48 of the General Prison Law and in art. 155 of the Prison Regulation and are granted for the following three reasons: birth of a child, death of an immediate family member and medical appointments (in cases where the medical treatment is provided outside prison)

21 Circular I-1/12 Secretaría General de Instituciones Penitenciarias, Permisos de Salida y Salidas Programadas, p. 7. *Available at* http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/instruccionesCirculares/CIRCULAR_1-2012.pdf

prison. The criminal judges seized in cases of ill-treatment are not necessarily the ones who ordered the remand custody, but the criminal judge on duty at the moment when the acts constituting ill-treatment were communicated to the judicial authority.

Effectiveness as regards art. 13 of the ECHR:

Judicial authorities can put an end to the situation reported by inmates, since their decisions are binding, but lack, however, the compensatory effect of art. 13 ECHR. In fact, there is no specific compensatory remedy for inmates as regards damages suffered in prison. Therefore, when claiming compensation they must first address the General Secretariat for Prison Administration and exhaust administrative remedies before turning to the judiciary. At this stage, regulations do not provide for legal assistance by an ex-officio lawyer (and thus the possibility of requesting free legal aid). This can be a disadvantage for most prisoners given the technicalities of this administrative process. Following the dismissal or the implied rejection of the claim for compensation by the General Secretariat of Prison Administration, the prisoner can then turn to an Administrative Court judge (not the Judge for Prison Supervision) and will now be assisted by an ex-officio lawyer (and could be granted free legal aid if requested). Here too the burden of proof may be excessive as it is the claimant who must prove the damage, the failure of the Administration and the causal link between the two. The causal relationship must be direct, immediate and exclusive (Judgement of the Supreme Court 2500/2000, 28 March) and in the event that the causal link is not proven, the Prison Administration is not held responsible (Judgement of the Supreme Court 7764/2005 18 October). The proceedings usually last a year and the judicial decision can be appealed before a higher administrative court.[22]

Besides these bodies of a judicial and administrative nature, pre-trial prisoners can also file formal complaints before the Ombudsman. Indeed, In addition to his ex officio activities, the Ombudsman in his NMPT capacity can also act at the request of any citizen, including prisoners convicted and on remand, who file complaints before him in cases of ill-treatment. These complaints are filed free of charge and must be signed by the party concerned, providing a name and address in a document stating the grounds for the complaint, and within a maximum of one year from the time of the underlying events. Reality is that, due to the fact that the complaints cannot be anonymous and are send by prisoners directly from the prisons where they are serving sentences, many inmates are discouraged when it comes to filing complaints regarding ill-treatment. Moreover, the Ombudsman's activities may be characterised generally as that of non-binding supervision. Indeed, the Ombudsman is not empowered to overrule acts and decisions of the Public Administration, and limits himself to suggest modifications in the guidelines used to apply them. This is done by providing reports on the results of his investigations. These reports include a series of resolutions and are sent to the public authorities and the civil servants involved in the case as well as to the interested party.

So far, the ECtHR has not assessed the effectiveness of the domestic remedies available to prisoners in Spain. Most of the judgements rendered by the ECtHR regarding deprivation of liberty in Spain refer to incommunicado police custody and the allegations of ill-treatment made by the incommunicado detainees (most of them belonging to ETA terrorist group). In all of these cases the ECtHR condemned Spain for violating Article 3 – not in its substantive aspect but in its procedural aspect. That is, the ECtHR held Spain responsible for failing to pursue a thorough and effective examination into allegations of inhuman and/or degrading treatment perpetrated by the State Security Forces during incommunicado detention. The ECtHR quoted the CPT reports in nearly all of its judgements on incommunicado detention, echoing some of the recommendations made by it as well as setting forth further recommendations of its own. The Court placed particular emphasis on suggesting how to carry out a thorough and independent investigation into alleged ill-treatment during

22 Guillén Navarro, N.A. "Análisis Actual de la Responsabilidad Patrimonial en el ámbito Penitenciario", *Revista Aragonesa de Administración Pública*, nums. 39-40 (2012), p. 439.

incommunicado detention, in order for it to be considered effective under Article 3 of the ECHR. In that regard, it stressed the need for identifying and hearing the police officers in charge of the detainees, the forensic medical experts who examined the detainees during their incommunicado detention and the court-appointed lawyer present during statement-taking. It has also recommended that the applicant be authorised to supply evidence which might help to clarify the facts (for example: copies of the forensic reports and of statements made during incommunicado detention; security camera recordings of the premises where detainees were held and statements taken; and new physical and psychological examinations). Furthermore, the ECtHR recommended that the applicant should be heard and the forensic examination improved. Finally, and in line with the recommendations of the CPT, the ECtHR has also encouraged amendments to the legal regime of incommunicado detention.

As regards the question of the impact of ECtHR judgements on the system of legal aid/access to legal information, it must be noted that the Spanish authorities have not completely abided by the recommendations made by the ECtHR (nor the CPT) in its judgements on incommunicado police detention. Indeed, in 2015 the Criminal Procedure Act was amended by Organic Law 13/2015 yet domestic legislation has not been aligned with all the safeguards recommended by the ECtHR and the CPT. Despite the 2015 amendments, the right of access to a lawyer of incommunicado detainees remains virtually unchanged: The amended Article 527 of the Criminal Procedure Act still allows that the right of access to a lawyer of one's own choice be restricted and incommunicado detained persons may still be prohibited from meeting their lawyer (whether their own or appointed ex officio) in private (even once the declaration to the law enforcement officials had been made)

1. LEGAL SUPPORT

1.1 Obligations as regards to legal support

The legal texts which define an obligation to provide legal information in police custody/penitentiary facilities are the following:

A. Firstly, the **Constitution**. Article 17.3 establishes the obligation to inform detainees of their rights and the grounds for their detention. It also foresees the right to be assisted by a lawyer during police and judicial proceedings[23]. As regards the exercise of the right of defence and the assistance of a lawyer and free legal aid in general (and not just for persons deprived of

23Article 17 reads as follows:

1. Every person has the right to freedom and security. No one may be deprived of his or her freedom except in accordance with the provisions of this section and in the cases and in the manner provided for by the law.

2. Preventive arrest may last no longer than the time strictly necessary in order to carry out the investigations aimed at establishing the events; in any case the person arrested must be set free or handed over to the judicial authorities within a maximum period of seventy two hours.

3. Every person arrested must be **informed immediately,** and **in a way understandable** to him or her, of his or her **rights** and of the **grounds** for his or her **arrest,** and may **not be compelled to make a statement**. The arrested person shall be guaranteed the **assistance of a lawyer** during police and judicial proceedings, under the terms to be laid down by the law.

4. An habeas corpus procedure shall be provided for by law in order to ensure the immediate handing over to the judicial authorities of any person illegally arrested. Likewise, the maximum period of provisional imprisonment shall be determined by law

their liberty) articles 24[24] and 119[25] of the Constitution must also be mentioned.

B. Secondly, the **Criminal Prosecution Act**, enacted by Royal Decree of 14th September 1882 and its subsequent reforms. The whole Title VI refers to: detention (Chapter II), remand prison (Chapter III) and the exercise of the right of defence, the assistance of a lawyer and the treatment of the detainees and prisoners (Chapter IV).

As regards the obligation to provide legal information in police custody, we consider necessary to literally translate Article 520 given its clarity and accuracy:

Article 520

1. Detention and pre-trial detention shall be carried out in the manner that less undermines the detainee or prisoner, his reputation and heritage. Those who order the measure and those who implement it shall ensure the respect for the constitutional rights to honour, privacy and image of the detainee or prisoner with respect to the fundamental right to freedom of information.

Preventive detention may not last longer than the time strictly necessary to clarify the facts, within the time limits laid down in this Act, and in any case, within a maximum period of seventy-two hours the detained person must be released or brought before the judicial authority

The police report shall reflect the place and time of detention and the time when the detainees were taken before a judicial authority or, as the case may be, the time when they were released.

2. Any person detained or remanded in prison shall be informed in writing, in simple and accessible language, in a language that he/she understands and immediately, of the grounds for his/her deprivation of liberty, as well as of his/her rights and especially of the following:

a.) The right to remain silent, not testifying if so desired, not answering any or some of the questions asked, or to declare that he/she will only testify before a judge.

b.) The right not to incriminate one-self and to plea guilty

c.) The right to appoint a lawyer, without prejudice to the provisions of section 1.a of Article 527, and to be assisted without undue delay. In the event that, due to geographical distance, legal assistance is not immediately possible, the detainee will be provided with telephone communication or video conference, unless such communication is impossible.

d.) The right to access all elements of the proceedings that are essential for challenging the legality of the detention or deprivation of liberty

e.) The right to inform a family member or any other specified person of his/her deprivation of liberty and the place of custody, without undue delay. Foreigners will have the above circumstances communicated to the consular office of their home country

f.) The right to communicate by telephone, without undue delay, with a third party of their choice. This communication will be held in the presence of a police officer or, as the

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24 Article 24 reads as follows:

1. All persons have the right to obtain effective protection from the judges and the courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defence.

2. Likewise, all persons have the right to the ordinary judge predetermined by law; to defence and assistance by a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defence; not to make self-incriminating statements; not to plead themselves guilty; and to be presumed innocent. The law shall specify the cases in which, for reasons of family relationship or professional secrecy, it shall not be compulsory to make statements regarding allegedly criminal offences.

25 Article 119 states the following:

Justice shall be free when thus provided for by law, and shall in any case be so in respect of those who have insufficient means to sue in court.

case may be, of the official designated by the judge or prosecutor, without prejudice to provisions of article 527

g.) The right to be visited by the consular authorities of their country, to communicate and to correspond with them

h.) The right to be assisted free of charge by an interpreter, in the case of foreigners who do not understand or speak Spanish or the official language of the action in question, or of deaf or hard of hearing persons, as well as other persons with language difficulties

i.) The right to be recognized by a forensic doctor or his/her legal substitute and, in their absence, by the doctor of the institution where the person deprived of liberty is being held or by any other doctor dependent of the State or of other Public Administrations.

j.) The right to request free legal aid, to be informed of the procedure to do so and of the conditions to obtain it.

In addition, he/she will be informed of the maximum legal term for detention until the moment of being taken before a judicial authority and of the procedure by which he/she can challenge the legality of the detention.

When a bill of rights is not available in a language understood by the detainee, he/she shall be informed of his/her rights by means of an interpreter as soon as possible. In this case, a written bill of rights shall be delivered later to him/her, without undue delay, in a language he/she understands.

In all cases, the detainee will be allowed to keep the written bill of rights throughout his/her detention.

2 bis. The information referred to in the previous section will be provided in an understandable language that is accessible to the recipient. For these purposes, the information shall be adapted to their age, degree of maturity, disability and any other personal circumstance from which a limitation of the ability to understand the scope of the information provided may result

As regards the obligation to <u>provide legal information to pre-trial detainees</u>, we also deem necessary to mention Article 118 of the Criminal Procedure Act since it is applicable to anyone to whom a punishable act is attributed. Article 118.1 reads as follows:

1.) Every person to whom a punishable act is attributed may exercise the right of defence and may intervene in the proceedings, from the moment of being informed of its existence, irrespective of whether he/she has been the object of detention or any other precautionary measure or whether the judicial authority has agreed to its prosecution, for which purpose he/she will be instructed, without undue delay, of the following rights:

a) Right to be informed of the facts attributed to him/her, as well as of any relevant change in the object of the investigation and the facts alleged. This information will be provided with sufficient detail to allow for the effective exercise of the right of defence.

b) The right to examine the proceedings in due time to safeguard the right of defence and, in any case, before a declaration is taken.

c) Right to act in criminal proceedings to exercise his/her right of defence in accordance with the provisions of the law.

d) Right to freely appoint a lawyer, without prejudice to the provisions of section 1 a) of article 527.

e) Right to request free legal assistance, the procedure to do so and conditions to obtain it.

f) Right to free translation and interpretation in accordance with the provisions of articles 123 and 127.

g) Right to remain silent and not to make a statement if he/she does not wish to do so, and not to answer any of the questions asked.

h.) Right not to testify against oneself and not to plea guilty.

The information referred to in this section will be provided in an understandable and accessible language. For this purpose, the information will be adapted to the age of the recipient, their degree of maturity, disability and any other personal circumstance from which a change in the ability to understand the scope of the Information provided may result.

C.) Thirdly, the **Prison Regulations** (approved by Royal Decree 190/1996 of 9th February). Article 21 foresees the obligation to inform both convicted and pre-trial prisoners in the following terms: “when entering prison, inmates must be informed of their rights and duties, as well as of the procedures to make them effective in the terms established in Chapter V of this Title”. In addition, article 52 states the following: “Inmates will receive written information about their rights and duties, the prison facility’s regime, the disciplinary rules and the means to formulate complaints and requests. To this end, they will be given a copy of the general informative brochure and the internal regulations of the Prison facility in question, which the Prison Administration shall necessarily edit in Spanish and in the co-official language of the Autonomous Community where the Prison facility is located”.

D.) Fourthly, Instruction nº 12/2015, of 1st October, from the State Secretariat for Security, approving the "Action Protocol in the areas of custody of detainees of the Law Enforcement Authorities".
Regarding the information that must be provided to detainees during custody by the law enforcement authorities, the Instruction provides as follows:
The detainee, upon entering the cells, will be informed in writing of:
• The existence of video surveillance cameras and their recording through which they will be permanently monitored.
• The means for communicating with the custody personnel and the operation of the established system, if applicable, for this purpose.
• The seizing of personal belongings (including laces, belts, etc.) that will be kept and later delivered once the detainee leaves the detention facilities.
• The notification of any infectious-contagious disease that he/she suffers, in order to activate the corresponding protocol.
• The possibility of making a voluntary declaration stating whether he/she suffers from other illnesses or is under medical treatment.
• The schedule of meals that will be provided during his/her stay in police custody. If for medical or religious reasons the detainee can not eat a specific kind of food, he/she must inform the custody staff.
• Any other information that the Officer in Chief of the custody shift deems relevant
To carry out this information task, there shall be available in the detention centers forms written in the most common languages that must be read and signed by the detainees[26]

As can be seen from the above provisions, the obligation to provide legal information is a matter of both general (criminal/procedural) law and specific prison law. And in both reference is made to aspects of every day life in detention (see for example, article 52 of the Prison Regulation).

As regards the conditions under which this obligation to provide legal information has emerged and been legally enshrined, it must be pointed out that a legal obligation on informing detainees of their rights was already laid down in the Spanish Constitution of 6 December 1978, still in force today.

