

# NATIONAL REPORT

- SPAIN -



*Dr. Jesus Bores Lazo (Advocate in Sevilla, Spain)*

## GENERAL OVERVIEW

### **National Legal system**

Spanish law has an ancient national tradition and presents a most complex amalgamation of customary, Roman, local and modern codified law, combined with many unassimilated and distinct vestiges of the laws of historically independent Spanish regions. Post-Napoleonic codification commenced with the Constitution of Cadiz of 1812, which established a short-lived democracy and called for the codification of all major branches of Spanish law, now celebrating its 200 anniversary. By 1880 the need for a national civil code and for the resolution of claims by the formal states to their own civil law codifications had become acute. In 1889 the Spanish civil code was enacted. It was an interesting and eclectic piece of legislation drawing on many sources (especially the Code Napoléon, although heavily influenced by Castilian and canon law) and is thus a not-entirely successful compromise mixture of codified Castilian law (with a number of gaps) with uncodified formal law given precedence where necessary or expedient, and finally, customary law. Codification of commercial law actually commenced with the Ordinances of Bilbao of 1737, but the first modern code was promulgated in 1829, revised in 1868 and entirely revised and repromulgated in 1885. In this final format, it is a much broader European work than the civil code, and shows the influence of 19th century German legal scholarship. Civil procedure in Spain is actually codified in two instruments: the civil procedure code (Ley de enjuiciamiento civil) of 1881 and the Ley organica del poder judicial, which governs the judiciary. The three 19th century codifications of civil and commercial and procedural law remain in force in Spain today; although much amended, they have not been subject to any overall revision or reform. The judiciary code was completely revised in 1985 and 2001.

<p><b>Court jurisdiction and different types of litigation for debt collection</b></p>	<p>Within the area of contemporary legal systems, the Spanish system meets the criteria of what is known as the continental model. Title VI of the Constitution of 1978, currently framing the Spanish legal system, is given over to the judiciary and Article 117 thereof states that the principle of jurisdictional unity is the basis for the organization and operation of the courts. Numerous courts exist to which the work is distributed according to criteria for the division of the area of jurisdiction: subject matter, amount, person, function or region, since Unity of jurisdiction does not preclude the existence of different bodies with different areas of jurisdiction. Therefore, In accordance with the reasons laid out in Organic Law 6/1985 of 1 July on the judiciary, the State is organized regionally, for judicial purposes, into municipalities, areas, provinces and autonomous communities, with jurisdictional authority over them being exercised by the Juzgados de Paz (magistrates courts), Juzgados de Primera Instancia e Instrucción (courts of first instance and preliminary investigations), Contencioso-Administrativo (administrative), Social, Vigilancia Penitenciaria (courts with special duties in the matter of criminal sentencing) and Menores (juvenile courts), Provincial Courts and Higher Courts of Justice. The Audiencia Nacional (national high court) and the Supreme Court and the Juzgados Centrales de Instrucción (central courts of preliminary investigations) and Administrative Courts have jurisdictional authority throughout the national territory. In addition to the regional element, we need to highlight the various subject matters which the courts can hear and which determine the existence of five areas of law: Civil; Criminal; Administrative; Social and the Military Jurisdiction.</p>
<p><b>National summary procedures for recovery of money claims</b></p>	<p>The Spanish Civil Procedural Law establishes declarative, executive and special proceedings for the recovery of money claims. The Declarative proceeding can be Oral (Juicio Verbal) due to the small amount of the claim. For claims over 6.000 € and for particular claims, actions have to be carried out through an Ordinary Proceeding (Procedimiento Ordinario). Executive proceedings are feasible whenever a title such as a judgment, provides the right of execution. Within the commercial law the Monitory Proceeding (Juicio Monitorio) and Small Claims Proceeding complies with the EU legislation in this matter.</p>

