



MANUAL - Portugal

for legal practitioners dealing with cross-border enforcement of civil claims



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This Manual is intended to help practitioners (primarily authorities in the field of civil enforcement) facing a foreign enforcement title. It offers answers to the most pressing issues faced in cross-border enforcement proceedings in a step-by-step manner, starting with the visual inspection and identification of the elements of the enforcement title. However, the Manual should only be used as an assisting tool in an unofficial capacity and cannot replace the scrutiny of regular inspection. The materials for this Manual have been sourced from national reports and other deliverables obtained within the EU-En4s project.

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1. Judgement

1.1 Headlines that form part of the judgement

The Portuguese Civil Procedure Code (hereinafter – CPC) does not explicitly set out the “headlines” of a judgement, but article 607 indicates the structure that a judgement should have.

A judgement should begin with an introductory part where the parties are identified, and the claim is summarised. Then the questions to be decided are indicated. The reasoning is a third part that must indicate the fact grounds (in first place) followed by the legal grounds. The judgment ends with the operative part in which the judge summarises the decision

All these parts are separated with headlines left-indented (even the introductory part) and are numbered (in general with roman numerals – I, II, II....).

Apart from the general structure of the judgement, the Reasoning of the judgement is subdivided with the inclusion of internal headlines to separate the fact and prove analysis from the legal reasoning. Moreover, when several issues have to be decided the judgement can be numbered and headline each question to be decided (ex. 1. legal framework or the type of liability at stake; 2. liability requirements).

1.2 Structural and substantive division/sequence of the Reasoning

The fact reasoning is numbered: the proven facts and the unproven facts by numbers (1.; 2.; 3;...) or by letters (a. b. c. ...). This numbering can be used in the legal reasoning for instance, since the judge can indicate that having proved fact 1 or a. legally the solution is X. The judgement also justifies in this part why some facts are proved and some are not.

In terms of sequence of the reasoning, in general the following format is used:

- [when existing] Observations on certain procedural irregularities (e.g. illegitimacy of the parties),
- List of admitted evidence and dismissed submissions of evidence (with explanations as to the dismissal),
- Determination of disputed and undisputed facts of the case,
- The intertwined legal and factual assessment of the case (this section is usually subdivided by headlines in respect of the).

1.3 Textual identification of the elements comprising the judgement

“the introduction of the judgement”: IDENTIFICAÇÃO DAS PARTES E OBJECTO DO LITÍGIO

“the operating part”: DECISÃO

“the reasoning of the judgement”: FUNDAMENTAÇÃO DE FACTO E DIREITO

“legal instruction”: FUNDAMENTAÇÃO DIREITO

1.4 Short description of the elements of the judgement

- The judgment contains: the court identification, the case-number, the type of proceedings, the date on which the case-file was referred for decision (opening of the conclusion), the

identification of the official who referred it, the date of the decision, the signature of the judge (currently digital).

- In the final part, it also contains the condemnation in procedural costs and the order to notify the parties of the judgment.
- Aside from these elements, the sentence is divided into four parts: Report; Reasoning of Fact; Reasoning of Law; Operative Part (Final decision/ jurisdictional order):
 - I. Report: The report summarizes the whole process. It identifies the parties, indicates the claim, states the reason for the claim, including the facts, mentions that the defendant was served, if there was a complaint, the grounds for the defence, and whether there was a prior hearing and a final hearing. It also states that the case is still in order and valid as to the procedural premises. Finally, it identifies the issues to be considered.
 - II. Reasoning of Fact: It indicates the proven and unproven facts; it exposes the judge's conviction (reasons for the factual decision).
 - III. Reasoning of Law: exposes the legal grounds and applies the right to the proven facts.
 - IV. Operative Part: Indicates the final and concrete decision; whether the defendant is condemned or acquitted of the claim.

1.5 Graphical separation of the elements of the judgement

The four parts of the judgement are numbered.

In each part, the main components are separated by title and/or underlined.

Each component and each part are separated by spaces or asterisks. (Reasoning of Judgment; Proven facts; Non proven facts; Reasons for the factual decision; Law reasoning,)

1.6 Specification of time-period in which the judgement must be performed

The sentence does not set a time limit, by order of the judge, during which it is not enforceable, nor is there a time limit to be enforced.

