



**International
Lawyers
Project**

SPAIN

**VICTIMS OF CORRUPTION:
NATIONAL LEGAL
FRAMEWORKS**

**DATABASE
2022**

**SOURCE: INTERNATIONAL LAWYERS
PROJECT**

VICTIMS OF CORRUPTION WORKING GROUP

UNCA CIVIL **Coalition**
SOCIETY

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The Victims of Corruption: National Legal Frameworks Database is an initiative of the UNCAC Coalition Working Group on Victims of Corruption.

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¹ Note, we are only qualified to advise on US and UK law, and as such are not qualified in this jurisdiction.

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1. Legal Standing

1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases

Civil society organisations and citizens have legal standing in corruption-related cases.

1.2 Type of Cases

- Criminal
- Civil

1.3 Legal basis under which citizens have legal standing

Legal standing in criminal proceedings: In Spain, citizens can prosecute criminal actions.² However, specialized law enforcement bodies, such as the Anti-Corruption Prosecutor's Office and certain special police units, have been created in order to investigate corruption cases. The criminal law section of the Spanish National Court is in charge of trying the most complex corruption cases. There are different methods for victims of crimes and offences, including corruption cases, to participate in a criminal proceeding:

- **The complaint (*denuncia*):** The victim of a crime can report the criminal act allegedly suffered to the relevant authorities. The complaint is a procedural act which initiates the proceeding and has to comply with few formalities. However, it only involves informing the authorities of the criminal offence and it does not imply the intention of the victim to be a party to the criminal proceeding. The victim maintains a marginal role in the proceeding.
- **The private accusation (*acusacion particular*):** The offended or harmed party is entitled to exercise a private accusation.³ Private prosecution is exercised with respect to public and semi-private

² Article 101 of the Spanish Criminal Procedure Law.

³ Article 270 of the Spanish Criminal Procedure Law

crimes. The party offended by the crime is considered to be the owner of the legal asset/interest offended by the criminal act or protected by the criminal law. However, according to certain Spanish scholars, in corruption cases, the legal interests that are offended by the crime or protected by the anticorruption legal framework are not interests relating to an individual but are interests pertaining to the State, the Public Administration, and the collectivity as a whole (which can be identified as the real “victim of corruption”). On this basis, the private accusation is hard to reconcile with corruption cases.

- **The popular action (*acción popular*):** Spanish citizens are not required to be the holders of the legal right protected by the crime in order to exercise the *acción popular*, through which they can defend the public or general interest.⁴ The *acción popular* is becoming, in the fight against corruption, a fundamental instrument for the prosecution of these crimes. Prosecutions brought by an *acusador popular* do not require the permission or prior approval of the Public Prosecutor.

The Spanish Statute of the Victim of the Crime extends the above rights to associations of victims and legal entities which have as core purpose the defense of the rights of the victims of such crimes (subject to the consent of the victims themselves).⁵

Compensation for damages can be requested in the context of criminal proceedings. The local criminal court (*Juzgado de Instrucción*) offers the civil action to the injured party, so that they can state whether they wish to make a claim during the criminal proceedings or reserve the right to claim for the injury suffered through civil proceedings. If the injured party states that they wish to claim compensation during criminal proceedings, they can either opt for civil action taken in their name by the public prosecutor (this will also happen if they do not state a preference) or, if they wish, attend in person (through a lawyer and

⁴ Article 125 of the Spanish Constitution.

⁵ Article 109-bis para 3 of Law 4/2015 of the Statute of the Victim of the Crime.

the court representative). If the injured party chooses to claim for damages outside the criminal proceedings, they must begin civil proceedings under the rules for these proceedings.⁶

Legal standing in civil proceedings: Spanish law grants legal standing to all Spanish citizens on issues involving the public interest, and petitioners need not show a direct injury to initiate a public interest suit, including a suit seeking judicial review of government action.⁷

1.4 Citizens and/or civil society's intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)

See above

1.5 State's entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens

See above

1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf of this country's citizens

No foreign government or foreign-based non-governmental institution has legal standing to bring corruption cases on behalf of this country's citizens

⁶ The legal basis for the civil actions within a criminal proceeding are regulated by the following articles: (i) Article 100 of the Spanish Criminal Procedure Law provides that all offences and misdemeanors, besides the criminal punishment of the guilty party, may give rise to civil action for the return of things, repair of damages, and compensation of material and moral damages caused by the punishable act; and (ii) Article 116 of the Spanish Criminal Procedure Law establishes that all persons held criminally liable for a criminal offence shall also be held liable under civil law if the fact gives rise to damages or losses.

⁷ Article 19.1(h) of the Spanish Contentious-Administrative Jurisdictional Law.

2. Cases

2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

There are corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

Anticorruption CSOs have taken advantage of the *acusador popular* procedure referenced above. In one particularly notable case, the Asociación Pro Derechos Humanos de España (in cooperation with the Open Society Justice Initiative) filed a criminal complaint acting as an *acusador popular* targeting a series of transactions involving Equatorial Guinea and the Spanish Banco Santander.⁸

3. Collective Damage

3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field (environmental damages, human rights, corruption, among others)

In human rights cases, individuals or organizations may bring civil lawsuits seeking damages for a human rights violation. The complainant may also pursue an administrative resolution. Persons may appeal court decisions involving alleged violations of the European Convention on Human Rights to the European Court of Human Rights (ECHR) after they exhaust all avenues of appeal in national courts.

