

In practice--Spain's new law on international judicial co-operation

18/08/2015

Dispute Resolution analysis: With its large expatriate community and Gibraltar on its doorstep, what does the new Spanish law on international judicial co-operation mean for those advising Spanish people or businesses where there is a need to seek assistance from the UK? Ignacio Morillas-Paredes, a Spanish abogado and a solicitor at Colman Coyle LLP, comments on the new Spanish law and how it will affect Spain's relations with other EU member states.

Original news

Ley de cooperación jurídica internacional en materia civil--Spain's law on international judicial co-operation in civil matters (Statute 29/2015)--received Royal Assent on 30 July 2015. It was published in the Official State Bulletin on 31 July 2015 and comes into force on 20 August 2015.

This law implements the recast Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It also implements Regulation (EU) 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

What are the significant features of this new law?

Statute 29/2015 develops Statute 1/2000, the Ley de Enjuiciamiento Civil (LEC). Together these statutes incorporate into the Spanish legal system a modern framework which will allow Spanish authorities to handle international legal co-operation in civil matters in tune with current European trends.

This statute itself is subordinate to any other prior legal international instruments or treaties. This flows from the established hierarchy of EU legislation, as well as from international treaties which Spain is a signatory to.

When interpreting Statute 29/2015, Spanish courts will apply the principle of speciality. This means that the statute will not take precedence above other statutes that may cover a particular subject in more detail. For example, existing Spanish law already addresses specific aspects in these areas, including, among others:

- o bankruptcy proceedings
- o international adoption
- o consumer law

The draftsman of this statute intends that it creates a legal body fully capable of dealing with the concept of international legal cooperation.

Statute 29/2015 makes particular reference to requests made to Spain by another state to apply that other state's procedural laws instead of Spanish procedural laws. It should always be the norm in Spain that it applies its own procedural laws. However, Spain will consider exceptional requests to disapply this norm where it is requested by a competent authority in another EU member state.

What areas of law does this new law affect?

Statute 29/2015, art 1.2 deals with the types of areas it should apply to. It states that it shall cover civil and commercial matters, regardless of the sort of court that might be within the Spanish court system empowered to hear such cases. It should be noted that this will include cases involving civil liability transpiring from either a criminal offence or an employment contract.

It also fills in a gap in the Spanish legal system because it creates a common legal regime in civil matters. This applies particularly to judicial communications or documents and formalities in relation to evidence.

How does this affect Spain's relationship with other member states?

Previously, Spain has applied the well-established international law principle of reciprocity. This principle is well known and has been used particularly in disputes relating to

- o copyright
- o extradition
- o the mutual recognition and enforcement of judgments

Statute 29/2015 aims to integrate this. It therefore gives paramount importance to citizens' rights above the nature of the relationship that may exist between Spain and a third country. This approach should assist the setting up of a system of real international legal cooperation.

It does, however, create an exception to this. Reciprocity is not an indispensable requisite in terms of co-operation. However, where co-operation has been repeatedly refused by one member state, or the law of that state forbids co-operation, the Spanish Government will then be able to pass another law whereby Spanish authorities will no longer need to cooperate with that defaulting member state.

Have there been challenges in the past with achieving international legal co-operation?

There are a variety of existing legal systems that co-exist. Although the ultimate aim of them all is to achieve justice, the chosen routes vary, particularly in relation to procedural rules.

Of particular interest for practitioners is the subject of service, including:

- o how service is effected
- o when it is deemed that service has been effected
- o when a defendant's right may have been undermined by the manner in which service was effected

These are familiar issues that different legal systems tackle in different ways. Different legal systems have different sets of principles or agents authorised to carry out service. The issue of service may create situations where international legal co-operation may not work as well as it should.

Could you give any examples of how this new law will work in practice?

It remains to be seen how the future application of this statute will work in practice. It is anticipated that Spanish courts will communicate directly--and without the use of intermediaries in the courts of other member states--provided this complies with the rules of both member states and the principle of judicial independence is protected.

The Spanish Ministry of Justice is appointed as a central authority. Its Central Registry Office acts as the authority on matters regarding the Civil Registry.

Brussels I Regulation (EC) No 44/2001 laid out a process known as exequatur. This process required a judgment of a court in one EU member state which was to be enforced in Spain to undergo a process of registration and a declaration of enforceability in the relevant jurisdiction before it could be enforced in Spain.

Exequatur has been reformed Brussels I (recast) Regulation (EU) No 1215/2012. This was overdue--Brussels I was in conflict with recent decisions of the Spanish Supreme Court. New trends and recent legislation are taken into consideration when addressing exequatur.

The statute also clarifies or addresses:

- o terminology and concepts
- o the type of decisions capable of recognition and enforcement including their effect
- o issues of recognition and partial or incidental execution
- o implementation of changes in foreign decisions (reforming the grounds for refusal)

It also allows the incidental recognition of a foreign judgment in a flexible and simpler way

The law is an innovative one for Spain because it regulates the need to adapt decisions contained in a foreign judgment where there is not an equivalent recognised by Spanish law. Where possible that judicial decision shall be adapted by any Spanish law which has equivalent effect or pursues similar purposes and interests. However, such adaptation cannot have more effect than those provided in the law of the state of origin.

There are a few categories of foreign judgments which deserve special mention. These are those relating to:

- o the provision of food
- o child custody
- o protection of minors
- o mental incapacity

In these cases, the parties to the judgment can choose to either modify the foreign judgment or institute a new procedure in Spain.

Certain types of foreign judgments may give rise to particular difficulty where Spain is required to recognise them. The statute permits Spain to refuse to recognise those foreign judgments. These include judgments obtained:

- o where there has been a breach in the right to a fair trial by either party
- o in default, but the claim had not been notified in a regular form and with sufficient time to respond

The statute also includes a special rule recognising foreign judgments given in proceedings arising from class actions. In general, Spain will recognise and enforce these, but special precautions will be taken into consideration. For example, the jurisdiction of the court of origin will be controlled more tightly.

Interviewed by David Bowden.

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