However, recently the basic legal framework governing detainees’ right to legal information has undergone important changes by virtue of Organic Law 13/2015 amending certain

26 Instrucción 12/2015, de la Secretaría de Estado de Seguridad, por la que se aprueba el “Protocolo de actuación en las áreas de custodia de detenidos de las Fuerzas y Cuerpos de Seguridad del Estado” Section 3. e). *Available at* https://www.defensordelpueblo.es/wp-content/uploads/2016/03/Instruccion_12_2015.pdf

provisions of the Criminal Procedure Act (such amendments entered into force on 1 November and 6 December 2015). The aim of the amendments was to transpose several EU directives[27] into the Spanish legislation and to strengthen some of the procedural safeguards offered to persons subject to criminal proceedings: for example, now the right to notify the family or a third person of the fact of one's detention and the place of detention (art 520(2)(e) of the Criminal Procedure Act) expressly stipulates that such notification should take place "**without unjustifiable delay**". In addition, Article 520(2)(f) now gives detained persons the right to communicate by telephone, in the presence of a police officer, with a third person of their choice. In addition, following the 2015 amendments of the Criminal Procedure Act, now it is also expressly foreseen that the right to be assisted by a lawyer should take place "**without unjustified delay**" and that the detainee has the right to consult with him/her in private before a statement is given to the police. Moreover, the Criminal Procedure Act now explicitly provides that any communication between the detained person and his/her lawyer is confidential. The CPT welcomed these developments in its 2016 report on Spain.[28]

1.2 Legal support to non-native speakers:

The heading of Article 520.2 of the Criminal Procedure Act states that persons detained or remanded in prison shall be informed **in a language that he/she understands** of his/her rights and especially of the following: "the right to request free legal aid, to be informed of the procedure to do so and of the conditions to obtain it" (art. 520.2.j.). Article 520.2.h. further provides that when the detained person is a foreigner who does not understand or speak Spanish or the official language of the action in question, "he/she shall also be informed of his/her right to be assisted free of charge by an interpreter." In addition, art. 520.2.e establishes that foreigners will have their deprivation of liberty and the place of custody notified to the consular office of their home country. On this point, art. 520.3 further provides that "if the detainee is a foreigner, the fact of his/her detention and the place of custody shall be communicated to the Consul of his/her home country and he/she shall be allowed to communicate with the consular authority. If the detainee has two or more nationalities, he/she may choose which consular authorities should be informed of his/her deprivation of liberty and with whom he/she wishes to communicate". Finally, art. 520.3 foresees that "when a bill of rights is not available in a language understood by the detainee, he/she shall be informed of his/her rights by means of an interpreter as soon as possible. In this case, a written bill of rights shall be delivered later to him/her, without undue delay, in a language he/she understands"

Moreover, art. 52 (paragraphs 2, 3 and 4) of the Prison Regulations foresees that when new incomers to prison are foreigners (be it as remand or convicted prisoners) they will also be informed of the possibility of requesting the application of international treaties or agreements signed by Spain for the transfer of convicted persons to other countries, as well as the substitution of penalties by the measure of expulsion from the national territory, in the cases and with the conditions provided by law. Likewise, they will be provided with the address and telephone number of the diplomatic representation accredited in Spain of their country. For these purposes, the prison administration will attempt to publish reference brochures in the languages of significant groups of foreign inmates in Spanish prison facilities. Foreigners who do not know the languages in which the brochure is published will be given an oral translation of its content by officers or interns who know their language and, if necessary, the collaboration of the State consular services will be sought. In any case, those Spanish or foreign inmates who can not understand the information provided in writing, will be provided by another suitable means.

27 Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU on the right to information in criminal proceedings and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.
28 CPT/Inf (2017) 34, p. 14

As regards translation and interpretation once granted free legal aid, the following provisions must be mentioned:
- Article 118.1.f) of the Criminal Procedure Act, since it recognises to any person to whom a punishable act has been attributed the right to be informed of his/her right to free translation and interpretation in accordance with the provisions of articles 123 and 127 of the Criminal Procedure Act.
- Articles 123 to 127 of the Criminal Procedure Act, which concern "the right to translation and interpretation". Thereby it is stated that those who have been accused or charged and who do not speak or understand Spanish or the official language used in the proceedings will have, amongst others, the following rights:
  - "right to be assisted by an interpreter who uses a language that he/she understands during all the proceedings in which his/her presence is necessary, including the police or the public Prosecutor questioning and all the judicial hearings" (art. 123.1.a.)
  - "right to have the conversations with his/her lawyer interpreted and that are directly related to the subsequent interrogation or statement taking or that are necessary for the the presentation of an appeal or any other procedural request (art. 123.1.b.)
  - "The costs of translation and interpretation derived from the exercise of these rights will be borne by the Administration, regardless of the outcome of the process".
- "The translator or court interpreter will be appointed from among those who are included in the lists drawn up by the competent Administration" (124.1).

The provisions mentioned in the previous paragraph refer to translation and interpretation in criminal proceedings. Yet, the scope of our research focuses on access to free legal aid regarding complaints and requests that pre-trial inmates file in general, not necessarily in the criminal domain. In this sense it is worth mentioning that the Law on Free Legal Aid[29] foresees that free legal aid will also cover interpretation services, translation of documents, and travel expenses if in-court appearance is deemed necessary when the following conditions are met (arts. 46-54):
- it is a cross-border dispute within the European Union
- it relates to civil and/or commercial law litigation
- the applicant of free legal aid resides or is domiciled in a Member State of the European Union other than Spain and meets the economic thresholds set by the Law on Free Legal Aid (art. 3). Nevertheless, the economic limits established thereby shall not prevent the applicant who exceeds them from obtaining free legal aid if he/she proves that he/she can not face the procedural expenses due to the differences in the cost of living between the Member State of his/her residence and Spain. In this case, compliance by the applicant with the economic criteria applicable in the Member State of his/her domicile or habitual residence to grant legal aid shall be taken into account.

Finally, we would like to note, that as regards foreigners from third countries outside of the EU, **all foreigners**, regardless of whether they legally reside in Spain or not, have the right to free legal aid if they prove insufficient resources to litigate based upon the thresholds foreseen in art. 3 of the Law on Free Legal Aid. This is particularly helpful as regards the legal assistance and defence of undocumented immigrants in all the procedures related to their criminal offence, or to Immigration Law, or their asylum application (including prior proceedings before the Public Administration).

1.3 Actors providing legal information

The police (and also judges when detainees are brought before them) are the persons in charge of informing detainees of their rights, including their right to free legal aid. But these authorities simply inform detainees of the existence of the right as such and requests the Bar

29 following the amendments introduced by Law 16/2005, of 18July, to adapt it to Council Directive 2003/8/EC of 27 January 2003 regarding improved access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes

Association to appoint an ex-officio lawyer in those cases where the detainee does not wish to appoint a lawyer of his/her choice. It is precisely this **ex-officio lawyer appointed by the Bar Association** and who goes to the police detention facilities the one who actually informs detainees about the content of their right to free legal aid, how to request it, before whom and when.

Status of appointed ex-officio lawyers (hereinafter we will refer to them as lawyers from the "duty shift" abogados del turno de oficio):
The lawyer's profession, and more precisely the lawyer's profession when providing Free Legal Aid, is regulated mainly in the following texts:
1.) Arts. 542-546 of the Organic Law 6/1985 on the Judiciary, of 1st July
2.) Law 34/2006, of 30th October, on the access to the professions of Lawyer and Attorney of the Courts;
3.) Royal Decree 658/2001, of 22nd June, on the General Statute of Spanish Lawyers;
4.) Order of June 3, 1997, of the Ministry of Justice, establishing the minimum general requirements of training and specialization necessary for the provision of Free Legal Aid;
5.) different regional regulations (most Autonomous Communities will have their own regional regulations on this issue). For example: Valencian Autonomous Community Regulations governing Free Legal Aid, adopted by Regional Decree 17/2017 of 10th February enacted by the Consell de la Generalitat Valenciana[30]
6.) internal regulations of the various Bar Associations in Spain (each Bar Association has its own internal regulations). For example: "Regulatory Standards governing the system of "duty lawyers" of the Madrid's Bar Association of 28th October 2014"[31], or the "Operating Regulations of the system of "duty lawyers" and detainees' legal assistance adopted by the Board of Governors of the Bar Associations of the Valencian Autonomous Community of 21st December 2017"[32]

In the afore mentioned texts (more precisely in art. 544.2 of the Organic Law on the Judiciary and art. 1.4 of the Law on the access to the professions of Lawyer and Attorney of the Courts) it is stated that anyone practising as a lawyer in Spain must be registered ("colegiado") in one of the 83 Bar Associations that exist in Spain. Registration in one single Bar Association, mainly (but not necessarily) the one established in the same area where the lawyer has his/her main office, authorizes to privately practice law in all the Spanish territory. Nevertheless, when the lawyer wishes to be ascribed to the system of "duty lawyers" ("turno de oficio")[33] of a particular Bar Association, he/she **must** have his/her office in the district or seat of that Bar Association and will be appointed to practice as a duty lawyer within that particular area or district. In fact, some Bar Associations not only require "duty lawyers" to have their office within the same district/area, but to habitually reside there too (for example, the Bar Association of the city of Granada). These requirements have been punished by the National Commission for Market Competence ("Comisión Nacional de los Mercados y la Competencia") with penalties amounting up to 108,000 Euros.[34] As it will be later explained,

30 Reglamento de Asistencia Jurídica Gratuita, aprobado por el Decreto 17/2017 de 10 de febrero del Consell de la Generalitat Valenciana. *Available at* https://www.dogv.gva.es/datos/2017/03/01/pdf/2017_1640.pdf

31 Normas Reguladoras Turno de Oficio aprobadas por la Junta de Gobierno del Ilustre Colegio de Abogados de Madrid, 28 Octubre 2014. *Available at:* https://web.icam.es/bucket/1420198848_NORMAS%20APROBADAS%2028.10.14.pdf

32Reglamento del funcionamiento del turno de oficio y asistencia al detenido de los Ilustres Colegios de Abogados de la Comunidad Valenciana. *Available at* http://es.icav.es/bd/archivos/archivo11520.pdf?nocache=0.220353

33 "Duty lawyers" are lawyers who consent to be appointed by the Bar Association from an established list of lawyers for the performance of defence counsel as appointed lawyers. In fore coming sections the system of "duty lawyers" (and its relation to Free Legal Aid) will be explained in detail

34 This has been the case of the Madrid Bar Association, which demands lawyers wishing to ascribe to the system of "duty lawyers" to have their office within the area covered by the Madrid Bar Association

the system of “duty lawyers” (turno de oficio) and Free Legal Aid are intrinsically related and it is important to mention in the present report the existence and controversy of these requirements.

Bar Associations (as all the other professional associations in Spain) have been regulated for decades by the Law on Professional Associations of 1974, which was partly modified in 2009 by the so-called “Omnibus Law”[35] and the “Umbrella Law”.[36]. Both Laws were enacted to adapt Professional Associations, including Bar Associations, to the requirements laid down by EU Directive 2006/123/CE on services in the internal market. In 2015 the Spanish Government came up with a proposal for a new law on Professional Associations, but the draft legislation was finally not adopted due to the strong opposition of Professional Associations, which did not agree to the suppression of the enrolment fee and the limitation of the annual quota of its members to a maximum of 250 Euros.

Budget of appointed lawyers for the provision of free legal aid:

The provision of legal information in detention by lawyers from the duty shift is financed with public money (either State or Regional subsidies). However, the provision by the Bar Associations of other services which are within the sphere of influence of free legal aid, for example the Service for Legal Orientation “Servicio de Orientación Jurídica” or the electronic file “expediente electrónico” are financed trough the enrolment fees and annual quotas of the registered lawyers.

According to the “11th Report of the Observatory for Free Legal Aid. Complete Statistics 2012-2016”[37] the total investment allocated by the Public Administrations to free legal aid reached 238.9 million Euros in 2016, which represents an increase of 5% compared to 2015, when 227 million Euros were invested. This cost recovery comes after several years of declining investments in free legal aid (for example, in 2011 the investment was of 254.5 million Euros, whereas in 2016 it was of only 238.9. This represents a five-year decrease of more than 6% and a reduction of more than 16 million Euros). This last year increase with respect to 2015 has been mainly due to the partial recovery of the hard cuts made in recent years in the remuneration levels of lawyers, especially in Madrid, Catalonia and Comunidad Valenciana, as well as the rising investment in the Gender Violence Service.
In 2016, 163.7 million Euros were allocated to the “duty shift” system (“turno de oficio”) with an increase of 5.7% compared to 2015. The increase in Legal Assistance to the Detainee was 2.9% in order to reach 44.8 million Euros; while the compensation received by the Bar Associations for the costs of infrastructures to finance the management of free legal aid also increased in 2016, 3.4% and reached the amount of 21.9 million Euros.

The average investment per citizen in Free Legal Aid is 5.13 Euros per year and the average remuneration received by free legal aid lawyers per case is 135 Euros, including the remuneration for the services provided during weekends or at night. Some levels of remuneration -for example, in the so-called “common territory”, that is, those Autonomous Communities which depend on the Ministry of Justice- have not been modified for twenty years, with its consequent real devaluation.

Lawyers do have an ethical framework (compiled in the “Código deontológico de la Abogacía

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http://www.europapress.es/madrid/noticia-cnmc-multa-colegio-abogados-madrid-exigir-despacho-area-incorporarse-turno-oficio-20170519151533.htm

35 Law 25/2009, of 22December, amending various laws for their adaptation to the Law on free access to service activities and their provision

36 Law 17/2009, of 23 November, on free access to service activities and their provision

37 XI Informe del Observatorio de Justicia Gratuita Abogacía Española - LA LEY 2016. Estadística completa 2012-2016. *Available at:* http://www.abogacia.es/wp-content/uploads/2016/07/XI-OBSERVATORIO-JUSTICIA-GRATUITA-COMPLETO.pdf

Española") guaranteeing their independency (art 2) and the secrecy of consultations (art. 5).[38] Article 23 of the Law on Free Legal Aid ensures that the provision of free legal aid will abide by them.[39]

As regards the actors responsible for providing legal information during pre-trial detention in prison facilities, we must mention at this point the "**Service for Legal Advice in Prison**" ("Servicios de Orientación Jurídico Penitenciaria", SOJPs).[40] Lawyers within this Service will not only inform the pre-trial detainee (as well as convicted prisoners) of their right to free legal aid, but will also help him/her fill in the application form. It is actually one of their main tasks, which consists on legal counselling (they are experts in prison law and hold interviews with inmates in prison every week to answer their questions and doubts, though they do not formally file applications before judicial authorities). It is a free service for prisoners that most (though not all) Bar Associations in Spain offer. In fact, this is one of the main claims raised by the General Council of the Spanish Lawyers: every Bar Association with a prison facility within its circumscription should have a Service for Legal Advice in Prison to make sure that all prisoners throughout Spain (irrespective of where they are serving their prison term) can access legal counselling on equal footing. It must be made clear that the SOJPs only provide legal counselling, for in-court representation inmates must request the appointment of an ex-officio lawyer (i.e. a lawyer from the "duty shift") or a private lawyer.

Status: only lawyers can be ascribed to this Service. As already said, to be able to practice as a lawyer, one must be registered in one of the 83 Spanish Bar Associations. Usually, lawyers from the SOJPs are also ascribed to the "duty shift" of a Bar Association and are very committed professionals.

Budget: Depending on the Bar Association, the SOJP is either subsidised by the Bar itself or by the Public Administration in certain Autonomous Communities (funded from budget headings other than those devoted to free legal aid) or is even offered on a voluntary basis by the lawyers ascribed to such Service. Indeed, except for the Autonomous Community of Aragón (where the SOJPs are included within the free legal aid scheme since the entrance into force of a new regional law in 2017) the legal counselling provided is not part of the free legal aid scheme. Free legal aid as regards prison matters strictly speaking only covers the appeals lodged by inmates before the Judge for Prison Supervision.

Besides lawyers from the "duty shift" and lawyers from the SOJPs, the following bodies can also provide information on legal aid to the public in general (including inmates' relatives), which is sometimes very useful and therefore worth mentioning here:
1. Bar Associations also provide information on free legal aid through their Services for Legal Advice (Servicios de Orientación Jurídica)
2. The Free Legal Aid Commissions of each Autonomous Community ("Comisiones de Asistencia Jurídica Gratuita", which will be further comment in section 2)
3. The General Council of Spanish Lawyers

1.4 Practical arrangements

A.) During detention in police custody

38 See Código deontológico de la Abogacía Española, *available at* http://www.abogacia.es/wp-content/uploads/2012/06/codigo_deontologico1.pdf

39 Article 23 reads as follows: "The professionals who provide the obligatory service of free legal aid, to which this law refers, will carry out their activity with freedom and independence, subject to the ethical and functioning norms of the Bar Associations' services of free legal aid".

40 It must also be noted that, in practice, besides the SOJPs, the ex-officio lawyer who has been entrusted with the defence of the pre-trial prisoner in the criminal case will also inform of the possibility of requesting free legal aid (and the appointment of another ex-officio lawyer different to the one representing/defending the pre-trial inmate in the criminal case) if he/she wants to file a request/complaint before the Judge for Prison Supervision.

