

## litigation &amp; arbitration

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**ROYAL DECREE-LAW 3/2013, OF FEBRUARY 22<sup>ND</sup>, 2013, AMENDING THE RULES ON FEES IN THE JUSTICE SYSTEM AND THE FREE LEGAL AID SYSTEM**

**Royal Decree-Law 3/2013, of February 22<sup>nd</sup>, 2013, amending the rules on fees in the justice system governed by Law 10/2012 of November 20<sup>th</sup>, 2012 (Law 10/2012) and Law 1/1996 of January 10<sup>th</sup>, 1996 on free legal aid (Law 1/1996), was published in the Official State Gazette on February 23<sup>rd</sup>, 2013.**

According to the preamble to the royal decree-law, the **amendments to Law 10/2012** (which were analyzed in Newsletter 6-2012 of November 2012) are justified because, even though the fees are not considered, in the abstract and in themselves, to be detrimental to any particular right, there may be specific, individual, cases in which the established fee is excessive and has undesired effects.

The amendments to Law 10/2012 can be summed up as follows: **(i) reduction in the amount of fees under certain circumstances; (ii) non requirement of fees on certain cases depending on the type of proceeding; (iii) creation of a specific scale for individuals**, with a lower rate than the standard scale, which will be limited to legal entities; **(iv) a fee limit in judicial review proceedings when an appeal is filed against a penalty decision**, preventing the fee from exceeding 50% of the amount of the fine; **(v) the resolution of problems arising from the application of Law 10/2012 in capacity, filiation and matrimonial proceedings and proceedings affecting minors, in cases involving legal actions brought by insolvency managers and in property division proceedings.**

The **amendments to Law 1/1996**, for their part, seek to avoid discrepancies between the legislative framework and the application of the fees, even though a new law is in the pipeline. In essence, the reform is limited to **defining in which cases the right to free legal aid will be recognized**. It has also replaced references to the national minimum wage with the public multi-purpose income indicator (IPREM) in order to increase the amounts determining the thresholds below which the right to free legal aid is recognized.

**In addition**, and of relevance to this newsletter, the royal decree-law has **amended**:

- **Article 241 of Civil Procedure Law 1/2000, of January 7<sup>th</sup>, 2000 (LEC)**, concerning costs, in order to ensure that, in proceedings to foreclose mortgages taken out for the purchase of a principal residence, the fees paid for exercising the power to seek judicial redress are excluded from the procedural costs to be paid by the foreclosed party, an exclusion which also extends to any guarantor.
- **Article 367 ter of the Criminal Procedure Law of September 14<sup>th</sup>, 1882 (LECrim)**, in order to add flexibility and expedite the system for the destruction of toxic drugs, narcotics and psychotropic substances. Thus, the administrative authority with custody of such items can destroy them —once the relevant test reports have been drawn up and storage of sufficient samples to ensure that subsequent checks can be carried out has been secured— if the examining judge does not order the retention of such items in their entirety within the month following that in which said judge was notified of completion of the necessary checks.

These amendments are described in greater detail below.

## **1. AMENDMENTS TO LAW 10/2012, OF NOVEMBER 20<sup>TH</sup>, 2012, ON CERTAIN FEES IN THE JUSTICE SYSTEM**

### **1.1 Chargeable events**

Amongst the chargeable events set forth in article 2 of Law 10/2012 these included, in paragraph c), "*the filing of the claim with the judicial review courts*".

Royal Decree-Law 3/2013 has amended said article to establish the chargeable event as the filing of the appeal for judicial review. The other chargeable events remain unchanged.

### **1.2 Objective exemptions**

Royal Decree-Law 3/2013 has amended, and added the following exemptions to article 4 of Law 10/2012:

- The exemption set forth in article 4.1.a) of Law 10/2012 has been amended to apply to **claims and appeals in proceedings relating to capacity, filiation and minors provided for under Title I, Book IV of the Civil Procedure Law**.

However, the exemption **does not apply** to proceedings relating to marriage and minors when they are not brought by mutual agreement or by one of the parties with the consent of the other, even where minors are involved, unless the sought measures only relate to minors. Accordingly, fees will have to be paid in those proceedings.

- The following new objective exemptions have been included:
  - The filing of **claims for the enforcement of awards handed down by Consumer Arbitration Boards**.

