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Enforcement of Foreign Judgments

Fundamental Principles [Spain]

2020



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS):

A. Ability to apply for recognition and enforcement of a foreign court judgment.

1. Is it possible to apply for enforcement of a foreign court judgment in your country?

Answer: Yes, pursuant to article 523 of the Code of Civil Procedure a foreign court judgment is enforceable in Spain according to International Treaties and legal rules about international judiciary cooperation.

B. Applicable Law. General Rules.

1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?

Answer: The law that is applicable to the recognition of a foreign court judgment is the Law 29/2015, 30th July, on international legal cooperation in civil matters.

The law that is applicable to the enforcement of a foreign court judgment is the Code of Civil Procedure 2000 (articles 517 to 720).

C. Special Rules: European Union.

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer: Bilateral International Treaties: e.g. Bilateral Convention between Spain and Brasil, 13rd April 1989, Bilateral Convention between Spain and China, 2nd May 1992.

Multilateral International Treaties: e.g. Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, of 2007.

2. Does the European Union have a special procedure to enforce court judgments coming its member states?

Answer: Yes.

- Regulation (Eu) No 1215/2012 of the European Parliament and of the Council, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

This Regulation applies between all Member States of the European Union, including Denmark. Regulation (EU) No 1215/2012 applies in Denmark under the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The necessary legislative amendments in Denmark came into effect on 1st June, 2013.

Regulation provides that a judgment given in a Member State shall be recognized in the other Member States without any special procedure being required.

A judgment given in a Member State and enforceable in that state shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

In Spain the application shall be submitted to the court or competent authority indicated: Court of first instance.

An appeal challenge from a decision granting a declaration of enforceability is to be lodged with the court indicated by Member States: Spain has communicated to the EU authorities that the Court of Appeal will be the Audiencia Provincial (Provincial Courts).

- **Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims and Council**

The Regulation applies between all Member States of the European Union with the exception of Denmark.

Absent a dispute over the nature or extent of a debt, it dispenses, under certain conditions, with all intermediary measures in the Member State in which enforcement is sought that have been necessary so far for decisions rendered in another Member State.

Those conditions mainly concern the service of documents in the case of judgments by default and try to guarantee that the defendant has voluntarily passed up the opportunity to defend himself. Abolishing exequatur (recognition) enable creditors to obtain quick and efficient enforcement abroad without involving the Member State courts where enforcement is sought in time-consuming and costly formalities.

According to Article 20 (Enforcement procedure):

“1. Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement. A judgment certified as a European Enforcement Order

shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement.

2. The creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity; and

(c) where necessary, a transcription of the European Enforcement Order certificate or a translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Community other than its own which it can accept for the completion of the certificate. The translation shall be certified by a person qualified to do so in one of the Member States.

3. No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment certified as a European Enforcement Order in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement”.

And According to Article 21 (Refusal of enforcement):

“1. Enforcement shall, upon application by the debtor, be refused by the competent court in the Member State of enforcement if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

(a) the earlier judgment involved the same cause of action and was between the same parties; and

(b) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and

(c) the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.

2. *Under no circumstances may the Member State of enforcement review the judgment or its certification as a European Enforcement Order as to their substance”.*

D. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer: Enforcement procedures take approximately four months for granting the enforcement, another five months if there is an opposition by the defendant and any additional time needed to sell the assets, if any, subject to the enforcement (which will vary according to the type of assets).

II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS

- A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? Is YES what kind of reasons may justify denial?**

Answer: Yes.

(a) **Judgments from a country with which Spain has an International Treaty:** those types of cases stated in the Treaty will be governed by the treaty (art. 523 Code of Civil Procedure).

(b) **Judgments from a country with which Spain has no International Treaty:** Spanish courts will not recognized firm foreign judgments for these reasons (art. 46 Law 29/2015):

“a) When they are contrary to public order.

b) When the resolution has been issued with a clear infraction of the rights of defense of any of the parties. If the decision had been issued in absentia, it is understood that there is a manifest infraction of the rights of defense if the defendant was not given a notification of the lawsuit or equivalent document on a regular basis and with sufficient time for him to defend himself.

c) When the foreign decision has been pronounced on a matter with respect to which the Spanish courts are exclusively competent or, with respect to the other matters, if the jurisdiction of the judge of origin does not obey a reasonable connection. The existence of a reasonable connection with the litigation will be presumed when the foreign jurisdictional body has based its international judicial competence on criteria similar to those provided for in Spanish legislation.

d) When the resolution was irreconcilable with a resolution issued in Spain.

e) *When the resolution was irreconcilable with a resolution previously issued in another State, when the latter resolution met the necessary conditions for recognition in Spain.*

f) *When there is a pending litigation in Spain between the same parties and with the same object, initiated prior to the process abroad”.*

(c) **Judgments from a country belonging to the EU:** A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required. (article 36 Regulation (Eu) No 1215/2012).