As regards the practical arrangements for providing legal information during detention in police custody, the law provides as follows: After the entry into force of Organic Law 13/2015 amending the Criminal Procedure Act, articles 118 and 520 now explicitly require that the information on the detainees' rights be provided in writing, in a language the person understands and in a simple and accessible form, and that detained persons be allowed to keep a copy of the information sheet throughout the period of police custody. In practice, however, the CPT found that not all detainees interviewed were aware of having been informed of their rights in writing. In the CPT's view it was noteworthy that none of the persons held in police custody with whom the delegation spoke during the visit possessed a copy of an information sheet on his/her rights and no information sheets were on display in the police custody cells seen by the delegation. However, it was positive that information sheets were available electronically in some 20 languages in all police establishments visited and could be readily printed out.[41]

As far as the practical arrangements for requesting legal aid during detention in police custody, the law (art. 520.5 of the Criminal Procedure Act) literally foresees the following: The detainee can freely appoint a lawyer and if he does not do so, he will be assisted by an ex officio lawyer. The police shall not make any recommendation about which lawyer to appoint beyond informing the detainee of his/her right. The police shall immediately inform the Bar Association of the name of the lawyer appointed by the detainee, so that it can assist the police in locating him/her and transmitting the professional assignment or, if applicable, shall communicate the petition for the appointment of an ex-officio lawyer. If the detainee has not designated a lawyer, or the chosen one rejects the assignment or is not found, the Bar Association will proceed immediately to the appointment of another ex-officio lawyer from the duty shift. The appointed lawyer shall go to the detention centre with the maximum expediency, always within a maximum period of three hours from the reception of the order. If during this period he/she does not appear, the Bar Association will appoint a new ex-officio lawyer from the duty shift who must appear as soon as possible and always within the indicated period, without prejudice to the disciplinary responsibility in which he/she may have incurred.

B.) **During pre-trial detention in prison facilities**

The practical arrangements for providing legal information to pre-trial detainees in prison facilities are as follows: currently, pre-trial inmates are informed of their rights and duties when they first enter prison either by the Social Worker or the Educator during the interview foreseen in Article 20 of the Prison Regulation.[42] Previously, they were given a brochure prepared by the General Secretariat for Prison Institutions, but not any more, even though Article 52 foresees the right for prisoners to be informed in writing of their rights and duties, of the procedures to make them effective and of the internal regulations of the prison facility in question.

As regards the practical arrangements for carrying out the task to provide legal aid during pre-trial detention, art. 48 of the Prison Regulations provides that "the communications of the inmates with their defence counsel or with the attorneys representing them will be held in accordance with the following rules (this article refers to inmates in general and applies to pre-trial inmates too):
1.1.) The lawyer will be identified by presenting the official document that accredits him as a

41 CPT/Inf (2017) 34 p. 15

42 Article 20 sets forth that remand prisoners (as well as convicted) shall stay for a maximum period of 5 days in the Admissions Department. During this time period, they shall be visited by the doctor and interviewed by the Social Worker and the Educator, who shall issue a report suggesting specific custody arrangements (internal separation, transfer to another prison facility, etc.) and activities. Aspects such as, previous employment, cultural and professional training, etc. are assessed and taken into account.

lawyer 1.2.) The lawyer must also submit a document issued by his/her respective Bar, which expressly states his/her status as the defender or inmate representative in the cases where the inmate is being tried or as a result of which is serving a sentence. In cases of terrorism or inmates belonging to armed bands or groups, the said document must be issued by the judicial authority that is aware of the corresponding causes, without prejudice to the provisions of article 520 of the Criminal Procedure Act (i.e. incommunicado pre-trial detention).
1.3.) These communications will be recorded in chronological order in the corresponding book, recording the name and surnames of the inmate's defence counsels or attorneys, the number of the case and the duration of the visit and will be held in special booths/parlours, where it is guaranteed that the control of the officer in charge of the service is only visual
2. In the same conditions indicated in the previous section, inmates' communications with the defence counsel and lawyers will be authorized when, before appearing in the case as defenders or representatives, they have been expressly called by the inmates through the Direction of the prison facility or by their relatives, this should be accredited by the presentation of the Bar's document specifying such circumstance.
3. The communications of the inmates with the defence attorney or with the lawyer expressly called in relation to criminal matters, as well as with the attorneys who represent them, may not be suspended or intervened, in any case, by an administrative decision. The suspension or intervention of these communications can only be made upon express order of the judicial authority.
4. Communications with other lawyers other than those mentioned in the previous sections, whose visit has been required by the inmate, will be held in the same special booths and will conform to the general norms of article 41. In the case that said lawyers present an authorization of the corresponding judicial authority (i.e. investigating judge) if the inmate was a pre-trial prisoner or the Judge for Prison Supervision if it were a convicted prisoner, the communication will be granted under the conditions prescribed in the previous sections of this article.

In practice, legal aid to pre-trial detainees is provided as follows: usually the same ex-officio lawyer (i.e. lawyer from the "duty shift") that assisted the person in police detention will be also assigned the defence of the pre-trial inmate in the main criminal case. If however, the pre-trial inmate during his/her police detention requested the services of a lawyer of his/her choice and, for whatever reason, this private lawyer does not continue to represent him/her, the pre-trial inmate may then request the appointment of a lawyer from the "duty shift". Such request must be filed in writing by the pre-trial inmate and sent by post to the investigating judge who agreed his/her remand detention. The investigating judge, in turn, will require the Bar Association to appoint a lawyer from the "duty shift" following the pre-set order. The Bar Association sends then a notification to communicate the appointment of the duty shift lawyer (with his/her personal data and the lawyer's office address) to both the investigating judge and the pre-trial detainee.

The communications between lawyers and prisoners (convicted and on remand) are carried out in special booths/parlours for interviews with lawyers. They have a glass barrier and an intercom and chairs for the prisoner and the lawyer, as well as a small ledge for writing. The sound is usually quite bad and if they want to exchange documentation it has to be done through a security officer visually monitoring the parlours. The security officer checks the documentation and delivers it to the prisoner or the lawyer and vice versa.

Visits can be made any day of the week between 9 a.m. and 1:30 p.m. and 4 p.m. and 7:30 p.m. Communications may last as long as they want, always respecting lunchtime and dinnertime and the lawyer and the inmate can meet as many times as they want.

Lawyers need to be provided with a document issued by the Bar Association to be able to visit the prisoner. Bar Associations issue such certifications:
- for lawyers directly appointed by the Bar Association from the "duty shift" because there is

an ongoing in-court procedure
- for lawyers also appointed by the Bar Association from the “duty shift” but following an express request from the pre-trial inmate before any procedure is initiated.
- for privately appointed lawyers
The main reason behind these certificates issued by the Bar Associations is to prevent lawyers from “stealing” clients or cases from other colleagues. Indeed, with these certificates, lawyers can go to prison to visit only a particular inmate and not any random inmate.

1.5 Legal information tools

During detention in police custody: the law (art. 520.2 of the Criminal Procedure Act) now requires that information on the detainees’ rights be provided in writing and that detained persons be allowed to keep a copy of the information sheet throughout the period of police custody. However, the law does not further foresee that the detainee will have access to other legal information tools, such as legal guides, etc.

Regarding pre-trial detention in prison facilities, under article 52 of the Prison Regulation, the following legal information tools are to be made available to all inmates (pre-trial and convicted) already in the Admissions Department and also in the Library of the Prison facility: the General Prison Law, the Prison Regulations and the internal regulations of the prison facility in question.

The main web pages that contain information on access to legal aid in Spain are the following:

- ✓ http://www.mjusticia.gob.es/cs/Satellite/Portal/es/servicios-ciudadano/tramites-gestiones-personales/
- ✓ http://www.justiciagratuita.es
- ✓ http://www.abogacia.es/ (Within this website you can find information of each of the 83 Bar Associations that exist in Spain through hyper links to their websites)

However, detainees and prisoners (both convicted and on remand) cannot access Internet, including on-line legal information portals, during the time spent in detention / remand custody. Electronic devices such as mobile phones are seized.

1.6 Reporting on legal information

The police is obliged to keep custody records containing information on the date and time of arrest, time of arrival at the police station and date and hour of release, as well as the signature of the responsible police officer. The police also keep individual files of detained persons containing the original copy of the information sheet on detainees’ rights signed by the detained person and a form indicating the time when the person was informed of his/her rights and whether a lawyer was appointed and his/her family contacted (including the phone number).[43] The purpose of recording all these data is to safeguard the rights of the detained person. With these custody records it can be proven that the person was indeed detained in that police station, the amount of time that lasted his/her detention, and if s/he was informed of all his/her rights. It is a means for verifying that the detention was carried out in accordance with the law.

As regards lawyers, they regularly report the provision of their services to the Bar Association to which they are ascribed (there are 83 Bar Associations in Spain)[44]. They must documentary justify the provision of free legal aid before their Bar Association, which after verifying it, forwards the documentation to the following institutions:

43 CPT/Inf (2017) 34, p. 16
44 http://www.abogacia.es/conozcanos/la-institucion/colegios-y-consejos/

1. the Free Legal Aid Commissions (we will later elaborate on them), which in turn send it to the Regional Department of Justice of each Autonomous Community
2. the General Council of Spanish Lawyers, which in turn sends it to the Ministry of Justice.[45]
The purpose behind these records is to prove that free legal aid has been provided in order to get paid for it.

2. LEGAL AID

CONTEXTUALIZATION

There are two modalities in which a person deprived of his/her freedom can exercise his/her right of defence:
a) Legal assistance to the detainee by a private lawyer. In this case, there is no possibility of applying for free legal aid. The detainee contacts the private lawyer through the phone call he/she is allowed to make from the police station where he/she is detained (or through his/her relatives who have already been informed).
b) Legal assistance to the detainee by an appointed or ex-officio lawyer (hereinafter, a lawyer from the "duty shift", abogado del turno de oficio). Each Bar Association has a number of lawyers ascribed to what is called the "duty shift" ("turno de oficio").[46] The enrolment is voluntary. Lawyers from this "duty shift" are assigned 24-hour guards, in which they must be available to go to detention centres whenever their services are requested by detainees. All 83 Bar Associations in Spain have a "Legal Aid Service for Detainees" which receives and centralises the calls from the different police stations and detention centres. This Service then contacts the lawyers who are on duty according to a pre-set order. The appointed lawyer must go to the detention centre as soon as possible. Once in the detention centre, the lawyer meets in private with the detainee (if it is an ordinary detention, not an incommunicado one) and assists him/her during the police declaration. The next day (in the case of large cities where there are many detainees) or several hours (in small cities or towns) the detainee, unless he/she is released before, is taken before the criminal investigating judge, who is the competent authority to order his/her release or his/her pre-trial detention. Before the judge, the detainee is informed once more of his/her rights and a statement is taken. After this, the appointed or ex-officio lawyer meets again privately with the detainee (either in the booths/parlours within the courts' dungeons or elsewhere if the detainee is released) in order to fill with him/her the application for free legal aid. This step is taken after a judicial file has been opened,[47] because the lawyer needs to reflect some details of the procedure (for example, the number of the instructing court, name of the

45 AGUILAR GONZÁLEZ, J.M., "La justicia gratuita en España: aproximación a un análisis cuantitativo" Foro, Nueva época, vol. 16, núm. 1 (2013): p. 39

46 There are four general "duty shifts"/turnos de oficio (which correspond to the four jurisdictional orders): civil, criminal, administrative and social. And within each of these "duty shifts" there are, in turn, different "duty shifts". For example, within the criminal "duty shift" there is a specific "duty shift for legal assistance to the detainee", a "duty shift for detainees due to gender-based violence", "duty shift for detainees due to serious crimes", "duty shift for minor offenses", etc. Obviously, not all these specific "duty shifts" exist in all Bar Associations. The bigger the Bar Association, the more specific duty shifts it has. In smaller towns, there is usually just the "duty shift for legal assistance to the detainee".

47 If a judicial file is never opened, the ex-officio lawyer's assistance during police detention is paid directly by the Autonomous Community or the Ministry of Justice (in the case of certain Autonomous Communities). Theoretically, if the person has sufficient economic means for litigating he/she should pay for the legal aid provided by the ex-officio lawyer during his/her police detention, but in practice it is not the case and all legal aid provided in police detention where no judicial file is opened, falls within the remuneration that ex-officio lawyers are paid for being on call (in Madrid, for example, it amounts to 130 Euros less any tax payable). Lawyers from the duty shift assume that during a 24-hour guard they can be called from the police detention facilities several times (and that some of these calls will turn into "cases", whereas others will not) or not called at all. In other words, lawyers from the duty shift know that those 130 Euros also cover the legal aid provided in those cases where no judicial file is opened.

municipality, number of the file regarding preliminary investigations or speedy trial, or number of the trial for minor offenses or the summary) in the application for free legal aid. In this application for free legal aid, the following data must also be reflected:

- Personal data of the detainee (name, surnames, domicile for the purpose of notifications, marital status, indication of whether he/she rents or owns the place where he/she resides, indication of the people who live with him/her, age and number of the national identity card)
- Economic data of the applicant (net annual or monthly income and concept (salary, subsidies, etc.), real estate owned by the applicant and its current market value and if they are subject to mortgage loans and, if so, the exact amounts, deposits or securities in banks, their balance in the bank account specifying the name of the bank and the vehicles under his/her name, the year of acquisition and their current value.
- Data of the judicial process (number of court, type of process (minor offence, speedy trial, preliminary or summary proceedings, jury court, before the “Audiencia Nacional”, etc.), location of the court, current state of the procedure (initiated or terminated if, for example, it has been a speedy trial in which there has been compliance).
- The signed declaration that the applicant has been duly informed by the appointed lawyer, indication of the the Bar Association where the lawyer is registered and the date on which the request for free legal aid is made. Both parties must sign this section of the application: the applicant and the lawyer.
- Finally, the applicant is given the following option: he/she is informed that he/she can authorize the Autonomous Community to access, through his/her ID and mobile phone, all his/her economic information and verify that the information entered in the application is true (electronic file processing), or, otherwise the applicant can collect all his/her paper documentation and take it to the Commission for Free Legal Aid of his/her Autonomous Community within ten days. The applicant will sign in different pages of the application depending on what he/she decides.

Once the application for free legal aid is duly completed, the ex officio lawyer must fill in a document called "Proof of Proceedings" where he/she consigns his/her personal data, the date of the guard, the date and place of detention and the information of the Judicial process. This proof must be stamped by the Court in which the process has been initiated, because that stamp accredits the lawyer's activity.

The lawyer must submit before the Bar Association (Department of “duty shift”) the “Proof of Proceedings” together with the application for free legal aid. It is the Department of “duty shift” the one in charge of a preliminary study of the application for free legal aid, of forwarding it to the Free Legal Aid Commission and of communicating to the lawyer and the defendant the opening of a file on the processing of free legal aid and, where appropriate, communicating its concession, its denial or the shelving of the file (due to lack of documentation or lack of information). The Free Legal Aid Commission decides whether or not free legal aid is granted within approximately three months. All decisions of the Free Legal Aid Commission can be appealed.

If the applicant is not granted free legal aid, the lawyer must charge his/her fees directly to the defendant and can not claim any payment to the Bar Association.

In the light of the above, two concepts ought not to be confused: ex-officio lawyer (appointed lawyer from the “duty shift”) with a free legal aid lawyer. A free legal aid lawyer will <u>always</u> be an ex-officio lawyer (appointed lawyer from the “duty shift”). But an ex-officio lawyer, depending on whether free legal aid is granted or not to the defendant, may be directly remunerated by the client in those cases where free legal aid is not granted.

