

Dispute Resolution

Costa Rica

I. THE JUDICIAL BRANCH

Judicial power in Costa Rica is vested in the Supreme Court of Justice. The Supreme Court is the court of last resort since the Costa Rican legal structure is composed of trial and appellate courts.

I.1 THE TRIAL AND LOWER COURTS

Any litigated issue in Costa Rica will either be litigated before a Trial Court (Juzgado) or one of the lower courts with proper jurisdiction over the amount and the subject matter of the dispute.

I.2 THE APPELLATE COURTS

The Appellate Courts are known as *Tribunales Superiores* and they have jurisdiction over decisions rendered by a lower court that have a right to an appeal. Generally, each Appellate Court hears cases within their designated specialty, which are Civil, Criminal, Administrative, Family, Labor, and Agrarian.

I.3 THE SUPREME COURT

The Costa Rican Supreme Court is located in the capital city of San Jose and is divided into four chambers. Each chamber, numbered I through IV, has jurisdiction over specific legal topics.

First Chamber (Sala Primera - I)

The First Chamber is made up of seven Magistrates. This chamber has jurisdiction over all administrative matters and civil suits of general jurisdiction. The First Chamber also has jurisdiction when a decision of one Court conflicts with that of another Court.

Second Chamber (Sala Segunda-II)

The Second Chamber is made up of five Magistrates. This chamber has appellate jurisdiction over all matters related to family law, estates, and labor law. It also has jurisdiction over conflicts of power that may arise between judicial authorities and administrative authorities.

Third Chamber (Sala Tercera - III)

The Third Chamber is made up of five Magistrates. This chamber has jurisdiction over all criminal matters.

Fourth Chamber (Sala Cuarta- IV)

The Fourth Chamber is also referred to as the Constitutional Chamber since its jurisdiction is limited to interpreting the Costa Rican Constitution and violation of constitutional rights.

2. THE RULES OF COURT PROCEDURE

2.1 CIVIL PRACTICE AND PROCEDURE

In Costa Rica, the Code of Civil Procedure governs the function and operation of the Costa Rican courts and the procedures that must be followed for conducting litigation.

Costa Rican procedural rules require written, formal declarations to be filed in court, which in turn are ruled upon in writing by the presiding Judge. There are no jury trials in the Costa Rican legal system.

2.2 JURISDICTION

In general terms, a Costa Rican judge will have jurisdiction over cases where the defendant is domiciled in Costa Rica; where an obligation has to be performed within Costa Rica and where the claim is based upon an act or omission which occurred within Costa Rica. Which particular court within Costa Rica will hear the case depends on the subject matter involved and the amount in controversy and the province where either of the parties reside or the controversy arose.

Subject Matter Jurisdiction and Amount in Controversy

The case load among the civil division of the courts is distributed according to the subject matter and the amount in controversy.

Territorial Jurisdiction

Where a case will actually be heard depends on the location of the subject matter of the lawsuit; the place of residence of the defendant or the place where the act or omission occurred.

2.3 LITIGATION

When a lawsuit is filed in Costa Rica it can proceed under three different procedural tracks: ordinary, abbreviated and summary procedures. Which procedure applies depends on the subject matter of the controversy.

Ordinary Procedure

Cases that do not fall into the abbreviated or summary category must proceed under the ordinary litigation track. The civil lawsuit is initiated by filing a complaint in the court with proper jurisdiction to hear the case.

Once the introductory pleading stages have been completed, the court will open the evidence gathering phase for a period of forty days. At any time the course of the proceedings the judge at the request of either of the parts, or on their own initiative may order them to appear in court to answer interrogatories related to the cause of action. After the taking of evidences, the court proceeds to rule on the admissibility of the evidences provided and gives all parties to the lawsuit ten days to present the court with their final statements and conclusions.

After the ten days have elapsed, the court closes the taking of further testimony or evidence. The judge then evaluates the evidence and the arguments made and enters a final judgment. A final judgment rendered by a trial court (Juzgado) may be appealed to the Appellate Court (*Tribunal Superior Civil*).

The Abbreviated Procedure

The Costa Rican Code of Civil Procedure provides that certain types of cases may proceed to an abbreviated as opposed to the ordinary procedure. Only the following causes of action may proceed according to the abbreviated procedure: marital dissolution actions, paternity, legitimization, interdiction, disputes related to rental contracts, request for accounting, shareholder resolutions, easements and sales at public auction. The abbreviated process shortens some of the time frames applicable to the ordinary procedure in half but in practice the difference between an ordinary and an abbreviated process are minimal.