- **Action brought by insolvency managers** in the interests of the assets available to creditors in the insolvency proceeding, following authorization from the commercial court judge.
- **Proceedings for the judicial division of property**, except where objections are filed or a dispute exists as to the inclusion or exclusion of assets, in which case fees will be chargeable upon trial and on the amount at issue or that deriving from the challenge to the document partitioning the property at the expense of the opposing party, and if both parties oppose, at the expense of each of them on their respective amounts.

### 1.3 Subjective exemptions

An exemption has been added, as article 4.4 of Law 10/2012, in the **judicial review jurisdiction of up to 60% of the fee in the case of appeals to immediately superior courts and cassation appeals filed by public officials acting in defense of their statutory employment rights**.

### 1.4 Level of court fees

As indicated above, article 7 of Law 10/2012 has been amended in order to:

- Establish a **limit on court fees** in relation to **appeals for judicial review** which seek to challenge **penalty decisions**, in which case the fee—including the variable amount— may not exceed 50% of the economic penalty imposed.
- **Distinguish between legal entities and individuals for the purposes of the variable amount**, so that **legal entities** will be subject to the standard scale set forth in Law 10/2012 and **individuals** will be subject to a rate of 0.1% of the chargeable base, up to a **variable maximum limit of €2,000**.

No change has been made to the fixed amounts.

### 1.5 Deadline for rectification

Royal Decree-Law 3/2013, amending article 8.2 of Law 10/2012, provides a time limit for the rectification of a failure to file the receipt evidencing payment of the fees when it is not attached to the submission triggering the chargeable event. In such cases, the fee payer will have a **time limit of 10 days to file the receipt**.

### 1.6 Refunds

The provision on the refund of part of the court fees paid, set out in article 8.5 of Law 10/2012, has been amended so that it applies not only to cases in which an agreement is reached bringing an end to the lawsuit, but also to cases of full admission to claims.

Furthermore, a 60% refund of paid fees will apply when the defendant public authorities accept the plaintiff's claims in full during administrative proceedings.

## 2. AMENDMENTS TO LAW 1/1996, OF JANUARY 10<sup>TH</sup>, 1996, ON FREE LEGAL AID

As mentioned above, the amendments made seek to define the cases in which the right to free legal aid will apply, replacing references to the national minimum wage with references to the public multi-purpose income indicator (IPREM).

### 2.1 Personal scope of application

Royal Decree-Law 3/2013 has amended article 2 of Law 1/1996 to add **new cases in which the right to free legal aid is recognized**, regardless of the resources available for litigation. Specifically, this right is extended to cover:

- Victims of gender-based violence, terrorism and human trafficking in proceedings which are linked to, derive from, or are the consequence of their status as victims, as well as minors and the mentally disabled if they are victims of abuse or mistreatment. This right is also recognized in favor of the successors in title of such victims in the event of death.
- Persons who, as a result of an accident, evidence the existence of permanent after-effects which completely prevent them from performing the tasks associated with their usual employment or professional occupation and who need the assistance of others to carry out the most basic activities in their day-to-day life, if the subject matter of the lawsuit is indemnification for personal injury and emotional distress.

### 2.2 Basic requirements, ineligibility on economic grounds and exceptional recognition of the right

By reforming article 3 of Law 1/2006, amendments have been made to the **income thresholds determining** whether a person is entitled to free legal aid and a further requirement has been added to the effect that applicants must lack sufficient economic means. Accordingly, the following thresholds must be exceeded, depending on the different situations:

- Persons who are not part of a family unit: gross economic income equal to less than twice the public multi-purpose income indicator (IPREM).
- Persons being part of a family unit of less than four members: gross economic income equal to less than two-and-a-half times the IPREM.
- Persons being part of a family unit of four or more members: gross economic income equal to less than three times the IPREM.
- Legal entities: annual book income equal to less than three times the IPREM.

Recognition of the right to free legal aid has also been extended to cover persons who initiate lawsuits to defend the interests of others based on legal authority to act as a representative. In that case, the requirements refer to the person represented.

Article 4 of Law 1/1996 has also been amended to provide that, for the purposes of determining whether or not an applicant has sufficient economic means, ownership of real estate (other than the principal residence) and income from movable capital will be taken into account

Lastly, with regard to the exceptional recognition of the right to free legal aid, article 5 of Law 1/1996 has been amended in order to link it to the IPREM. Thus, anyone whose income does not exceed the figure resulting from multiplying the IPREM by five will be exceptionally entitled to free legal aid.