This is the way to access free legal aid during police detention; yet there are other means for accessing free legal aid when police detention does not take place, but the person is still deprived of his/her liberty:

- As regards inmates (convicted or on remand) within a prison facility, they access free legal aid as follows: they must firstly request the appointment of an ex-officio lawyer for filing an appeal (for example, for litigating before the judiciary a change in the detention regime, more explanation is provided in section 2.1 “mandatory character of legal representation”). They request the appointment of the said lawyer before the Judge for Prison Supervision (or other judicial authority, where appropriate) at the time of lodging their initial complaint or their appeal for reform (“recurso inicial de queja o recurso de reforma”). At the bottom of their written plea they must specify this request for an ex officio lawyer. At this point, the Judge for Prison Supervision sends an official notification to the Bar Association’s department of “duty shift” requesting the appointment of an ex-officio lawyer. According to a pre-set order, the Bar Association appoints an ex-officio lawyer from the specific “duty shift for prison affairs” (“turno de oficio de vigilancia penitenciaria”) or from the general “duty shift for criminal affairs” in those smaller Bar Associations which do not have a specific duty shift for prison issues and notifies such appointment to the judicial authority who requested it and to the Free Legal Aid Commission, which in turn asks the prisoner to fill in the application for free legal aid and send it by mail directly to their offices or to deliver it to the lawyers from the Services for Legal Advice in Prison (Servicios de Orientación y Asistencia Jurídico Penitenciaria, SOAJP), who go to prisons every week and who advice inmates on how to apply for free legal aid (explain the requirements, the procedure, help them fill in the application, etc. We will further elaborate on this Service in fore coming sections). These lawyers then submit the documentation to the Bar Association’s Department for Free Legal Aid, which in turn sends it to the Free Legal Aid Commission, following the same procedure detailed above. The documentation and the data thereby requested is the same as detailed above and the pre-trial inmate can also benefit from the “electronic file processing”; in fact in most cases it is the only way the can gather all the documentation that must be produced (though they can also grant a power of attorney to their relatives).

As regards persons who, without being detained or imprisoned, are summoned by a court and have to declare as investigated on a specific day:

- In these cases, already the writ of summons indicates that on the day of their declaration (or trial in the case of minor offences), they must be represented by a lawyer, either a lawyer of their choice or an ex-officio lawyer, who will be appointed by the Court on the day of the declaration. In fact, it is not the Court who appoints the ex-officio lawyer, but the Bar Association. Indeed, that same day, if the person turns up without a lawyer of his/her own choice, the court clerk calls the Bar Association’s Department for free legal aid, which appoints a lawyer from the list of lawyers on duty that day (i.e. a lawyer from the “duty shift”) following the pre-set order. This appointed ex-officio lawyer must appear at the courthouse within an hour (otherwise he/she can incur in disciplinary responsibility). That same day, after the statement taking, the appointed lawyer will inform the summoned person of the possibility of requesting free legal aid and, in fact, they will fill in together the application forms for free legal aid detailed above. Usually the appointed lawyer will hand in the forms at the Bar Association, which will in turn send it to the Free Legal Aid Commission.

Therefore, only detention centres and courts can initiate the appointment of an ex-officio lawyer (lawyer from the “duty shift”). The request for free legal aid is done through this appointed ex-officio lawyer (in the case of criminal and penitentiary litigation) or by turning to the Bar Association of the Autonomous Community where the person in question resides in all other cases (civil, social and administrative litigation). In Spain there are 83 Bar Associations and all of them are affiliated to the General Council of Spanish Lawyers (Consejo General de la Abogacía española)

In 2016, the 83 Spanish Bar Associations attended more than 1,781,000 cases under the free legal aid scheme, which represents an increase of more than 2% compared to 2015 when 1,745,000 cases were generated. The Autonomous Community which processed more applications for free legal aid was, once again, Andalucia with more than 397,000 files that exceed 22% of the total files managed at the State level. Catalonia comes next with 337,000 applications that account for 19% of the total.[48]

2.1 Mandatory character of legal representation

It has already been mentioned that pre-trial detainees, depending on the content of their claim, seize either the Judge for Prison Supervision, the criminal judge or the investigating judge who remanded them in prison. Seizing one or the other has an impact on the mandatory character of representation by a lawyer so we will try to be very clear on this point.

For litigating the conditions of their detention, pre-trial (and convicted) inmates must first address the authorities of the prison facility where they are serving their prison terms. At this point, representation by a lawyer is not foreseen as mandatory by the law when inmates (both convicted and on remand) file complaints and requests within prison. Indeed, the sole provision mentioning lawyers in the General Law on Prison ("Ley Orgánica General Penitenciaria, 2/1979 de 26 Septiembre") is art. 51 regulating the regime of the communications between inmates and their lawyers.[49] As for the Prison Regulations, there are two references made to lawyers: in art. 48, which develops art 51 of the General Prison Law and in art. 242, which details the procedure for imposing disciplinary sanctions. Thereby, in subsection 242.2.i.) it is stated that the inmate **may** seek the advice and counselling of a lawyer, of a prison official or of any other person he/she considers during the disciplinary procedure and the drafting of his/her defence statements. That is, representation by a lawyer is optional, not compulsory, at this "administrative" stage of litigation.[50] The Spanish Constitutional Court has ruled on the content of the right of defence in disciplinary proceedings within prison, clarifying that although the rights of defence are part of the procedural guarantees and safeguards which also apply in the administrative sanctioning procedure, not all of the rights contained in art. 24.2[51] of the Spanish Constitution are applicable in its entirety (STC 2/1987). In the light of the above, the Constitutional Court concluded that "the assistance of counsel shall be allowed in the terms and to the extend considered proportionate to the infringement, sanction and procedure" (STC 74/1985), and therefore "the refusal to appoint an ex-officio lawyer is not to be reproached constitutionally" (STC 161/1993).

Once this administrative remedy has been exhausted, pre-trial (and convicted) inmates can then move on and litigate their conditions of detention before the judiciary, specifically before the Judge for Prison Supervision. Representation by a lawyer is not foreseen as mandatory by the law when the inmate first reaches the Judge for Prison Supervision. In court-assistance by lawyers (either a lawyer of one's own choice or an ex-officio lawyer) becomes mandatory only when prisoners lodge **appeals** against a decision rendered by the Judge for

48 Data from the "XI Informe del Observatorio de Justicia Gratuita Abogacía Española-LA LEY"

49 Article 51 reads as follows "the communications between inmates and their defence lawyer or with the lawyers expressly called in relation to criminal matters and with the solicitors ("procurador") representing them, shall be held in appropriate departments and may not be suspended or intervened except by order of the judicial authority and in cases of terrorism"

50 This clearly creates a grievance between inmates who can afford a lawyer of their own choice and those who cannot (the great majority). Indeed, since the representation by a lawyer is not mandatory, inmates cannot request to be appointed an ex-officio lawyer and access the free legal aid scheme

51 Art. 24.2 reads as follows: "all persons have the right of access to the ordinary judge predetermined by law; to the defence and assistance of a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defence; to not make self incriminating statements; to not declare themselves guilty; and to be presumed innocent. The law shall determine the cases in which, for reasons of family relationship or professional secrecy, it shall not be compulsory to make statements regarding alleged criminal offences".

Prison Supervision. This has been unanimously accepted by the Judges for Prison Supervision at their Regular Meetings, where they approve a series of guidelines, conclusions and agreements regarding procedural and substantive issues to try fill in the legal *lacunae* that the lack of a Prison Procedural Act entails.[52] The reason for the mandatory character of a lawyer's representation only when lodging appeals (and not when filing for the first time a complaint / request before the Judge for Prison Supervision) lays in the interpretation given to paragraph 9 of the 5th additional provision of the Organic Law of the Judiciary (as modified by Organic Law 5/2003, of 27th May). Currently the amended provision reads as follows: "the appeal referred to in this provision shall be lodged in accordance with the provisions of the Criminal Procedure Act regarding the Abbreviated Procedure. Both the Public Prosecutor and the inmate or the person released on parole are legitimated for bringing action through this appeal procedure. For the filing of the appeal, defence counsel is necessary and, if a barrister ("procurador") is not designated, the lawyer will also have legal authorization to represent his defendant. In any case, the inmate's right to defence in their legal claims must always be guaranteed". The expression "for the filing of the appeal, defence counsel is necessary" has been understood so as to implicitly mean that such defence and representation by a lawyer is not needed in the rest of procedures that are followed before the Judge for Prison Supervision (i.e. the initial filing of requests and complaints).[53]

Nevertheless, even though it is unanimously agreed that the intervention of a lawyer is not mandatory when initially seizing the Judge for Prison Supervision, it is also unanimously accepted that "at the request of the inmate in those cases in which the absence of a lawyer's defence and representation could lead to defencelessness due to the matter or complexity of the issue at quest, the Judge for Prison Supervision shall proceed to the appointment of an ex-officio lawyer in accordance with art. 21 of the Law on Free Legal Aid. The assessment of the the need for the technical assistance by a lawyer is left to the Judge's criteria, always with the limit of avoiding defencelessness"[54]

Therefore, and summing up, when litigating conditions of detention before the Judge for Prison Supervision, representation by a lawyer is not mandatory initially (i.e. when lodging the first complaint / request). However, it becomes mandatory at the stage of appealing. Namely, it is unanimously accepted that the following appeals need to be signed by a lawyer: "recurso de apelación" (pursuant to para. 9 of the 5th Additional Provision of the Organic Law on the Judiciary), "recurso de queja contra las resoluciones que inadmitan la interposición de un recurso de apelación" (also pursuant to para. 9 of the 5th Additional Provision of the Organic Law on the Judiciary) and "recurso para la unificación de doctrina penitenciaria" (pursuant to arts. 856 and 874 of the Criminal Procedure Act). The majority of scholars and legal practitioners[55] also argue for the mandatory character of representation by a lawyer in the following appeal: "recurso de reforma" and base their arguments in art. 221 of the Criminal Procedure Act.[56] So far, however, in practice representation by a lawyer when filing such appeal is considered not mandatory.

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52 The action guidelines, conclusions and agreements approved by the Judges for Prison Supervision in their meetings celebrated since 1981 can be found at http://www.derechopenitenciario.com/normativa/criterios/Historicocriteriosjvp.asp

53 Carlos García Castaño, Ponencia "Asistencia en fase penitenciaria, asistencia jurídica gratuita en fase penitenciaria, turno de oficio y servicios de orientación jurídica penitenciaria", Noviembre 2005

54 Guideline n.º 152 of the the action guidelines, conclusions and agreements approved by the Judges for Prison Supervision "Criterios de actuación, conclusiones y acuerdos aprobados por los Jueces de Vigilancia Penitenciaria en sus XVIII reuniones celebradas entre 1981 y 2009 (texto refundido y depurado actualizado a mayo de 2010) *Available at* http://juristadeprisiones.com/wp-content/uploads/2014/02/Criterios-actuaci%C3%B3n-JVP-actualizados-a-2010.pdf

55 Carlos García Castaño, Ponencia "Asistencia en fase penitenciaria, asistencia jurídica gratuita en fase penitenciaria, turno de oficio y servicios de orientación jurídica penitenciaria", Noviembre 2005

56 Article 221 of the Criminal Procedure Act sets forth that: "appeals for reform, direct appeals and actions of complaint ("recursos de reforma, apelación y queja") shall always be filed in writing, authorized by the signature of a lawyer"

Besides the Judge for Prison Supervision, pre-trial inmates[57] seize the investigating judge who ordered their remand in prison when requesting extraordinary prison leaves, and the sentencing court (or the executing court in larger cities) when requesting the suspension of the enforcement of the penalty (including access to an early release measure for medical reasons). Representation by a lawyer in all these cases is mandatory, and the same appointed lawyer for the defence of the pre-trial inmate in the main criminal case will actually lodge all these requests. Indeed, "duty shift" lawyers appointed for the defence in a criminal case under the free legal aid scheme are obliged to assume all procedural incidents related to the main criminal case even two years after the sentence has been rendered (art. 7 of the Law on Free Legal Aid)

2.2 Legal aid scheme

Article 119 of the Spanish Constitution enshrines the right to free legal aid in the following terms: "*Justice shall remain free when thus provided by law and, shall in any case be so in respect to those who prove insufficient means to litigate*". The exact content and conditions of exercise of the constitutional right to free legal aid has been developed mainly by:
- Law 1/1996, of 10th January, on Free Legal Aid[58] which unified the procedure and avoided having to turn to the different laws regulating the procedure in each jurisdictional order);
and by two Royal Decrees:
- Royal Decree 996/2003, of 25th July, endorsing the Regulations on free legal aid
- Royal Decree 1455/2005, of 2nd December, amending the Regulations on free legal aid.

It must be noted that since important competences on free legal aid have been transferred to several Autonomous Communities, the regulations enacted at the regional level also determine the way the legal aid scheme is organized within the territory of those Autonomous Communities.

The following Autonomous Communities have taken over responsibility for free legal aid: 1. Cataluña, 2. Madrid, 3. Andalucía, 4. Comunidad Valenciana, 5. Canarias, 6. Galicia, 7. País Vasco, 8. Asturias, 9. Aragón, 10. Navarra, 11. Cantabria.

The following Autonomous Communities have not taken over responsibility for free legal aid and are dependent on the Spanish Ministry of Justice are: 1. Castilla León, 2. Castilla la Mancha, 3. Extremadura, 4. Murcia, 5. Baleares, 6. La Rioja, 7. Ceuta, 8. Melilla[59]

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57 Convicted inmates seize the Judge for Prison Supervision when requesting ordinary prison leaves and early release for medical reasons

58 The Law on Free Legal Aid has undergone major amendments since its entry into force. The main legal texts amending the Law on Free Legal Aid are the following:

1. Law 16/2005, of 18 July, amending Law 1/1996 on Free Legal Aid, which regulates the particularities of civil and commercial cross-border litigation in the European Union, transposing Council Directive 2003/8/EC of 27 January 2003, to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. Law 16/2005, of 18 July, also took the opportunity to extend free legal aid to persons with disability and foreigners, even if they do not legally reside in Spain, whenever they prove insufficient means to litigate (thus incorporating the Constitutional Court ruling of 95/2003 of 22 May)

2. Royal Decree 3/2013, of 22February, amending the system of fees regarding access to justice and the system of free legal aid. This Royal Decree amended the existing general requirement for accessing free legal aid (according to which someone was entitled to free legal aid if he/she together with his/her family unit failed to exceed twice the minimum inter-professional salary) by introducing a threshold regime

3. Law 2/2017, of 21June, amending Law 1/996 on free legal aid, which ratifies the obligatory nature of the provision of free legal aid by the Bars Associations, as well as the compensatory nature of the on-duty lawyer's remuneration and, therefore, the non-subjection of this service to VAT.

59 Ceuta and Melilla are not Autonomous Communities ("Coumunidades Autónomas", but Autonomous cities ("ciudades autónomas"), but for the purposes of the present report such nuisances in terms of official status are not relevant. The same happens as regards Navarra, which is officially a

Funding of the legal aid system:
Free legal aid is a public service financed with public funds (either State-owned or stemming from the Autonomous Communities). The amount spent in free legal aid, represents around 6% of the State budget as a whole – including in this percentage the Autonomous Communities, the General Council of the Judiciary and the Constitutional Court -.

In Spain access to free legal aid as established by Law 1/1996, of 10th January, on Free Legal Aid, is an essentially administrative activity; thus, courts and judges are relieved from a task which is understood to lie outside the constitutional boundaries of the exercise of jurisdictional power.[60]
In this sense, in Spain, the recognition of the right to free legal aid rests firstly, on the Bar Associations (which initiate the processing of applications, undertake a preliminary analysis of such applications and provisionally agree on denials or grantings); and secondly, on administrative bodies known as "**Free Legal Aid Commissions**" (*Comisiones de Asistencia Jurídica Gratuita*) which are the bodies formally responsible for the **final decision** on the access to free legal aid.

In certain Autonomous Communities (those where competences on free legal aid have been transferred, see above), these Commissions are ascribed to the Regional Justice Department of the Autonomous Communities where they are present and their exact composition, functions and funding are regulated by different Regional Decrees. Indeed, pursuant to art. 37 of the Law on Free Legal Aid those Autonomous Communities where competences on free legal aid have been transferred shall subsidized the implementation, attention and operation of free legal aid services by the Bar Associations established in their territory.