3.2 Procedures for advancing class-actions

Spain has a judicial collective redress mechanism denominated “collective actions.” The Spanish collective actions framework was established in Spanish law as part of the Spanish Civil Procedure Law 1/2000 of 7 January (the Spanish Civil Procedure Law). The collective actions regulations are not drafted as a

⁸ See <https://www.justiceinitiative.org/litigation/apdhe-v-obiang-family>.

systematized, consolidated, and structured body of regulations, but rather are limited to a few rules spread throughout the Spanish Civil Procedure Law (essentially, Articles 11, 15, 220, 221 and 519).

The Spanish collective actions system is basically an opt-out system, in the sense that the Spanish Civil Procedure Law provides that a decision issued in a collective action is binding on all members of the class whether the court rules on the claim or dismisses it (*i.e.*, the decision has *res judicata* effects), but with important limitations. For instance, the Spanish Civil Procedure Law does not establish any mechanism to allow represented consumers to opt out (to avoid being bound by the decision on the collective claim and, therefore, to preserve their individual action).

The collective action is only applicable to consumer protection issues, in which procedural standing to initiate the action is not granted to a member of the class but to consumer associations and the Public Prosecutor's Office.⁹

Collective actions in Spain have been used very infrequently to claim individual, normally monetary, homogeneous rights of a class (*i.e.*, a group of consumers whose underlying individual cases have factual and legal issues in common). Furthermore, in those very limited cases in which collective actions regulations have been used to claim individual homogeneous rights, they nevertheless involved contractual issues. Currently, there does not seem to be any collective actions brought in Spain claiming damages arising from non-contractual liability (*i.e.*, based on tort). Thus, the most significant collective actions in Spain are related to contractual damages in connection with the execution of financial or other types of mass-service contracts.

⁹ This regulation, however, may be subject to some changes in the future due to the approval of the Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (Representative Actions Directive) and the future modifications of the Spanish Procedural Act that are still being discussed.

4. The Role of the victims of corruption

4.1 Definition of victims of corruption or common definition used by the courts in this country

There does not seem to be a definition of “victims of corruption” used by Spanish Courts but certain Spanish scholars have identified the State, the Public Administration and the collectivity as a whole as the real “victim of corruption”.

4.2 Cases that recognize the role of victims

There are no cases that recognize the role of victims

4.3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense

Please refer to section 1 above.

4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases

Victims can get help in preparing the application from the Crime Victim Support Offices (*Oficinas de Asistencia a las Víctimas del delito*) found in all the autonomous communities, in almost all provincial capitals and also in other cities.

5. Available Information

5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions

Information is published by enforcement authorities (subject to certain limitations described below). Type of information:

- The enactment of sanctions
- The grounds for sanctioning or acquitting (the case)

5.2 Feasible access to information on ongoing or concluded cases

Information relating to ongoing proceedings are available only to the parties that have an express, direct, and justified interest in the proceeding (or their legal representatives). However, even in this case, access to the text of the judgments, or to certain points thereof, may be restricted when it could affect the right to privacy, the rights of persons who require a special duty of protection or the guarantee of anonymity of the victims or injured parties, when appropriate, as well as, in general, to prevent judgments from being used for purposes contrary to the law.

With respect to concluded cases, Article 120 of the Spanish Constitution provides that the decisions are public. However, Spanish judges do not interpret this provision in favor of the right to obtain access to previous judgements. Furthermore, even if hearings should be public in accordance with the Spanish Constitution, criminal sentences are rarely handed down in public. The vast majority of criminal sentences handed down by criminal judges are not published in legislative collections or in the press. Criminal judges themselves cannot publish and disseminate their sentences. Only the decisions of the Supreme Court, National Court, Provincial Court and Superior Courts of Justice are published and, even these, only after the names and other identifying information they have been “anonymized” by the Judicial Documentation Center (CENDOJ). The CENDOJ changes the names of all people, streets, car license plates, and any other personal data that could identify the accused, the victim, and the witnesses. Also, unlike in the US, Spanish court decisions are not known or cited by the names of the parties, but rather by court, case number, and date. The only exception is Judgments of the Constitutional Court,¹⁰ which are generally published with all the names in the Official State Gazette and on the website of the Court itself.

¹⁰ Article 164 of Spanish Constitution

As a result, except in a small number of “famous” cases, citizens will not know how a criminal case has been resolved or the sentence that, in their case, the judge imposed. The minutes of the proceeding are not publicly accessible. Neither a public official nor an individual can post convictions judgements on a web page. The Spanish Constitution protects the freedom of information, however, if a journalist is able to obtain that information, they run the risk of being sued and held responsible for illegitimate interference with honor and privacy if it is considered that the information does not meet the requirements of public relevance.

5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed.

The Freedom of Information Act has been implemented in Spain with the Transparency Law (Law 19/2013). Spain’s transparency law covers requests for information and access to public documents. When the government denies a request or does not supply sufficient information, members of the public can appeal to the Transparency and Good Government Council, the organ tasked with overseeing compliance with the law.

6. Supplementary information

6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases.

Please refer to Section 1 above.

6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption.

N/A