How to enforce a court decision

Španija

1 What does 'enforcement' mean in civil and commercial matters?

In general, civil and commercial enforcement mean that, when an enforceable decision (such as a final judgment) is not complied with voluntarily by the offender, the claimant must apply for judicial enforcement in order to ensure that the decision is complied with. For example, in order to recover a debt that the defendant has been ordered to pay but does not do so, the claimant (creditor) applies for judicial enforcement and obtains the recovery by way of the attachment of the debtor's current accounts or the debtor's immovable property that, once auctioned, allows the auction proceeds to pay the amount owed to the creditor.

Enforcement is part of the response to the mandate of the Spanish Constitution of 1978, which entrusts the judges and the courts with the task of both issuing judgments and enforcing them (Articles 117 and 118 of the Constitution). Therefore, the parties involved in the proceedings are under an obligation to comply with judgments and other court decisions, as well as to provide the cooperation required to enforce what has been decided. It is for the judge to ensure that these requirements are met in an appropriate way.

Enforcing a court decision means complying with what has been ordered by the court, i.e. enforcing the full right gained by the party that won the litigation. This may involve the claimant (hereafter the 'party seeking enforcement' [*ejecutante*]) requesting, depending on the order, the reimbursement of a sum of money, the right to have an action carried out or not carried out, e.g. building work, or that a recognised right be fulfilled by registration in the relevant public registry.

Enforcement may be final or provisional. In the latter case, and under certain circumstances, a judgment that is not yet final is enforced in order to prevent the creditor incurring losses during the interim period (i.e. over the duration of the procedural steps of the action against that decision and while the final judgment is issued) because of the delays inherent in the proceedings (Articles 524-537 of the Code of Civil Procedure [*Ley de Enjuiciamiento Civil*]).

2 Which authority or authorities are competent for enforcement?

Spanish legislation assigns the enforcement of judgments to judges and courts, in accordance with the laws and rules on jurisdiction (Article 117(3) of the Spanish Constitution).

In line with the Constitution and under the Code of Civil Procedure (Law 1/2000 of 7 January 2000, BOE No 7 of 8 January 2000, as amended), which regulates the enforcement procedure in civil matters, the judge is tasked with monitoring the proper implementation of the enforcement procedure (Articles 545, 551, 552 and the corresponding provisions). It is the judge who, on the application of the party seeking enforcement, initiates the procedure by means of the general enforcement order that will be issued once the enforceable title has been reviewed. The judge will also issue a decision if the defendant (hereafter 'the judgment debtor' [*ejecutado*]) raises an objection to the enforcement and initiates the specific enforcement opposition procedure referred to below.

The registrars [*letrados de la administración de justicia*], previously called court clerks [*secretarios judiciales*]) are responsible for determining and adopting the specific enforcement measures (demands for payments, attachment of the judgment debtor's goods, deductions from current accounts, salaries, etc.). Once the general enforcement order has been issued by the judge, it is therefore the registrar who monitors the enforcement procedure and adopts the corresponding decisions, notwithstanding that in some cases an appeal may be lodged before the judge against those decisions.

3 What are the conditions under which an enforceable title or decision may be issued?

In general, it is necessary to have a final judgment or court decision, or any other enforceable title permitting enforcement (there are exceptions in which a decision is not yet final but enforceable, such as the provisional implementation of contested judgments, which is permissible under certain circumstances).

In accordance with the provisions of Article 517 of the Code of Civil Procedure concerning the enforcement procedure and enforceable titles, the enforcement application must be based on a title that is enforceable. Only the following titles are enforceable:

A final judgment.

Arbitration decisions and mediation agreements. Mediation agreements must be registered in accordance with the Law on Mediation in Civil and Commercial Matters [Ley de Mediación en Asuntos Civiles y Mercantiles].

Court decisions approving or confirming court settlements and agreements reached during the proceedings, accompanied, if necessary, by the corresponding depositions in order to provide a record of their actual content.

Public documents, provided that they are first copies. If they are second copies, they must be issued by a court order referring to the person who will suffer loss, or the person causing the loss, or they must be issued with the agreement of all the parties.

Instruments of commercial agreements signed by the parties and by a commercial broker who is a member of a professional association and who inspected them, provided that they are accompanied by a certificate in which the broker certifies that the contract matches the entries and the dates of them in his/her register.

Lawfully issued bearer or registered securities representing obligations due and the coupons, also payable, on those securities, provided that the coupons correspond to the securities and that the securities, in any case, match the receipt books.