It may happen, for example in the execution of an obligation to do a fact that there is a time limit to be complied with, but this will always have to result from the request, the judge is limited to deciding according to what was requested.

The sentence, as long as it is enforceable, can be enforced immediately. And it can be enforced as long as the obligation does not expire, but in that case the obligation itself is extinguished and it is not the judgment that loses its enforceability. Moreover, as the statute of limitations is not a matter of official knowledge, it can happen that the execution is proposed and followed up, for payment.

Regarding actions for payment of an obligation, the fact that it is not due at the time the action was brought does not prevent the existence of the obligation from being known, provided that the defendant contests it, or the defendant is ordered to satisfy the benefit at the appropriate time. Thus, the defendant shall be ordered to pay even if the obligation is overcome in the course of the proceedings or at a date subsequent to the judgment, but without prejudice to the time limit in the latter case.

For periodic obligations which have to be paid repeatedly over a certain period of time, the judgment may specify the monthly payments or the respective payment periods and amounts.

If a judgment imposes an obligation payment, it shall be enforceable until full payment is made.

The prescription period for obligations imposed by judgment is 20 years (Articles 311 and 309 of Civil Code). However, if the judgment refers to payments not yet due, the limitation period will be 5 years (Articles 311 and 310 of Civil Code).

1.7 Identification of Parties

Parties are identified in the introductory part of the judgment by full name, civil (marital) status, tax number (NIF), residence. (Article 552.o CPC)

After this identification, the parties are mentioned in the action only for their role as claimants or defendants.

1.8 Indication of the amount in dispute

The judgment cannot order a greater number or a different object than that requested (article 609 (1) CPC).

The amendment of the request is either by agreement or exceptionally in the case of Article 265.

In the sentence, the amounts indicated are those corresponding to the claim or its amendment, but all this will be explained in the part of the report

The monetary amounts are referred to by numerical value followed by the number in words. Example: 16 041,20 EUR (sixteen thousand forty-one euros and twenty cents).

1.9 Indication of the underlying legal relationship

- The judgement reasoning indicates the underlying legal relationship, gives the legal assessment of the dispute and explains how that relationship justifies a conviction to pay a certain obligation.
- There are cases in which the nature of the debt determines lower restrictions on the attachment of salary, as in the case of execution for maintenance (Article 738(4) CPC). However, since this is a special process (Article 933 CPC), the nature of the underlying legal relationship is identified by the type of enforcement proceeding itself.
- However, there are other situations in which the nature of the underlying relationship is not relevant for the purposes of execution and property liability. For example, if the execution is based on a judgment that sentenced only one of the spouses, even if the debt is, under civil law, the responsibility of both spouses, the creditor can only execute the sentenced spouse in the declaratory process. The creditor has the duty to propose declaratory action against both spouses in order to enforce both spouses. This is because in the enforcement procedure the legitimacy is formal, it is determined by who appears in the enforcement instrument as debtor and as creditor (Article 53 CPC).

1.10 Information contained in the operative part

The decision, also referred to as the operative part of the judgment, consists of the final conclusion in that the judge determines, in a clear and concise manner, the legal effects recognised and dictates the concrete corrective commands, or denies the action requested.

This is a prescriptive discourse, through which the judge, as the case may be:

- either dictates a concrete command of conduct, the purpose of which is to give or to do;
- or states the existence or non-existence of a fact or a right;

- or decrees the production of a constitutive, amending or extinctive effect.

The operative part of the judgment shall not, in principle, contain any mention of the rules applicable, since they must be included in the part concerning the legal basis.

The device of the merit sentence decomposes, analytically:

- (a) in the formulation of a judgment of provenance or of dismissal of the action, the counterclaim or the peremptory exception in question;
- (b) if all or part of the claims are well-founded:
 - in actions of simple evaluation, the recognized legal effect is declared;
 - in actions for condemnation, the defendant shall be condemned in the provision or instalments of dare or of make sure they're actually due;
 - the constitutive, modifying or extinctive effect of the operate;
- (c) in the event of dismissal, the defendant shall be acquitted.

The operative part of the judgement has also to indicate the court costs (Article 607(6) CPC Portuguese).

1.11 Existence of a threat of enforcement

The operative part does not contain a threat of enforcement. The possibility of enforcement is common knowledge.

