



TRAVEL LAW CONFERENCE
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OUTER TEMPLE

ENFORCEMENT OF UK JUDGMENTS AND TORPEDOES- SPANISH PERSPECTIVE

David Sánchez Almagro

Abogado - Lawyer | dsa@eja.es | Tel: 917 454 014

Estudio Jurídico
— **Almagro**

Tel: (+34) 917 454 010 | Fax: (+34) 914 117 000
www.eja.es
Paseo de la Castellana 151 bis 1ª planta
28046 - Madrid (Spain)

Estudio Jurídico
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Enforcement of UK Judgments in Spain in proceedings instituted BEFORE end of transitory period

- **Article 67 (2) of Withdrawal Agreement:**

- Brussels I (Recast) will apply to the recognition and enforcement of judgments given in legal proceedings instituted before the end of the transitory period.
- Applicable to Judgments on damages.
- What about court orders on legal costs?
- Recent Practice by Spanish insurers.

- **Arguments?:**

- Court costs order covered by Article 67 (2) of Withdrawal Agreement?
- **Manifestly** contrary to public policy under Article 45. A) of Brussels I (Recast)?
- Public policy: values and principles in the Spanish Constitution and fundamental rights.

Enforcement of UK Judgments in Spain in proceedings instituted AFTER the end of transitory period

- In the absence of an international treaty, the applicable law for enforcement of a foreign judgment is Act 29/2015 of International Legal Cooperation in civil matters published on 31 July 2015 ("Act 29/2015").
- Modern law - imbued by the principle of international cooperation. Abandons the principle of reciprocity.
- Orders on legal costs issued by a judicial authority are specifically included- Article 43 a) of Act 29/2015.
- Article 48: of Act 29/2015: The Spanish Judge may not review the merits of the foreign Judgment (*"Under no circumstances"*).
- Articles 52-55 of Act 29/2015 regulate the procedure to make the application for exequatur.

Main procedural aspects:

- Competent court: The Court where the defendant is domiciled.
- 30 days to file a defence.
- Decision can be appealed before High Court of Appeal and Spanish Supreme Court.



REASONS TO DENY EXEQUATUR

(Article 46 of Act 29/2015)

1.- Judgment is against public policy

- The adverb "**manifestly**" used in article 45.1 a) of Brussels I (Recast) goes out.
- Concept of public policy: the values and principles in the Spanish Constitution and fundamental rights including right of defence.
- Lessons from Case law review shows in the majority of cases the right of defence was not duly respected by the judicial court of origin.

2.- Judgment given in breach of the right of defence

The Court will look into whether:

- i)** the Defendant was duly notified the claim.
- ii)** the Defendant had sufficient time to put forward a defence (Spain: 20 working days).

3.- Jurisdiction issue:

Foreign judgment given on a matter in respect of which Spanish courts have exclusive jurisdiction or, in respect of other matters, if there is not **a reasonable connection** between the dispute and the jurisdiction of origin.

- The list of matters for which Spanish courts have exclusive jurisdiction does not include PI.
- All coming down to “**reasonable connection**”.
- Test: there is a reasonable connection where the foreign court has based its jurisdiction on similar criteria to those under the applicable Spanish laws. *Odenbreit* and Brussels I (Recast) are Spanish law.
- Article 5 (1) (j) of Hague Convention V. Art. 46 of Act 29/2015.

4.- Judgment irreconcilable with a judgment given in Spain.

5.- Judgment irreconcilable with a judgment given in another country but which has been recognised by the Spanish courts.

6.- Lis pendens issue:

Where there is pending litigation in Spain involving the same parties and the same cause of action, provided the Spanish court was seized first.

SUMMARY

- 1.- Is the English Judgment against Spanish Public policy? Burden of proof on the Defendant.
- 2.- Is there a reasonable connection between the dispute and England?.

Factors:

- Procedural strategy of the Defendant before the UK Court: Not to enter appearance?
- Has Spanish law been applied to discuss liability and quantum?.