A protest of securities forgery formulated during the matching process will not, if the items match, prevent the enforcement order from being issued, without prejudice to the subsequent objection to enforcement that the debtor may make, arguing that the security is forged.

Unexpired certificates issued by the bodies responsible for the registers showing the securities represented by book entries referred to by the Stock Market Law [Ley del Mercado de Valores], provided that they are accompanied by a copy of the public instrument representing the securities or, where applicable, the issue, where such an instrument is required by current legislation.

The certificates referred to in the previous paragraph do not expire once enforcement has been sought and ordered.

The court order setting out the maximum amount that can be claimed by way of compensation, issued under the conditions laid down by law in criminal proceedings instituted in relation to events covered by compulsory third-party liability motor vehicle insurance.

Other procedural decisions and documents which are enforceable under this or another law.

3.1 The procedure

For the rest, the procedure is set out in Articles 548 *et seq.* of the Code of Civil Procedure; it should be noted that the enforcement order will be issued only at the request of one of the parties and will be in the form of an application, as discussed below. Once the enforcement application has been submitted to the court, and provided that the procedural rules and requirements are fulfilled, the court draws up the general enforcement order. After the order has been issued by the judge, the registrar issues a decree containing the appropriate specific enforcement measures, as well as the tracking and investigation measures relating to the judgment debtor's assets deemed appropriate for enforcement.

Notice of the above-mentioned order and decree, along with a copy of the enforcement application, is issued to the judgment debtor, notwithstanding that certain measures may be adopted in order to protect the creditor from potential losses.

The judgment debtor may object to the enforcement on specific grounds, either substantive (e.g. payment of the debt) or procedural (e.g. if there are errors in the title submitted), in accordance with Article 556 *et seq.* of the Code of Civil Procedure. In this case, an adversarial procedure is initiated, permitting evidence to be examined, which concludes with the issue of an order either upholding the enforcement order or rendering it null and void in whole or in part. This decision is subject to appeal before the corresponding Provincial Court (*Audiencia Provincial*).

3.2 The main conditions

As stated earlier, an application for enforcement must be made at the request of the party concerned by lodging the claim containing the enforcement application. The enforcement application must contain the title on which enforcement is based, state the enforcement sought from the court, the assets of the judgment debtor eligible for attachment, the tracking and investigation measures to identify the debtor's assets, and the person or persons against whom enforcement is to be carried out, with official proof of their identity. If the enforceable title is a decision issued by the registrar or a judgment or decision issued by the court responsible for the enforcement, the enforcement application will request issuance of the enforcement order, identifying the judgment or decision to be enforced (Article 549 of the Code of Civil Procedure), whereas, in other cases, the application for enforcement must be submitted with the documents on which enforcement is based (listed in Article 550 of the Code of Civil Procedure). If the enforcement application meets the above requirements and if the title presented is one that allows enforcement to be ordered, enforcement will be ordered by the judge or by decree issued by the registrar, who will determine - in the case of a monetary enforcement - the amount constituting the principal of the enforcement, along with the amount provisionally set for interest and costs, without prejudice to its subsequent settlement and adjustment, and must always identify the persons concerned and the enforcement measures to be adopted.

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

Notwithstanding certain unattachable assets referred to below, it should always be stressed that the enforcement measures must be in proportion to the amount for which enforcement is granted. Thus, if they are deemed excessive the court can order a reduction. Additionally, if they are insufficient, the party seeking enforcement can apply for them to be complemented by broadening or increasing the measures adopted. Where the party seeking enforcement does not know what assets are owned by the judgment debtor, the court may be asked to make enquiries. These are carried out by the registrar, either directly from the court or by submitting requests to the competent authorities. However, there is a series of scales or limitations to attachments and garnishments of wages and salaries that are listed below. Enforcement arising from an order to pay maintenance (set out in either a maintenance proceeding between relatives or in a family proceeding relating to maintenance payments owed to children) is an exception, as in these cases enforcement is not subject to the statutory scales; instead, the court determines the amount that can be attached (Article 608 of the Code of Civil Procedure).

With regard to unattachable assets, Articles 605 *et seq.* of the Code of Civil Procedure state the following (references to the 'court clerk' should be taken to refer to the registrar):

Article 605. Unattachable assets.

Under no circumstances may the following assets be attached:

Assets that have been declared inalienable.

Ancillary rights that cannot be alienated separately from the main right.

Assets that, in themselves, have no value.

Assets expressly declared unattachable by a legal provision.

Article 606. Judgment debtor's unattachable assets.