<b>State of IT operational options in judicial procedures for recovery of money claims</b>	A new Law is regulating IT in Spanish Justice (Ley 18/2011, regulating the use of Information and Communication Technologies in the Administration of Justice. The main aims are to facilitate public access to judicial services, facilitate the use of new technologies by the main actors in the judicial structure, and provide rules to regulate connectivity and security, data protection and all other changes needed to foster the use of IT. 24 million citizens already have an electronic ID. The Spanish Judicial System offers more than 40 services on-line for consulting, exchange of information, access to the Ministry of Justice, statistics and management of the Court (in 2.008 there were only 18) and the activity is notably increasing.
--	---

## SCOPE OF THE PROCEDURE

### Eligible claims

**SPECIAL PROCEDURES:** Spanish Law foresees some court proceedings, which are faster and convenient for the creditor claiming, when the debt is recognized or documented in some kind of legal instruments or agreements: 1. Enforcement or Execution Procedure (procedimiento ejecutivo) It is possible to directly start this process against the debtor and his assets when our credit is fully documented in public deeds, commercial policy contracts formally signed, etc. This proceeding simplifies the debt collection and it is much faster than the standards ones. Thus we recommend, for example that if you give out a loan or a credit, you should try to document in a Public Deed at the time of signing, since in the case of lack of payment it will be a lot easier to recover the debt, just as banks do when giving a mortgage loan. 2. Exchange Procedure (procedimiento cambiario-articles 819 to 827 of LEC): this proceeding is used for claims based on bills of exchange, promissory notes and cheques and even though the defendant may object to the claim, once the proceeding is admitted, the Court can order directly to freeze all the assets of the defendant since the idea is to provide special protection to these instruments. As previously stated, in case of debt, our recommendation is to have it documented in bills of exchange, promissory notes and cheques.

**STANDARD PROCEDURES** In case of not having your credit documented in any of the previously mentioned special ways, we would then, generally, have to start a Standard Civil Declarative Procedure (procedimiento civil declarativo) which according to the amount of the debt can be an Ordinary Procedure (Ordinario), when the debt is over 6.000 € or a Verbal Procedure, when the debt is 6.000 € or less, being the Verbal significantly faster than the Ordinary. We must not forget that these procedures may finish with a Court Order declaring our rights to recover the debt but if the debtor does not voluntarily comply with the Order, an Enforcement or Execution Procedure (before mentioned) must be initiated to force compliance.

	<p>But usually in debt collection matters the most relevant is the Payment Procedure (PROCEDIMIENTO MONITORIO) which allows the creditor in first place and without the need of a lawyer or procurator to request the payment directly at the Court. He must show the Court any documents signed by the debtor proving the debt acknowledgement, or invoices or any other relevant documents regularly used to establish credit such as registered letter, fax or telegram. The maximum amount for this Procedure has been recently raised up to 250.000 €.</p>
<b>Limit regarding value of claim</b>	<p>Less than 2.000 € no need of a Lawyer or representative in court. Less than 6.000 € - Verbal Proceeding. Less than 250.000 € - Payment Procedure (Procedimiento monitorio).</p>
<b>Rules on using the procedure</b>	<p>The procedure depends on the existence of a title to be executed or a declaration of the debt. Considering the amount and the legal circumstances of the claim different proceeding to be applied.</p>
<b>Possibility of using national procedure in cross border cases</b>	<p>Considering European legislation in force, international applicable law, and rules on jurisdictions are equal to other EU Member States under the existing regulations and directives. Therefore, recognition and enforcement of judgments is granted although certain internal procedural rules hinder the effectiveness of EU rules. Slowness and delays of the proceedings, formal burdens and other obstacles remain as a challenge in cross border cases and therefore an important field of development can be found here particularly in the area of execution of judgements.</p>
<b>Number of steps</b>	<p>At least an executive proceeding, but more than one to obtain an execution title.</p>
<b>Rules on representation by a lawyer</b>	<p>Lawyers are not required for claims under 2.000 €.</p>