According to article 45.1 Regulation (Eu) No 1215/2012:

“the recognition of a judgment shall be refused:

(a) *if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;*

(b) *where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;*

(c) *if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;*

(d) *if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; (...).”.*

Moreover, a judgment shall not be recognized if it conflicts with Sections 3 (Jurisdiction in matters relating to insurance), 4 (Jurisdiction over consumer contracts), 5 (Jurisdiction over individual contracts of employment), or 6 (Exclusive jurisdiction) of Chapter II, pursuant to article 45.1. (e) Regulation (Eu) No 1215/2012.

B. Costs and expenses.

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer:

Fees: The fees of lawyers and procurators¹ depend on the amount claimed and the problems that may arise during enforcement; Procurators fees are regulated by their professional association.

Expenses: include translation of documents and acquiring a power of attorney.

III. FORMAL REQUIREMENTS.

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer:

The general rule, according to article 518 of the Code of Civil Procedure provides that, the application for enforcement has to be filed in the five years following the date/time that the Court Judgment is considered final.

This article applies to foreign court judgments (art. 50 Law 29/2015).

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer:

(i) **Judgments from a country with which Spain has an international Treaty:** according to the Treaty (art. 523 Code of Civil Procedure).

(ii) **Judgments from a country with which Spain has no international Treaty:** according to article 525 of the Code of Civil Procedure it is not possible to ask for enforcement of a foreign court judgment before it is final and definitive.

(iii) **Judgments from a country belonging to the EU:** *A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States*

¹ The procurator is the legal representative of the party before the court. In Spain it is mandatory to have a procurator.

without any declaration of enforceability being required. (Article 39 of the Regulation (Eu) No 1215/2012).

In general terms, under the Spanish Code of Civil Procedure there is no special requirement to provisionally enforce a court judgment which is not final and definitive.

C. Necessary Requirements.

1. What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?

Answer:

(i) Judgments from a country with which Spain has an international Treaty: according to the Treaty (art. 523 Code of Civil Procedure).

(ii) Judgments from a country with which Spain has no international Treaty: according to article 41 of Law 29/2015, *“Recognition and enforcement in Spain, in accordance with the provisions of this title, will be subject to firm foreign resolutions that will be rendered in a contentious proceeding”*, so the foreign court judgment must fulfill the following requirements to be recognized:

- a. The foreign court judgment must be firm.
- b. The foreign court judgment must not be against the public order.
- c. The foreign court judgment must not have been rendered against the defense rights of the parties.
- d. The foreign court judgment must fulfill all the necessary requirements in the country of origin to be considered authentic, and the requirements under Spanish law to be considered certain.

(iii) Judgments from a country belonging to the EU: *“A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required”* (Article 39 of the Regulation (Eu) No 1215/2012).

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay Court Fees for this kind of application?

Answer: No. It is not necessary to pay Court fees to file an enforcement claim.

- E. **Are there any other formal requirements in your country to enforce a court judgment?**

Answer: No.

IV. PROCEDURE.

A. Competent court.

1. Which Court or courts are competent to decide an enforcement application?

Answer:

(i) **Judgments from a country with which Spain has an international Treaty:** according to the Treaty (art. 523 Code of Civil Procedure).

(ii) **Judgments from a country with which Spain has no international Treaty:** *“The competence to hear the applications for exequatur corresponds to the Courts of First Instance of the domicile of the party against whom the recognition or execution is requested, or of the person to whom the effects of the foreign judicial resolution refer. Subsidiarily, the territorial jurisdiction will be determined by the place of execution or by the place where the resolution must produce its effects, being competent, as a last resort, the Court of First Instance before which the application for exequatur is filed”.* (Article 52.1 Law 29/2015).

(iii) **Judgments from a country belonging to the EU:** in Spain the application shall be submitted to the Court of First Instance; *“Subject to the provisions of this Section, the procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State addressed.”* (Article 41 of the Regulation (Eu) No 1215/2012).

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer:

(i) **Judgments from a country with which Spain has an international Treaty:** according to the Treaty (art. 523 Code of Civil Procedure).

(ii) **Judgments from a country with which Spain has no international Treaty:**

The demand for exequatur and the application for execution may be accumulated in the same document (article 54 Law 29/2015).

