

STREAMLINING LITIGATION: Recent Modifications to the Spanish Civil Procedure Code

More than a century after its passage, the Spanish Civil Procedure Law (LEC) was recently the subject of extensive modifications.¹ Although criticized by some as not sufficiently encompassing, the changes were more than merely cosmetic. Behind many of the amendments to the LEC lay the objective of streamlining a litigation process that was seen as unduly cumbersome and was often employed by defendants to postpone payment of a debt whose existence was undeniable.² To the prospective litigant in Spain, the revisions to the LEC adopted in late 1984 render the prospects of Spanish legal proceedings somewhat easier to digest.

Changes of the New Law

CHANGES IN AMOUNTS IN CONTROVERSY

The most important amendment to the LEC will affect foreign and domestic litigants alike: instead of subjecting all major suits to the cumbersome procedure reserved for actions entailing large amounts in controversy (*juicio de mayor cuantía*), much of the litigation in Spain will now take place under the procedure reserved for trials involving lesser amounts (*juicio de menor cuantía*). The importance of this change, long advocated by Spanish legal commentators, is that the *juicio de menor cuantía* procedure permits fewer interlocutory motions than its *mayor cuantía* counterpart and has a

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1. Law 34/1984 of August 6, published in the BOLETIN OFICIAL DEL ESTADO of August 7, 1984.

2. See Statement of Legislative Intent of Law.

prescribed length which is less than three months (it may be longer in practice) from the time a complaint is filed. This change was accomplished by simply raising the amounts in controversy for both types of trials. Under Article 484 of the LEC, claims involving between 500,000 and 100,000,000 pesetas (U.S.\$1 equals approximately 175 Spanish pesetas), in addition to most family and other civil actions, will now follow the *menor cuantia* procedure,³ while only those over 100 million pesetas will be resolved as a *juicio de major cuantia*.

PROVISIONAL EXECUTION OF JUDGMENTS

Neither will defeated debtors be able to postpone payment through interminable appeals. Article 385 of the LEC now provides for the provisional execution of certain trial court judgments upon posting of a bond. In order for the creditor to take advantage of this remedy, the new provision requires that the damage award be a "liquid" sum, or else that it be quantifiable by "simple numerical operations" based on the terms of the trial judge's order. Although the trial court is granted discretion to allow provisional executions in instances not involving the above, Article 385 specifically denies this remedy in cases involving personal rights such as maternity and paternity suits, divorces, and the like. The provisional remedy motion is summary: the appellee's request is filed within six days of receipt of the debtor's notice of appeal, and the judge should rule both on the motion and on the amount of the bond during the following six-day period.⁴

COSTS AND ATTORNEY'S FEES

A further deterrent against bad-faith litigants was added by the requirement that the defeated party pay its opponent's court costs and attorney's fees (*costas*). This amendment resolved one of the longest-running arguments among Spanish legal scholars, most of whom decried the case law which previously required a finding of "temerity" (*temeridad*) prior to imposing the payment of *costas* upon the defeated party.⁵

Under the new Article 523, a party whose claims are "totally rejected" must generally pay the opponent's cost and attorney's fees, unless "exceptional circumstances" dictate otherwise. Where a judgment does not totally favor one side, each party will pay its own *costas* and share common ones.

3. See also LEC Articles 484, 488 and 489.

4. See also LEC Article 1722.

5. One former Supreme Court Justice had described the temerity standard as "completely anarchic." De Borrajeiros, *La Condena en Costas en los Procesos Cíviles y su Posible Censura en Casacion*, 235 REVISTA GENERAL DE LEGISLACION Y JURISPRUDENCIA 295, 308 (1973).

However, the concept of “temerity” has not altogether disappeared from the LEC, since a partially successful but still “temerarious” litigant may be forced to pay his opponent’s *costas* as well as his own. In addition, while a losing party ordinarily need not pay attorney’s fees which exceed certain prescribed standard rates (*aranceles*), or one-third of the amount of controversy, this limitation does not extend to a losing party who has litigated with “temerity.”

FOREIGN CURRENCY DEBTS

Putting to rest another long-standing uncertainty, Article 1435(2) of the LEC was amended to state that—if otherwise properly documented—denominating debts in foreign currency will not preclude a creditor from collecting the full amount through a *juicio ejecutivo* proceeding. This summary proceeding, generally commenced on the basis of a notarized agreement or other document (*titulo ejecutivo*) meeting certain requirements, often provides the only leverage to foreign investors unwilling to commence a long court battle in Spain. In view of a prior judicial judgment holding that foreign currency debts had to be converted into pesetas on the date the litigation was commenced, the amended version of Article 1435(2) dispels the uncertainty among foreign investors and bankers in Spain concerning the *juicio ejecutivo* procedure.

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The effect of the changes to the LEC introduced last year in Spain, only a few of which can be highlighted here, cannot yet be ascertained. Obviously, much will depend on their interpretation by the Spanish courts. On their face, however, the amendments to the LEC herald a more streamlined litigation process less prone to abuse by recalcitrant debtors.