Lack of precedents

TORPEDO ACTIONS

Recent case: Facts

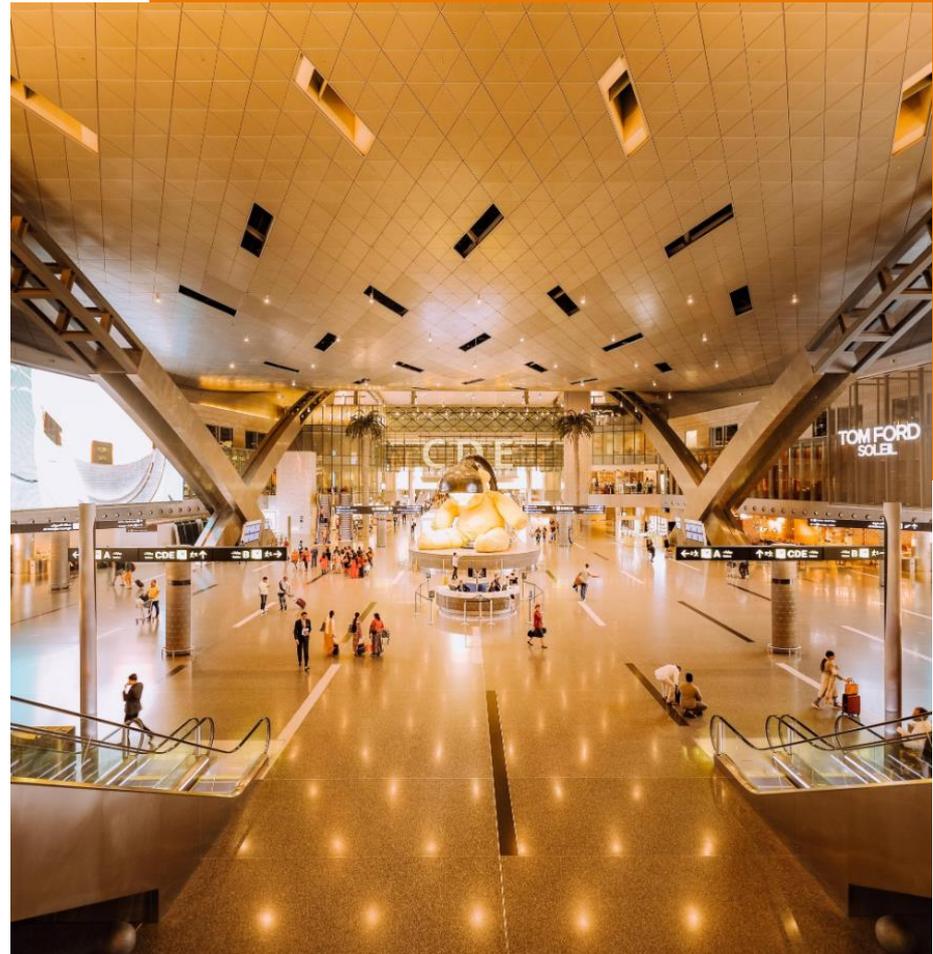
- English tourist struck by a vehicle whilst crossing the road with the traffic light in red for pedestrians. CCTV recording.
- Police report puts 100% of the blame on English pedestrian.
- Spanish insurers sues English pedestrian before the Spanish court claiming repair costs for vehicle.
- English pedestrian brings proceedings before the English courts before the end of the transitory period.
- Court first seized: The Spanish
- English pedestrian appears before Spanish court and files defence relying upon accident recon report.

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- The background is a faded, orange-tinted photograph of a city street scene. On the left, a prominent building features a large, ornate dome topped with a statue. The street is lined with various multi-story buildings, and a streetcar is visible in the distance. The overall image has a soft, historical feel.
- ❑ Final Judgment: contributory negligence 40% driver- 60% pedestrian.
 - ❑ TBC before the English Courts

Torpedo action popular before end of transitory period

And after

- Recent case law allows drivers to make a claim against an injured pedestrian also in the event of contributory negligence, not just when the pedestrian was exclusively to blame for the accident.



Possible scenarios

- Court first seized is the English and Spanish insurer ignores this and sues in Spain after.
- Article 30 of Brussels I (Recast) no longer there to assist, but the English party may rely upon Article 46.1 f) of Act 29/2015 where it is a requirement that the Spanish court had been first seized.
- If Spanish Court first seized. Wait and litigate (**only**) liability in Spain– Or you will add another to the list of reasons to deny recognition: Article 46.1.f of Act 29/2015 (ongoing proceedings in Spain involving the same cause of action between the same parties and the Spanish court was first seized).

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**Thank you very much
for your attention**

DAVID SÁNCHEZ ALMAGRO

dsa@eja.es

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