# COMPETENT COURTS

## According to matter

**SPECIAL PROCEDURES:** Spanish Law foresees some court proceedings, which are faster and convenient for the creditor claiming, when the debt is recognized or documented in some kind of legal instruments or agreements: 1. Enforcement or Execution Procedure (procedimiento ejecutivo) It is possible to directly start this process against the debtor and his assets when our credit is fully documented in public deeds, commercial policy contracts formally signed, etc. This proceeding simplifies the debt collection and it is much faster than the standards ones. Thus we recommend, for example that if you give out a loan or a credit, you should try to document in a Public Deed at the time of signing, since in the case of lack of payment it will be a lot easier to recover the debt, just as banks do when giving a mortgage loan. 2. Exchange Procedure (procedimiento cambiario-articles 819 to 827 of LEC): this proceeding is used for claims based on bills of exchange, promissory notes and cheques and even though the defendant may object to the claim, once the proceeding is admitted, the Court can order directly to freeze all the assets of the defendant since the idea is to provide special protection to these instruments. As previously stated, in case of debt, our recommendation is to have it documented in bills of exchange, promissory notes and cheques.

**STANDARD PROCEDURES** In case of not having your credit documented in any of the previously mentioned special ways, we would then, generally, have to start a Standard Civil Declarative Procedure (procedimiento civil declarativo) which according to the amount of the debt can be an Ordinary Procedure (Ordinario), when the debt is over 6.000 € or a Verbal Procedure, when the debt is 6.000€ or less, being the Verbal significantly faster than the Ordinary. We must not forget that these procedures may finish with a Court Order declaring our rights to recover the debt but if the debtor does not voluntarily comply with the Order, an Enforcement or Execution Procedure (before mentioned) must be initiated to force compliance.

	<p>But usually in debt collection matters the most relevant is the Payment Procedure (PROCEDIMIENTO MONITORIO) which allows the creditor in first place and without the need of a lawyer or procurator to request the payment directly at the Court. He must show the Court any documents signed by the debtor proving the debt acknowledgement, or invoices or any other relevant documents regularly used to establish credit such as registered letter, fax or telegram. The maximum amount for this Procedure has been recently raised up to 250.000 €.</p>
<p><b>According to territory</b></p>	<p>As said above, in accordance with the reasons laid out in Organic Law 6/1985 of 1 July on the judiciary, the State is organized regionally, for judicial purposes, into municipalities, areas, provinces and autonomous communities, with jurisdictional authority over them being exercised by the Juzgados de Paz (magistrates courts), Juzgados de Primera Instancia e Instrucción (courts of first instance and preliminary investigations), Contencioso-Administrativo (administrative), Social, Vigilancia Penitenciaria (courts with special duties in the matter of criminal sentencing) and Menores (juvenile courts), Provincial Courts and Higher Courts of Justice. The Audiencia Nacional (national high court) and the Supreme Court and the Juzgados Centrales de Instrucción (central courts of preliminary investigations) and Administrative Courts have jurisdictional authority throughout the national territory.</p>

# APPLICATION FOR AN ORDER FOR PAYMENT - FORMAL REQUIREMENTS

<b>Availability of standardized form and form description</b>	<p>There exist some standards approved for minor claims without the need of a Lawyer and representative in Court (Procurador) by the Agreement of 28 September 2011, by the Plenary of the General Council of the Judicial Power, which allow citizen to introduce directly certain claims admitted in the Civil Procedural Law.</p>
<b>Rules on representation by a lawyer</b>	<p>In the first place any plaintiff in Spain is obliged – almost in every case and for claims over 2.000 € – to grant a Notarial Power of Attorney which is called “Poder a Procuradores”. It is absolutely necessary that this Power of Attorney is granted before a Notary Public (legalized with the Apostille of The Hague, if it is not a Spanish Notary) or before a Spanish Consul. Letters of instructions or simple authorizations to lawyers are not valid in Spain. This Power of Attorney must contain the name/s of the Procuradores that shall represent the plaintiff (or the defendant in its case) in Court. The “Procurador” is a professional whose duty is to receive notices from the Court and notify them to the parties. He formally represents the party before the Court. He is usually a lawyer (although some of them are not as it was not mandatory in earlier times to be a lawyer). Usually this “Poder a Procuradores” includes also the names of the instructed lawyers, but it is not essential. The writs would be signed by the Procurador on behalf of the Plaintiff (or the defendant) and by the instructed lawyer as the legal director (“letrado director”).</p>
<b>Description of the reasons for the clame</b>	<p>Monitory proceedings can only be initiated, when a monetary debt in arrears, claimable and explicit, is concerned. The claim must be filed at the relevant court according to the address of the debtor, and it is also necessary to submit any documents signed by the debtor, invoices, evidence of delivery or other documents that substantiate the existence of the debt. Whenever judicial action becomes necessary to collect a debt, the above-mentioned monitory proceedings or an ordinary claim is called for. Originals of</p>