In those Autonomous Communities where competences on free legal aid have <u>not</u> been transferred and are dependent on the Ministry of Justice, the composition, functions and funding of the Free Legal Aid Commissions are regulated mainly by Royal Decree 996/2003, of 25th July, endorsing the Regulations on free legal aid. Thereby it is established (art. 36) that the Ministry of Justice will subsidize from its budget the implementation and provision of free legal aid services by the Bar Associations in their area of management. The payment of such subsidies will be issued quarterly. Annex II of the afore mentioned Royal Decree establishes the economic bases and compensation modules set for each type of procedure and procedural act. As regards prison litigation, the remuneration level set for each appeal a lawyer from the "duty shift" lodges under the free legal aid scheme is 114,19 Euros.

Besides these Free Legal Aid Commissions with a regional scope, art. 9 of the Law on Free Legal Aid foresees the creation of a Central Free Legal Aid Commission ("*Comisión Central de Asistencia Jurídica Gratuita*") ascribed to the Courts and Tribunals with jurisdiction throughout the national territory, which shall depend on the General State Administration and have its seat in Madrid. This Central Free Legal Aid Commission decides on the granting or denial of free legal aid regarding litigation before the courts with jurisdiction throughout the national territory (for example, the Audiencia Nacional). Since they depend on the General State Administration, it is also the Ministry of Justice the one which subsidizes from its budget the implementation and provision of free legal aid granted by this Central Free Legal Aid Commission.

"Comunidad Foral"

60 There is an exception to the administrative nature of the implementation of the right to free legal aid introduced by Law 13/2009, of 3rd November, on the reform of procedural legislation for the establishment of the new "Judicial Office": In certain cases, where the in-court representation by a lawyer is not mandatory, the court may still order the appointment of an assigned counsel to guarantee the equality of arms between the parties. In these cases, it is the judicial clerk the one that prompts the Bars Associations to designate an ex-officio lawyer Nonetheless, the request for free legal aid must still be initiated by the party him/herself.

The different procedural acts that an appointed lawyer may undertake when providing free legal aid are paid according to predetermined remuneration levels set by the concerned Public Administrations. Several agents participate in the pay system. We will here describe how it works in those regions which depend on the Ministry of Justice (although the scheme is very similar in those Autonomous Communities which do not depend on the Ministry of Justice): firstly, the appointed lawyers must documentary justify the provision of their service before their respective Bar Association, which must then verify the submitted documentation. Secondly, the Bar Associations send the documentation to the Commissions for Free Legal Aid (for the final verification of the right to free legal aid) and to the General Council of the Spanish Lawyers, which is responsible for distributing the amount of subsidies quarterly. In turn, the General Council of the Spanish Lawyers sends (at the beginning of the calendar month following the end of each quarter) the aforementioned documentation to the Ministry of Justice. The Ministry of Justice issues the corresponding certificates through the Public Treasury paying the General Council of the Spanish Lawyers, which in turn pay the corresponding Bar Associations, which pay the lawyers.

2.3 Emergence of a right to legal aid in prison facilities

When were the defraying of prison disputes decided?
1. Appeals before the Judge for Prison Supervision concerning prison issues strictly speaking, are covered by a free legal aid scheme since 1986.[61]
2. The different "procedural incidents" that a pre-trial inmate files before the investigating judge who orders his/her remand in prison or the sentencing court (for example, access to an early release measure for medical reasons or the request of an exceptional prison leave) are also covered by a free legal aid scheme since 1986 (they do not have a "penitentiary nature", but are rather considered, or are more similar in nature, to "appeals" within a criminal procedure)

As regards the political circumstances: it must be noted that the adoption and subsequent improvements in the free legal aid scheme have always been implemented under socialist governments. During the last socialist government (2004-2011) an amendment to the Law on Free Legal Aid was proposed, which foresaw the inclusion under the free legal aid scheme of all procedural steps regarding prison matters (that is, not just the appeals against the decision of the Judge for Prison Supervision, but also the initial claims and requests and some of the legal advice provided by the SOJPs). However, the proposal was finally not adopted.

2.4 Perimeter of the legal aid regarding prison litigation

Perimeter of legal aid:
In terms of the substance matter, no aspects of prison life are excluded from the scope of free legal aid. That is, prisoners can litigate under the free legal aid scheme their conditions of detention, their detention regime, the imposition of disciplinary sanctions, the access to an early release measure, the denial of prison leaves, etc. In this sense, free legal aid covers all aspects of prison litigation. However, as regards some of the above listed matters, free legal

61 Royal Decree 118 / 1.986, of 24th January. This Decree was the first to foresee a "budget line" to subsidize the legal services provided by the lawyers ascribed to the "duty shift". Until then, lawyers ascribed to the "duty shift" provided their services free of charge under certain circumstances as a professional charge. RUIPÉREZ SÁNCHEZ, L. "Introducción y Antecedentes", III Jornadas de Asistencia Jurídica Gratuita (10 años de vigencia de la Ley 1/96). Ponencia IV la asistencia jurídica gratuita y los servicios complementarios, p. 70
http://www.reicaz.org/varios/3jornajg/ponenc4.pdf

aid is not available for the first procedural steps, i.e. when initially seizing the Judge for Prison Supervision since legal representation by a lawyer is not mandatory. A lawyer becomes mandatory only in the appeals stage and only at this point may the inmate apply for free legal aid.

We would like to make clear that the so-called SOJPs, which help inmates (convicted and on remand) with these first procedural steps and provide legal advice on how to claim/request before the Prison Administration and the Judge for Prison Supervision are not covered by the free legal aid scheme, except in the Autonomous Community of Aragón since 2017. Each SOJP is financed differently, depending on the Bar Association and the Autonomous Community where it is provided. Usually they are financed by the Public Administration but under budget lines different to free legal aid. They are, thus, free for inmates but are not under the same free legal aid scheme that applies to lawyers from the "duty shift".

Scope of legal aid for criminal proceedings:
Since prison litigation (strictly speaking) in Spain takes place before a specific judicial authority (i.e. the Judge for Prison Supervision) and not the criminal judge, the free legal aid granted for a criminal case will not extend to the handling of a proceeding linked to the defendants' rights within prison. The inmate (both remanded and convicted), when litigating prison-related issues will have to apply again for free legal aid and the appointed lawyer for representing him/her in the penitentiary procedure will be a different one from the criminal cause.
Obviously the above statement does not apply in those cases when the pre-trial inmate seizes the investigating judge (when requesting exceptional prison leaves) or the sentencing court / criminal execution court (when requesting suspension of the sentence, including access to an early release measure for medical reasons). In these cases, since these requests are lodged before the same judge that investigates or decides the main criminal case, art. 7 of the Law on Free Legal Aid will apply. According to art. 7 of the Law on Free Legal Aid, free legal aid, in the course of a same instance, extends to all proceedings, incidents and appeals in relation to the procedure for which it has been granted, including the execution of the court decision for a period of two years, but it cannot be applied to a distinct procedure. In the light of the above, no additional fees are foreseen for the lawyer if s/he handles a proceeding linked to the defendants' rights within prison.

2.5 Scope of the compensation

Generally, free legal aid does not differentiate between the different acts performed by the lawyer, but does differentiate whether the case is of special difficulty, or whether it is a speedy trial, or a jury trial, etc.
When it comes to prison litigation, free legal aid provides for the overall management of the case without differentiating whether the case is of special difficulty. Nonetheless, visits to prison are paid separately and the level of remuneration varies depending on how far away the prison facility is from the Bar Association (more than 5km, more than 25 km, more than 50 km). On average lawyers are paid 25 Euros less taxes for travel expenses. In Madrid there are free buses that take lawyers to prison

2.6 Eligibility to legal aid

The conditions for detainees and pre-trial prisoners to be eligible to legal aid are the same as for any other person and are established in article 3 of the Law on Free Legal Aid. Thereby it is established that the right to free legal aid shall be recognized to those natural persons who, lacking sufficient assets,[62] have gross income and economic resources, computed annually for all items and per family unit, that do not exceed the following thresholds:

62 In order to assess the existence of sufficient assets, ownership of immovable property will be taken into account, provided they do not constitute the applicant's usual residence, together with the gains yielded by the movable capital.

1. twice the public income indicator (*Indicador Público de Renta de Efectos Múltiples*, IPREM, literally: Public Income Indicator of Multiple Effects)[63] in force at the time of making the applications in the case of persons not integrated in any family unit (in 2016 this meant that their economic sources/income could not exceed 12,780.26 Euros)
2. twice and a half times the IPREM in force at the time of making the application in the case of persons integrated in any of the modalities of family unit with less than four members[64] (in 2016 this meant that their economic sources/income could not exceed 2016: 15, 975.33 Euros)
3. three times that same indicator in the case of family units with four members or more (in 2016: 19,170.36 Euros)

Legality of residence:
Currently, the right to free legal aid is recognized to all foreigners, regardless of their situation of documentary irregularity in Spain. This is so since the judgment of the Constitutional Court STC 95/2003, of 22 May, which declared unconstitutional the limitation of the right to free legal aid to foreigners residing legally in Spain. Therefore, for accessing free legal aid there is no requirement of legality of residence; in fact, in cases where a so-called "undocumented immigrant" is detained, a lawyer from the specific "duty shift" for aliens law (who are also on call) goes to the detention facility alongside with the lawyer from the "duty shift" for detainees, in order to defend the detained person from expulsion (in Spain if the penalty is less than one year imprisonment, the detained foreigner is automatically expelled from the national territory without entering prison and if it does not exceed 5 years they may also replace imprisonment for expulsion (art. 89 of the Criminal Code). If the penalty exceeds 5 years imprisonment, the detained foreigner enters prison in any case and when accessing the open regime, s/he will be expelled with an entry ban of up to 10 years).

Free legal aid is granted irrespective of the merits of the applicant's complaint. However, art. 32 and 33 of the Law on Free Legal Aid provides that if the appointed lawyer considers that the pre-trial inmate's claim is not feasible, he/she must communicate it, within 15 days, to the Free Legal Aid Commission, which in turn will request from the Bar Association an expert opinion on the feasibility and practicability of the claim. The expert opinion must be delivered within 15 days. If this expert opinion aligns with the appointed lawyer's criteria, the Bar Association will request a second expert opinion from the Public Prosecutor's Office, which must be submitted within 6 days. If the Public Prosecutor also considers the claim not feasible, the Free Legal Aid Commission will dismiss the application for free legal aid. If however, either the Bar Association or the Public Prosecutor Office consider the claim viable, the applicant for free legal aid will be entitled to the appointment of a second ex-officio lawyer for whom the defense of the case will be mandatory.

2.7 Choice of the lawyer

Detainees and pre-trial inmates can choose their lawyer, however, if it is so the case they will not be able to access the free legal aid scheme. This point must be made clear: in Spain free legal aid covers the services provided by ex-officio lawyers only (appointed lawyers from the "duty shift" / abogados del turno de oficio); and these ex-officio lawyers cannot be freely chosen by the detainee/pre-trial inmate, rather they are appointed by the Bar Association from a list following a pre-established order. Once a lawyer is appointed he/she cannot resign. There is only one case in which the lawyer can excuse him/herself from exercising the assigned defence: only within the criminal order and when there is a personal and just reason, which must be appreciated by the Deans of the Bar Associations.

2.8 Application for legal aid

63 http://www.iprem.com.es/
64 Modalities of family units: A.) composed by spouses not legally separated and, if any, by minor children, with the exception of those who are emancipated. B.) composed by the father or the mother and the children that meet the requirements referred to in A.)

The following formalities are required when applying for free legal aid (though not all the documents listed below are necessary in all cases. Depending on the place of residence of the applicant and the circumstances that have been alleged in the application, he/she will be required to documentary prove them. Therefore, the following is an indicative list of what documentation may be necessary to provide):

- Photocopy of the ID, passport or residence card of the applicant
- Certificate of payment of the Personal Income Tax or certificate of not having presented the documentation (in those cases where the person is exempted from this tax payment)
- Cadastral certificate of real estates
- Simple Note of the Property Register if charges are alleged on the real estates
- Certificates of registrations and cancellations in the Social Security
- Company certificate proving annual gross income
- Certificate of payment of the Corporation Tax (in the case of legal persons)
- Census certificate
- Certificate of "external signs" issued by the City Council where the applicant has his/her permanent residence
- Certificate from the Spanish Public Employment Service of the unemployment periods and the social benefits granted.
- Certificate of collection of public pensions
- Certificado del Servicio Público de Empleo Estatal en el que conste la percepción de ayuda por desempleo y periodo al que se extiende
- any other document that serves to accredit the alleged data.

In order to expedite the application process, the Bar Associations may, when expressly authorized by the applicant, request several of these certificates on his/her behalf. We would like to elaborate here on the so-called "electronic file" ("expediente electrónico"), which has been rated very positively by applicants in a survey undertaken by the Observatory of Free Legal Aid.[65] The "Electronic file for Free Justice" designed and instituted by the General Council of the Spanish Lawyers through its technological infrastructure ("Red Abogacía") is available to all Bar Associations[66] and Free Legal Aid Commissions of the different territorial Public Administrations. It connects in a telematic and simple way the Bar Associations with agencies such as the Tax Agency, the National Social Security Institute and its General Treasury, the General Directorate of Cadastre, or the National Employment Institute, among others. This electronic system, which allows the electronic processing of all the documents that are required from the applicant of free legal aid, saves him/her from requesting them personally in the Cadastre, the Social Security, the Treasury, etc. with the consequent saving of time for him/her and for the own Administration and shortening substantially the terms - thus guaranteeing a greater reliability and avoiding possible frauds. This important tool allowed, already in 2013, the electronically processing of more than 524,487 citizen applications for free legal aid.

2.9 Evaluation and granting of application for legal aid

Competent bodies:

As stated in previous sections, two different bodies are involved in the recognition of the right

65 According to such survey, the applications which the applicant authorizes to be processed through the Electronic File gain in transparency in their management, minimize errors in the administrative file and reduce the economic cost and the processing times up to 40 days.

66 Notwithstanding this availability, still not all the 83 Bar Associations have managed to incorporate the "electronic file" to their operative systems; for the time being, it is used by 70 Bar Associations and it is expected that this number will increase during this 2018

to free legal aid. Firstly, the Bar Associations (which initiate the processing of applications, undertake a preliminary analysis of such applications and provisionally agree on denials or grantings); and secondly, administrative bodies known as “Free Legal Aid Commissions” (*Comisiones de Asistencia Jurídica Gratuita*) which are the bodies formally responsible for the final decision on the access to free legal aid.

Composition and deliberative rules:

The Autonomous Communities with competences on free legal aid regulate the composition and deliberative rules of the Free Legal Aid Commissions established in their territories. However, on general terms, they follow the same scheme established in art. 3 of Royal Decree 996/2003 of 25th July approving the Regulations on Free Legal Aid, which regulates the composition and deliberative rules of the Central Free Legal Aid Commission and of the Free Legal Aid Commissions of those Autonomous Communities where competences on free legal aid have not been transferred. The composition of such Free Legal Aid Commissions is as follows:

The Central Free Legal Aid Commission: is chaired by a member of the Public Prosecutor’s Office and composed of the Deans of Madrid Bar Association and Madrid Solicitor’s Association, a State’s Attorney and a civil servant of the Minister of Justice, who will act as the Secretary.

The other Free Legal Aid Commissions with territorial ascription: are chaired by a member of the Public Prosecutor’s Office and composed of the Deans of the Bar Associations and of the Solicitor’s Associations of the respective Autonomous Communities, a State’s Attorney and a civil servant of the Department of Justice of the Regional Administration of the respective Autonomous Community, who will act as the Secretary.