The enforcement application requested by the party must comprise: data and circumstances of identification of the plaintiff and the defendant and the domicile or residence in which they can be summoned, the facts and the legal grounds will be numbered and separated and what will be requested will be clearly and precisely established (art. 54.4 Law 29/2015), so the instrument on which enforcement is based must be clearly identify.

For the enforcement: the enforcement sought, the assets of the debtor that can be seized, the localization and research measures necessary to ascertain the debtor's assets, the person or persons against whom the decision is to be enforced, identifying them and their circumstances and, in cases where the aim is to enforce a court judgment or decision, this must also be identified and enclosed, pursuant to Article 549 of the Code of Civil Procedure.

(iii) **Judgments from a country belonging to the EU:** Spanish Procedural Law will be applied (above mentioned).

“Subject to the provisions of this Section, the procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State addressed. A judgment given in a Member State which is enforceable in the Member State addressed shall be enforced there under the same conditions as a judgment given in the Member State addressed. (...) 3. The party seeking the enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.” (Article 41 of the Regulation (Eu) No 1215/2012).

In Spain the enforcement application must be done as stated in article 549 of the Code of Procedure, and the applicant shall appoint a Procurator (*authorised representative*).

C. Documental Requirements for the Application to Enforce a Foreign Court Judgment

1. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer:

(i) **Judgments from a country with which Spain has an international Treaty:** according to the Treaty (art. 523 Code of Civil Procedure).

(ii) **Judgments from a country with which Spain has no international Treaty:**

The documents listed in Article 54.5 of the Law 29/2015 must be attached to the enforcement application:

a) *The original or authentic copy of the foreign resolution, duly legalized or apostilled.*

b) *The document that proves, if the resolution was issued in absentia, the delivery or notification of the lawsuit or the equivalent document.*

c) *Any other document proving the finality and enforceability, if applicable, of the foreign decision in the State of origin, and this can be stated in the resolution itself or thus be released from the law applied by the court of origin.*

d) *The relevant translations in accordance with article 144 of the Law of Civil Procedure.*

And also, the power of attorney, and any other document that the special case required (e.g. a report from experts of the country of origin explaining the applicable law in order to calculate the interest rate or the enforceability of the court resolution).

(iii) **Judgments from a country belonging to the EU** (Article 37 of the Regulation (Eu) No 1215/2012).

- a. A copy of the judgment which satisfies the conditions necessary to establish its authenticity.

b. The certificate referred to in Article 53 (*“The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I”*) without prejudice to Article 55 (*“1. If the certificate referred to in Article 54 is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production. 2. If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be certified by a person qualified to do so in one of the Member States”*).

c. The court or authority before which a judgment given in another Member State is invoked may, where necessary, require the party invoking it to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate referred to in point (b) of paragraph 1. The court or authority may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation.

Article 57 about translations:

“1. When a translation or a transliteration is required under this Regulation, such translation or transliteration shall be into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where a judgment given in another Member State is invoked or an application is made, in accordance with the law of that Member State.

2. For the purposes of the forms referred to in Articles 53 and 60, translations or transliterations may also be into any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept.

3. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States”.

If the enforcement application meets the requirements mentioned above and if the instrument presented is one of the instruments that permit enforcement, the application will be granted by the judge to whom it was made. The judge will also determine the amount to be seized, the persons concerned and the enforcement measures.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer:

(i) **Judgments from a country with which Spain has an international Treaty:** according to the Treaty (art. 523 Code of Civil Procedure).

(ii) **Judgments from a country with which Spain has no international Treaty** (art. 54 y 55 Law 29/2015):

1. Recognition and Enforcement application.
2. Recognition:
 - 2.1. Opposition by the defendant.
 - 2.2. Decision / Order of the Court
 - 2.3. Appeal. If the order appealed is affirmative, the court may suspend the enforcement or subject said enforcement to the provision of the appropriate bond.
3. Enforcement. Court decision granting the enforcement.
4. Opposition by the defendant.
5. Selling the assets subject to enforcement.

(iii) **Judgments from a country belonging to the EU:**

1. Enforcement application.
2. Court decision granting the enforcement.
3. Opposition for reasons mentioned in the Code of Procedural Law against enforcement and for reasons included in article 45 of the Regulation (Eu) No 1215/2012.
4. Appeal.
5. Selling the assets subject to enforcement.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: Yes.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer: Yes.

(i) **Judgments from a country with which Spain has an international Treaty:** according to the Treaty (art. 523 Code of Civil Procedure).