	all relevant documents (order, order confirmation, evidence of delivery, invoices, receipts, etc.) must be submitted.
<b>Need for written evidence and documents admissible as proof</b>	This formality of Spanish procedures is expressed also in the fact that all documents should be presented in originals and if they are in a foreign language, duly translated into Spanish. A simple translation may be filed, but if objected by the counter-party a translation done by a Sworn Translator would be necessary. Translations to Spanish done in foreign countries should be notarized and legalized – when possible – with the Apostille of the Convention of The Hague and if not by the Spanish Consul, although many courts accept non legalized translations.
<b>Option of electronically filing the form</b>	It is not possible yet under Spanish Law.

# ISSUE OF THE ORDER OF PAYMENT

## Specific rules for dealing with submitted apps for order of payment and court decision

Same requirements as established in the EU Legislation in force. To guarantee the effectiveness of enforcement, the law provides for certain measures depending on the type of asset.

In the case of immovable property or other assets that can be entered in a register, the court may, at the request of the party applying for enforcement, order a preventive annotation of seizure in the corresponding public register (usually the property register, which is the one for immovable property).

In other cases, the following measures may be granted:

- Money: confiscation; current accounts: order to the bank to block the accounts; salaries: order to the payer to withhold part of the payment;
- Interest, proceeds and revenue: withholding by the payer, receivership and judicial confiscation;
- Securities and financial instruments: withholding of interest at source, notification to the stock market or secondary market regulator (if the securities are listed on an official market) and notification of the company;
- Other movable property: confiscation.

In addition, with a view to guaranteeing enforcement, all persons and public and private entities are required to cooperate with enforcement procedures (on pain of incurring a fine or even of being charged with contempt of court if they fail to respect the requirement). This means that they must provide the information required of them, adopt the guarantee measures in question, handing over to the court any documents and data in their possession, without any limitations other than those arising from the observance of fundamental rights or limits which, in certain cases, are expressly laid down by law.

<p><b>Decision of the court on the payment order</b></p>	<p>The enforcement application requested by the party must comprise: the instrument on which enforcement is based, 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.</p> <p>The documents listed in Article 550 of the Code of Civil Procedure must be attached to the enforcement application. If the enforcement application meets the requirements mentioned above and if the instrument presented is one of the instruments that permit enforcement, this will be granted by the judge to whom the application was made, who will determine the amount to be seized, the persons concerned and the enforcement measures.</p>
<p><b>Existence of guidelines for submitting application</b></p>	<p>There are no guidelines for submitting an application, only standardized forms for minor claims under 2.000 €. The other claims have to comply with the legal requirements established by Spanish Law for each one of the proceedings.</p>

<b>Defendant's service of the order of payment</b>	<p>In Spain as in England, no distinction is made between the French concepts of “notification” (formality whereby the contents of a document are communicated to a person for information) and “signification” (the name given to the service process carried out by a bailiff or huissier de justice). The parties’ documents are communicated to the other parties and procedural writs are served by means of “actos de comunicación judicial” (judicial communications), always by the court under the direction of the Court Clerk, who is responsible for the proper organization of this service. These documents are in actual fact served by the Court Clerk himself or by a civil servant designated by him, in one of the following ways:</p> <p>Documents are served via the solicitor, in the case of documents addressed to those represented in the proceedings by this legal representative.</p> <p>Documents to be served are remitted by post, telegram or any other technical means which provides a reliable record of the reception, date of reception and content of the document.</p> <p>Personal remittance to the addressee by the Court Clerk or civil servant designated by the former of a full copy of the decision to be notified, of the injunction addressed to him by the court or of the summons or order to attend.</p> <p>In the event that the addressee cannot be located (in which case there is an obligation to look for the address in the various public registers that exist, many of which can even be accessed electronically from the court itself), notification will be carried out by posting notices on the door of the court (these notices may also be published in Official Gazettes or other media at the request of the plaintiff). An exception to this are judgments which must be published in the Official Gazette of the Autonomous Community in addition to being posted on the notice board of the court.</p>
--	---