Appeals against refusals:

According to art. 20 of the Law on Free Legal Aid, the decisions of the Commissions for Free Legal Aid granting or denying the previously recognized right to free legal aid (by the Bar Associations), can be challenged before the judiciary. This rebuttal, for which the intervention of a lawyer is not mandatory, must be done in writing, must be reasoned and must be submitted before the Secretariat of the Commission for Free Legal Aid within ten days of the notification of the decision or since it was known by any of the legitimate parties to lodge it. The Secretariat of the Commission for Free Legal Aid will forward the rebuttal, together with all the documentation corresponding to the contested decision to the competent Court. Once the rebuttal and the documents referred to in the preceding paragraph have been received, the court clerk will require the parties and the State Attorney (or the Counsel of the corresponding Autonomous Community when the competences on Free Legal Aid Commission have been transferred), so that within five days they submit in writing the allegations and evidence they deem appropriate. The judge or court may decide by means of an order, ex officio or at the request of one of the parties, to hold a hearing if the rebuttal can not be decided with the documents and evidence provided. The court clerk will indicate the day and time of the hearing that shall take place within ten days. Once the allegations have been received or the hearing has taken place, the judge or court will decide without further proceedings within five days, maintaining or revoking the contested decision, and can impose a financial penalty of 30 to 300 Euros on any person who has challenged with abuse of right.

2.10 Remuneration of legal aid lawyers

As far as remuneration is concerned those Autonomous Communities with competences on free legal aid establish through regional regulations the remuneration of lawyers for the provision of free legal aid. Therefore, lawyers are paid differently depending on the

Autonomous Community in which the Bar Association where they are ascribed to the system of "duty lawyers" is established. As regards those Autonomous Communities[67] where competences on justice matters (including free legal aid) have not been transferred and depend on the Ministry of Justice, a State Regulation[68] establishes the remuneration of lawyers for the provision of free legal aid (the remuneration levels thereby set were lastly upgraded in 2005,[69] a fact very much criticized). This same State Regulation also establishes the remuneration levels of lawyers within the free legal aid scheme when they plea before the courts with jurisdiction over the entire national territory (Audiencia Nacional, Central Court for Prison Supervision, Supreme Court and Constitutional Court)

In Annex 1 of the present report we have included the remuneration levels (including the remuneration levels for prison litigation) of free legal aid lawyers in most of the Autonomous Communities. As regards prison matters: on average, lawyers are paid 130 Euros for each appeal (it must be reminded that legal representation is only compulsory as regards appeals against the decisions of the Judge for Prison Supervision). In the Basque Autonomous Community lawyers are paid the most: 197,64 Euros per appeal, whereas in those Autonomous Communities where competences on free legal aid have not been transferred and depend on the Ministry of Justice lawyers are paid the least: 114 Euros per appeal. Extras are assigned for travel expenses to prison and it varies depending on how far the prison facility is.

If compared with the remuneration levels of free legal aid lawyers for litigation outside prison issues the remuneration levels are clearly much lower for prison litigation. For example, for their services within the general criminal procedure, free legal aid lawyers are paid 270,45 Euros (in the Autonomous Communities dependent on the Ministry of Justice), 329,41 Euros in the Basque Country and 330,56 Euros in Andalucia.

It is worth noting the problems faced by many Bar Associations when it comes to payments in general, not only as regards prison issues:
Some times the remuneration of appointed lawyers for the provision of free legal aid has to be advanced by the Bar Associations given the permanent delay in the payment of the state/regional subsidies. Some Autonomous Communities, due to the economic crisis, have reduced the already low remuneration awarded to lawyers ascribed to the system of "duty lawyers" (for example, in the Autonomous Community of Valencia remuneration to "duty lawyers" was lowered up to 40 percent, although it has been risen back again in 2017), other Public Administrations, like for example the Ministry of Justice, have maintained for over 10 years the same amount paid to "duty lawyers", lastly, other Public Administrations simply delay payments to "duty lawyers" (up to more than one year after the provision of their service). In some cases, as in the Bar Association of Antequera, the lack of continued payment by the Department of Justice of Andalucía has put at risk the service of free legal aid itself. To avoid this situation, many Bar Associations have arranged "confirming services" with bank institutions that allow the advancement of payments and the assumption of interests.

70% of the total remuneration is paid when the lawyer documentary proves the procedural action that has taken before the investigating judge (for example: hearing of witnesses, or request for provisional release) and the remaining 30% after the sentence or the court order that ends the procedure is rendered. If it turns out that the lawyer has already been paid 70% for any action taken before the judge and then s/he is informed that free legal aid has not been granted, the lawyer must return the 70% already paid to the Bar Association and charge the client. This practice is highly contested by the lawyers since many people are not

67 Castilla León, Castilla-La Mancha, Extremadura, Baleares, La Rioja, Murcia, Ceuta and Melilla
68 Royal Decree 996/2003 of 25July approving the Regulations on Free Legal Aid
69 Remuneration was upgraded by Royal Decree 1455/2005, of 2 December, modifying the Regulations on Free Legal Aid as approved by Royal Decree 996/2003 of 25 July
http://www.boe.es/boe/dias/2005/12/17/pdfs/A41347-41355.pdf

granted free legal aid because they have not submitted enough information or they did not request the modality of “electronic processing file” and did not present all the necessary documentation, but still have no money to assume the costs of litigating. Thus, in most of the cases the lawyer will never get paid by the client for his/her services, not even after initiating the so-called “swearing accounts procedure” (proceso de jura de cuentas). This constitutes one of the black spots of the free legal aid scheme. Most lawyers believe that it would be better if the lawyer from the “duty shift” was paid by the Bar Associations in all cases and the Bar Association was responsible for pursuing the “debtors”, i.e. those who benefited from the legal services provided by lawyers in advance but were finally not granted legal aid.

2.11 Support to non-native speakers

During police detention, if the detained person does not understand Spanish, an interpreter must be present; and the lawyer from the duty shift, together with this interpreter, helps the detained person fill in the application for free legal aid. Translators who go to detention facilities are also on call, like lawyers from the “duty shift” and are also present when the detained person is taken before the judicial authority

Once in prison, pre-trial detainees who do not understand Spanish may request the presence of an interpreter at the court house in order for him/her to translate the proceedings. This is as far as the main criminal case refers. Interpretation of penitentiary proceedings, however, is not so well-established. Mainly because inmates hardly get to appear before the Judge for Prison Supervision, it is not the general rule but the exception (when the judge so requests). In these exceptional cases, an interpreter will be present if necessary. Within prison, it is usually another inmate the one who translates

2.12 Exemption of costs for the legal aid beneficiary

According to Article 6 of the Law on Free Legal Aid, the following services are covered by free legal aid:
1.) Free advice and orientation by a lawyer prior to the start of the proceedings for those who would like to institute legal proceedings before the courts, and information on the possibility of resorting to mediation and other extra-judicial means of dispute resolution
2.) Legal assistance by a lawyer to detainees in police custody or remand prisoners in relation to any action that takes place within police facilities or during the first appearance before the judicial authority. It is not necessary for the detainee or pre-trial prisoner to prove at this stage lack of resources, without prejudice to the fact that if finally they are not eligible for free legal aid, they will have to pay the lawyer’s fees incurred for his/her services.
3.) In-court representation and defence by a lawyer and a solicitor (“procurador”) during judicial proceedings, when their intervention is legally required or when, although not being mandatory, it is expressly required by the judge/court by way of a reasoned order to guarantee the equality of the parties in the proceedings.
4.) Publication in official gazettes of announcements or edicts in the course of proceedings when their publication is considered compulsory
5.) Exemption from court fees, as well as from the payment of monetary deposits for the filing of appeals
6.) In-court expert assistance under the terms established by law
7.) Expedition of copies, testimonies and notarial deeds under the terms established in art. 103 of the Notary Regulations.
8.) An 80% reduction on the tariff duties of certain notarial deeds
9.) An 80% reduction on the tariff duties of certain acts of the Property and Business Registers

In addition, and solely for cross-border disputes (following the reform of the Law on Free Legal Aid by Law 16/2005, of 18th July, to adapt it to Council Directive 2003/8/EC of 27th January 2003), the recipients of free legal aid do not have to pay the following costs:

interpretation services, translation of documents, and travel expenses if in-court appearance is deemed necessary.

2.13 Financial consequences of the failure of the proceedings for the legal aid beneficiary

According to art. 36.2 of the law on Free Legal Aid, if the legal aid beneficiary is sentenced to pay the judicial costs (mainly, his/her lawyers' fees and the counterpart lawyers' fees), he/she will have to do so if within three years from the ending of the court proceedings, his/her financial situation improves. It will be presumed that the legal aid beneficiary's financial situations has improved if his/her income and economic resources exceed twice the amount set forth in article 3 of the Law on Free Legal Aid, or if the circumstances and conditions taken into account to recognize the right to free legal aid have been substantially altered. The Free Legal Aid Commission is responsible for declaring whether the legal aid beneficiary financial situation has improved in accordance with the provisions of art. 19 of the Law on Free Legal Aid.

2.14 Opportunities in case the legal aid beneficiary is not satisfied with counseling

If the legal aid beneficiary is not satisfied with counselling, he/she may not request the appointment of a new lawyer from the Bar Association. A new lawyer would only be appointed by the Bar Association if the previous one died or fell ill. The legal aid beneficiary can, however, submit before the Bar Association (to the department of "professional deontology") a complaint concerning the in-court representation or the legal services provided by the appointed lawyer. A disciplinary proceeding is initiated and the lawyer is given a deadline to present allegations. The lawyer can be sanctioned by the Bar Association in different ways: suspension of service for a period of time, definitive expulsion, etc. and will have to compensate the legal aid beneficiary if his/her negligence has caused any damage; this explains why lawyers must subscribe a civil liability insurance on a mandatory basis. Nevertheless, for a lawyer to be sanctioned he/she must have performed very badly: for example, ignoring deadlines, not appearing in trials; it is not enough if the lawyer does not go to prison or the relationship between the legal aid beneficiary and the lawyer is not good.
The number of complaints lodged before the Bar Associations by free legal aid beneficiaries in 2016 was 5,081, which represents a 5% decrease compared to 2015 when 5,320 claims were submitted. Of these 5,081 complaints, 3,744 were dismissed and 207 entailed a sanction to lawyers of the "duty shift". Of the 45,348 lawyers assigned to the system of "duty shift" only 0.45% has been sanctioned, reducing the percentage with respect to 2015 when 0.5% of the lawyers of the Office shift were involved in disciplinary proceedings.[70]

3. ORGANIZATION OF BARS AND LAWYERS' ACTION IN DETENTION

3.1 Regulations of bars' involvement in legal support to detainees

As it has been already advanced, the involvement of the Bars in the legal support to detainees (in police detention, but also to pre-trial inmates under the free legal aid scheme) is regulated at the national level, at the regional level (in those Autonomous Communities where competences on free legal aid have been transferred) and at the level of local Bars. Indeed, many details, particularly those concerning how to access the "duty shift system" (which is intrinsically related to the free legal aid scheme), are mainly regulated at the level of local Bars.

The organization of legal consultation in detention is mandatory for the Bars (see for example arts. 22 and 29 of the Law on Free Legal Aid). Indeed, irrespective of whether legal consultation ends up being free of charge or not for the detainee (once it is ascertained

70 Data from the "XI Informe del Observatorio de Justicia Gratuita Abogacía Española-LA LEY"

whether he/she meets the requirements for being a beneficiary of free legal aid), Bars Associations must put at the disposal of any detained person the possibility of accessing a lawyer. This service is provided by lawyers ascribed to the "duty shift" system (Turno de Oficio). In fact, within such "duty shift" system, there is a specific shift devoted to legal assistance in detention ("asistencia letrada al detenido").

The "duty shift" system is a "list" of lawyers who agree to be appointed as lawyers when requested by any person (in detention or not) in need of legal services or when required by the judiciary for in-court representation in certain circumstances, this "list" is managed by the Bars which appoint the lawyers according to an unbiased and impartial pre-set order.

As of 31st December 2016, the 83 Spanish Bar Associations had 142,061 "practicing lawyers" registered. Out of these 142,061, more than 45,300 lawyers throughout Spain were ascribed to the "duty shift" system, this is one in three lawyers (32%). This percentage supposes a slight increase with respect to the data available on 31st December 2015, when 31% of the lawyers were ascribed to the "duty shift" (the number of women ascribed to the "duty shift" continues to increase and represents 47% (21,314 lawyers), 3% more than in 2015 when there were 20,700 women lawyers in the "duty shift".

As said, the "duty shift" system is a service provided by 45,300 lawyers[71] throughout Spain, 24 hours a day, 365 days a year anywhere in Spain Within this "duty shift" system there are lawyers who specialise in civil, commercial, administrative, or criminal law; and within the specialization of criminal law, there are, in turn, different specializations for lawyers to sign up: the largest and most popular is the shift for "legal assistance in detention". Indeed, out of the 45,300 lawyers ascribed to the duty shift" system, more than 37,400 lawyers sign up for the shift for "legal assistance in detention". Other specific shifts within the criminal branch are: the shift for gender-based violence, shift for minors, shift for minor offences, etc. and, depending on how large the Bar Association is or how it organises its "duty shift" system there can also be a specific shift for "prison litigation", "turno de penitenciario" (the Madrid Bar Association[72] has, and so does the Valencia Bar Association[73])

Besides the "duty shift", most Bar Associations also have the so-called Service for Legal Advice in Prison ("Servicios de Orientación Jurídico Penitenciaria" SOJPs),[74] which must not be confused. As the name suggests, the Service consists on the provision by lawyers experts in prison law of legal advice. Lawyers ascribed to this Service go to prison on a weekly basis and advice prisoners on different legal issues, mainly on prison law and the procedure before the Prison Administration and the first steps for seizing the Judge for Prison Supervision; but also on how to request a lawyer from the "duty shift" system, or on the possibility and the procedure for applying for free legal aid, etc. It is important to note that these lawyers only provide legal advice but do not represent inmates in court (this is done by lawyers from the "duty shift"). It is a highly requested service which regrettably is not available in every Bar Association with a prison facility within its circumscription (although the majority does).

The Service is managed by the Bars Associations and coordinated by the Subcommittee for Prison Law of the General Council of Spanish Lawyers.[75] It is totally free for inmates and it is subsidized either by the Bar Associations or by the Public Administration of the Autonomous

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71 This figure represents an increase of 3.7% with respect to 2015 (when the number of "duty shift" lawyers amounted to 43,751) Data from the "XI Informe del Observatorio de Justicia Gratuita Abogacía Española-LA LEY"

72 https://web.icam.es/bucket/1420198848_NORMAS%20APROBADAS%2028.10.14.pdf

73 http://es.icav.es/ver/112/turno-de-oficio-y-asistencia-al-ciudadano.html

74 The first SOJP was established in Vizcaya (Basque country) in 1986 and three years later Madrid and other regions from the Basque country joined the initiative too. By 2000 most, though not all, Bar Associations with a prison within its circumscription had a SOJP
http://www.derechopenitenciario.com/SOAJP/index.asp

75 http://www.abogacia.es/2013/08/14/subcomision-de-derecho-penitenciario/

Communities (though not from the same budget lines as free legal aid) or even in some Bar Associations the legal advice is provide by lawyers ascribed to this Service in an altruistic manner without an economic compensation. Either way, the remuneration for lawyers ascribed to this service is very low.

There is an important point which we would like to make clear: except in the Autonomous Community of Aragón since the entrance into force of a new law in 2017, the Services for Legal Advice in Prison are not covered/financed by the free legal aid scheme. Indeed, even if subsidized by the Public Administrations with public funds, it is not covered by the same budgetary lines as free legal aid. Last year, 2017, was the first time that a law (though regional in scope) was passed in order to incorporate the Service for Legal Advice in Prison within the free legal aid scheme. Indeed, the Autonomous Community of Aragón passed Law 9/2017, of October 19, regulating the free legal advice and orientation services in Aragón.[76] According to such law, the free legal aid scheme of that region will now also include the legal advice (and not only the in-court representation provided by lawyers from the "duty shift") provided in prison by lawyers from the Service for Legal Advice in Prison. Hopefully, in the near future other Autonomous Communities will follow this approach.