(ii) **Judgments from a country with which Spain has no international Treaty:**

The defendant may oppose the enforcement against him either based on procedural shortcomings or for reasons relating to the legal relationship in question.

1. Procedural reasons (applicable to all enforcement instruments), pursuant to article 559 of the Code of Civil Procedural Law:

- The defendant does not have legal capacity, or the representation required;
- Lack of capacity or representation on the part of the plaintiff or the plaintiff's inability to prove his capacity or representation;
- Absolute invalidity of the enforcement granted because it does not contain the judgment or arbitration decision against the defendant, because the document produced does not comply with legal requirements for enforceability, or because of a violation, when the enforcement was granted, of the rules governing the proceedings to be followed before granting an enforcement measure;
- The lack of authenticity of the decision, if the enforcement instrument was an arbitration decision that was not placed on record by a notary.

2. In addition to the above grounds, the debtor may invoke grounds of opposition to the enforcement arising from the underlying legal relationship (material grounds). Since, in the case of judgments, there has been a previous process during

which there were extensive opportunities for debate, there are fewer possibilities of opposition if the enforcement instrument is a judgment.

Thus, if the enforcement instrument is a court decision or judgment or an arbitration decision against the defendant, or if it approves a settlement or agreement reached during the process, the debtor may, within ten days following the notification of the act in which enforcement is granted, oppose the enforcement in writing on one of the following grounds (article 556 and 558 of the Code of Civil Procedural Law):

- Payment or compliance with what is ordered in the judgment, which will have to be established by documents;
- Lapse of the enforcement action;
- Agreements and settlements that were reached to avoid enforcement (provided that these agreements and settlements are recorded in a public document).
- Plus petition².

In these cases, opposition does not suspend enforcement.

(iii) Judgments from a country belonging to the EU (Final provision twenty-fifth of the Code of Procedural Law³):

The defendant can use the opposition provided for in the Code of Civil Procedural Law (abovementioned) and the ones included in article 45 of the Regulation (EU) No 1215/2012 of the Parliament and of the Council:

“On the application of any interested party, the recognition of a judgment shall be refused:

(a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;

(b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence

² There is plus petition when the plaintiff asked for more money than he is owed.

³ Measures to facilitate the application in Spain of Regulation (EU) No 1215/2012 of the Parliament and of the Council, of December 12, 2012.

proceedings to challenge the judgment when it was possible for him to do so;

(c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;

(d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or

(e) if the judgment conflicts with:

(i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or

(ii) Section 6 of Chapter II.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal the Court Decision to recognize and enforce a foreign Court Decision?

Answer:

(i) Judgments from a country with which Spain has an international Treaty: according to the Treaty (art. 523 Code of Civil Procedure).

(ii) Judgments from a country with which Spain has no international Treaty:

It is possible to appeal the court decision recognizing the foreign court judgment (article 55 Law 29/2015).

It is also possible to appeal the court decision about the opposition of the defendant to the enforcement based on material grounds (article .561 Code of Procedural Law)

Appeal is not possible against specific measures laid down in the decision granting enforcement, but the debtor, as said above, may oppose the adoption of specific measures.

In this case, the debtor may initiate appeal proceedings opposing the court's dismissal of the opposition (article .563 Code of Procedural Law).

(iii) Judgments from a country belonging to the EU:

It is possible to appeal the judgment enforcing the Foreign court Decision; according to Article 49 and 50 of Regulation (EU) No 1215/2012: *“The decision on the application for refusal of enforcement may be appealed against by either party”*.

According to Final Provision Twenty-five of the Code of Procedural Law, the court decision can be appealed, and this appeal is to be lodged with the Audiencia Provincial.

According to Article 50 of the Regulation (EU) No 1215/2012: *“The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75”*.

According to Final Provision Twenty-five of the Code of Procedural Law, against the judgment issued in the second instance, it will be possible, in its case, extraordinary recourse for procedural infraction and appeal in cassation in the terms foreseen by this law, and this cassation is to be lodged with the Tribunal Supremo (Supreme Court).

According to Article 46 of the Regulation (EU) No 1215/2012: *“On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist”*.

According to Article 48 of the Regulation (EU) No 1215/2012: *“The court shall decide on the application for refusal of enforcement without delay”*.

According to Article 52 of the Regulation (EU) No 1215/2012: *“Under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State addressed”*.

2. Can this appeal suspend the enforcement?

Answer:

(i) Judgments from a country with which Spain has an international Treaty: according to the Treaty (art. 523 Code of Civil Procedure).

