



# MANUAL - Spain

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



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## **Manual – Spain**

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

Art. 208 of Ley de Enjuiciamiento Civil or Civil Procedural Law (hereinafter – LEC) establishes the content of the different kinds of judgments:

“1. The order proceedings and judicial decisions will just express what is sent by them and will also include a succinct motivation when the Law or whoever dictates them finds it convenient.

2. Judicial decrees and non-judicial decrees will always be motivated and will content in separated and numerated paragraphs the factual background and the findings of Law in which the subsequent ruling will be founded.

3. In case of sentences and judicial decrees, the Court that pronounces them must be indicated, with expression of the Judge or Magistrates that integrate it and their signature, and indication of the reporting judge, when the Court is collegiate. In case of decisions pronounced by courtrooms, it will be enough with the reporting judge’s signature. The judgments issued by the Letrado de la Administración de Justicia or Justice Administration Attorney (hereinafter – LAJ) shall always indicate the name of the one who pronounced it, with extension of his signature.

4. Every judgment will include a mention of the place and date of pronouncing, and whether it is final or it can be appealed, mentioning, in this latter case, which appeal is appropriate, before which legal body it must be interposed, and the term to appeal.”

In practice, every judgment is drafted with a header indicating the date, place, identifying number/s (number of procedure, of appeal, of judgment), the name of the Judge or the reporting Judge, and the name of the parties involved, and ends with what information regarding legal remedies on the case (*pie de recurso*), specifying if the judgment can be appealed or not, and which kind of appeal can be issued (as it is referred in art. 208.4 LEC and art. 248.4 of Ley Orgánica del Poder Judicial (Constitutional Law of the Judicial Branch, hereinafter - LOPJ), and the signature. So, considering art. 208 LEC (and art. 209 LEC in case of judgments), and the Court practice, we can find the following elements in each kind of judgment:

- Decisions: Header, legal instructions, footer of appeal, signature.
- Judicial decrees: Header, factual background, legal findings, ruling, remedies, signature.
- Sentences: Header, factual background, findings of Law, ruling, footer of appeal, signature.
- Proceedings: Header, legal instructions/facts, footer of appeal, signature.
- Non-judicial decrees: Header, factual background, findings of Law, ruling, footer of appeal, signature.

In every judgment, part of the heading is in a different lettering style (usually bold). The rest of the content is separated by headlines in judicial decrees, sentences, and non-judicial decrees, and has no specific separation in decisions and proceedings. Those headlines are not mandatory by Law, but in practice are always used. They are not numbered either, but the content inside each part is numbered.

## 1.2 Structural and substantive division/sequence of the Reasoning

The Reasoning is divided by *fundamentos* (foundations) that are necessarily numbered as provided by arts. 208 and 209 LEC, usually with capital letters followed by a point and a dash, as the following example:

- PRIMERO.- ... (First)
- SEGUNDO.- ... (Second)
- TERCERO.- ... (Third)

This division is not necessarily by paragraphs. That means, a *fundamento* can be composed by one paragraph or more. There is no universal meaning of the numbers, but the sequence usually coincides with the order of the issues raised in the claim and the counterclaim, unless the Judge finds more useful to study the case in a different order.

### **1.3 Textual identification of the elements comprising the judgement**

“the introduction of the judgement”: *Encabezado*

“the operating part”: *Fallo / Parte. Operativa*

“the reasoning of the judgement”: *Razonamiento de la Sentencia*

“legal instruction”: *Instrucción jurídica*

### **1.4 Short description of the elements of the judgement**

Short description of the elements of the judgment is discussed in detail in Section 1.1 Headlines that form part of the judgement.

### **1.5 Graphical separation of the elements of the judgement**

In every judgment, part of the heading is in a different lettering style (usually bold). The rest of the content is separated by headlines in judicial decrees, sentences, and non-judicial decrees, and has no specific separation in decisions and proceedings.

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

The judgment does not include any of those time-periods. Spanish Civil Procedural Law specifies, however, the time-period within which the judgment is not to be enforced, that is set by Law with a delay of twenty days since the judgment becomes final (art. 548 LEC). It is important to emphasize that, in Spanish legal order (Civil), a judgment can be judicially enforced only by request of the interested party, through a new procedure initiated by a petition for execution (except from actions for evictions, which can be included in the first claim and executed without further procedures).

Regarding the time-period after which the judgment is no longer enforceable, Art. 518 LEC establishes that “the enforcement action based on a sentence, a Court judgment or a LAJ judgment that approves a judicial transaction, or an agreement achieved during the procedure, arbitration award or mediation agreement, will expire if the pertinent petition for execution is not lodged within the first five years after the judgment or sentence became final.”

### **1.7 Identification of Parties**

It is mandatory to specify just the name and surnames of the parties, and, whenever it is necessary, it shall also include the legitimation and representation by virtue of which they act, either as legal representative of a natural person or an entity or company.