### **2.3 Substantive content of the right and applications for free legal aid**

Article 6 of Law 1/1996 has been amended to ensure the right to free legal aid includes the **exemption from payment of court fees**. Moreover, it is established that the court can order the provision of free specialized expert assistance by private professionals when it needs to be provided for minors and the mentally disabled who are victims of abuse or mistreatment.

Regarding applications to free legal aid, article 12 of Law 1/1996 has been amended to indicate that: (i) the application must mention which services are requested; (ii) it is possible to apply for free legal aid for the sole purpose of obtaining the exemption from payment of court fees; and (iii) the recognition of the right to free legal aid will include, in all cases, the exemption from the payment of fees and bonds.

If the applicants must have a single defense counsel and representative in the lawsuit, and it is evidenced that they exceed the thresholds set forth in article 3.1 of Law 1/1996, but do not reach the figure resulting from multiplying the IPREM by five, the Free Legal Aid Committee may determine which services will be provided to the applicants.

### **2.4 Stay of proceedings**

Article 16 of Law 1/1996 has been amended to determine that the court clerk (previously the judge) can order a stay of proceedings following an application for free legal aid. Furthermore, it is provided that any such stay will also affect the 10-day time limit for submission of the receipt evidencing payment of the court fees if it was not attached to the submission triggering the chargeable event.

### **2.5 Transitional provision one. Recognition of the right to free legal aid**

According to transitional provision one of Royal Decree-Law 3/2013, any fees paid between the date of entry into force of Law 10/2012 and that of the abovementioned royal decree-law will be refunded to anyone who, in accordance with the new thresholds and criteria, would be entitled to free legal aid. The interested parties must evidence payment of the appropriate fees and recognition of the right to free legal aid.

### 3. AMENDMENTS TO CIVIL PROCEDURE LAW 1/2000, OF JANUARY 7<sup>TH</sup>, 2000

Law 10/2012 had amended **article 241.1.7 LEC** to include in costs the fees for exercising the power to seek judicial redress.

Royal Decree-Law 3/2013 has further amended that article to exclude from costs any fees paid in proceedings to foreclose mortgages taken out for the purchase of a principal residence or fees paid in other enforcement proceedings arising from those mortgage loans which are directed against the foreclosed party or the guarantors.

### 4. AMENDMENTS TO THE CRIMINAL PROCEDURE LAW OF SEPTEMBER 14, 1882

Royal Decree-Law 3/2013 has amended **article 367.1 ter LECrim** in order to allow the destruction of toxic drugs, narcotics and psychotropic substances by the administrative authority with custody of such items —once the relevant test reports have been drawn up and storage of the required minimum samples which, by scientific standards, are necessary to ensure that subsequent checks and investigations can be carried out has been secured, and after notifying the examining judge— if the judge does not order the retention of such items in their entirety by means of a reasoned decision within one month following the date on which the judge received such notification. In all cases, any retained substances will be held at the disposal of the competent court at all times.

Under transitional provision two of Royal Decree-Law 3/2012, the rules regarding the destruction of toxic drugs, narcotics and psychotropic substances, per the wording introduced by the royal decree-law, will apply to such drugs, narcotics and substances under the custody of the administrative authorities on the date of that instrument's entry into force.

### 5. IMPLEMENTING REGULATIONS AND ENTRY INTO FORCE

Pursuant to final provision six of Royal Decree-Law 3/2013, the government will enact any **additional regulations** that may be necessary to apply the fees for exercising of the power to seek judicial redress subject to the amendments introduced by the royal decree-law.

Furthermore, the Minister for Finance and Public Authorities will, by order, amend the fee self-assessment forms in order to adapt them to the reforms carried out by the royal decree-law.

Moreover, and in accordance with final provision seven, the royal decree-law **entered into force on the day following the date of its publication in the Official State Gazette** (which took place on February 23<sup>rd</sup>, 2013).

However, any fees to be paid by individuals, or by any fee payer in the case of the appeals for judicial review set forth in articles 4.4 and 7.1 of Law 10/2012 after this reform, between the entry into force of Royal Decree-Law 3/2013 and that of the order by the Minister for Finance and Public Authorities adapting forms 696 and 695, must be paid within fifteen business days from the latter date, halting the proceedings at the stage they have reached.

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