1.12 Final specification of debt

As a rule, the judgment condemns a specific obligation and a fixed amount, with the exception of interest which will be calculated in the enforcement proceedings.

As for court costs, it is the court office that determines the final amount to be paid by the parties.

There are exceptional cases in which the obligation in which the defendant was sentenced is not immediately determined in the decision as to its quantity or quality.

For example, in cases in which the plaintiff makes a generic request and, at the end of the process, there are still no elements to fix the object or quantity, the court condemns in what will be determined (generic condemnation sentence) (Articles 556; 609(2)). That will be determinate in a proper incident, in the declarative phase, and the process can be reopened for that purpose (article 358), without prejudice of immediate condemnation in the part that is already liquid.

Another example is the judgments in cases that began with alternative requests, in which the judge can condemn in alternative obligations, whereby the debtor is released with the fulfilment of any of them. However, the choice still has to be made (by the creditor, the debtor or a third party, according to the applicable regime). This may be done in the enforcement phase (article 553).

1.13 Partial rejection of a claim

In the operative part of the judgement, it has to be indicated whether the requests made by the claimant are partially or totally granted or totally dismissal. The drafted in terms of structure is the same.

Example: Accordingly, on the basis of the above grounds:

- a) I declare the action to be fully well-founded, stating that the claimant does not owe the defendant the sum of 1 618.92 EUR;
- b) I dismiss the counterclaim in its entirety, acquitting the applicant of the defendant's claim.

1.14 Set-off of a claim

If set-off (compensation) is invoked in the counterclaim, the judge must declare whether it is well founded or unfounded and must specify the amount of both claims or declare the amount to be compensated.

Example: In view of the foregoing, I consider the present action to be partially proven and well-founded, and the counterclaim to be fully justified and, consequently, I order the Claimant to acknowledge the right to the compensation carried out by the Defendant in the amount of 1,211.00 EUR (one thousand two hundred and eleven euros)

1.15 References to the Reasoning found within the operative part

The operative part does not contain elements from or references to the reasoning of the judgment. The judge shall only declare whether the action is well-founded or unfounded (proceeds or dismisses) and shall state clearly which orders the parties will have to obey (a concrete command of conduct) if it is the case.

Example:

1. I now judge this action to be fully justified and, consequently,
2. I sentence the defendant L (...), S.A., to pay to the plaintiff M (...) S.A., the amount of 313,933.60 EUR (three hundred and thirteen thousand, nine hundred and thirty-three euros and sixty cents), relating to the value of the principal secured by the invoices, to which must be added the default interest, at the commercial legal rate, the interest due on the date of the injunction totals 51,753.93 EUR (fifty-one thousand, seven hundred and fifty-three euros and ninety-three cents) and the interest due until actual and full payment.

1.16 Wording used to mandate performance

In Portugal the wording of the operative part of the judgment must be clear and precise, necessary and sufficient to define the specific legal effects of the order decreed, so as not to raise doubts about the practical implementation of the enforcement or execution of the decision. Indeed, it is a requirement dictated by reasons of legal certainty and objective understanding of the verdict.

This definition is particularly acute in the field of *facere* obligations (doing something), in which adequate precision of the service to be performance is required, in special for the purpose of enforcing the sentence.

1.17 Reciprocal claims

The wording of operative part must be clear about the obligations to be fulfilled by the claimant and the defendant, and may specify dates, amounts and rules on the fulfilment of obligations.

1.18 Indication of interest (rates)

Regarding interest the judgement should indicate the due interest and the legal rate (different rates may be indicated if they are durable obligations).

The obligation to pay interest not yet due is specified by stating the legal rate and the date from which the interest is due.

Example: In view of the foregoing and in accordance with the grounds of law invoked, I find the action to be partially well-founded and, consequently, I order the Defendant's husband to pay the Claimant the sum of 3,500.00 EUR (three thousand and five hundred euros), and also default interest, at the legal rate of 4%, from February 8, 2018, until full payment.

1.19 Legal ramification for incomplete, undetermined, incomprehensible or inconsistent operative part

According to Article 614 of the Portuguese CPC, if the sentence has errors in writing or calculation or any inaccuracies due to another omission or manifest lapse, it may be corrected by order, at the request of any of the parties or at the initiative of the judge.

In case of appeal, the rectification can only take place before it goes up, and the parties can argue before the superior court what they think regarding the rectification.