The following items are also unattachable:

Furniture and household items, as well as the clothes of the party against whom enforcement is sought, or those of his/her family, that cannot be considered superfluous. In general, items such as food, fuel and others which, in the opinion of the court, are essential so that the judgment debtor and their dependents can live with reasonable dignity.

The books and instruments needed by the judgment debtor to practise his/her profession, art or trade, where their value is not proportional to the amount of the debt claimed.

Sacred items and items used in the practise of legally registered religions.

Amounts expressly declared unattachable by law.

Assets and amounts declared unattachable by Treaties ratified by Spain.

Article 607. Attachment of wages and pensions

1. Salaries, wages, pensions, emoluments or their equivalent that fall below the amount set for the minimum wage shall be exempt from seizure.

2. Salaries, wages, remuneration or pensions that are higher than the minimum wage may be seized according to this scale:

For the first additional amount up to the amount equivalent to twice the minimum wage, 30%.

For the additional amount up to the amount equivalent to three times the minimum wage, 50%.

For the additional amount up to the amount equivalent to four times the minimum wage, 60%.

For the additional amount up to the amount equivalent to five times the minimum wage, 75%.

For any amount that exceeds the above amount, 90%.

3. If the party against whom enforcement is sought receives more than one salary or wage, all of them will be added together and the unattachable part deducted once only. Unless separate estates are in place for the spouses, and proof of this is provided to the Clerk of Court, the spouses' salaries, wages and pensions, emoluments or equivalent shall be combined.

4. If the party against whom enforcement is sought has dependants, the court clerk may reduce by between 10% and 15% the percentages laid down in Nos 1, 2, 3 and 4 of this Article.

5. If the salaries, wages, pensions or remuneration were encumbered with permanent or temporary deductions of a public nature pursuant to tax or social security legislation, the net amount received by the judgment debtor after those deductions will be the amount used as the basis for determining the amount to be seized.

6. The previous paragraphs of this Article shall apply to revenue from professional and commercial activities carried out on a self-employed basis.
7. The amounts seized in accordance with this provision may be transferred directly to the party seeking enforcement, into an account previously designated by said party, if approval is granted by the Clerk of Court responsible for enforcing the seizure.
In that case, both the person or body carrying out the attachment and subsequent transfer, as well as the party seeking enforcement, must inform the court clerk every three months of the amounts sent and received, respectively, with the exception of any claims that may be lodged by the party against whom enforcement is sought, either because they consider the debt to be fully repaid, therefore invalidating the seizure, or because the attachments and transfers were not being carried out as stipulated by the court clerk.
The order issued by the court clerk allowing direct transfer may be challenged by bringing a direct appeal for review before the court.
In accordance with Royal Decree-Law 8/2011 of 1 July 2011 on measures to support mortgage debtors, which entered into force on 7 July 2011, clarification is given as regards the provisions of the Code of Civil Procedure. Article 1 of Royal Decree-Law 8/2011 stipulates:
Article 1. Exemption from attachment of minimum family income.
'If, in accordance with the provisions of Article 129 of the Mortgage Law [Ley Hipotecaria] the price obtained from the sale of the mortgaged habitual dwelling, following enforcement in relation to that debt, is insufficient to cover the secured loan, the amount exempt from attachment laid down in Article 607(1) of the Code of Civil Procedure will be increased by 50% and, in addition, by a further 30% of the minimum wage per member of the family unit that does not receive a regular income, salary or pension above the minimum wage. For these purposes, the family unit is understood to comprise the spouse or cohabiting partner and the first-degree ascendants and descendants who live with the judgment debtor.
Salaries, wages, remuneration or pensions above the minimum wage and, where applicable, the amounts resulting from application of the provision laid down in the paragraph above protecting the family unit, will be attached in accordance with the scale set out in Article 607(2) of the above-mentioned law.'

4.2 What are the effects of enforcement measures?

In the case of immovable property or other assets that can be registered, the court may, at the request of the party seeking enforcement, order a preventive attachment entry to be made in the corresponding public register (usually the Property Register, which is the register for immovable property) in order to guarantee the subsequent enforcement.
In other cases, the following measures may be granted:

- Cash: confiscation.
- Current accounts: preservation order to the bank.
- Wages: retention order to the payer.
- Interest, proceeds and revenue: withholding by the payer, court-supervised administration or payment into court.
- Securities and financial instruments: withholding of interest at source, notification to the stock exchange or secondary market regulator (if the securities are listed on a public market) and notification to the issuing company.
- Other movable property: confiscation.