### **1.8 Indication of the amount in dispute**

The amount is specified in the factual background (referring to the amount that the claimant requests in his lawsuit) and in the operative part (referring to the amount that the Court finds actually due).

When it is not known or partially known, the Judge must establish in the operative part the specific arithmetic rules that will be used to quantify it.

### **1.9 Indication of the underlying legal relationship**

The underlying legal relationship is fundamental to provide the enforcement title, but the once obtained the title is independent and enforceable. Court interpretation and decision-making will be always determined by the cause of the judgment and the facts of the case.

### **1.10 Information contained in the operative part**

The operative part of a sentence must include the pronouncements about the claims of the parties and the distribution of the costs and expenses of the procedure, although the granting (or not) of some of those claims may be deduced because of the findings of Law and may not be necessary developed. It must rule about the litigious issues between the parties, without exceeding those limits.

### **1.11 Existence of a threat of enforcement**

The operative part may contain a threat of enforcement under certain conditions. For instance, Art. 1128 Código Civil or Civil law (hereinafter – CC) establishes that any obligation without a deadline may be fixed by the Court and therefore the enforcement can be related to its compliance.

### **1.12 Final specification of debt**

The Court must specify its decision about the claims of the parties, including, if it is the case, the debtor's obligation. If the obligation is the payment of an amount of money or goods, art. 219 LEC establishes that, when a determined amount of money is claimed in a trial, the Court must indicate, if it issues a conviction sentence, the exact quantification of the due amount or the arithmetic rules that will be used to quantify during the enforcement of the judgment. It is not possible to leave the quantification (nor the specific obligation) to further procedures.

### **1.13 Partial rejection of a claim**

There is no significant change in the drafting of the operative part in the case of rejection of a claim. In the case of whole dismissal, the Court says that they dismiss the claim (*'desestimamos el recurso/la demanda'*). In the case of partial dismissal of a claim, the Court writes in the sentence that they 'partially admit' the claims of the claimant, specifying which part of the claim is granted and which is dismissed. In Spanish, the phrase used for this purpose is *'estimamos parcialmente...'*. As an example, see STS 228/2011 of 3 January.

### **1.14 Set-off of a claim**

Any invocation from the parties entitle to certain rights or compensation has to be addressed at the judgment.

### **1.15 References to the Reasoning found within the operative part**

Usually, the operative part does not contain elements from or references to the reasoning of the judgment.



### **1.16 Wording used to mandate performance**

In Spanish legal system, when the claims of the claimant are granted, the sentence says that the debtor is 'condemned' to do something (in Spanish, '*debo/debemos condenar a ...*'). This expression means that the Court recognises the obligation of the debtor to do (or stop doing) what the claimant requested, and it does not need another judgment to make it enforceable (it becomes enforceable the twenty days after it becomes final, as it was discussed in the Section 1.6 Specification of time-period in which the judgement must be performed, although it does need a further procedure to actually enforce the decision.

### **1.17 Reciprocal claims**

In case of reciprocal relationships, where the counter performance is prescribed as a condition for the performance of the other party, the Judge considering the claims of the parties as in any other case.

### **1.18 Indication of interest (rates)**

In the sentence, the Spanish Courts apply the following phrase: 'We must condemn the defendant to the payment of the amount of X EUR plus the legal interest of the money since the day [date]'. As an example, see SJPI 201/2019 of 30 December. The legal disposition is in art. 576.1 LEC, that provides the following redaction:

"Since the sentence is issued in First Instance, every sentence or decision that condemns to the payment of an amount of liquid money will determine, in favour of the creditor, the accrual of an annual interest equal to the legal interest of the money incremented by two points or what it corresponds because of a pact between the parties or special disposition of Law."

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

Judgements must be exhaustive, clear, precise and congruent (referred to all the claims made by the parties and only to those claims), and the ruling must be motivated, as it is said in arts. 216 and 218 LEC. There is an instrument provided by art. 214 LEC that allows the Courts to clarify or correct a ruling. They cannot change the ruling, but they may clarify any obscure concept (within the two days after the publication of the decision) and rectify any material or arithmetic error (at any moment). This can be done *ex officio*. If the Court manifestly omits a ruling about any of the pretensions of the parties, they may ask, within the five days following the issuing of the judgement. In any case, judgements may be appealed.

### **1.20 Legal effects of the Reasoning of the judgement**

The ruling must be based on the reasoning, and, sometimes, it may decision about certain claims may be considered within the findings of Law and it is not necessary to address them in the operative part. Also, the findings of Law refer jurisprudence setting a precedent that might be used in further procedures. The argument of the Court to make a decision must be equal in every judgment of the same Court and can be standardised if it is considered by higher instances.