# REJECTION OF THE APPLICATION

## Grounds for rejecting application

Appeal is not possible against specific measures laid down in the decision granting enforcement, but the debtor may oppose the adoption of specific measures. In this case, the debtor may initiate appeal proceedings against the court's dismissal within a period of five days. Initiation of appeal proceedings does not suspend enforcement of the measures granted.

In addition to the above, the debtor may oppose the enforcement that is going ahead against him either on the basis of procedural shortcomings or for reasons relating to the legal relationship in question.

Procedural reasons (applicable to all enforcement instruments):

- The debtor does not have the capacity or representation required;
- Lack of capacity or representation on the part of the plaintiff or his inability to prove the capacity or representation required;
- Absolute invalidity of the enforcement granted because it does not contain the judgment or arbitration decision finding 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;
- If the enforcement instrument was an arbitration decision that was not placed on record by a notary, the lack of authenticity of this decision.

# OPPOSITION BY THE DEFENDANT

## Procedural rules

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 this in writing on one of the following grounds:

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

In these cases, opposition does not suspend enforcement.

But when the enforcement instrument is different from those mentioned above, there are more grounds for opposition, including the following:

- Payment, documentary evidence of which may be provided;
- Offsetting of a payable claim based on a document that is enforceable;
- Plus petitio or excess in the evaluation of debts in cash;
- Limitation and lapsing;
- Acquittal, respite, or an agreement or promise not to sue, recorded in documents.
- A settlement, provided that it is set down in a public document;
- If opposition is formulated in these cases, enforcement is suspended.

<b>Substantiated order of payment requirement</b>	Yes.
<b>Effects of notice of opposition</b>	The procedure is converted into a declaratory procedure and send to the competent court.
<b>Nature of the structure of the procedure</b>	Both "Execution" and "Declaratory" proceedings

## EFFECTS OF ABSENSE OF TIMELY OPPOSITION

<b>Consequences on not filing opposition</b>	If there is no objection the court, on its own motion, issues the certification of enforceability.
<b>How to obtain an enforcement judgement</b>	The court issues on its own motion a declaration of enforceability.
<b>Effects for the order of payment</b>	Mentioned above.

## COURT FEES

The service provided by the court is usually free except in the case of corporate persons, which have to pay a fee, collected by the Board of Inland Revenue, if their turnover is significant.

The fees of lawyers and solicitors are regulated by their corresponding professional associations. Persons entitled to free legal aid can continue to receive this during the enforcement phase.

There is in principle no limit for these costs, with their level depending on the problems that can arise during enforcement.

# ENFORCEMENT OF NATIONAL ORDER OF PAYMENT

<b>Domestically</b>	<p>Only the following instruments are enforceable:</p> <ul style="list-style-type: none"><li>- A final judgment;</li><li>- Arbitration decisions (laudos) ;</li><li>- Court decisions approving or confirming court settlements and agreements reached during the procedure, accompanied, if necessary, by the corresponding depositions in order to provide a record of the actual content;</li><li>- Authenticated public documents, provided that they are the first copies. If they are second copies, they must be issued subject to a court order mentioning the person who may be injured or the perpetrator of the injury, or they must be issued with the agreement of all the parties;</li><li>- Commercial contracts signed by the parties and by a broker who is a member of a professional association, who mediated between them, provided that they are accompanied by a certificate in which the said broker certifies that the contract complies with the entries in his register and the dates of these entries;</li><li>- Lawfully issued bearer securities or registered securities which represent liabilities payable, and the coupons, also payable, of the said securities, provided that the coupons match the securities and that the securities, in all cases, match the receipt books.</li></ul>
<b>Abroad</b>	Same as domestic.

# COMPARING NATIONAL AND EU ORDER FOR PAYMENT

Same considering the principle of non-discrimination.