In addition, with a view to ensuring that enforcement takes place, all persons and public and private bodies are required to cooperate with enforcement measures (with a warning that they may incur a fine or even be held in contempt of court if they fail to comply with the requirement). This means that they must provide the information required of them or adopt the guarantee measures in question, and they must hand over to the court any documents and data in their possession, with no limitations other than those arising from the respect for fundamental rights or limits which are expressly laid down by law in certain cases.

4.3 What is the validity of such measures?

Enforcement measures have no set duration; they remain in force until enforcement is complete. With regard to these measures, the party seeking enforcement must apply for the relevant enforcement in each case. For instance, an auction will be requested in the case of the attachment of movable or immovable property. The payment to the party seeking enforcement will be made with the money obtained from the auction. In other cases, for instance when the order consists of delivering a property to the party seeking enforcement (such as eviction for failure to pay rent), the enforcement measures will consist of returning possession of the property to the party seeking enforcement, once the tenant in breach of contract has been evicted from the property.

5 Is there a possibility of appeal against the decision granting such a measure?

However, the judgment debtor may object once notice of the enforcement has been given. In that case, the above-mentioned objection proceedings will be held. The objection may be on substantive grounds or on the basis of procedural defects. The grounds for objection vary according to the title to be enforced (as provided in Articles 556 *et seq.* of the Code of Civil Procedure, depending on whether it is a procedural decision issued by the judge or the registrar, an arbitration decision or a mediation agreement; maximum penalty titles ordered in criminal proceedings relating to traffic accidents; titles referred to in Nos 4, 5, 6 and 7 of Article 517 of the Code of Civil Procedure, as well as other enforceable documents referred to in No 9 of Article 517(2). Objections based on excessive claim or procedural defects are governed by Articles 558 and 559, respectively, of the Code of Civil Procedure). It should be noted that the court may have previously raised some of these grounds of its own motion (if the court considers that any of the clauses included in an enforceable title consisting of authenticated public documents, instruments or certificates may be unfair, it is required to act ex officio by hearing the parties on the matter and issuing a ruling thereafter). The parties may appeal against the order issued by the Court of First Instance in response to the grounds for objection. The appeal will be heard by the relevant Provincial Court.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

Thus, an enforcement measure based on a court judgment or decision, a decision by the registrar approving a legal settlement or an agreement reached during the proceedings, or an arbitration decision or mediation agreement, lapses if the corresponding enforcement application is not filed within five years of the judgment or decision becoming final (Article 518 of the Code of Civil Procedure).
There is also a waiting period before instituting the enforcement of procedural decisions (by the judge or the registrar) or arbitration decisions or mediation agreements. This period is intended to give the judgment debtor time to comply voluntarily with the order, thereby avoiding the need for the person who wins the case to apply for enforcement. Accordingly, no enforcement of procedural or arbitration decisions or of mediation agreements will be ordered within 20 days of the date on which the conviction becomes final, or on which notice of the decision to approve the agreement or sign the agreement was given to the judgment debtor (Article 548 of the Code of Civil Procedure). Ultimately this waiting period is intended to encourage voluntary compliance by the judgment debtor.
As explained above in 4.1, for the protection of the debtor, the Code of Civil Procedure lays down that certain assets are unattachable, as well as setting quantitative limits proportional to the attachments of salaries, wages, remuneration or pensions.
In property auctions, the sale to the highest bidder must be made for minimum amounts in proportion to the appraisal value of the asset or the amount of the debt. These debtor protection limits are higher if the debtor's habitual residence is auctioned (Articles 670 and 671 of the Law on Civil Procedure).
The Code of Civil Procedure also states that, as a general rule, enforcement of interest on the principal owed and on procedural costs may not be carried out for an amount exceeding 30% of the principal (Article 575 of the Code of Civil Procedure).

Where enforcement is carried out against the habitual residence, the costs claimable from the judgment debtor may not exceed 5% of the amount claimed in the enforcement application (Article 575 of the Code of Civil Procedure).
In mortgage foreclosures, and for debtors whose social and financial situation is particularly vulnerable, eviction from the habitual residence is postponed (Article 441 of the Code of Civil Procedure).
Pursuant to Articles 55 to 57 of the Insolvency Law (*Ley Concursal*), individual enforcement orders cannot be carried out once bankruptcy has been declared, since the judge hearing the bankruptcy proceedings has exclusive competence in relation to the enforcement against the insolvent party; the aim is to avoid some creditors being given preferential treatment over others.

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