If neither party appeals, the rectification may take place at any time.

In accordance with Article 615(1)(e) CPC, the sentence is void when the judge orders the defendant to pay a greater quantity or in an object other than the requested.

In addition to the appeal, the parties may challenge the court decision on the ground of error detected by a complaint addressed to the judge who issued it.

1.20 Legal effects of the Reasoning of the judgement

A judgment shall be null and void if it does not state the reasons of law on which it is based; or the grounds are in opposition to the decision or there is some ambiguity or obscurity which renders the decision unintelligible, according with Article 615(1)(b) and (c) CPC.

1.21 Obtaining the *res judicata* effect

The judgment becomes *res judicata* when it is no longer susceptible of complaint or ordinary appeal, whether no objection has taken place within the legal timeframes, or the admissible used means of objection have been exhausted (Article 628 CPC).

As rule, the time limit for appeal is 30 days and shall run from notification of the judgement, reducing it to 15 days in certain cases, for example those listed in Article 644(2); and is extended by 10 days (to 40 days) if the purpose of the appeal is to reconsider recorded evidence 638(7).

1.22 *Res judicata* of negative declaratory relief

If the action is of a simple assessment, that is to say, it merely states the existence or non- existence of a right or of a fact, that judgment is not, as a rule, enforceable.

A judgment must be of a condemnatory nature in order to be enforceable. The enforceable title is a judgment that is condemning and not any judgment (Article 704(a)).

Therefore, if a judgement declares that there is no right to a claim, it does not mean that the defendant is obliged to pay this amount.

In the case of a negative declaratory action if the court dismisses the claim the judge can declare the converse right of the defendant in a counterclaim exist. In this case such judgement is enforceable.

1.23 Suspensive periods barring the enforcement of a judgement

Portuguese legal order does not expressly prescribe a suspensive period within which the judgment creditor cannot initiate the enforcement proceedings.

2. Court settlements

2.1 Elements of a court settlement

The necessary elements a court settlement must contain are defined in Article 290(1).

Article 290(1) - "The confession, withdrawal or transaction can be made by authentic or private document, without prejudice to the requirements of form of the substantive law, or by declaration in the process."

2.2 Formal requirements

The formal requirements that must be satisfied are defined in Article 290.

2.3 Identification of Parties

The parties are identified by reference to the parties of the process. There are no specific rules.

3. Notarial deeds

3.1 Prerequisites for enforceability

A notarial act is an enforcement title *per se*, without prejudice of the dispositions of Article 707 for future obligations.

In Portugal, the "enforcement titles" list is defined by Civil Procedure Code. Depending on the document issued by the notary, if it is in that list it is an enforcement title. For example, the public deeds and the notarization of private documents are always enforcement titles, not being necessary any particular clause. The parties just have to declare to the notary that they agree with what is written on the document that they wish to authenticate.

3.2 Special clause

In Portugal, the "enforcement titles" list is defined by Civil Procedure Code. Depending on the document issued by the notary, if it is in that list, it is an enforcement title. For example, the public deeds and the notarization of private documents are always enforcement titles, not being necessary any particular clause. The parties just have to declare to the notary that they agree with what is written on the document that they wish to authenticate.

3.3 Consent

The debtor's consent must be notarized. The notarial act is a "authentication term" of the document signed by the debtor, where he declares to the notary that he agrees with what is written on the document that he wishes to authenticate. The consent must normally be specific and concrete so that can be considered an enforcement title.

3.4 Structure

Depending on the act, it necessary more or less requirements. All acts must have date of issue, location, the identification and signature of the notary. More elaborated acts, such as authentication terms and public deed, must have the full identification of the parties.

3.5 Personal information

Full name, marital status, birthplace, full address, fiscal number, and ID number.

3.6 Obligations contained in attachments

Obligations, contained in a directly enforceable notary deed, can be attachments to the notarial act. Attachments are an integral part of the notarial act. They can be on a document that stays archived with the deed and has the same importance and legal value.

3.7 Conditional claims

Conditional claims, contained in a notary act, can be enforceable. But with their own rules. The execution must be mandatory (first it is cited and only later it is seized) (Article 550(3)(a) and there is a mini preliminary procedure to demonstrate the verification of the condition (Article 715 CPC)).