The Summary Process

The Summary Process is only available for the following causes of action: Landlord-Tenant evictions and rental increases, collection proceedings based upon executory financial instruments, injunctions, false claim to legal right or obligations due, restitution, controversies involving joint ownership of property or condominiums, guaranty, and possession of personal property.

3. MEDIATION AND ARBITRATION

Since litigation within the Costa Rican judicial system is a tedious and lengthy process mediation and arbitration can be a viable alternative. Costa Rica passed its Alternative Dispute Resolution Law (*Ley Sobre Resolucion Alternativa de Conflictos y Promocion de la Paz Social*) in 1997 and as a result of this law there are now alternatives to litigation. The law allows the creation of privately operated mediation and arbitration centers that comply with the requirements set forth in the law. Selecting the arbitrator that will oversee the arbitration is the most important factor in alternative dispute resolution since the credibility, professionalism and independence of the arbitrator will determine the success of the proceeding.

3.1 MEDIATION

In mediation which is generally referred to as conciliation (*conciliacion*) in Costa Rica a neutral third person acts in intermediating a dispute between two parties. In Costa Rica, although the Code of Civil Procedure establishes a mediation procedure it is voluntary. It is generally the judge who also must act as the mediator. In its current form the mediation system is not as effective as it could be if the parties were obligated to mediate in good faith before professional independent mediators.

3.2 ARBITRATION

Arbitration is a voluntary mechanism by which parties submit their dispute to a neutral third party. Arbitration is a private matter and the parties must agree to arbitration generally by inserting a clause in the contract stipulating that any dispute will be subject to arbitration. In Costa Rica all matters related to Arbitration are governed by the Alternative Dispute Resolution Law (*Ley Sobre Resolucion Alternativa de Conflictos Y Promocion de la Paz Social*). The law allows for matters to be arbitrated if the parties have agreed to arbitration in writing. The law does not require a specific formality other than it be agreed to "in writing". However, it is recommended that the arbitration clause be as specific as possible to avoid interpretation problems. Once the arbitration clause is invoked and the matter is assigned to the arbitrators specified in the arbitration clause it will proceed until the arbitrators issue their ruling. The

Arbitration award is binding upon the parties in the same manner as a Judgment issued by a court of law. In Costa Rica, there is no right to appeal an arbitration award and the parties may only request an addition or clarification of the arbitration award so long as it does not alter the essence of the award. Once the arbitration award is final, it becomes executory meaning that the prevailing party may request the Court to enforce and execute the award.

In Costa Rica, the arbitration centers are of an institutional nature. This means that they are organized by Chambers or Associations as opposed to individuals. The most commonly used arbitration centers in Costa Rica are:

- (1) The Costa Rican Chamber of Commerce (*Camara de Comercio*).
- (2) The American-Costa Rican Chamber of Commerce.
- (3) The Costa Rican Chamber of Realtors (*Camara Costarricense de Bienes Raices*)
- (4) The Architect and Engineering Association (*Colegio Federado de Ingenieros y Arquitectos de Costa Rica*)

4. INTERNATIONAL LITIGATION

There are instances when a party from a foreign country wants a judgment which was issued in that country to be enforced in Costa Rica. The Costa Rican Code of Civil Procedure, Articles 705-708 states that the recognition of all foreign rulings, judgments, orders and other pronouncement of foreign courts must be requested before the First Chamber of the Costa Rican Supreme Court. The process is known locally as an Exequatur proceeding.

5. LETTER ROGATORY

Unlike the Exequatur proceeding which is a request for recognition of a foreign ruling or judgment, the Letter Rogatory (*Carta Rogatoria*) is a request for judicial assistance by one court to another. In the absence of any treaty agreement, the Letter Rogatory is the most common method of obtaining assistance from a foreign court. The Letter Rogatory generally comes through diplomatic channels. In Costa Rica, the Letter Rogatory is ruled upon by the First Chamber of the Supreme Court. If granted, the Costa Rican Supreme Court will order the corresponding local court to carry out the request.

Author

Carlos Echeverría

Interlex/Bufete Echeverría
San José, Costa Rica

E-mail cecheverria@bufetecheverria.com

Tel. +506 524 0717

To contact PLG

Julienne Laveaux
PLG Secretariat
PANNONE LAW GROUP E.E.I.G.
avenue de Sumatra 41
1180 Brussels
Belgium

Tel. +32 2 374 88 46

Fax: +32 2 374 90 61

E-mail plg@plg.be

www.plg.eu.com

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