3.2 Lawyers specialized in detention/penitentiary law

Each Bar Association approves within a General Meeting the "Rules regulating the duty shift system" ("normas reguladoras del turno de oficio") which include the requirements for accessing the "duty shift" system, the obligations of the appointed duty lawyer, their rights, the scope of their performance, the responsibility they may incur for the incorrect exercise of the profession, etc.

As a general rule, lawyers who wish to ascribe to the "duty shift" system must have at least actively practiced law for three years, be in possession of the diploma of the School of Legal Practice or equivalent courses approved by the Bar Association, or have completed the courses or passed the entry tests to the "duty shift" established by the Governing Board of the Bar Association.

As for the ascription to the specific "duty shift for prison litigation" (turno de oficio de vigilancia penitenciaria") available in some Bar Associations, in most cases there are special statutory requirements. For example, in Madrid Bar Association it is required that the lawyer must have at least practised law for five years and completed a specific course on prison litigation.

3.3 Practical arrangements for carrying out legal assistance missions

Lawyers do not have access to inmates' accommodation facilities, not even when litigating their conditions of detention. They can only access the parlours for lawyers.

The Prison Administration does not make available the penitentiary file to lawyers. Only after the Judge for Prison Supervision orders it, can they access the files. The lack of access is a common complaint of lawyers.

Practical arrangements for carrying out legal assistance missions are as follows:

Lawyers from the "duty shift" go to prison when they choose to: some never go, others go whenever there is a novelty in the procedure or need to prepare the trial. There is no legal requirement specifying the regularity of visits to prison. Lawyers from the duty shift get paid for their visits to prison (on average 25 Euros less taxes) but must prove they have seen the inmate; this encourages lawyers from the "duty shift" to go to prison

76 http://www.boa.aragon.es/cgi-bin/EBOA/BRSCGI?CMD=VEROBJ&MLKOB=986088825656

Lawyers from the SOJPs (Services for Legal Advice in Prison) go once a week to prison all year round. Prisoners who wish to meet the lawyer from the SOJP have to request it before the Prison Director using a standard form ("instancia para la solicitud de asesoría jurídica") or they can also write a letter directly to the Bar Association. On the day the lawyer goes to prison s/he will meet with the prisoners who wrote to the Bar Association and with those who requested it before the Prison Administration (the security officer at the entrance has a list with the names of those who have requested a meeting before the Prison Administration and to that list s/he adds the name of those who have written a letter to the Bar Association)[77]. The meeting takes place in the parlours for lawyers where the 30 or 40 inmates will be queuing. Inmates and the lawyer from the SOJP can meet as many times as they deem necessary.

4. ROLE OF NGOs, LEGAL CLINICS AND NATIONAL MONITORING BODIES OF PRISON CONDITIONS

4.1 Ability to intervene in prison and to provide legal advice

Without the need for prior authorization, only the Ombudsman is entitled to visit prisons, yet it does not provide legal advice but only monitors detention facilities and the possible commission of ill-treatment (in Spain the Ombudsman acts as the National Mechanism for the Prevention of Torture (MNPT)). NGOs and actors of legal clinics providing legal advice have to firstly be authorized by the Secretary-General of Prison Institutions in order to visit prisons.
In Spain, only a few NGOs provide legal advice to prisoners. The most relevant ones are 1.) "Caritas española delegación diocesana de pastoral penitenciaria" (which mainly advices and counsels on areas such as immigration, civil and family matters, administrative and criminal issues) and 2.) ACOPE – Asociación de Colaboradores con las mujeres Presas (which focuses on female prisoners. Its legal department mainly translates into understandable language the judicial proceedings which the female prisoners undergo, explaining it step by step, accompanies female prisoners to Court, strengthens and facilitates communication between female prisoners and their lawyer and transmits to the prison administration female inmates' problems)
To the best of our knowledge there are no legal clinics providing legal advice to inmates

4.2 Dissemination of legal documents

Yes, NGOs, legal clinics and national monitoring bodies can disseminate legal documents within prison. In fact, Caritas Spain, one of the main NGOs working in Spanish prisons, prints and distributes for free for prisoners a book called "Handbook of Prison Execution. How to defend oneself from Prison".[78] It is a 900 pages-long book which is updated whenever there is a legislative reform. The first 600 pages answer the most common questions that a prisoner may have and the other 300 pages are sample application forms for filing complaints, requests, appeals, etc. Prisoners just need to find from the available pool of samples the one that matches their particular need and hand copy the form, entering their names in the blanks fields. This handbook is popularly known in prison as "the Bible of

77 Since 2006 there exists a Collaboration Framework Agreement between the Prison Administration and the General Council of the Spanish Lawyers for the improvement, management and control of the visits regime by lawyers, which has enabled the development of a set of telematic services facilitating the communications between prison facilities and Bar Associations of the per-arranged visits. See also Instrucción I 4/2006 Dirección General de Instituciones Penitenciarias regarding lawyers' visits ("Visitas de abogados. Red Abogacía")

78 It is distributed for free for prisoners solely. For professionals and for the public at large it is distributed by conventional publishing houses. RÍOS MARTÍN, Julián Carlos, ETXEBARRIA ZARRABEITIA, Xabier, PASCUAL RODRÍGUEZ, Esther. *Manual de ejecución penitenciaria: defenderse de la cárcel*. Madrid: Universidad Pontificia de Comillas, 2016

Prison" since all prisoners know and use this book. This book took off in the late 80s, when the current Mayor of Madrid (Manuela Carmena), then Judge for Prison Supervision, began working with Professor Julian Rios in the designed of an information brochure for prisoners, which later turned into a book.

4.3 Legal action in court

NGOs / Legal clinics / national monitoring bodies (like the Ombudsman) do not have standing to bring legal action in penitentiary proceedings. Appeals must be filed by prisoners in their personal capacity and cannot be sheltered under an organization. Indeed, pursuant to the 5th Additional Provision of the Organic Law on the Judiciary only the Public Prosecutor and the prisoner him/herself may lodge appeals against the decisions of the Judge for Prison Supervision, and only they can be part of the appeals procedure. Only lawyers registered as such in one of the 83 Bar Associations in Spain are entitled to assume the defence of a particular prisoner and only solicitors (procuradores) are entitled to represent them. Litigating is thus vetoed for legal persons, like for example NGOs. They can, however, bring legal action against a Prison Administration or a prison officer for the commission of a crime in a criminal proceeding (not a penitentiary one) and request the investigating judge to ascertain the facts. Notwithstanding the possibility that NGOs have of reporting to a criminal investigating judge, in practice they however institute legal proceedings mainly when there have been several complaints on the same issue (and not just isolated incidents).

ANNEXES

UMBRALES DE ACCESO A LA JUSTICIA GRATUITA POR UNIDAD FAMILIA

Importes anuales

UNIDAD FAMILIAR	UNA PERSONA	DOS MIEMBROS	TRES MIEMBROS	CUATRO MIEMBROS	CIRCUNSTANCIAS ESPECIALES, FAM. NUM. 1ª CLASE
Umbral de justicia gratuita antes de 2013	14.910,00 euros				29.821,00 euros
	2 veces el SMI				4 veces el SMI
Umbral de justicia gratuita propuesto y en vigor	12.780,00 €	15.975,33 euros		19.170,39 €	31.950,65 €
	2 veces IPREM	2,5 veces el IPREM		3 veces IPREM	5 veces IPREM
VARIACIÓN	-2.130,00 €	1.065,33 euros		4.260,39 €	2.129,65 €

Importes mensuales

UNIDAD FAMILIAR	UNA PERSONA	DOS MIEMBROS	TRES MIEMBROS	CUATRO MIEMBROS	CIRCUNSTANCIAS ESPECIALES, FAM. NUM. 1ª CLASE
Umbral de justicia gratuita antes de 2013	1.242,52 euros				2.485,05 euros
	2 veces el SMI				4 veces el SMI
Umbral de justicia gratuita propuesto y en vigor	1.065,00 €	1.331,28 euros		1.597,53 €	2.662,55 €
	2 veces IPREM	2,5 veces el IPREM		3 veces IPREM	5 veces IPREM
VARIACIÓN	-177,52 €	88,76 euros		355,01 €	177,50 €

BAREMO COMÚN

CLASE DE PROCEDIMIENTO	IMPORTE
J.PENAL: Procedimiento Penal General	270,45
J.PENAL: Procedimiento Penal General ante Aud.Nacional	283,00
J.PENAL: Procedimiento Abreviado	200,00
J.PENAL: Procedimiento Abreviado ante Aud.Nacional	210,00
J.PENAL: Procedimiento con Tribunal del Jurado	300,51
J.PENAL: Menores, incluida pieza de Respons. Civil	200,00
J.PENAL: Menores ante Audiencia Nacional	132,00
J.PENAL: Exptes. Vigilancia Penitenciaria	114,19
J.PENAL: Exptes. Vigilancia Penitenciaria (Aud. Nacional)	120,00
J.PENAL: Asistencia a Comparecencia Orden Protección	60,10
J.PENAL: Juicios de Faltas	70,00
J.PENAL: P.A. con desplazamiento Asistencia Juicio Oral	224,04
J.PENAL: Procedimiento de Especial Complejidad	300,51
J.PENAL: - Por cada 1.000 folios	18,03
J.PENAL: - 5 comparecencias adicionales (a partir de 5)	18,03
J.PENAL: - Vista Adicional (a partir de 2)	54,09
J.PENAL: Proc. de Especial Complejidad ante Aud.Nacional	315,00
J.PENAL: - Por cada 1.000 folios	19,00
J.PENAL: - 5 comparecencias adicionales (a partir de 5)	19,00
J.PENAL: - Vista Adicional (a partir de 2)	57,00
J.PENAL: Proc. Enjuiciam.Rápido con Asist.Detenido	240,00
J.PENAL: Proc. Enjuiciam.Rápido sin Asist.Detenido	220,00
J.CIVIL: Juicio Ordinario	240,40
J.CIVIL: Verbal	150,00
J.CIVIL: Filiación, Paternidad, Capacidad	200,00
J.CIVIL: Monitorio	150,00
J.CIVIL: División Judicial de Patrimonios	150,00
J.CIVIL: Cambiario	150,00
J.CIVIL: Jurisdicción Voluntaria	150,00
J.CIVIL: Familia - Procedimiento Completo	200,00
J.CIVIL: Familia - Mutuo Acuerdo	120,00
J.CIVIL: Familia - Medidas Provisionales	60,10
J.CIVIL: Solic.As.Medidas Previas Separ.y Divorcio	60,10
J.CIVIL: Solic.As.Medidas Previas o Provis. L.E.C.	60,10
J.CIVIL: Procesos Guarda y Custodia o Alimentos	120,00
J.CIVIL: Petic.Eficacia Civil Resol.Trib.Eclesiás.	60,10
J.CIVIL: Procedim.Completo de Modificación Medidas	90,00
J.CONT-ADM: Vía Admva.Previa (Extranjería y Asilo)	72,12
J.CONT-ADM: Vía Admva.Previa (Ext.y Asilo) Aud. Nacional	75,00
J.CONT-ADM: Recurso Contencioso-Administrativo	198,33

J.CONT-ADM: Recurso Cont-Admvo. ante Aud. Nacional	208,00
VIA ADMVA.: Solicitudes y Reclamaciones	20,00
VIA ADMVA.: Recursos en Vía Administrativa	60,00
J.SOCIAL: Procedimiento Integro	132,22
J.SOCIAL: Recursos de Suplicación	72,12
J.MILITAR: Fase Sumarial	60,10
J.MILITAR: Fase Juicio Oral	120,20
RECURSOS: Casación	260,00
RECURSOS: Casación (Cuando sólo hay anuncio)	24,04
RECURSOS: Amparo	260,00
RECURSOS: Apelación	102,17
V.GENERO: Disponibilidad sin asistencia en Guardia	60,10
V.GENERO: Dispon.y Asesoramiento en Guardia	60,10
V.GENERO: Dispon.y Asesoramiento con Denun.o Prot.	90,00
V.GENERO: Vía Previa Admva.o Conciliación Previa Lab.	60,10
V.GENERO: Desplazamiento, más de 5 Km.	12,02
V.GENERO: Desplazamiento, más de 25 Km.	30,05
V.GENERO: Desplazamiento, más de 50 Km.	50,00
Asistencia al Detenido o Enjuiciamiento Rápido	60,10
Ser.Guardia 24h. Asist.Detenido (Audiencia Nacional)	150,00
Ser.Guardia 24h. Asist.Detenido (Proc.Penal General)	114,19
Ser.Guardia 24h. Asist.Detenido en Enjuic.Rápido (Excepc.)	60,10
Informe Motivado de Insostenibilidad de la Pretensión	30,05
Salida Prisión, más de 5 Km.	12,02
Salida Prisión, más de 25 Km.	30,05
Salida Prisión, más de 50 Km.	50,00
Acreditación Inicio y Final (% devengado)	100,00
Acreditación al Final (% devengado)	30,00
Acreditación al Inicio (% devengado)	70,00
Final por Incomp. Jurisdic. (% s/ cualquier proc.)	70,00
Transacción Extrajudicial (% s/ cualquier proc.)	75,00

BAREMO DE ANDALUCÍA

Jurisdicción Penal:	
Asistencia ordinaria al detenido	79,33
Servicio de guardia de asistencias (hasta 6 asistencias)	138,83
Servicio de guardia (más de 6 asistencias)	277,67
Procedimiento con Tribunal del Jurado *. Delitos contra la vida	567,00
Procedimiento con Tribunal del Jurado *. Resto de delitos	462,78
Procedimiento penal general *	330,56
Procedimiento penal abreviado ***	251,22
Proc. enjuiciamiento rápido delitos sin conformidad */**	251,22
Proc. enjuiciamiento rápido delitos con conformidad */**	200,98

Menores	132 22
Menores pieza separada de responsabilidad civil L.O 5/2000 [Bol. 3, NDL 107 BOE'00]	92,79
Expedientes penitenciarios,	132,22
Juicio de faltas **/***	76,03
Desplaz. Juicio oral (Jurado, penal gral., abreviado) para abogados cuyo despacho oficial esté en partido judicial distinto del de la sede el Juzgado de lo Penal o de la Audiencia Provincial)	26,44
Jurisdicción Civil:	
Proceso ordinario	264,44
Tercerías	264,44
Proceso verbal***	112,39
Procesos s/ capac.,filiación, patern. matern. (salvo expedientes del art. 763 de la LEC)	231,39
Proceso matrimonial contencioso completo incluida nulidad	297,51
Proceso matrimonial de mutuo acuerdo	142,14
Procesos de desamparo, tutela y guarda	298 08
Medidas previas y coetáneas	79,33
Modificación de medidas	178,50
Proceso s/ división judicial de patrimonios	198,33
Procesos monitorios ***	99,17
Procesos cambiarios	198,33
Expedientes de jurisdicción voluntaria y de internamiento no voluntario por razón de trastorno psíquico **	198,33
Otros procedimientos civiles (excluida la ejecución de sentencias)1	198,33
Jurisdicción Contencioso-Administrativa:	
Vía administrativa (extranjería)	
Recursos contra deneg. permiso trabajo y residencia	66,11
Alegaciones en expedientes de expulsión	66,11
Recursos de revisión	66,11
Rec. Resoluc. s/ visados de tránsito/estancia y su prórroga)	66,11
Expedientes de asilo	66,11
Rec. contra resol. Deneg. entrada de retorno y devolución	66,11
Recurso Contencioso-Administrativo:	
Recurso contencioso-administrativo ante la Sala	198,33
Recurso contencioso-administrativo ante el Juzgado en procedimiento ordinario	198,33
Procedimiento abreviado ante el Juzgado	123,72
Apelación	111,07
Jurisdicción Social:	
Procedimiento integro	148,09
Recurso de suplicación	76,03
Jurisdicción Militar:	
Fase sumarial	111,07
Juicio oral	111,07