(ii) Judgments from a country with which Spain has no international Treaty:

As a general rule: Initiation of appeal proceedings does not suspend enforcement of the measures granted, when the Court decided to recognize the foreign court resolution.

According to article 55 Law 29/2015, if the appealed court resolution was estimating the opposition to the recognition of the defendant, the court may suspend the execution or subject said execution to the provision of the appropriate bond.

As regards to the enforcement: article 561.3 Code of Procedural Law says that the appeal shall not suspend the course of the execution if the resolution appealed was rejecting the opposition of the defendant, but in case it is accepting the opposition the plaintiff may request that the seizures and security measures adopted be maintained and that those that proceed in accordance with the provisions of article 697 of this Law be adopted (security measures), and the court shall so agree, by means of a ruling, provided that the performer provides sufficient security, which will be fixed in the resolution itself, to ensure the compensation that may correspond to the defendant in case the acceptance of the opposition is confirmed.

(iii) **Judgments from a country belonging to the EU:** Pursuant to article 51.1 of the Regulation (EU) No 1215/2012: *“The court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged”.*

Same rules of the Code of Procedural Law for the enforcement will apply to these cases.

G. Recovery of judicial costs and expenses.

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer:

There are no special rules regarding costs related to the enforcement of Court Judgments, so the general rule is applicable; the debtor must pay for the cost and expenses caused by the enforcement procedure unless his appeal or opposition is accepted by the Court.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. What types of assets are subject to enforcement of the court's judgment?

Answer:

All movable and immovable property as well as claims and real property rights may be subject to enforcement by the court.

The following assets may not under any circumstances be subject to enforcement (Articles 605 and 606 of the Code of Civil Procedural Law):

1. Assets that have been declared inalienable;
2. Secondary rights that cannot be alienated separately from the main ones;
3. Assets that in themselves have no property value;
4. Assets expressly declared unattachable by a legal provision;
5. Household items and furniture belonging to the home, as well as the clothes of the debtor and his family, apart from what may be regarded as superfluous. In general, assets such as foodstuffs, fuel and others which, in the view of the court, are essential for the debtor and his dependants to live with decency are not subject to attachment;
6. Books and instruments needed by the debtor to exercise his profession, art or business, when their value is not out of proportion to the amount claimed;
7. Sacred items and those used for the practice of legally registered religions;
8. Amounts expressly declared to be unattachable by the law;
9. Assets and amounts expressly declared to be unattachable by treaties ratified by Spain.

The following amounts may not be enforced either (article 607 of the Code of Civil Procedural Law):

1. The salaries, wages, pensions, remuneration or equivalent payments not exceeding the amount laid down as the minimum intersectoral wage (this is determined each year by the Government of Spain);

2. The salaries, wages, remuneration and pensions that are higher than the minimum intersectoral wage may be seized according to a predetermined scale.

3. If the debtor receives more than one salary, all the salaries will be added together and the unattachable part deducted once. Moreover, the salaries, wages, pensions, remuneration and equivalent payments of the spouses will be added together unless their marriage settlement involves a separation of estates and income of all kinds, evidence of which must be provided to the court.

4. The court may apply a reduction of between 10% and 15% in the percentages laid down in sub-paragraphs 1, 2, 3 and 4 of paragraph 2 of this article to allow the debtor to meet family expenses.

5. Should the salaries, wages, pensions and remuneration be encumbered with permanent or transitional deductions of a public nature pursuant to tax or social security legislation, the net amount received by the debtor, once they have been deducted, will be the amount used as the base for determining the amount to be seized.

6. The above sub-paragraphs of this article also apply to revenue from self-employed professional and business activities.

In any event and without prejudice to the need to take account of the amounts that cannot be attached as mentioned above, the enforcement measures must be in proportion to the amount for which the enforcement was granted, so that if they are excessive a reduction may be necessary, and if they are insufficient, an increase may be needed.

Where the party initiating the enforcement does not know what assets are owned by the debtor, the court may be asked to make enquiries; these are carried out by consulting the data banks of the various official institutions, some of which are directly accessible from the court, with the usual safeguards.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.

A. Any other issues of interest in your jurisdiction.

Answer:

The Code of Civil Procedural Law (2000), announced a law regarding Judicial International Cooperation which was finally approved in 2015 (Law 29/2015, 30th July, on international legal cooperation in civil matters), this Law also included a modification of the Code of Civil Procedural Law in order to make easier and clearer the application of the Regulation (Eu) No 1215/2012 of the European Parliament and of the Council, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

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