### **1.21 Obtaining the res judicata effect**

A judgement becomes *res judicata* (in its material aspect) when it decides on the main merits of the case, and it becomes final. That means that, either there is no possibility of filing an appeal, or the

deadline for filing it has expired. The procedural decisions and those ruled during summary procedures may not have material *res judicata* effect.

### **1.22 Res judicata of negative declaratory relief**

Art. 222.1 LEC provides that “*res judicata* of final judgements, either when the claim is granted or dismissed, will exclude, as provided by Law, any further procedure with the exact same merits than those of the procedure in which that was ruled”. The doctrine confirms that this provision is valid for every kind of final sentence, including declaratory sentences, regardless the direction of the ruling.

### **1.23 Suspensive periods barring the enforcement of a judgement**

Spanish Civil Procedural Law specifies the time-period during which the judgment may not be enforced. That is set by Law in twenty (20) days after the judgment becomes final (art. 548 LEC). It is important to emphasise that, under the Spanish legal order (Civil), a judgment can be judicially enforced only by request of the interested party, through a new process initiated by a petition for execution (except from actions for evictions, which can be included in the first claim and executed without further procedures). Although, it is not necessary to demand the payment before initiating the enforcement procedure, since the final conviction judgement is enough to seek the voluntary fulfilling of the obligation. During the delay of twenty days period the judgment is not enforceable.

## **2. Court settlements**

### **2.1 Elements of a court settlement**

Regarding the formal scheme of the settlement, as a contract, it is governed by the principle of formal freedom, as it is specified in art. 1.258 CC. It can be orally performed in the act of the hearing or agreed and signed in an external document that is brought to the trial. However, apart from the formal scheme, there are certain material elements that conform the Court settlement, that are set by the Court practice. Those are the following three:

- The *res dubia* or disputed right that involves an uncertain legal relationship between the parties.
- The parties’ intention to replace the doubtful relationship with a true and incontestable relationship.
- The reciprocal concessions of the interested parties, to resolve the controversy.

### **2.2 Formal requirements**

There exists a principle of formal freedom for this agreement. However, for a Court settlement to be effective, there exist some prerequisites, that include, as formal requirements, the signature or oral manifestation (express or tacit, but free and definitive) made by the parties and a special power of the legal representatives.

### **2.3 Identification of Parties**

The parties are identified with the Parties Identity cards and deeds of incorporation and appointment of legal representatives and/or powers of attorney.

### **3. Notarial deeds**

#### **3.1 Prerequisites for enforceability**

A Public Notary Document constitutes an Executive Title as such (art. 517 LEC).

Since July 23, 2015, certain, fix and due debts may be required through the Notary Public.

#### **3.2 Special clause**

There are model deeds for Notaries as executive title for payment of debt. The structure and main content being:

1. Introductory information, description of the parties and the debt, providing evidence with invoices, contracts, etc.;
2. Confirmation that is not one of the matters excluded (consumers, ...);
3. Notary "jurisdiction" and domicile of the debtor;
4. Execution title and requiring the debtor to pay or to provide evidence and allegations.

#### **3.3 Consent**

The debtor receives the notarial deed, but consent is not necessary to enforce the executive title.

#### **3.4 Structure**

Although it is not provided by Law, common practice has set that any public instrument made by notaries should be divided in the following parts:

- First part: It is used to identify the formal facts of the public instrument. Those are the preliminary mentions, and include a summary of the instrument, the protocol number, the location where the instrument is made, the date, and the identification of the Notary.
- Second part: Its function is to identify the appearing parties, the grantors, the means by which the representation is justified if it is the case, the judgment of capacity and the qualification of the act or contract.
- The proper content of the business, which is usually divided in: a) a factual background, where the facts are exposed and the object is identified, and b) the contract with all of its clauses.
- Some final mentions, that are usually divided in: a) granting, b) reservations and legal warnings, c) faith of knowledge, and d) giving of faith and authorization.

Nevertheless, that is the structure that is usually used, but it is not an imposition and it can change depending on the Notary and on the concrete act.

### **3.5 Personal information**

Art. 156 of the Decree of the organisation and regime of the Notary collective (hereinafter – RN) requires that, for the correct identification of the parties, the document must designate their names and surnames, age, marital status, domicile, and the number of the DNI (*Documento Nacional de Identidad*, that is, national identity document). That article excepts the case of public officials involved in the exercise of their positions, in which case it will suffice with the indication of this and their name and surnames. Art. 156 10<sup>th</sup> RN also establishes that, if the Notary of the parties find it necessary, the profession or any other personal data should be included.

### **3.6 Obligations contained in attachments**

Obligations, contained in a directly enforceable notary deed, must be included in the Act, either in the text or attached.

### **3.7 Conditional claims**

Notary documents are enforceable and conditional claims may be accepted.