Recursos:	
Apelación civil	111,07
Apelación penal	111,07
Apelación jurisdicción del menor	111,07
Apelación faltas	82,48
Recurso de casación cuando no se formaliza y hay sólo anuncio	26,44
Recurso de casación, (cuando resuelva el Tribunal Superior de Justicia de Andalucía)	257,83
Normas Generales:	
Informe de insostenibilidad	29,76
Transacciones extrajudiciales	75% proc.
Ejecución sent. transc. dos años resol, instancia	111,07
Con carácter excepcional, en los procedimientos penales en los que se dicte auto de sobreseimiento o archivo, cuando sean de especial complejidad, duración, dificultad o dedicación por razón de la materia, territorio, personas implicadas, múltiples diligencias en órganos jurisdiccionales, o cualquier circunstancia, previo informe fundamentado del Colegio de Abogados competente.	70% del módulo correspondiente al procedimiento penal de que se trate

BAREMO DE ASTURIAS

CLASE DE PROCEDIMIENTO	IMPORTE
Asistencia a la Persona Detenida o Presa:	
Asistencia individualizada (general o enjuiciamiento rápido)	85,12
Servicio de guardia 24 horas. Asistencia persona detenida procedimiento general	154,00
Servicio de guardia 24 horas. Asistencia persona detenida enjuiciamiento rápido	154,00
Servicio de guardia, hasta 6 asistencias	154,00
Servicio de guardia, más 6 asistencias	300,00
Asesoramiento y Asistencia Inmediata a la Mujer:	
Por disponibilidad no siendo requerida asistencia en el servicio de guardia de 24 horas	85,12
Por disponibilidad y asesoramiento previo sin requerimiento de ninguna otra actuación en el servicio de guardia, por cada asistencia	85,12
Por disponibilidad y asesoramiento previo prestado con asistencia en la formulación de denuncia u orden protección, por cada asistencia.	112,50
Vía previa administrativa o conciliación previa en materia laboral	85,12
Gastos desplazamiento si el lugar en que hay que prestar la asistencia:	
- Dista más de 5 kilómetros desde la capital del partido judicial	12,02
- Dista más de 25 kilómetros	30,05
- Dista más de 50 kilómetros	50,00

Jurisdicción Penal:	
Procedimiento con tribunal del jurado	450,00
Procedimiento penal de especial complejidad	450,00
Por cada mil folios	20,00
A partir de 5 comparecencias ante el Juzgado, por cada cinco comparecencias	27,00
A partir de 2 días de vista, por cada día	70,00
Procedimiento penal general	325,00
Procedimiento abreviado	242,37
Procedimiento de enjuiciamiento rápido con asistencia a persona detenida	270,00
Procedimiento de enjuiciamiento rápido sin asistencia a persona detenida	242,37
Procedimiento penal de menores. Incluida pieza de responsabilidad civil	220,00
Expedientes de vigilancia penitenciaria	143,00
Asistencia a la comparecencia en la orden de protección	85,12
Juicio de faltas	105,00
Gastos de Salida a Centros Penitenciarios y a Vistas:	
- Más de 5 kilómetros	12,02
- Más de 25 kilómetros	30,05
- Más de 50 kilómetros	50,00
Jurisdicción Civil:	
Juicio ordinario	290,00
Verbal	200,00
Juicio completo de familia contencioso	300,00
Medidas provisionales	90,15
Juicio completo de familia de mutuo acuerdo	180,00
Filiación, paternidad y capacidad	240,00
Monitorio	150,00
División judicial de patrimonios, sin incidentes	180,00
Cambiario	180,00
Solicitud y asistencia a las medidas previas de separación y divorcio	90,15
Solicitud y asistencia a la vista de medidas cautelares o provisionales	90,15
Procesos sobre guarda y custodia o alimentos de hijos o hijas menores	240,00
Petición de eficacia civil de resoluciones de los tribunales eclesiásticos	90,00
Procedimiento completo de modificación de medidas	180,00
Jurisdicción voluntaria	175,00
Jurisdicción Contencioso-Administrativa:	
Vía administrativa previa (extranjería y asilo)	95,00
Recurso contencioso-administrativo	250,00
Procedimiento contencioso-administrativo ante la sala	270,00
Procedimiento contencioso-administrativo ante el juzgado	250,00
Procedimiento abreviado ante el juzgado	240,00

Jurisdicción Social:	
Procedimiento íntegro	198,00
Jurisdicción militar	
Fase sumarial	110,00
Fase juicio oral	140,00
Recursos en Todas las Jurisdicciones:	
Recurso de casación	300,00
Recurso de casación cuando no se formaliza y hay sólo anuncio y anuncio de amparo	48,08
Recurso de amparo	300,00
Recurso de apelación civil y penal	140,00
Recurso de apelación en jurisdicción contenciosa-administrativa	142,50
Recurso de suplicación	115,00
Normas Generales:	
Transacciones extrajudiciales	75%
Informe motivado sobre la insostenibilidad de la pretensión	60,00
Salidas y Desplazamientos a Juicios, Vistas o Comparecencias en Todas las Jurisdicciones:	
- Si dista más de 5 kilómetros	12,00
- Si dista más de 25 kilómetros	30,00
- Si dista más de 50 kilómetros	50,00
Ejecuciones	172,00
Procedimientos en Vía Administrativa:	
Solicitudes	20,00
Reclamaciones y recursos en vía administrativa	90,00
Subvención por gastos de funcionamiento e infraestructura: - 36 euros por expediente tramitado. (Estas cantidades se actualizarán cada año en el mismo porcentaje de incremento de las retribuciones del personal funcionario de la Administración del Principado de Asturias).	

BAREMO DE GALICIA

CLASE DE PROCEDIMIENTO	IMPORTE
Asistencia al Detenido o Preso:	
Asistencia individualizada	97,42
Jurisdicción Penal:	
Procedimiento ante el Tribunal del Jurado	450,00
Asistencia diaria a la vista ante el Tribunal del Jurado a partir del segundo día	110,71
Procedimiento ordinario por delito	431,77
Procedimiento abreviado de especial complejidad (causa de más de 1.000 folios)	431,77
Procedimiento por delito contra la seguridad del tráfico (alcoholemias)	221,42
Procedimiento penal abreviado	321,06
Proc. enjuiciamiento rápido de delitos sin conformidad	332,13
Proc. enjuiciamiento rápido de delitos con	221,42

conformidad	
Juicio de faltas	143,92
Menores. Proceso terminado con sentencia	221,42
Menores. Proceso con otras formas de terminación	166,07
Recurso ante el juzgado de vigilancia penitenciaria con intervención preceptiva o designación de abogado por requerimiento judicial, conforme al artículo 21 de la Ley de asistencia jurídica gratuita	149,46
Salidas a centros de prisión (máximo dos salidas por proceso)	18,82
Desplazamientos para la asistencia a juicio oral (abogados con despacho oficial en un partido judicial distinto del de la sede del juzgado de lo penal o de la audiencia provincial)	38,75
Recursos de apelación. Proceso por delito	149,46
Recursos de apelación. Juicio de faltas	121,78
Defensa jurídica inmediata de la mujer en diligencias policiales, tramitación de la orden de protección y procedimientos administrativos que traigan causa directa o indirecta de violencia doméstica	97,42
Jurisdicción Civil:	
Procedimiento ordinario	332,13
Juicio verbal	221,42
Proceso matrimonial contencioso completo	332,13
Proceso matrimonial de mutuo acuerdo	180,00
Medidas provisionales previas a la demanda	88,57
Modificación de medidas	309,99
Proceso sobre filiación, paternidad o capacidad, salvo expedientes del artículo 763 de la LEC	221,42
Monitorio	110,71
Actuación en un proceso como contador partidor	240,00
Proceso de división judicial de patrimonios	166,07
Ejecuciones de títulos judiciales con oposición y posteriores a dos años	166,07
Cambiario y ejecución de títulos no judiciales	166,07
Expedientes de jurisdicción voluntaria y expedientes de internamiento no voluntario por razón de un trastorno psíquico	166,07
Recursos de apelación	149,46
Jurisdicción Contencioso-Administrativa:	
Recurso contencioso-administrativo	321,06
Recurso contencioso-administrativo. Proc. abreviado	221,42
Vía administrativa (extranjería y asilo)	110,71
Recursos de apelación	149,46
Jurisdicción Social:	
Procesos laborales (ordinario y especiales)	245,00
Recursos de suplicación	149,46
Jurisdicción Militar:	
Proceso íntegro	210,35
Recursos de Casación y Amparo:	
Recurso de casación	332,13

Recurso de casación cuando no se formaliza y hay sólo anuncio	46,57
Recurso de amparo	332,13
Actuaciones Extraprocesales:	
Transacciones extrajudiciales	(*) 75%
Informe motivado de la insostenibilidad de la pretensión	72,61
Desistimiento previo al proceso por pasividad de la persona enjuiciable, estudio y preparación del asunto, previa a la presentación de la demanda	(*) 30%
Normas Generales:	
Sometimiento	(*) 30%
Ejecución de la sentencia posterior a los dos años de recaída la resolución judicial, salvo en la jurisdicción civil	(*) 30%

(*) Sobre el módulo aplicable al procedimiento

BAREMO DE MADRID

CLASE DE PROCEDIMIENTO	IMPORTE
Asistencia al Detenido o Preso:	
Asistencia individualizada	90,15
Servicio de guardia	180,30
Jurisdicción Penal:	
Tribunal del jurado	450,76
Penal Especial “Macroprocesos”	450,76
Por cada mil folios	30,05
A partir de 5 comparecencias ante el Juzgado, por cada 5	30,05
A partir de 2 días de visita, por cada día	60,10
Penal General	360,61
Procedimiento abreviado	300,51
Enjuiciamiento rápido	330,56
Menores	300,51
Expediente de vigilancia penitenciaria	150,25
Juicio de faltas	120,20
Salidas a centros de prisión:	
- Si distan menos de 25 kilómetros desde el domicilio del letrado	12,02
- Si distan más de 25 kilómetros desde la residencia del letrado	30,05
Jurisdicción Civil:	
Juicio ordinario	300,51
Completo de familia	360,61
Mutuo acuerdo	180,30
Ejecuciones de sentencia de familia	240,40
Filiación, paternidad, capacidad	300,51
Menores	300,51
Verbal	240,40
Monitorio	180,30
División judicial de patimonios	300,51
Ejecución de títulos judiciales	300,51
Cambiario	300,51

Jurisdicción voluntaria	240,40
Jurisdicción Contencioso-Administrativa:	
Vías previa contencioso-administrativa	120,20
Recurso contencioso-administrativo	300,51
Jurisdicción Social:	
Procedimiento laboral	180,30
Recurso de suplicación	150,25
Jurisdicción Militar:	
Procedimiento militar	300,51
Recurso de Casación:	
Anuncio de recurso de casación	42,07
Recurso de Apelación:	
Recurso de apelación	150,25
Normas Generales:	
Transacción extrajudicial: 75% de la cuantía aplicable al procedimiento	
Informe motivado de la insostenibilidad de la pretensión	60,10
Gastos de Funcionamiento:	
Por expediente tramitado	30,05

BAREMO DE NAVARRA

CLASE DE PROCEDIMIENTO	**IMPORTE**
Jurisdicción Penal:	
Procedimiento con Tribunal del Jurado	460,00
Procedimiento penal general	395,00
A partir de tres días de vista, por cada día	60,00
Procedimiento abreviado	231,00
Procedimiento abreviado con desplazamiento	270,00
Menores	165,00
Responsabilidad civil Menores	165,00
Expediente de vigilancia penitenciaria	132,00
Juicio de faltas	132,00
Revisión de sentencia	34,00
Procedimiento enjuiciamiento rápido delitos	295,00
Procedimineto enjuiciamiento rápido faltas	164,00
Visitas a centros penitenciarios fuera de Navarra	98,00
Procedimiento Ley de Extranjería	165,00
Autorización de internamiento y expulsión en los Juzgados de Guardia	150,00
Comparecencia Orden de Protección	150,00
Jurisdicción Civil: (Procedim. iniciados antes de la entrada en vigor de la Ley 1/2000, de 7 de enero [Bol. 2, NDL 73 BOE'00], de Enjuiciamiento Civil)	
Mayor cuantía	460,00
Resto de procedimientos contenciosos	231,00
Procedimiento completo de familia (incluida nulidad)	362,00
Medidas provisionalísimas	98,00
Medidas provisionales	98,00
Modificación de medidas contenciosas	231,00

Mutuo acuerdo	159,00
Expediente de jurisdicción voluntaria	159,00
- Jurisdicción civil (Procedim. iniciados tras de la entrada en vigor de la Ley	
Juicio Ordinario	362,00
Juicio Verbal cuando la demanda no exceda de 901,52 euros y no se refiera a las materias previstas en el apartado 1 del artículo 250 LEC (siendo preciso, en este caso, resolución judicial sobre la necesidad de ser asistido por Abogado)	231,00
Procedimiento completo de familia (incluida nulidad)	362,00
Ejecuciones en familia	159,00
Ejecuciones en familia con oposición	227,00
Medidas provisionalísimas / Medidas provisionales	98,00
Modificación de medidas contenciosas	231,00
Familia mutuo acuerdo	159,00
Expediente jurisdicción voluntaria	159,00
Expediente de jurisdicción voluntaria con oposición	226,00
Juicio monitorio	132,00
Medidas cautelares/Diligencias preliminares	98,00
Procedimiento con desplazamiento	39,00
Filiación, paternidad, capacidad	355,00
Otros procedimientos civiles	231,00
Jurisdicción Contencioso-Administrativa:	
Abreviado	197,00
Recurso contencioso-administrativo	317,00
Jurisdicción Social:	
Procedimiento íntegro	198,00
Vía previa en la que se estime la pretensión y ponga fin al procedimiento 75%	
Jurisdicción Militar:	
Procedimiento militar	198,00
Recursos:	
Recurso de apelación	132,00
Recurso de suplicación	132,00
Recurso de casación cuando no se formaliza y hay un anuncio	33,00
Recurso de casación	296,00
Recurso de amparo	296,00
Ejecución de Sentencia:	
Ejecución de sentencia posterior a los dos años de la resolución judicial	159,00
Ejecución de sentencia con oposición	227,00
Actuaciones Extraprocesales:	
Transacción extrajudicial: 75% de la cuantía aplicable al procedimiento	
Informe motivado insostenibilidad de la pretensión	66,00
Asistencia al detenido o preso Asistencia individualizada	81,00
Servicio de guardia	180,00

BAREMO DEL PAÍS VASCO

CLASE DE PROCEDIMIENTO	IMPORTE
Asistencia al Detenido o Preso:	
Asistencia Ordinaria	137,25
Actuaciones en Materia de Extranjería:	
Expedientes administrativos	219,60
Jurisdicción Penal:	
Procedimiento penal especial	658,80
Procedimiento ordinario	329,41
Apelaciones	197,64
Expedientes de vigilancia penitenciaria	197,64
Aplicación de la Ley Orgánica del Tribunal del Jurado	658,80
Juicio de Faltas	164,70
Apelaciones de juicios de faltas	98,82
Jurisdicción Civil:	
Procedimientos civiles	329,41
Matrimonial mutuo acuerdo	329,41
Matrimonial contencioso	658,80
Contador partidor dirimente	329,41
Apelaciones civiles	131,76
Apelaciones matrimoniales	197,64
Monitorio	164,70
Jurisdicción Contencioso-Administrativa:	
Recurso contencioso administrativo	329,41
Apelaciones	131,76
Jurisdicción Social:	
Procedimiento íntegro	329,41
Recurso de suplicación	131,76
Actuaciones extraprocesales:	
Desistimiento	54,90
Transacciones extrajudiciales	219,60
Informe de insostenibilidad de la pretensión	164,70